

UKLA Technical Note

Share buy-backs with mix and match facilities

Ref: UKLA/TN/202.42 – Guidance Consultation

LR 9.5.10R–
LR 12.6 and LR
15.4.11R and
MAR

Issuers need to ensure that buy-back programmes are undertaken in accordance with the Market Abuse Regulation.

When an issuer undertakes a tender offer via an intermediary and the shares bought by the intermediary are automatically cancelled or held as treasury shares by the company under a pre-existing binding contract, we look through the intermediary to the company itself. As a consequence, the ‘sale’ of the buy-back shares by the intermediary to the issuer would not constitute a related party transaction even if the intermediary initially acquired over 10% of the issuer’s share capital in its own right.

Occasionally the structure detailed above is altered to include a mix and match facility. Under such a facility, after buying the shares from the shareholders under the tender offer, the intermediary will offer the same shares to certain new and/or existing shareholders before the eventual sale back to the issuer.

As noted above, the rationale for not viewing the ultimate sale to the issuer as a related party transaction is that the buy-back is effectively being undertaken by the company itself. So, following that logic, any shares that the intermediary buys under the tender offer should, in this instance, be treated as treasury shares for the purpose of the Listing Rules. Hence, any offer for selling these shares under the mix and match facility should be conducted in line with rules LR 9.5.10R, LR 12.6 and LR 15.4.11R (where relevant) in terms of the limitations on the price at which the shares may be sold, and any other rules applicable to the sale of treasury shares.

When we have made this point, some have responded that the intermediary is simply standing in the market selling shares and thus is unrelated to the company. Such an argument is, however, inconsistent with the look-through approach we take to these transactions. This is because it would suggest that the intermediary has been acting as principal in the buy-back and hence require us to treat the sale of shares to the listed company by the intermediary as a related party transaction.