

Primary Market Technical Note

Shareholder votes in relation to hypothetical transactions

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

Rules

UKLR 10, UKLR 11

We are occasionally asked to consider whether an issuer can seek shareholder approval for a hypothetical transaction. By this we mean where there is uncertainty about whether the issuer will pursue the transaction, or on what terms.

We acknowledge that there will rarely be absolute certainty, when an issuer proposes a resolution to approve, or a resolution otherwise directly related to or connected with, a proposed transaction, that the issuer will go through with the transaction. However, in most cases, all key terms will have been determined and the issuer will intend to

pursue the transaction, which is reflected in the Board's opinion that the transaction is in the best interest of security holders as a whole.

But in hypothetical transaction scenarios, an issuer may not have finalised the terms of a future transaction, or the Board may not have concluded whether to recommend the transaction. We have been asked whether an advance vote can be obtained in such circumstances, e.g. because the issuer is holding another meeting and it would be convenient to combine the votes.

We would highlight that for issuers in the equity shares (commercial companies) or closed-ended investment funds categories, it may not be possible to obtain a vote at such an early stage, if the issuer is unable to produce a UK Listing Rules compliant circular. For example, it may not be possible to obtain shareholder approval pursuant to the UK Listing Rules until negotiations are sufficiently advanced so that the issuer can provide shareholders with all information necessary to make a properly informed decision, as required by UKLR 10.3.1R.

We would advise issuers and their sponsors to contact us to discuss specific proposals, if an issuer is hoping to seek shareholder approval at a particularly early stage. In determining whether a vote can be undertaken, we will have particular regard to whether the issuer can provide the information required to be included in a circular under UKLR 10, or UKLR 11.6 for closed-ended investment funds in the case of relevant related party circulars.