

On 30 July 2013, the Financial Conduct Authority (FCA) published Primary Market Bulletin (PMB) No.6, the first edition in its capacity as the new regulatory authority governing the UK Listing Regime.

The edition explains the changes made to the Knowledge Base, the online bank of up-to-date guidance on the Listing Rules, Disclosure and Transparency Rules and Prospectus Rules, following feedback received on the proposed technical and procedural notes during the PMB No.2 consultation (July 2012) and the PMB No.5 consultation (February 2013). For background, click [here](#) and [here](#) to see our articles on both consultations.

What has changed?

Having received respondents' feedback on the consultation versions, the FCA has amended the following technical and procedural notes which are now included in the Knowledge Base:

PMB No.2 Consultation:

Block listings ([UKLA/PN/907.1](#))

A consultation version of a new procedural note on block listings was published in PMB No.2 in order to provide a clear explanation of the policy and application process regarding block listings for market participants. Although the FCA provides some guidance as to when a block listing may be approved and, conversely, when it might not be, it stresses that it does not intend to be prescriptive, nor can it provide absolute certainty in the procedural note. In response to respondents' feedback, the procedural note has been amended to clarify the process in more detail so that specific practical issues are addressed, such as confirming where the application form for admission of the securities to the Official List can be found on the FCA website and noting that the rules on block listings can be found in Listing Rule 3.5.

PMB No.5 Consultation:

Eligibility review process ([UKLA/PN/901.2](#)) and review and approval of documents ([UKLA/PN/903.2](#))

In PMB No.5, the existing procedural notes regarding the review process of eligibility and documents were proposed to be amended to reflect revisions to the FCA's eligibility review procedures. Following feedback on the consultation versions, the FCA has amended the procedural note on the 'Eligibility review process' to reassure potential applicants that, whilst the new process will run the eligibility review in parallel with the prospectus review, the FCA will continue to hold early discussions with potential applicants on eligibility,



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where the applicant believes that this would be helpful. The FCA also confirms that it will be willing to allocate staff to discuss an applicant's case and will not limit the applicants who wish to discuss eligibility with the FCA, which should give sufficient assurance to prospective applicants considering a listing in London.

Periodic financial information and inside information ([UKLA/TN/506.1](#))

The consultation version of the new technical note contained guidance which clarified that the disclosure of inside information, including information about financial performance, could not be delayed so as to coincide with a scheduled announcement of a periodic financial report. In response to feedback, the technical note has been amended to clarify that an issuer does not necessarily discharge its obligations to disclose inside information by announcing its 'preliminary results' ahead of its annual financial report.

Risk factors ([UKLA/TN/621.2](#))

The consultation version proposed that a statement should be included in the preamble to the risk factors section of a prospectus, which provides that the risks sets out in the summary are the essential risks to be considered – but also notes that the non-key risks noted in the risk factor section should also be considered by prospective investors. The FCA has slightly revised the note to allow the preamble to refer to relevant transferable securities (rather than just to ordinary shares) to which the prospectus applies.

Sponsor services ([UKLA/TN/710.1](#))

The proposed new technical note sought to clarify when an approved sponsor would be conducting 'sponsor services', the definition of which was amended in the Listing Rules in December 2012. The consultation version of the note has been amended to reflect various comments from respondents so that the final version:

- confirms that the sponsor declarations on applications for listing or transfers of listing category should remain subject to the requisite standards of care up to the effective date of the admission or transfer,
- clarifies that the sponsor's obligation to inform the FCA of any further information before its client's admission to listing or effective date of transfer does not extend to the advisers of issuers or sponsors. The FCA acknowledges that sponsors are provided with comfort letters from their advisers which confirm that they will inform or discuss with the sponsor any matter which will affect its confirmations given to the FCA in respect of its client. Consequently, the FCA confirms that it has no intention to comment on this practice or extend the sponsor's notification obligation to other parties, and
- clarifies that sponsors will continue to be subject to the principles for sponsors set out in Listing Rule 8.3 following the publication of a circular up until the time of the transaction's completion, at which point the sponsor service ceases. Consequently, the FCA has amended the technical note to make it clear that the sponsor will need to put in place systems and controls between the publication of the circular and completion, so that it can be notified of any possible issues affecting its role as sponsor and so the client is able to have access to its sponsor's guidance on its obligations under the Listing Rules and Disclosure and Transparency Rules.

Sponsor notification requirements ([UKLA/TN/711.1](#))

The consultation version, which contained practical guidance for sponsors with regard to complying with its notification requirements, has been published in the Knowledge Base, subject to corrections of typographical errors.

Sponsors: regular review and annual confirmation (UKLA/TN/702.1)

As proposed in consultation PMB No. 5, this note has been deleted in its entirety as it is no longer relevant pursuant to the changes set out in CP 12/11 "Quarterly consultation No.33" in relation to the process on how sponsors confirm to the FCA (then FSA) that they continue to satisfy their approval criteria. Click [here](#) for our article on the consultation.

What's pending?

Following the consultation, the FCA are continuing to assess the feedback received on four technical notes on: '*Indemnities, guarantees and similar arrangements*'; '*Supplementary prospectuses*'; '*Final terms*' and '*PD disclosure issues relating to non-equity securities*'. The FCA notes that it intends to take action on the latter three technical notes in the next edition of PMB.

What's new?

Listing Principle 6 – dealing with the FCA in an open and co-operative manner ([UKLA/TN/209.1](#))

The FCA has released a new technical note containing guidance on compliance with Listing Principle 6, which requires premium listed companies to deal with the FCA in an open and co-operative way. In the draft note, the FCA states that the obligation on issuers to engage with the FCA goes beyond their general engagement with the FCA on ongoing matters. Additionally, the obligation extends to requiring issuers to approach the FCA in relation to '*significant transactions*'. The FCA notes, however, that it is not necessary to approach the FCA in relation to *all* transactions. Rather, the issuer should have regard to particular factors before deciding whether to do so, which include considering whether:

- the FCA has a regulatory role to perform before the transaction can proceed, for example, by waiving or modifying an application of a rule, and
- the FCA's decision required for the transaction is time critical. If so, it should be notified well in advance of the event.

Issuers should also allow time in their transaction timetable for the FCA to consider a substantive matter and to form a view, particularly where there is a chance that the FCA may disagree with the issuer's position in relation to a time critical event, such as a suspension before the market opens. Helpfully, the FCA notes that it would expect to be contacted early in respect of reverse takeovers and class 1 disposals by issuers in financial distress, but not for routine class 1 transactions where the FCA has a limited role.

Finally, the FCA refers issuers to Listing Rule 1.2.5G which offers general guidance highlighting that the issuer should consult the FCA 'at the earliest possible stage' if there is any doubt on how to apply a Listing Rule to a particular situation.

Reverse Takeovers ([UKLA/TN/306.2](#))

In light of the new technical note on Listing Principle 6, the FCA has amended its technical note on reverse takeovers to remind issuers (and, for issuers which are premium-listed, their sponsors) that they need to consider Listing Principle 6 when considering the appropriate time to contact the FCA with regard to a possible suspension of the issuer. In particular, the FCA states that early engagement, preferably *before* the point where a reverse takeover can be considered to be in contemplation, is essential. It is unclear whether this is intended to cut across the obligation in Listing Rule 5.6.6 which requires issuers or sponsors to contact the FCA as early as possible 'before announcing a reverse takeover has been agreed or is in contemplation'. The note appears to be imposing an obligation to consult with the FCA earlier than required under the Listing Rules, by stating that it is preferable for issuers to approach the FCA *before* a reverse takeover can be considered to be in contemplation (for example, before the issuer has approached the target's board or entered into an exclusivity period with a target).

Comments on the consultation versions of the notes are required by 10 September 2013.

Guidance for sponsors

In PMB No.6, the FCA recognises that the identification and management of conflicts by sponsors is a complex area and is seeking to provide relevant guidance for sponsors. Consequently, the FCA is welcoming feedback from sponsors on issues they face in identifying and managing conflicts, together with any other areas where sponsors would benefit from further regulatory guidance.

When in doubt, consult the FCA

The draft notes relating to Listing Principle 6 reflect a mood within the FCA that on occasions it is not invited to the party – or at least not soon enough. The proposed guidance is a direct message to the market to involve the FCA in all significant transactions at an early stage, and when in doubt, issuers and sponsors should consult the FCA. The FCA's recent public censure and imposition of hefty fines for an issuer's breach of Listing Principle 6 signifies its tough stance on the matter.

If you have any queries on the new content in the Knowledge Base, please contact your usual Hogan Lovells contact or one of the listed contacts.