The Law Society

Primary Market Bulletin 19: comments on consultation on proposed update to technical note FCA/TN/506.1

Law Society and City of London Law Society joint response

23 July 2018

RESPONSE TO PMB 19: PROPOSED UPDATE TO FCA/TN/506.1

Introduction

The comments set out in this paper have been prepared jointly by the Market Abuse Joint Working Party of the Company Law Committees of the Law Society of England and Wales and the City of London Law Society.

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 City of London Law Society ("**CLLS**") represents approximately 17,000 City lawyers through individual and corporate membership including some of the largest international law firms. 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.

The Market Abuse Joint Working Party is made up of senior and specialist corporate lawyers from both the Law Society and the CLLS who have a particular focus on capital markets and Market Abuse.

We set out below comments in response to the Financial Conduct Authority's Primary Market Bulletin No.19 (published in June 2018).

Comments on the proposed update to FCA/TN/506.1

We welcome the draft guidance, which we consider the market will find helpful.

While the statement in the fifth paragraph about a so-called "blanket" approach to the assessment of information held in the course of preparing periodic financial reports should serve as a useful reminder to certain issuers, our experience, from working with issuer clients of our member firms, is that issuers do not take such a blanket approach. On the contrary many issuers have a procedure for the preparation of financial reports, with restricted access to information, the maintenance of "confidential lists" detailing who within the issuer has access to the results information and checks throughout the process so as to identify whether there might be any potential inside information (in accordance with the issuer's normal procedure for identifying inside information) and, if any inside information arises, whether or not the conditions to delay publication are satisfied.

The example given in the wording in italics is helpful and we agree that each case must be assessed in the light of its own facts and careful consideration must be given as to whether disclosure of the inside information in question can be made in a manner which will enable the correct assessment of its impact. However, we do not think it is appropriate to say that "in many cases", it will be possible to draft an announcement that will enable the correct assessment of the inside information by the public, as in some cases this will be possible and in others it will not.

Accordingly, we suggest that the paragraph immediately after the words in italics is amended as follows:

> "~~In many cases, an issuer~~If, in the process of preparing financial information, an issuer identifies inside information, in some cases it will be able to carefully and appropriately draft an announcement that will enable the correct assessment of the import of the inside information by the public. We accept that in ~~some~~other cases this will not be practicable other than through publication of the full financial report."

This change would make it clear that, if and when in the process of the preparation of any financial report, they have identified inside information, issuers need to assess whether an appropriate announcement could be made rather than conveying any implication or expectation that it should be possible to make such an announcement. The final paragraph of the Guidance then makes it clear that the assessment that a legitimate interest exists is not one-off, but must be made on an ongoing basis.

If you have any queries in relation to any of the points raised in this submission, please contact Victoria Younghusband of Charles Russell Speechlys.

23 July 2018

Annex

Memberships of the Market Abuse Joint Working Party of the Company Law Committees of the Law Society of England and Wales and the City of London Law Society

Mark Austin	Freshfields
Mark Bardell	Herbert Smith Freehills
Adam Bogdanor	Berwin Leighton Paisner
Robert Boyle	Macfarlanes
David Broadley	Allen & Overy
Caroline Chambers	Ashurst
Lucy Fergusson	Linklaters
Nicholas Holmes	Ashurst
Simon Jay	Cleary Gottlieb Steen & Hamilton
Anne Kirkwood	Allen & Overy
Vanessa Knapp	Independent
Kathy MacDonald	Norton Rose Fulbright
Stephanie Maguire	Freshfields
Chris Pearson	Norton Rose Fulbright
David Pudge	Clifford Chance
Lucy Reeve	Linklaters
Kath Roberts	Clifford Chance
James Roe	Allen & Overy
Carol Shutkever	Herbert Smith Freehills
Patrick Speller	Nabarro
Elizabeth Wall	Allen & Overy
Martin Webster	Pinsent Masons
Richard Ufland	Hogan Lovells
William Underhill	Slaughter and May
Victoria Younghusband	Charles Russell Speechlys
Khasruz Zaman	Simmons & Simmons