

# Primary Market Bulletin

Newsletter from the FCA for primary market participants

## About this edition

Welcome to the 24<sup>th</sup> edition of the Primary Market Bulletin (PMB).

This edition starts, as usual, with general news and information, moving on to the latest changes we have made, or are proposing to make, to our [Knowledge Base](#).

We include an update on Brexit and a brief overview of our proposals in relation to the European single electronic format requirements which apply to issuers on EU markets from 1 January 2020. We also outline our thematic review into understanding the money laundering risks in the capital markets.

Finally, we discuss the most recent updates on the Prospectus Regulation which came into force on 21 July 2019.

## Brexit update

We continue to update the FCA website with [new Brexit material](#), including a non-exhaustive list of Brexit information websites for other EEA regulators. Additionally, [Andrew Bailey's recent speech at Bloomberg](#) set out key remaining Brexit issues, including providing information on the current state of play with regard to the share trading obligation (STO).

We published two special edition PMBs related to Brexit in [February](#) and [March](#) 2019. As we continue to prepare for a possible no-deal exit, firms may wish to re-visit these. The new regulatory obligations for market participants will apply as explained in PMB 21 and 22 if the UK leaves the EU on 31 October without a deal.

Unless we have indicated otherwise in the PMBs, new rules will immediately apply. They closely mirror existing requirements that issuers would have in the UK or their home state. Accordingly, we expect issuers to have taken reasonable steps to be able to comply with these changes from exit day.

## Update to PMB 21 – Short Selling Regulation and Market Abuse Regulation

In PMB 21, published in February 2019, we advised market makers and issuers of new regulatory obligations that they will need to implement to meet the requirements of the Short Selling Regulation (SSR) and Market Abuse Regulation (MAR) if the UK leaves the EU without a deal. This is particularly important for firms using the market maker exemption under the SSR, as they should take action as soon as possible if they wish to benefit from the market maker exemption under UK SSR in the future. See [here](#) for

more information on this.

### ***Update on our work on the UK Short Selling Regulation***

In PMB 21, we explained the regulatory changes to be implemented for the SSR after exit, including the production of the list of exempted shares required under Article 16 of the SSR that ESMA currently publishes on its website. In PMB 21, we explained that under the UK SSR we will take responsibility for publishing the list of shares traded in the UK, where the principal trading venue is in a third country and that this list will be published on our website. We provide an update on this work below.

We will be publishing the UK list of exempted shares on exit day on our UK SSR webpage. Market participants will then have this information on time for their net short position submissions to us. As per the UK SSR, our UK list of exempted shares will initially comprise two lists:

- A. The FCA's list of exempted shares, containing all shares admitted to trading on UK trading venues where their principal trading venue is outside the UK; and
- B. ESMA's list of exempted shares as of exit day. The shares on this list will remain exempt from some of the requirements in UK SSR during two years after exit day, including the reporting requirements under Articles 5 and 6 of UK SSR.

Further details on how these lists will operate will be provided on the day of publication.

### **Update to PMB 22 – Listing Rules, Disclosure Guidance and Transparency Rules and the Prospectus Rules**

In PMB 22, published in March 2019, we advised issuers and other stakeholders of key changes to the Listing Rules, the Disclosure Guidance and Transparency Rules, and the Prospectus Rules that will be applicable if the UK leaves the EU without a deal.

### ***Update on Use of EU-adopted International Financial Reporting Standards (IFRS)***

In PMB 22, we noted that HM Treasury intended to issue an equivalence decision in time for the UK's exit from the EU in relation to the use of IFRS. This would determine that EU-adopted IFRS can continue to be used to prepare financial statements for Transparency Directive requirements, and for preparing a prospectus under the prospectus regime.

On 11 April 2019, HM Treasury made such an equivalence determination under The Equivalence Determinations for Financial Services and Miscellaneous Provisions (Amendment etc) (EU Exit) Regulations 2019. This new equivalence determination has determined that EU-adopted IFRS is equivalent to UK-adopted international accounting standards (UK-IAS) for the purposes of the Transparency Directive and for preparing a prospectus under the Prospectus Directive. This means that, provided that the FCA grants third-country issuers an exemption in relation to EU-adopted IFRS, third country issuers will be able to use EU-adopted IFRS when preparing consolidated accounts for financial years beginning on or after exit day, instead of having to translate the accounts to UK-IAS. HM Treasury are working on updating the April equivalence determination to reflect the shift to the Prospectus Regulation (see discussion below).

### ***Update on the Prospectus Regime***

Since PMB 22 was published, the Prospectus Regulation now applies in full in the UK.

To reflect the shift from Prospectus Directive to Prospectus Regulation on 21

July, Parliament made [The Financial Services and Markets Act 2000 \(Prospectus\) Regulations 2019](#). We replaced our Prospectus Rules sourcebook with the Prospectus Regulation Rules sourcebook. We explained our changes in our Consultation Paper [Changes to align the FCA Handbook with the EU Prospectus Regulation, CP19/6](#) and its similarly titled Policy Statement, [PS19/12](#).

If the UK leaves the EU on 31 October 2019 in a no-deal scenario the UK prospectus regime will be amended. On 5 September 2019, the Government published the [Prospectus \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) ('Prospectus Amendment SI') to ensure that the UK has a coherent and functioning prospectus regime once the UK leaves the EU.

We consulted in Chapter 7 of our Quarterly Consultation Paper No 25, [CP19/27](#) on changes to our Prospectus Regulation Rules sourcebook and related changes to the Listing Rules and other sourcebooks arising from EU Withdrawal. Our consultation closes on 4 October 2019.

The content of PMB 22 remains substantially correct and relevant, except that the Official Listings SI is amended by the Prospectus Amendment SI. We note that there are also new features of the Prospectus Regulation, such as the universal registration document (URD), which are accommodated in the Prospectus Amendment SI.

## What's new

### European single electronic format

In our quarterly consultation paper (QCP) published on 6 September, we are proposing a new rule in the Disclosure Guidance and Transparency Rules sourcebook (DTR) to implement requirements for annual corporate reporting in the European single electronic format (ESEF) under the [Transparency Directive](#) (TD).

#### ***Our role in implementing ESEF in the UK***

'ESEF' refers to the new electronic format for the preparation of the annual financial report (AFR) that issuers are required to make public under the TD. We support the aims of this initiative, which include improving the process of evaluating corporate performance by investors.

We are currently consulting on implementing ESEF in our role as competent authority for the TD. Our proposals are catering for the scenario where the UK remains subject to EU law on 1 January 2020. In other cases, we will update the market further on our plans for implementation as part of our feedback on the QCP.

#### ***How ESEF works***

Companies with securities admitted to trading on a regulated market already have to publish audited financial statements annually. In the UK, they must file this information in the FCA's National Storage Mechanism (NSM).

The new requirements will make it mandatory for issuers to produce this information using the electronic format set out in a [regulatory technical standard](#) (RTS) of the European Commission. The RTS includes additional requirements for issuers who file audited, consolidated annual financial statements prepared in accordance with International Financial Reporting Standards (IFRS). These issuers must mark-up or 'tag' certain disclosures in their financial statements using

structured data formatting processes.

The new DTR requirements for reporting in ESEF will replace the current practice of submitting the AFR to the NSM via the upload of a PDF file.

### ***What will issuers need to do to comply with ESEF?***

For accounting years beginning on or after 1 January 2020, issuers will be required to prepare their AFR in the new electronic reporting format and in accordance with the provisions set out in the RTS. Firstly, all issuers will need to submit their AFR to the NSM in a different file format: the Extensible Hypertext Markup Language (XHTML) format. Secondly, those issuers who prepare consolidated annual financial statements in accordance with IFRS must tag certain disclosures in their financial statements using the inline Extensible Business Reporting Language capabilities (iXBRL) which the file format supports. To do that, issuers must use the taxonomy specified in the RTS.

There will be various options available to issuers transitioning to the production of their AFR in the iXBRL format. For example, some may integrate tagging into their existing internal processes for producing AFRs. Others may outsource the work to a third party, particularly given much design work for AFRs is already outsourced to design agencies. We would expect that an issuer's approach to tagging will be influenced by its own particular circumstances.

The European Securities and Markets Authority has published [guidance materials](#) on its website to assist issuers and their service providers in preparing for ESEF.

### ***Responding to our consultation on ESEF***

Responses to our ESEF proposals should be sent to the address or email set out in the QCP by 1 November 2019.

## **Thematic review - Understanding the money laundering risks in the capital markets**

In June 2019, we published our thematic review '[Understanding the money laundering risks in the capital markets](#)'. This examined money laundering risks and vulnerabilities in capital markets and included an Annex of typologies to help inform industry. We found that participants were generally in the early stages of their thinking about these risks and some needed to do more to be aware of the money laundering risks they face.

Our focus was primarily on money-laundering risks in the secondary markets, however our report also included a section on primary-market services. It highlights the need for firms acting as NOMADs, corporate advisers to firms on NEX Exchange or sponsors for listings on the main market to note their obligations for customer due diligence. The report also says firms should be aware of the risk factors when relying on professionals such as lawyers, who can also be enablers of financial crime.

## European updates

### Prospectus Regulation

#### ***Issuer data submission requirements – implementation deferred***

As noted above, the new EU Prospectus Regulation came into full effect on 21 July 2019 and we published our [final rules](#) on 11 July 2019.

In CP19/6 – [Changes to align the FCA Handbook with the EU Prospectus Rules](#) and PS19/12 – [Changes to align the FCA Handbook with the EU Prospectus Regulation: feedback to CP19/6](#) we explained that when the Prospectus Regulation comes into full effect we will be required to report data to ESMA on our prospectus review activities. So we consulted on and finalised new rules (PRR 3.2.7 R and 3.2.8 R) to require issuers to provide us with the data we must send to ESMA.

However, ESMA advised EU authorities prior to 21 July 2019 that it does not require the full data set to be submitted at present. This is pending system changes that are unlikely to be completed until mid-2020. In light of this delay, we have decided to delay the implementation of changes to our ESS system that would enable us to collect the data. We therefore only made limited changes to the ESS portal for 21 July 2019. Issuers and their advisors should continue to use existing processes. We will provide updates on the implementation of further changes to the ESS system in due course.

#### ***Application of the FCA's Knowledge Base materials (such as Technical Notes and Procedural Notes) under the Prospectus Regulation***

Currently the materials set out in our Knowledge Base are still based on the provisions of UK national law implementing the old Prospectus Directive - not the new Prospectus Regulation. We are preparing to update our Knowledge Base materials and our website will be updated with revised materials in the Autumn of 2019. In the meantime, the guidance provided by the Technical Notes and Procedural Notes should be applied to prospectuses and other listing documents (as applicable) drawn up under the Prospectus Regulation to the extent they are compatible with the Prospectus Regulation. The application of the Technical Notes and Procedural Notes can help to facilitate the review process and assist issuers when drawing up prospectuses and other listing documents.

#### ***ESMA update to its Q&As relating to the Prospectus Regulation***

On 12 July 2019 ESMA published [25 new Q&As](#) on Regulation (EU) 2017/1129 (the "Prospectus Regulation"). Three of the Q&As give new clarifications on Prospectus Regulation issues that were not covered in, or did not apply to, the Q&As under the Prospectus Directive (PD). 22 of the Q&As are pre-existing Q&As under the PD which have been updated for the Prospectus Regulation.

ESMA has decided not to update another 28 pre-existing Q&As, currently contained in the PD Q&As as they will not be carried over in relation to the Prospectus Regulation.

ESMA will continue to analyse existing Q&As published on the PD. It will either update and carry them forward in the Q&A document on the Prospectus Regulation or not carry them forward.

It will continue to publish the existing PD Q&As during the period in which prospectuses that have been approved under the PD may continue to be valid, which is until 21 July 2020. After this period, these Q&As will no longer apply.

The latest PD Q&As are dated 8 April 2019.

### ***ESMA guidelines on disclosure requirements under the Prospectus Regulation***

On 12 July ESMA published a consultation paper "Draft Guidelines on disclosure requirements under the Prospectus Regulation". ESMA intends to update the existing CESR recommendations on complying with disclosure requirements in the Prospectus Directive to make them more consistent with the Prospectus Regulation, while at the same time converting them into guidelines.

The consultation closes on 4 October 2019 and ESMA is expected to publish a final report with a summary of all consultation responses and a final version of the guidelines on its website in Q2 2020.

## **Consultation feedback and changes to the Knowledge Base**

### **Outcome of guidance consultations in PMB 20 and published guidance**

We have made the following changes to the Knowledge Base following consultation in PMB No. 20:

- the amendment of 1 existing technical note
- the amendment of 1 existing procedural note
- the addition of 2 new procedural notes
- the deletion of 1 existing procedural note

Here, we summarise key feedback received on our proposals, and our response to that feedback.

### **Technical notes**

#### ***Category: Governance and conduct***

FCA/TN/203.4 – Compliance with the Listing Principles and Premium Listing Principles (Amendment)

We only received minor drafting suggestions on the proposed amendments and so finalise this without further changes.

### **Procedural notes**

FCA/PN/906.2 – UKLA standard comments (Deletion)

We have received no feedback on our proposals and so we will delete this note.

FCA/PN/908.2 – Primary Market Oversight and Listing Transactions - decision making and individual guidance process (Amendment)

We only received minor drafting suggestions on the proposed amendments and so finalise this without further changes.

FCA/PN/912.1 – Sponsor Service Enquiry Line (New)

We have received no feedback on the suggested amendments and so finalise this in its current form.

FCA/PN/913.1 – Schemes of Arrangement (New)

We received feedback to our note on Schemes of Arrangement (FCA/PN/913.1) as published in PMB 20.

There were comments on the last paragraph of the note about the form of words that could be used in the supporting letter the note suggests should be sent to us where an issuer does not want to use a suspension. The suggestions are sensible. However, we do not prescribe the wording and structure of the letter and so do not intend to make changes to this section of the procedural note. The note sets out potential approaches and illustrates methods we consider meet the LR requirements. We recognise there are different ways of structuring this type of transaction and the key message is that whatever structure the issuer proposes, it is important to engage with us as early as possible.

Another comment suggested a change to drafting to make a statement that transactions would complete 'immediately' upon the scheme of arrangement becoming effective. However, the note's point is that transactions (i.e. cancellation and admission) need to complete at the same time. This is why we use the word 'simultaneous' in the fourth paragraph of the article.

We are therefore finalising this note as set out in PMB 20.

### **Proposed changes to our guidance**

We are consulting on the following further proposed changes to the Knowledge Base:

- the amendment of 1 existing technical note
- the addition of 1 new technical note

### **Category: Closed-ended investment funds**

FCA/TN/409.1 – Master-feeder structures (Amendment)

The rules in LR15 for feeder funds take taking into account diversification at the level of the master fund to enable these funds to comply with the LR15 risk diversification requirements. However, where there is only one fund acting as a 'feeder' for a specific master fund, we would not consider this as a genuine master-feeder structure that can use this route. We thought it helpful to clarify this point and so propose to amend our existing technical note on master-feeder structures to incorporate this view.

FCA/TN/411.1 – Class testing changes to an investment management agreement where there are unquantifiable benefits (New)

Under LR11, changes to the terms of an existing investment management agreement between a closed-ended fund and its investment manager are classifiable as related party transactions. The Knowledge Base currently contains two technical notes setting out our approach to classification of specific changes being made to an investment

management agreement. These are: UKLA/TN/404.1 (Related party transactions by closed-ended investment funds – amendment of an existing investment management agreement to cover new money) and UKLA/TN/403.1 (Alterations to investment management fees).

However, we also frequently receive queries about changes to existing investment management agreements and how to classify them where the benefit of the transaction may be unclear and the class tests are difficult to apply. So we are consulting on an additional technical note which describes our approach to these scenarios in more detail. The note also includes some of the questions we may ask if our guidance is sought on a particular case. The proposed technical note also explains our approach in certain circumstances: for example, where changes relate to payment of the fee being made via something of the same value other than cash. In addition, where there is a benefit to a related party, but this is not a financial benefit that is capable of being quantified, we explain that we accept the percentage ratio is in effect zero. We would welcome any feedback on the approaches set out in the technical note.

### **We want to hear what you think**

Please send your comments on our latest proposals by 14 November 2019 to [primarymarketbulletin@fca.org.uk](mailto:primarymarketbulletin@fca.org.uk).

### **Legislative and Regulatory Reform Act 2006 (LRR)**

We consider that the proposals here have regard to the 5 LRR principles – that regulatory activities should be carried out in a way which is transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed. We have also had regard to the Regulators' Code, in particular the requirement for proportionate and targeted regulatory activity. The amendments to the Knowledge Base in this PMB aim to provide and update guidance to primary market practitioners on specific technical and procedural aspects of the Listing Rules, Prospectus Regulation Rules and Disclosure Guidance and Transparency Rules.

### **Equality and diversity**

We are confident that our proposals do not give rise to equality and diversity implications, but we welcome your comments if you have any concerns.

### **Useful links**

To access the guidance referred to in this edition of the PMB, see our website: [PMB No. 24 guidance consultation](#).