

UKLA Technical Note

Listing Principle 2 – Dealing with the FCA in an open and co-operative manner

Ref: UKLA / TN / 209.1

LR 7.2.1R and
LR 1.2.5G

LP 2 requires premium listed issuers to deal with the FCA in an open and co-operative manner. This obligation is broader than simply requiring issuers to ensure that they deal with the FCA in an open and co-operative manner on on-going matters. In particular, LP 2 also requires issuers to approach the FCA in relation to significant transactions. However, it is not necessary for issuers to contact the FCA in relation to all transactions; the following provides an indication of the factors that should be considered and examples of transactions that could be considered significant.

It is not possible to describe all the factors that should be taken into account when trying to ascertain whether to contact the FCA, however, the following considerations are likely to be relevant.

- Is there a role for the FCA?

Issuers should consider the need for timely disclosure to the FCA in circumstances where the FCA has a regulatory role to perform before the transaction can proceed. Examples of where the FCA will have a role to play include providing guidance on the interpretation of a rule, waiving or modifying the application of a rule, or making a decision on whether a suspension is appropriate.

- Is the decision time critical?

Where an issuer is aware that a decision will need to be made by a certain point in time, for example making an announcement before the market opens, issuers should ensure that they contact the FCA well in advance of the event.

- Does the timing of contact allow for the FCA to disagree with the proposed approach?

Issuers should ensure that they allow, within their timetable, sufficient time for the FCA to consider the substantive matter presented and to form a view. This is particularly important in circumstances where the timetable cannot be delayed if the FCA disagrees with an issuer's position, due to an immovable event such as insolvency or a need for a suspension before the market opens.

Based on the above considerations, examples of the types of transactions where we would expect an issuer to carefully consider the timing of initial contact with the FCA includes reverse takeovers and class 1 disposals by issuers in severe financial distress. However, a routine class 1 transaction with a limited role for the FCA before the submission of the circular is unlikely to require early contact.

In circumstances where an issuer is unclear on whether LP 2 applies, LR 1.2.5G offers general guidance highlighting that issuer should consult the FCA 'at the earliest possible stage' if there is any doubt about how a Listing Rule applies in a particular situation.