UK Corporate Update.

UKLA publishes new guidance and launches consultation

The UK Listing Authority ("UKLA") has published the sixth edition of its Primary Market Bulletin in which it announces a consultation on a proposed new technical note providing guidance on Listing Principle 6 (dealing with the FCA in an open and co-operative manner) and gives details of new or amended guidance. Certain new guidance notes follow the UKLA's consultations in Primary Market Bulletin No.2 (see UK Corporate Update 26 July 2012) and Primary Market Bulletin No.5 (see UK Corporate Update 28 February 2013).

Consultation: dealing with the FCA in an open and co-operative manner

The UKLA has launched a consultation on a new technical note on Listing Principle 6 which requires a listed company to deal with the FCA in an open and co-operative manner UKLA/TN/209.1.

The note makes clear that it is not necessary for issuers to contact the FCA in advance of all transactions and outlines some factors that should be taken into account when trying to ascertain whether a transaction is significant and whether early contact with the FCA is necessary. The FCA's list is not exhaustive but covers the following:

> Is there a role for the FCA?
> Is the decision time critical?
> Does the timing of the contact allow for the FCA to disagree with the proposed approach?

Based on these considerations, examples of the types of transactions where the FCA would expect an issuer to carefully consider the timing of initial contact with the FCA includes reverse takeovers and Class 1 disposals by issuers in severe financial distress. However, the FCA states that a routine
Class 1 transaction with a limited role for the FCA before the submission of the circular, is unlikely to require early contact.

In connection with this new guidance, the UKLA is also consulting on an amendment to existing technical note UKLA/TN/306.2 – Reverse Takeovers to remind issuers of the need for early engagement with the FCA when completing a reverse takeover.

The consultation closes on 10 September 2013.

**New guidance published**

**Sponsors:** The UKLA has published a new technical note providing guidance for sponsors when identifying and managing conflicts of interest: UKLA/TN/701.1 - Sponsors: identifying and Managing Conflicts.

The technical note:

> sets out examples of situations where a perception could arise that a sponsor may be unable to carry out its role in a proper manner;

> lists factors a sponsor should take into account when deciding whether to take a role on certain transactions; and

> explains how to contact the UKLA for further guidance.

The UKLA has also asked for feedback from sponsors on the issues they face identifying and managing conflicts and for ideas on other areas where sponsors feel additional guidance or policy consideration is required.

In addition the UKLA has also published:

> Technical note UKLA/TN/710.1 – Sponsor services: Principles for sponsors which provides guidance on the meaning of the definition of “sponsor services” and when a sponsor service begins and ends, including examples. The note has been amended to clarify the nature of certain sponsor obligations in response to feedback received.

> Technical note UKLA/TN/711.1 – Sponsor notification requirements which provides guidance on the practical considerations sponsors face when submitting general notifications under LR 8.7.8R.

**Inside information in periodic financial reports:** Technical note UKLA/TN/506.1 – Periodic financial information and inside information has been published. This note reminds issuers that the requirement to disclose inside information under DTR 2.2.1R also applies during the period when issuers are preparing their financial reports.

**Risk factors:** Technical note UKLA/TN/621.2 – Risk factors has been published. The amendments to the Prospectus Directive which came into force on 1 July 2012 introduced a requirement for prospectus summaries to disclose only key information on key risk factors. Feedback from market
participants suggested that this could de-emphasise the materiality of the risks not included in the summary. To address these concerns, this technical note provides wording (agreed with the Company Law Committee of the City of London Law Society) to be included in the preamble to the risk factors section, drawing the reader’s attention to all the risk factors, not just those in the summary. The technical note also provides general guidance on drafting risk factors for a prospectus.

**Eligibility process:** The UKLA’s proposal to run the eligibility review process in parallel with the prospectus review process raised concerns that applicants would lose the opportunity to consult with the UKLA on eligibility at an early stage, prior to incurring substantial costs. In response to feedback, the UKLA has amended its procedural note on the eligibility process and confirmed that, if an applicant wishes to submit an eligibility letter to the UKLA before submitting a prospectus, it is happy to interact with the applicant in this way and allocate staff to discuss their case: UKLA/PN/901.2 - *Eligibility process* and UKLA/PN/903.2 - *Review and approval of documents*.

**Block listings:** The UKLA has published a procedural note on its current approach to block listings, including some practical considerations relevant when submitting an application for a block listing: UKLA/PN/907.1 - *Block listings*.

**Guidance still under consideration by the UKLA**

**Parent company guarantees for subsidiaries:** Under a recent amendment to the Companies Act 2006, a parent company can guarantee a subsidiary so that it is exempt from producing audited accounts (section 479C). The UKLA has proposed technical note UKLA/TN/310.1 - *Indemnities, guarantee and similar* to clarify whether such a guarantee is classifiable as a class 1 transaction under LR 10.2.4(1)R. In the proposed technical note, the FCA considers that such an arrangement does fall within LR 10.2.4(1)R. Where the arrangement relates to a wholly owned subsidiary the exemption in LR 10.2.4(1)R will apply. Where the subsidiary is less than 100% owned by the parent, the transaction would be treated as a class 1 transaction. However, following feedback received on the classification of guarantees to a subsidiary that is less than 100% owned by its parent, the UKLA has decided to delay publishing this technical note so that it may give it further consideration and perhaps seek further consultation.

**Supplementary prospectuses:** Technical note UKLA/TN/605.2 - *Supplementary prospectuses* has not been finalised. The UKLA is considering the feedback received on this technical note and intends to respond to it in the next edition of Primary Market Bulletin.

**Final terms and PD disclosure issues relating to non-equity securities:** Both of these technical notes, UKLA/TN/629.2 - *Final terms* and UKLA/TN/631.1 – *PD disclosure issues relating to non-equity securities* are
the subject of further consideration by the UKLA which intends to take action on their contents in the next edition of Primary Market Bulletin.

Guidance deleted from the Knowledge Base

Sponsors: UKLA/TN/702.1 - Sponsors: Regular review and annual confirmation has been deleted from the Knowledge Base as it is no longer relevant.

Click here for FCA's Primary Market Bulletin No.6.

Click here for FCA's consultation website in relation to the guidance for dealing with the FCA in an open and co-operative way.

Final form of regulations requiring companies to publish a strategic report published

The Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013 (the “Strategic Report Regulations”) have now been made. They require companies to publish a strategic report rather than a business review, require quoted companies to publish additional information on human rights, diversity and greenhouse gas emissions and abolish the option for companies to send a summary financial statement to shareholders who do not wish to receive the full report and accounts. The regulations are in the same form as the draft published in June 2013 (see UK Corporate Update 20 June 2013).

The following regulations have also been made:

> The Companies (Receipt of Accounts and Reports) Regulations 2013 allow companies to provide shareholders who do not wish to receive the full report and accounts with a strategic report with certain supplemental information instead of a summary financial statement. They revoke the Companies Act (Summary Financial Statement) Regulations 2008 whilst deeming any existing election of shareholders not to receive the full annual report and accounts to be elections to receive a strategic report with supplemental information. The procedure for obtaining shareholder consent going forward is largely the same as under the 2008 regulations;

> The Companies (Revision of Defective Accounts and Reports) (Amendment) Regulations 2013 amend the 2008 regulations that provide how companies should revise their accounts and reports if they are found to be defective. These reflect amendments to Companies Act 2006 by the Strategic Report Regulations and by the Enterprise and Regulatory Reform Act 2013;
The Unregistered Companies (Amendment) Regulations 2013 amend the Unregistered Companies Regulations 2009 which applied provisions of the Companies Act 1985 and Companies Act 2006 to unregistered companies that are not incorporated under any of Companies Acts (e.g. companies formed by charter granted by the Crown or by special Act of Parliament). The amendments were made as a consequence of changes to the Companies Act 2006 made by the Enterprise and Regulatory Reform Act 2013 and the Strategic Report Regulations.

All the above regulations come into force on 1 October 2013. For the most part they apply to accounts and reports for a financial year ending on or after 30 September 2013. The only exception to this are the Companies (Revision of Defective Accounts and Reports) (Amendment) Regulations 2013 which apply to financial years beginning on or after 1 October 2013.

The Strategic Report Regulations and an explanatory memorandum can be found here and here.

The Companies (Receipt of Accounts and Reports) Regulations 2013 and an explanatory memorandum can be found here and here.

The Companies (Revision of Defective Accounts and Reports) (Amendment) Regulations 2013 and an explanatory memorandum can be found here and here.

The Unregistered Companies (Amendment) Regulations 2013 and an explanatory memorandum can be found here and here.