The City of London Law Society

The Law Society

FSA Primary Markets Bulletin Issue 2

This response has been prepared jointly by the Company Law Committee of the Law Society of England and Wales and by the City of London Law Society Company Law Committee.

The Law Society of England and Wales is the representative body of over 120,000 solicitors in England and Wales. The Society negotiates on behalf of the profession and makes representations to regulators and Government in both the domestic and European arena. This response has been prepared on behalf of the Law Society by members of the Company Law Committee. The committee is made up of senior and specialist corporate lawyers.

The City of London Law Society ("CLLS") represents approximately 14,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees and in this case the response has been prepared by a working party of the CLLS Company Law Committee comprising senior and specialist corporate lawyers.

We welcome the opportunity to respond to FSA Primary Bulletin Issue No 2.

Our response is set out in the following format:
1. Introductory comments
2. Specific comments on the reformatted notes
3. Specific comments on the new notes
4. Appendix 1 – items from issues 1 to 25 of List! not included in the UKLA's Technical Notes
5. Appendix 2 – items from the Technical Notes not included in the new technical and procedural notes
6. Appendix 3 – manuscript mark-up of certain notes with minor amendments and to correct typos etc.

Where we have not commented on a particular note, we do not have any issues to draw to the FSA's attention.

1. Introductory comments

We are concerned at the quantity of existing guidance (formal or informal) that has not been replicated in the new notes. We do not think it desirable for useful information on FSA practice and FSA views that was formerly in List! or in the Technical Notes to be withdrawn without an explanation. Attached are two appendices we have prepared summarising "lost" information – Appendix 1 notes items from issues 1 to 25 of List! not included in the Technical Notes and Appendix 2 notes items from the previous version of the Technical Notes not included in the new notes. In Appendix 2 we have indicated the areas where we think the previous guidance remains helpful and should be retained.

In addition, we think it would make it easier for users (in particular issuers) if the Technical Notes could be grouped together by Rule Book (as was previously the case) and by chapter/rule. If that is not practical, would it be possible to produce an index with that grouping?

We note that many changes relate to the UKLA position set out in CP 12/2. For example, it is proposed that the substance of the technical notes on reverse takeovers is inserted into the Listing Rules. Our comments are subject to any changes which may result from the consultation.

2. Specific comments on the reformatted notes

2.1 Procedural notes

(a) PN 901.1

This note replicates the current UKLA Eligibility Procedural Notes except for two areas. Firstly, the section on "Transfers from AIM to the Official List" has been removed and secondly the reference to cases where overseas issuers have misunderstood the nature of the passporting regime has also been removed. It would be helpful to have an explanation of these omissions.

(b) PN 903.1

We suggest that the UKLA adds a cross-reference to the current note on the UKLA website entitled "Submit a draft document for review and approval". Alternatively, the practice note and this note could be combined into one document.

(c) PN 904.1

Significant acquisitions

Factsheet 3 states as follows:

"Significant acquisitions

For significant acquisitions (i.e. where the significant gross change calculations as set out in CESR guidance are more than 25%) where you have provided a three-year track record on the group as a whole and the target has already been consolidated into your latest financial statements, we will not require any further financial information on the target in the prospectus.

However, where a significant acquisition has not yet been consolidated, the significant gross change and pro forma rules mean that you must include the last year's accounts of the target in the prospectus.

Significant acquisitions (over 100%) or misleading financial information

If the significant gross change calculations are over 100% for an acquisition or where the financial information provided does not properly reflect the business of the issuer as a whole throughout the required period and could therefore be misleading, it may be appropriate to provide three years' financial information on the target as if it were part of the issuer's historical group."

The new Procedural Note no longer makes the distinction between the types of acquisitions. Similarly, the Procedural Note makes no distinction between cases in which the target has been consolidated into the latest financial statements and cases in which it has not. The Procedural Note simply states that in the case of any significant acquisition, "it may be appropriate to provide three years' financial information on the target as if it were part of the issuer's historical group". It would be helpful if you could clarify whether this represents a change in approach in relation to such acquisitions or whether the UKLA expects to continue the current practice provided the issue has been discussed with the UKLA in cases of uncertainty.

2.2 Technical Notes

(a) TN 201.1

The following paragraph has been deleted from the existing guidance on share buy back programmes and the market abuse safe harbour:

"We understand that market practice is leaning towards following the Listing Rules rather than the provisions of the Buy-back and Stabilisation Regulation. We would note that the fact that an issuer does not comply with all conditions necessary to benefit from one of the safe harbours provided by the Market Abuse Directive, does not necessarily mean it is engaging in market abuse. Issuers will need to make an assessment of the appropriate course of action to take in each particular case."

We think this is helpful guidance and suggest that this should be retained.

(b) TN 401.1-403.1

We do not have any comments on these notes, however, the Note headed "Reclassified Shares in an investment trust wind up/rollover" has not been reproduced. This was very helpful in confirming the UKLA's (revised) view that it would not require a prospectus for reclassified shares in these circumstances and setting out what it expects of issuers. We assume that the UKLA's position has not changed but it would be helpful to have this confirmed.

(c) TN 503.1

We note that you have omitted the following sentence from page 13 of the DTRs Technical Note "However, in respect of period financial reporting requirements not related to accounting standards (e.g. contents, deadlines etc), we are able to grant partial exemptions to the requirements set out in DTR 4". We assume that the UKLA's position has not changed but it would be helpful to have this confirmed.

(d) TN 520.1

We note that the final two paragraphs about the Friday night drop have been deleted from the sections headed "Selective disclosure: DTR 2.5.6". We think this remains valid and could usefully be retained.

(e) TN 540.1

We note that these sentences have been deleted from page 11 of the current Technical Note "Some concerns have been raised that the rule's construction does not necessarily achieve this objective. We are currently re-examining this provision to ensure that we have achieved our policy objective in drafting the rule." We assume therefore that the FSA is no longer re-examining this provision but it would be helpful to have this confirmation.

We note that the first four paragraphs of the section on page 11 headed "Notification of transactions by PDMRs" have been moved to a new section but that the "own account" guidance has been omitted. We think this guidance was helpful and could usefully be retained.

Global Depositary Receipts

(f) TN 541.1

We are concerned that this section omits the discussion of LR 14.3.23R and LR 18.4.3R(2) which appears in the last paragraph on page 17 of the existing (October 2010) Technical Note on the DTRs. The omitted paragraph accurately describes a problem under the existing rules. As the rules are written, LR 18.4.3R(2) clearly obliges certain overseas companies to comply with LR 14.3.23R, which in turn obliges them to comply with DTR 5. The last paragraph on page 17 of the existing Technical Note on the DTRs indicates that this outcome is not intended. We think this statement is very helpful. Without it, overseas companies subject to LR 18.4.3R(2), and holders of voting rights in those companies, will incorrectly assume that they must comply with DTR 5. We therefore suggest that the last paragraph on page 17 of the existing Technical Note on the DTRs be re-inserted at the very end of this section.

(g) TN 542.1

We suggest that DTR 5.6.1AR (see later comments) and DTR 5.8 (as the technical note covers certain notification requirements) should be added in the reference column.

We note that the paragraph under "DTR 5.6.1: Disclosure by issuers" in the current technical note dealing with the frequency of total voting rights announcements (page 21) has not been carried across to this draft technical note. We agree that this should be removed from the technical notes as the potential uncertainty has been clarified in part by the introduction of DTR 5.6.1A. However, we suggest that the issuer's obligations to disclose a relevant increase or decrease pursuant to DTR 5.6.1A should be referenced in the technical notes.

We suggest that the notification deadline tables be amended to include disclosures required by DTR 5.6.1A. For example, the deadline column for total voting rights could be amended to read: *At the end of every calendar month or, where there has been a material increase or decrease in its total voting rights as a result of a transaction, as soon as possible (and no later than the end of the business day following the day on which the increase or decrease occurs).* Similarly, we would suggest amending the details column as follows: *Disclose any changes in total number of voting rights and capital in respect of each class of share (in accordance with DTR 5.6.1R or DTR 5.6.1AR as applicable)*.

We wonder whether, for completeness, the notification deadline table for non-EEA issuers on regulated markets should also refer to DTR 5.11.1R and DTR 5.11.3R.

We suggest that it would be more helpful for readers if the table outlining the ongoing disclosure provisions for shareholders at the foot of page 3 of the draft technical note was moved to the technical note which deals specifically with Shareholder obligations (UKLA/TN/543.1). We would also suggest moving the examples on page 4 of the draft technical note forwards to the end of the section dealing with the acquisition or disposal by the issuer of its own shares.

(h) TN 543.1

If the table outlining the ongoing disclosure provisions for shareholders is not moved into this technical note, the reference to DTR 5.8.3R should be removed as it is not otherwise referred to in this technical note. We suggest that a reference to DTR 5.8.4R should be included as this is covered in the paragraph dealing with procedures for the notification and disclosure of major holdings.

(i) TN 544.1

We suggest that the opening sentence should be amended to make clear that it applies where the home member state is the UK. For example, it could be amended as follows: *Non-EEA issuers on regulated markets for which the home member state is the UK are subject to the Transparency Directive (TD) requirements unless we deem the domestic regime to be equivalent to the TD.*

We suggest that it may be helpful to have a link in the technical note to the page of the FSA website which lists the equivalent regimes and provides further details on the FSA's approach to equivalence.

(j) TN 545.1

The DTR references should be removed and we suggest replaced with a generic reference to DTR 5.

We suggest that the opening paragraph of this technical note be amended to make clear that where the shareholder has not changed his or her holding, the shareholder's obligation to disclose arises following the issuer's total voting rights announcement (whether that be pursuant to DTR 5.6.1R or DTR 5.6.1AR). Similarly, we would suggest deleting the reference to "bringing" in the examples and replacing with *"Issuer XYZ ... shares with voting rights attached and notifies the market that the total number of shares in issue is I".*

(k) TN 546.1

(i) *Managers of lawfully managed investments, assets of a collective undertaking and open-ended investment companies*

The point raised in paragraph 2.2 (l) (i) in our comments on the draft new technical note on Asset managers (UKLA/TN/549.1) could also be addressed here, if that was preferred.

(ii) *Market makers*

In paragraph 1 of this section, we think it would be helpful to change the words in parentheses in the first sentence to "*(as defined in the FSA Handbook's Glossary and DTR 5.1.4R)*". In our view the market maker exemption in DTR 5.1.3R(3) only applies to (a) market makers that fall within the FSA Handbook's Glossary definition of a "market maker" (this is required because the term "market maker" is italicised in DTR 5.1.3R(3) and DTR 5.1.4R), who also (b) meet the additional requirements of DTR 5.1.4R.

Also in paragraph 1 of this section, the second sentence currently states that the exemption "falls away if [holdings]… fall below the 10% threshold". However, DTR 5.1.3R(3) only requires that market makers notify on falling below the 10% threshold. Once their holding is below 10% the exemption applies, rather than falling away. We suggest the following changes to paragraph 1 to make this clear:

"This exemption falls away if they reach, or exceed the 10% threshold. So market makers must disclose their total holdings if they change to reach or exceed every 1% above 10% of the issuer's total voting rights and capital in issue. Market makers must also disclose if they fall below 10%."

Paragraphs 2 and 3 of this section discuss the definition of "market makers". We wonder if this guidance would be more logically located in the draft new technical note on Market makers (UKLA/TN/548.1)? That strikes us as the place where readers would be most likely to look for guidance on the market maker exemption.

Paragraph 2 of this section rightly refers to the definition of a "market maker" in Article 2(1)(n) of the Transparency Directive. When DTR 5 was first introduced, the definition of "market maker" in the FSA Handbook's Glossary was amended to match the Transparency Directive definition word-for-word. However, the Glossary definition of "market maker" was then amended on 23 March 2007 by the Handbook Administration (No 5) Instrument 2007 (FSA 2007/19). Paragraph 2.15 of Handbook Notice 64 (March 2007) stated that the changes made by that instrument "consist of minor administrative corrections and clarification… These changes were not consulted on and there are no changes to policy". Based on this, it seems that the move away from the Transparency Directive definition of a "market maker" was unintentional.

Article 2(1)(n) of the Transparency Directive defines a "market maker" as:

"a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him."

However, the FSA Handbook's Glossary now defines a "market maker" as:

"(except in COBS and FINMAR) (in relation to an investment) a person who (otherwise than in his capacity as the operator of a regulated collective investment scheme) holds himself out as able and willing to enter into transactions of sale and purchase in investments of that description at prices determined by him generally and continuously rather than in respect of each particular transaction."

We feel that it would be helpful if the guidance acknowledged this inconsistency and indicated that the market maker exemption is available to "market makers" which fall within the Transparency Directive definition and also comply with DTR 5.1.4R. You may also wish to consider amending the Glossary definition in due course.

(iii) *Credit institutions or investment firms*

The text of this section mirrors paragraph 3.43 of List! 14 (updated April 2007). However, since List! 14 was published, DTR 5.1.3R(4) was amended on 1 June 2009 to refer to not only shares held, but also shares underlying financial instruments that are held (see DTR 5.1.3R(4)(b)). We suggest that the opening sentence of this section be amended to reflect this rule change, so that it begins, "Provided that shares or financial instruments held by credit institutions…".

This section currently states that the trading book exemption falls away "at the 5% threshold" (i.e. at or above 5%) and that holdings do not need to be disclosed "below 5%". However, DTR 5.1.3R(4)(b)(ii) provides that the exemption applies so long as the relevant voting rights "do not exceed 5%". We suggest the following changes to this section to make this clear:

> "…the holdings do not need to be disclosed at or below 5% of the issuer's total voting rights and capital. Above the 5% threshold the exemption from disclosure falls away…"

(l) TN 548.1 and TN549.1

Market makers and asset managers

(i) *Scope of the exemption*

These draft new technical notes largely repeat wording which originally appeared in paragraphs 3.56 and 3.57 (asset managers) and 3.58 to 3.62 of List! 14 (updated April 2007). Since List! 14 was published, the trading book exemption was amended on 1 June 2009 to expressly extend its scope from "voting rights attaching to… shares" (see the opening words of DTR 5.1.3R) to apply to shares underlying financial instruments (see DTR 5.1.3R(4)(b), added on 1 June 2009). However, no equivalent changes were made to the market maker or asset manager exemptions, which still only expressly apply to "voting rights attaching to shares".

Paragraph 2.14 of PS 09/3 (issued following the consultation in CP07/20 and CP08/17) indicated that "the current DTR market-making (10%)… [exemption] would be available for CfDs in the same way that [it is] for shares". Likewise, Question 31 of the FSA's "Disclosure of Contracts for Difference – Questions and Answers", Version 3 (22 November 2010) states that "the partial exemption… for… market-making… potentially appl[ies] under the new [CfD] regime, subject to firms being able to satisfy the terms of the exemption in their particular circumstances".

Question 31 of the FSA's "Disclosure of Contracts for Difference – Questions and Answers", Version 3 (22 November 2010) states that "the partial exemption… for… investment management potentially appl[ies] under the new [CfD] regime, subject to firms being able to satisfy the terms of the exemption in their particular circumstances". In addition, Jim Feasby of the UKLA Helpdesk (after discussion with his colleagues) verbally confirmed to a CLLS member firm on 2 June 2009 that the investment management exemption also applies to long economic CfD positions and qualifying financial instruments.

Reflecting these statements, we feel that it would be helpful if these technical notes could clarify the scope of the exemptions, i.e. they also apply to shares which underlie voting rights attaching to financial instruments.

(ii) *Definition of market maker*

See paragraph on TN 546.1 in relation to the definition of "market makers".

(iii) *Asset managers - Example B (TN 549.1)*

Example B originally appeared in paragraph 3.62 of List! 14 (updated April 2007). However, when it was copied across onto page 29 of the existing (October 2010) Technical Note on the DTRs, the second bullet point of Example B was omitted. This appears to have been an error, as the scenario which was described in the second bullet point of Example B was still illustrated in the table summarising the worked examples on page 30 of the existing Technical Note on the DTRs. This apparent error has been replicated in the draft new technical note. To correct this, we suggest that the following wording (copied from paragraph 3.62 of List! 14) be inserted into the draft new technical note as a second bullet point in Example B:

> *"The asset manager then increases holdings on behalf of clients to 5% (a 3% increase) but the level of other holdings remains unchanged. Here the disclosure is 6%, as the combined holding has breached the 5% threshold as a result of the acquisition."*

(m) TN 550

(i) *Trading book exemption*

This draft new technical note largely repeats wording which originally appeared in paragraphs 3.65 of List! 14 (updated April 2007). Since List! 14 was published, DTR 5.1.3R(4)(b)(iii) was amended on 1 June 2009. To reflect this change to the rules, we suggest amending the second sentence of paragraph 1 to read:

> *"…the credit institution or investment firm must ensure that the voting rights attached to shares held, or shares underlying financial instruments held, in the trading book, are not exercised or otherwise used to intervene in the management of the issuer."*

(ii) *Table summarising examples*

This summary table originally appeared at the end of paragraph 3.65 of List! 14 (updated April 2007). However, when the table was copied across onto page 32 of the existing (October 2010) Technical Note on the DTRs, two figures summarising the effect of Example B were amended, we assume unintentionally. This has been replicated in the draft new technical note.

The text describing Example B only mentions changes to the trading book holding. No changes (or disclosure obligations) are mentioned in relation to the 6% non-exempted holding. However, the Example B section of the summary table shows a reduction in the non-exempted holding from 6% to 5% (which would need to be disclosed). We think this is incorrect, and that the figures in the summary table should be amended to align them with the figures which originally appeared in List! 14. We have marked the changes required in Appendix 3.

(n) TN 551.1

When Example A was copied from pages 30 and 31 of the existing (October 2010) Technical Note on the DTRs, the phrase “qualifying financial instruments” was changed to “financial instruments” in the first bullet point (and throughout the rest of this note). For consistency, we think the same change should be made in the second bullet point of Example A, which still uses the phrase “qualifying financial instruments”.

(o) TN 601.1-605.1

We do not have any specific comments on these notes but point out that there is a typo in both the printed and online versions of PR1.2.2R(5). The words "or by an affiliated undertaking" after the word "employer" in the first paragraph have been omitted, i.e. the exemption should read "transferable securities offered, allotted or to be allotted to existing or former directors or employees by their employer **or an affiliated undertaking** if". FSA instrument 2012/29 sets out the correct wording so we assume that this is a typo.

3. **Specific comments on new notes**

(a) TN 206.1

The proposed note does not give issuers any helpful guidance that would inform their decision whether a circular is "unusual". It would be helpful if the note could clarify some of the following questions:

(i) Is the test of what is "usual" to be judged by what is "usual" for the issuer concerned or for issuers generally?

(ii) Does the importance of the subject matter to the issuer affect whether it is "usual" or not?

(iii) Are there any categories of business that could be identified as not (absent special circumstances) being "unusual". For example, change of name, modifications to borrowing limits[, other examples?].

The existing technical note on LR 13.2.2R states that the UKLA would not normally expect to vet scheme circulars. This has not been carried forward into the revised guidance but we assume there has not been a change of policy at the UKLA and it would be helpful if that could be confirmed.

(b) TN 208.1

LR 9.4.2R(2) is a valuable exemption in circumstances where it is necessary to put in place a one-off arrangement for recruitment or retention purposes. As such, the exemption is relied on frequently in developing incentive packages, especially for new hires. By stating that the UKLA would expect the rule to be used ‘rarely in practice’, it is not clear whether the proposed note is merely seeking to draw attention to the ‘unusual circumstances’ requirement, or to add an additional gloss so as to discourage listed companies from relying on it, even when the circumstances are unusual. Our view is that such a gloss is unhelpful as the ‘unusual circumstances’ requirement speaks for itself.

The unusual circumstances, together with other matters, must be disclosed, pursuant to LR 9.4.3R, in the first annual report published by the listed company after the date on which the relevant individual becomes eligible to participate in the arrangement. If the UKLA believes that there is a risk of LR 9.4.2R(2) being over-used, it would be possible to bring forward the disclosure requirement, so that the unusual circumstances and other matters must be disclosed via an RNS announcement (which would normally be issued anyway in respect of the share award) at the time the individual becomes eligible to participate.

(c) TN 631.1

The note reflects what has been happening in practice, however, we can identify six options rather than four. The additional options are where the credit rating agency is: (a) established in the EU and not registered under the CRA Regulation but has applied for registration and (b) established in the EU and has not applied for registration and is not registered under the CRA Regulation.

If you have any questions regarding ths submission or if you would like to arrange a meeting to discuss it, please contact Caroline Chambers (+44 (0)20 7859 2918, caroline.chambers@ashurst.com) or William Underhill (+44 (0)20 7090 3060, william.underhill@slaughterandmay.com).

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Appendix 1 to response to FSA consultation Primary Market Bulletin 2

UKLA guidance: items from issues 1 to 25 of List! not included in the UKLA's Technical and Procedural Notes

- On 15 October 2010, the UKLA published a set of technical and procedural notes[1]. The FSA's website states that these notes bring together the *still valid and some updated* articles from issues 1 to 25 of the UKLA Newsletter List! under key themes and topics.

- However, some items in List! that seem to remain valid and up-to-date have not been carried forward into the new notes by the UKLA.

- Using the PLC "List! Destination table" we have identified those List! items that have not been included in the new notes but for which PLC did not provide an explanation (such as, the item is irrelevant or outdated). In many cases we have been able to ascertain an explanation. However, in a number of cases there is no obvious reason. These items have been highlighted in yellow in the table below for ease of reference.

List! issue	Section of List! omitted / brief details
23 (Dec 2009)	2. Mix and match facilities in the context of a scheme of arrangement: relates to offers that will be effected via a scheme and which also provide mix and match facilities. The stated UKLA view is that, in such a situation, the individual shareholder makes an investment decision and it would follow that a prospectus should be produced absent an exemption to cover such offers.
22 (Aug 2009)	6. Black Lining – A request for help. UKLA asked that advisors provide blacklines showing deleted text to assist in the vetting process.
22 (Aug 2009)	7. Schemes of arrangement – Companies House comfort letters/ procedures issuers should follow to avoid having their own shares suspended when undertaking a scheme of arrangement (a continuation of entry in List! 16, which has also been omitted).
21 (May 2009)	1. Property valuation reports – relates to how up-to-date a property valuation report in a property company's share prospectus should be.
21 (May 2009)	5. Transferring officially-listed securities from a regulated market to a multilateral trading facility (MTF). Requests notification letters to the UKLA when transfers take place.
20 (Jan 2009)	2.1 Disclosure and transparency: compliance with DTR 5 – refers to change in enforcement policy as DTRs had been in force for 2 years.
19 (Oct 2008)	2.2 Listing applications – confirmation of the number of securities allotted. Clarifies that if an application for the admission of securities to the official list contains written confirmations that the securities will be allotted at the time of admission, the UKLA do not need to receive separate written confirmation of the number of allotted securities.

[1] Notes set out at http://www.fsa.gov.uk/Pages/Doing/UKLA/ukla_publications/index.shtml on the FSA's website.

List! issue	Section of List! omitted / brief details
Update (Jun 2008)	Electronic communication update. In relation to e-coms letters to shareholders, UKLA agrees that because of the sensitive and confidential nature of some of the details in the letter, it may not be appropriate to include the disclosure required by LR13.3.1(6) (that requires the letter to be passed on to the transferee when shares are sold).
18 (Mar 2008)	4.2 Requests for transfer to another Competent Authority under PR 3.1.12 – clarification on what the UKLA expects to see in a request for transfer but states "we will deal with each request on a case-by-case basis."
18 (Mar 2008)	5.1. Letters relating to amendments to the Official List resulting from reclassifications/ redenominations; confirms "If an issuer confirms it has obtained legal advice that a Prospectus is not required, it does not need to apply for reclassified or redenominated securities. Instead, the issuer can submit a letter to the UKLA …".
17 (Nov 2007)	9. Treatment of securities lending/borrowing.
16 (July 2007)	3.5 Targets/forecasts being construed as profit forecasts – UKLA views on circumstances when an investment entity's target/forecast might reasonably be treated as a 'reportable' profit forecast.
16 (July 2007)	4.1. Retail debt cascades. Requirement for detailed disclosure of terms and conditions.
16 (July 2007)	4.3 Frequently asked questions. If including a "Summary" in a non-equity prospectus for securities having a denomination of at least EUR 50,000, does this section have to comply with the summary contents and disclosure requirements?
16 (July 2007)	5.3 Early redemption of securities. Reminder that where securities of a class cease to exist in circumstances other than maturity or expiry, their listing is not cancelled automatically – issuers must contact the UKLA.
16 (July 2007)	5.4 Comfort letters for schemes of arrangement (supplemented in List! 22)
16 (July 2007)	9.1 PD Article 4(1)(d) – securities allotted free of charge. Refers to CESR Q&A and also states: "ultimately the question as to whether an issuer is required to produce a prospectus is a legal matter in respect of which issuers should seek and rely on their own legal advice."
13 (Sep 2006)	3.2 Should issues of convertible bonds comply with LR 12?
13 (Sep 2006)	3.3 Financial information required for guarantors of debt issues. States new policy that guarantors do not need to comply with the accounting standards of Article 3 of Regulation (EC) No 1606/2002.
12 (Feb 2006)	5.2 Block listing returns. A reminder to submit block listing returns on a timely basis, as required by LR 3.5.6.
12 (Feb 2006)	8.4 Insider lists and persons acting on issuer's behalf (Regulators and Credit Rating Agencies). Gives a reassurance in response to queries that regulators and credit rating agencies do not need to be on insider lists.
12 (Feb 2006)	8.5 Short names. A reminder to use correct company short names in announcements.

List! issue	Section of List! omitted / brief details
12 (Feb 2006)	9.1 Turnbull guidance on internal controls. Directs issuers to read the Turnball guidance.
12 (Feb 2006)	9.3 Transparent Disclosure. A notice to read CESR's guidance on transparent disclosure in the context of many issuers preparing first IFRS accounts.
11 Supplementary Edition (Nov 2005)	1. Competitive initial public offerings. Highlights UKLA's concerns in relation to conflicts that can arise in context of competitive IPOs (and explains what this means). Points firms to rules in COBs/general principles in the Handbook and issuers/sponsors to the Listing Rules.
11 (Sep 2005)	7.1 Historical financial information on a Guarantor in a Non Equity Prospectus. Clarifies requirements of Annex VI of PD Regulation. 7.2 Requirement to disclose Cashflow per 13.1 Annex IV of the PD Regulation – Retail Debt.
11 (Sep 2005)	10.1 Loss numbers in class tests. States that where the target or listed company selling or purchasing it has produced a loss in the most recent year, the UKLA will no longer treat the result as necessarily being anomalous. In the first instance, UKLA will disregard the negatives and perform the class test in the normal way, although they can still decide that this produces an anomalous result.
11 (Sep 2005)	10.2 Investment entities. Although an investment entity or VCT need not have a clean working capital statement to be eligible for listing, any prospectus they produce must nevertheless include a working capital statement.
11 (Sep 2005)	10.3 €100,000 exemption.
11 (Sep 2005)	10.5 Shares in public hands outside EEA. Clarification of requirements of LR 6.1.19R – stresses FSA's 'discretion' and 'flexible approach' to lowering the 25% held in EEA states provided that the issuer can demonstrate that the market will operate properly with a lower percentage.
10 (June 2005)	Offers to discretionary private client brokers. Assures that new treasury regulation (Section 86 of FSMA) does not change old law.
10 (June 2005)	Employee share schemes and options. Unlikely that exercising an employee share option would amount to a public offer.
9 (June 2005)	10. The internet. Refers to view that information dissemination on the internet is no different to information dissemination through any other media and cautions compliance with DTRs so that inside information in announced before being put up on the website.
9 (June 2005)	11. Regulatory information services (RIS). Notes how RIS are approved and that issuers should use an RIS to disseminate information.
9 (June 2005)	14. Contact details. Reminder of obligation to provide contact details (LR9.2.11R).
8 (Dec 2004)	Missing shareholder services. Reminder to observe FSA Conduct of Business Regulations (especially Chapter 2) when engaging third parties to reunite missing shareholders with shares.

List! issue	Section of List! omitted / brief details
7 (Sep 2004)	Interaction with other FSA departments. Disclaimer that UKLA does not speak for all FSA departments and should not be assumed to be doing so.
7 (Sep 2004)	Participation of overseas shareholders in rights issues and open offers.

Appendix 2 to response to FSA consultation on Primary Market Bulletin 2 – items omitted from the Technical Notes

Using the PLC "UKLA procedural and technical notes: destination table", we have listed below those items which have not been included in the new notes. We have highlighted in fuchsia those items which in our view are material.

1.	**Listing Rules**
	What do we mean by "latest practicable date"?
	Listing transactions approach to high-risk transactions
	LR 3.4.7R (1) - Increases to the size of a previously approved debt issuance programme
	LR 5.2.10R(1): Cancellation of listing in relation to a takeover offer
	LR 6.1.4R: Nature and duration of business activities (LR 6.1.4R: The requirement for a three-year track record under LR 6.1.4R)
	LR 6.1.4R: when is a three year track record not a three year track record?
	LR 6.1.19: Shares in public hands (How does the UKLA approach LR 6.1.19R(4)(e) in relation to shareholdings held by corporate shareholders, such as fund managers?)
	Application of LR 6.1.19R(4)(e) in light of changes to the DTR 5 regime
	Should the discount in LR 9.5.10 be calculated at the time of announcement or at the time of agreeing the placing?
	When calculating the discount, where should the share price for the purposes of LR 9.5.10R be derived from?
	LR 9.7A.2: Continuing obligations - Statements of dividends (Dividend Statements)
	LR 10.1.3R: Transactions (LR 10.1.3R: Reminder on the class tests)
	LR 10.1.3R: Transactions (LR 10.1.3R: Joint venture exit arrangements)
	LR 10.2.7R: Break fees (UKLA approach to break fees)
	LR 10.2.7R: Break fees (Do break fees require aggregation?)
	LR 10 Annex I 4R: How is the profits test applied to disposals or acquisitions of minority interests?
	LR 11.1.4R(1): Dual Listed Company

	LR 11.1.5R: Related party transactions (Will we consider "ordinary course" arguments for LR 11.1.5R(2)?)
	Do the associate rules in LR 11 apply to interests in a partnership held by a related party?
	LR 13.5.27R and LR 13.5.28R: Accountant's Opinion (Financial information in "listed for listed" circulars)
	LR 13.5.27R and LR 13.5.28R: Accountant's Opinion (Applying LR 13.5.27R and LR 13.5.28R to acquisitions of publicly traded companies)
	LR 13.5.27R and LR 13.5.28R: Accountant's Opinion (Modified accountant's report on the underlying target's accounts)
	LR 15 Timetable - Investment Trust rollovers
	LR 15: Reclassified shares in an investment trust wind up/ rollover
2.	**Prospectus Rules**
	"Latest practicable date"
	Listing transactions approach to high risk transactions
	PR 2.2.9R: Final terms (CESR FAQs on information included in Final Terms, SPs or Securities Note)
	PR 3.3: Advertisements (Mini-prospectuses)
3.	**Disclosure and Transparency Rules**
	DTR 1.3.5R: Misleading information not to be published (Regulatory announcements)
	DTR 2.2.3G: Disclosure of inside information (A framework for handling inside information (Use of advisers))
	DTR 2.2.3G: Disclosure of inside information (Timing of results announcements)
	DTR 2.2.3G: Disclosure of inside information (Market expectations)
	DTR 2.2.3G: Disclosure of inside information (Continuing obligations – pure debt issuers)
	DTR 2.2.10: Communications with third parties (Communications with shareholders and other interested parties)
	DTR 2.2.10: Communications with third parties (Analysts)
	DTR 2.6.2: Control of inside information - Breach of confidentiality (Breaches of confidence)

	DTR 2.7: Dealing with rumours (Press speculation and market rumours)
	FSA comments on disclosures around liquidity and going concern
	DTR 2.8: Insider lists
	DTR 4.2: Half-yearly financial reports (Alternative performance measures)
	DTR 4.2: Half-yearly financial reports (Announcing the half-yearly report)
	DTR 4.3: Interim management statements
	DTR 6.1.12R and 6.1.13R: Information about meetings, issue of new shares and payment of dividends share issuers
	DTR 6.3: Dissemination of information
4.	**Interim Management Statements**
	Interim Management Statements
5.	**Specialist issuers**
	Mineral expert reports (Acceptable reporting codes for mineral expert reports)
	Mineral expert reports (Caveats and disclaimers)
	Mineral expert reports (MERs) (Age of MER)
6.	**Sponsors**
	LR 8.3.5A R, LR 8.6.19 and LR 8.7.2: Contacting sponsors
	LR 8 Sponsor regime: A targeted review – Policy Statement 08/12
	LR 8 Sponsor regime: A targeted review – Policy Statement 08/12 (Regular review and annual confirmation (LR 8.6.17R, LR 8.6.18R and LR 8.7.7R): What should be covered in regular review? Relationship between regular review and annual confirmation)

FSA

UKLA Technical Note

Scope and application of vote holder and issuer notification rules

Ref: UKLA/TN/541.1 – consultation

DTR 5

DTR 5 requirements concern the control over exercising voting rights attached to shares. Disclosing changes in major shareholdings are designed to enhance market transparency.

DTR 5 requires shareholders (or those with rights to acquire shares) of an issuer traded on a regulated market to inform the issuer and us simultaneously of changes to major holdings in the issuer's shares. Issuers must then disseminate this information to the wider market.

Issuer scope

~~UK~~ Issuers on regulated markets

- ~~Issuers~~ UK issuers with shares traded on regulated markets must comply with DTR5.
- Non-UK issuers and their shareholders whose shares are traded on a regulated market for which the UK is their home member state must comply with the Transparency Directive (TD) minimum disclosure requirements only (super-equivalent requirements do not apply). However, non-EEA issuers can be exempt from the requirements if their domestic regime is deemed equivalent.

~~UK~~ Issuers on prescribed markets

- Issuers and shareholders of UK public companies traded on a prescribed market – such as AIM or PLUS – must comply with DTR 5. Non-UK issuers on these markets are not required to comply with DTR 5. However, the rules of the relevant prescribed market may impose similar obligations to DTR5.
- EEA issuers, incorporated in another member state with a registered office located other than in the UK with listed securities on a UK regulated market, will not be expected to comply with DTR 5, as they will already be required to comply with corresponding requirements in their home member states.

Issuers of Global Depositary Receipts (GDRs)

We have received enquiries about how the DTRs apply to issuers of Listed Global Depositary Receipts (GDRs) (for the purposes of this note we mean especially in relation to DTR 5 – Major Shareholder Notifications (MSN).

In summary, we would not normally expect DTR 5 to apply to GDR issuers (i.e. the issuers of shares underlying GDRs where the GDRs are admitted to trading on a Regulated Market, not the depositary). Article 9 (1) of the TD on which DTR 5 is based states that the MSN regime's scope is issuers whose shares are admitted to trading on a regulated market and to which voting rights are attached. As a GDR is not itself a share, the fact that it may be admitted to trading on a regulated market does not of itself bring the GDR issuer within the scope of DTR 5. So, unless the issuer's shares are admitted to trading on a regulated market, we believe that GDR issuers will not fall within the scope of DTR 5.

If the issuer of the shares underlying the GDR has voting shares which are admitted to trading on a regulated market, the holder of depositary receipts representing those shares is treated as the holder of those underlying shares (by virtue of the definition of shareholder in the TD as copied out into the FSA Glossary) for the purposes of DTR 5 disclosure obligations.

FSA

UKLA Technical Note

Third country equivalent obligations

Ref: UKLA/TN/544.1 – consultation

DTR 5.11.4R;
DTR 5.11.5R

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Non-EEA issuers on regulated markets are subject to the Transparency Directive (TD) requirements unless we deem the domestic regime to be equivalent to the TD. Non-EEA issuers on prescribed markets are not subject to these requirements.

Under the TD we may exempt non-EEA issuers from certain disclosure and transparency obligations provided that they are subject to equivalent obligations in their country.

If we determine that provisions in a third country are equivalent, then this will result in the following directive provisions being disapplied:

- Article 12(6): Notification of the acquisition of or disposal of major holdings;
- Article 14: Acquisition and disposal of own shares; and
- Article 15: Notification following increase or decrease in capital/or voting rights.

When a regime is deemed equivalent, the issuer will not be expected to comply with DTR5. The issuer will have to comply with the requirements under DTR6, for example:

- the filing of information with the FSA;
- the language provisions; and
- the dissemination of information provisions.

We have conducted equivalence assessments on several non-EEA jurisdictions. All other non-EEA issuers will be expected to comply with TD minimum. Further details of our approach to equivalence and a list of equivalent regimes are published on our website.

Financial Services Authority

FSA

UKLA Technical Note

Trading book exemption

Ref: UKLA/TN/550.1 – consultation

DTR 5

There is a partial exemption from notification for voting rights held in the trading book of credit institutions and investment firms. However, we re-emphasise that to benefit from the exemption, the credit institution or investment firm must ensure that the voting rights attached to shares held in the trading book are not exercised or otherwise used to intervene in the management of the issuer.

The following examples illustrate how the exemption should work in practice.

- In example A, the exempted trading book holding increases from 4% to 5% but this does not exceed 5%, and so no disclosure is required.
- In example B, the trading book holding increases from 4% to 5% but does not exceed 5% and the non-exempted interest of 6% has already been disclosed.
- The trading book holding then increases by 1% (from 5 to 6%), triggering a disclosure obligation. The disclosure should be 12% (6% Trading Book holding plus 6% non-exempted holding).

These examples are summarised in the table below:

Credit institutions and investment firms: Trading book exemption			
	Trading book holding covered by the exemption	**Other interest, not covered by an exemption**	**Disclosure obligation**
Example A	4%	0%	No disclosure required.
	Original holding 4% Change in holding +1% **Total holding 5%**	Original holding 0% Change in holding 0% **Total holding 0%**	**No disclosure required** as trading book holding does not exceed 5%.
Example B	4%	6%	6% – exempted holding need not be disclosed.
	Original holding 4% Change in holding +1% **Total holding 5%**	Original holding 6% Change in holding -1% **Total holding 5 %**	**No disclosure required** – exempted holding need not be disclosed. The 6% holding has already been disclosed.
	Holding 5% Change in holding +1% **Total holding 6%**	Holding 6% Change in holding - 0% **Total holding 6%**	**12%** – once the exempted holdings have breached 5% a disclosure is required of the new aggregated total.

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UKLA Technical Note

Asset managers

Ref: UKLA/TN/549.1 – consultation

DTR 5

Asset managers

We consider it important to continue to allow certain interests held by qualifying asset managers and investment managers and shares belonging to open ended investment companies to be disregarded for the purposes of notifications below 10%. However, the TD requires that such interests be disclosed at the 5% threshold.

In PS06/11 we explained 'In the limited circumstances where an entity has holdings as principal in combination with holdings that are disregarded then the following should be considered.

'Holdings that are disregarded and non-exempt holdings should be aggregated. If the aggregate breaches the 5% or 10% thresholds, then these holdings must be disclosed. Once the disregarded holding has lost its exempt status at the 5% level, then, to the extent that additional non-exempt holdings are acquired, disclosure is required at each percentage point. If additional exempted holdings are acquired, these do not have to be disclosed until the aggregate is equal to or above 10%.'

We have set out some examples below to make the complex interplay of rules clearer. It is also worth bearing the following points in mind:

- If an asset manager has holdings on behalf of a client ('disregarded' holdings) and holdings as a principal ('non-exempt' holdings) these should be aggregated. If the total is equal to or exceeds 5% then this total should be disclosed (examples A & B).
- If the aggregate holding is already equal to, or above 5% and there is a further acquisition of shares then the disclosure positions depends on the nature and size of the acquisition: If disregarded holdings are acquired: no further disclosure is required until the aggregate equals or exceeds 10% (no further disclosure: example C; exceeding the 10% combined holding: example D).
- If non-exempt holdings are acquired: the aggregate total should be disclosed if the acquisition increases total voting rights by 1% or more (example C).

The examples below illustrate how the rules will work in practice. For the examples below assume that 'asset manager' refers to either an 'asset manager' (meets the requirements in DTR 5.1.5 R 1(a)/ or an 'operator' (meeting the requirements DTR 5.1.5 R 1(b)). The examples apply to parent undertakings with principal holdings aggregating fund

PN 902.1

"ESMA - Questions and Answers on Prospectuses

- When the final terms incorporate by reference the terms and conditions of an older prospectus or base prospectus. This is inconsistent with the guidance in the '~~Frequently asked questions regarding prospectuses: common positions~~ agreed by ESMA ~~Members' document~~'. This is available on the ESMA website (*www.esma.europa.eu*).
- When a draft prospectus has been submitted to the UKLA for approval, the subject of which is a security which is also the subject of final terms. In this situation the final terms should not be submitted.
- Where a base prospectus has been updated but the final terms refer to the previous base prospectus.
- Where the summary of the individual issue is not annexed to the final terms.
- Where the final terms do not comply with the requirements of PR Appendix 3, Annex ~~20~~. 21

What to expect when final terms are challenged by the UKLA

Other than where it is clear that the securities are not for immediate issue (e.g. where the final terms have future issue date), UKLA will contact the agent or issuer who submitted the final terms to inform them we will challenge the appropriateness of the securities that are the subject of final terms for listing. This will initially be via a telephone call, followed by an email. When an agent has submitted the final terms and they have subsequently been challenged, we would expect the agent to contact the issuer. This communication is vital as the correct payment of tax in relation to the securities may be subject to whether or not the listing has been successful.

It is important to note that we will not take any further action until advised to do so. So, securities that are the subject of final terms initially submitted will remain unlisted until appropriate remedial action has been taken, which would enable us to proceed with listing. If you are in any doubt about the appropriate remedial action that is required for a listing to proceed, please contact us.

Key steps that can be taken by the issuer or their agents to ensure a trouble-free listing of securities using final terms

- Ensure that no conditions or situations described in the section: 'Circumstances where securities that are the subject of final terms may not be listed the following day' apply to you.
- Send the final terms by email to *final.terms@fsa.gov.uk* with an attached covering note. On submission of your email you will receive confirmation of receipt. Check that the securities that have been submitted for listing are on the Official List Notice that is released every business day at 8am on RNS. To see them select 'Official List Notice' for the headline type. Notice that is released every business day at 8am on RNS. To see them select 'Official List Notice' for the headline type.

PN 904.1

What contents should we include in the Prospectus?

ESMA Update of Recommendations

You and your advisers should consider the ESMA Recommendations when drafting a prospectus. The guidance provides additional detail and clarification in relation to issues such as working capital disclosure, profit forecasts, capitalisation and indebtedness and also on the detailed disclosure items under Annexes 1 and 3. A significant proportion of non-listed companies making offers to the public are start-up companies and should therefore also comply with the ESMA Recommendations on start-ups.

In determining whether the PD Regulation has been complied with we will take into account whether the ESMA Recommendations have been followed.

Securities being issued

It is not uncommon for non-listed companies to issue a new line of securities, such as A Ords or B Ords, which have different rights from the company's existing ordinary shares. Where the rights attaching to the securities being offered confer subordinated voting or dividend rights, you should clearly disclose this in the document.

If this is a sufficiently material matter, you may be required to disclose it in the summary.

Annex 1 item 1.1 – Responsibility

For equity issues, we require both the company and each director to take responsibility for the contents of the document. In addition, other persons may also be responsible for the contents.

For example, if another party/expert has consented to information being included in the document (such as an accountant's report) in accordance with Annex 1 item 23.1, then they will also be required to take responsibility for that part of the document. Any such responsibility will be additional to that of the company and its directors, who must still take responsibility for the document as a whole.

~~*Annex 1 item PR 10 – Capital Resources*~~ Annex III PR3.1 – Working Capital

The requirement of the regulation is to provide a statement that the issuer has sufficient working capital for its present requirements (a 'clean' statement') or to explain how additional working capital will be provided. Under ESMA Recommendation ~~107~~ 108, 'present requirements' is taken as being for at least the next 12 months from the date of the prospectus. To comply with the requirements no reference should be made to 'due and careful enquiry' in the statement, and the words 'is' or 'has' should be used rather than 'will have' or 'will be'.

When making a working capital statement issuers are expected to have undertaken appropriate procedures to support the statement being made – ESMA Recommendation 125 outlines what those procedures might normally include. Where a clean working capital statement is provided, the prospectus should not detail any assumptions underlying the working capital statement.

PN 905.1

- confirmation that 'no significant new factor, material mistake or inaccuracy has come to light' since the date the prospectus was approved – include this confirmation if the prospectus is not passported on the same day it is approved.

2. **PROSPECTUS (or SUPPLEMENTARY PROSPECTUS)** to be passported.

Neither a Registration Document nor a Securities Note can be passported on its own as we can only passport a complete prospectus. Similarly, a supplementary prospectus can only be passported if the prospectus it relates to has previously been passported out.

3. **TRANSLATIONS OF THE SUMMARY**

You must attach this if you ask us to passport an equity prospectus or a retail debt prospectus. See below for details of which host Member States do not require translations.

What happens once I have submitted the passport request and how long does it take?

We will passport the prospectus, together with a certificate of approval and any relevant summary translations to the host Member State within the following timeframes:

- within one working day after the prospectus is approved if the request is received **BEFORE** the prospectus is approved
- within three working days following receipt by the UKLA of the request, if the request is received **AFTER** approval

How do I check the host has received and accepted the passported documents?

The passporting process occurs between Member State competent authorities and issuers/advisers will not have access to any passporting correspondence sent between the competent authorities. The host Member State should confirm to us it has received the 'passported documents' as soon as possible and, if you have asked us to, we will pass on this confirmation. Note that both the host Member State and ESMA must also publish on their respective websites a list of certificates of approval.

Which jurisdictions require a translation of the summary in a prospectus?

Member States require translations of retail prospectus summaries with the following exceptions:

- Luxembourg;
- Austria; and
- The Netherlands.

These Member States all accept prospectuses in English without a summary translation.

Financial Services Authority

FSA

UKLA Procedural Note

Block listing

Ref: UKLA/PN/907.1 - consultation

LR 3

What is a block listing?

A block listing is a facility that allows an issuer to admit to listing unallotted securities that are issued over an extended period of time. Block listed securities are admitted to the Official List when we release the 'Official List Notice'

Reasons for the block listin~~g~~g regime and our current approach

Block listings were originally designed to reduce the unnecessary administrative burden of routine, every day admissions. Block listings enable us to process high frequency issues in an efficient and timely manner, where we are satisfied, due to the nature and circumstances of the issue, that the regulatory risk is sufficiently contained.

Ordinarily, we operate on a presumption towards the usual application process rather than block listings for all applications, as this enables us to properly scrutinise the individual circumstances of an issue (whether for a new class of shares or a further issue). Block listing is confined to limited circumstances so as to be compatible with the FSA's statutory duty under s.75(4) of FSMA to admit securities only where we are satisfied that relevant requirements are satisfied.

In practice, the block listing regime is used predominantly for routine Employee Share Schemes (which carry specific exemptions under the PD) and less commonly, the exercise of warrants into equity shares and conversion of convertible securities (which are often accompanied by a document explaining the nature of the scheme).

However, we recognise that there may be other circumstances in which the normal application process may be unnecessarily onerous.

Practical issues regarding the Block Listing Regime

When to use a Block Listing *– Although, the presumption is that a normal application is required, LR 3.5.2G provides that an applicant may apply for a block listing where the normal admission process is likely to be very onerous due to the frequent or irregular nature of allotments.*

TN 302.1

We also apply this approach in relation to transactions completed during the last financial year for both issuer and target. If we did not take this approach it would produce an anomalous result whereby a transaction that occurred shortly after the year end would be adjusted for, but one that occurred shortly before the year end would not.

To illustrate our approach, here is an example:

> Listed issuer A is considering acquiring company B. A's latest published annual audited accounts are to 31 December 2011~~06~~ and B has a year end of 31 March 2012~~06~~. A completed a class 2 acquisition of target C, after its year end, in February 2012~~06~~. The figures for A must be adjusted before the class tests are performed so that the latest audited 12 month profit and asset figures for C are added to the profits and assets of A as extracted from the 31 December 2011~~05~~ audited accounts.
>
> If, however, A had disposed of C after its year end we would expect A's financial information to be adjusted so that 12 months of profits and assets for C are deducted from A's profits and assets before the class test is performed.
>
> If B had disposed of its subsidiary D, prior to its year end, the profits for B must be adjusted by removing all profits for D from the full year profits for B to 31 March 2012~~06~~. B's year-end balance sheet will already reflect this disposal and no further adjustment needs to be made.
>
> However, if B had acquired E before its year end those profits for E that have already been consolidated should be subtracted from B's figures and the latest audited 12 months profits for E should be added back. B's latest balance sheet will already reflect this acquisition and no further adjustment needs to be made.

Financial Services Authority

FSA

UKLA Technical Note

Risk factors

Ref: UKLA/TN/621.1 – consultation

PR Appendix 3 Annexes

The Prospectus Directive and requirements under FSMA

The Prospectus Directive (PD) requires all issuers to include disclosure on risk factors in the prospectus. The disclosure is driven by the relevant Annex disclosures and is therefore dependent on the issuer, its industry and the securities being offered to the public or admitted to market~~.~~ key

In addition, Section D, Annex 22 ~~of PR~~ Appendix 3 requires summaries to contain prominent disclosure of ~~the~~ risk factors, as required by the relevant Annexes.

While the requirements, as laid out in the Annexes, are broadly drafted and do not prescribe the type of risk factors that should be included (although a prescribed statement is required in relation to derivatives – see Annex 12), they do state that the risk factors should be specific to the company, its industry and should be relevant to the type of securities being offered.

These disclosure requirements are important to emphasise, as we are of the view that there has been an increasing tendency for risk factor sections to include more generic, standardised risk factors, which do not appear to be directly relevant for the company or the issue that is the subject of the document.

It is also important to highlight the overarching requirements of section 87A(3) FSMA, which requires the information to be presented in a form that is comprehensible and easy to analyse.

The UKLA approach to risk factors sections in documents

The UKLA believes that issuers are best placed to assess the material risks that are relevant to them, their industry and the specific issue of securities. The UKLA is also mindful of the prospectus responsibility regime, whereby the document is the responsibility of the issuer and its directors. Therefore, we do not routinely request that risk factors are substantially redrafted or removed from a prospectus.

However, the UKLA will challenge risk factors in certain situations as part of its day-to-day vetting – for example:

Financial Services Authority

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UKLA Technical Note

Sponsors who are part of an investment management group

Ref: UKLA/TN/707.1 ~~-~~ consultation

LR 8; LR 11 ; LR15

listed under Chapter 15 of the Listing Rules

Agreements between an issuer and its sponsor firm will be treated as related party transactions under the Listing Rules if the issuer's sponsor forms part of its investment manager's statutory group. For example, ~~a placing arrangement entered into between an issuer and its sponsor as part of a fundraising are deemed~~ related party transactions if the sponsor belongs to the same group as the issuer's investment manager.

In this scenario, it is unlikely that any of the exemptions in Annex 1R in LR 11 can be used. Therefore such agreements may need to be covered by a letter to us under LR 11.1.10R, or a related party circular under LR 11.1.7R (as is appropriate considering the value of the agreement).

any agreement entered into between an issuer and its sponsor could be a