

## Procedural Note

### Schemes of arrangement and reconstructions

LR 2.2.4R  
LR 5.3.2R(3)(b)  
LR 5.3.6G

This procedural note sets out potential approaches issuers may take for transactions implemented by way of a scheme of arrangement in the context of listing and cancellation of securities from the Official List. *focusses on being*

~~For the purposes of~~ this note, ~~in the UK a~~ scheme of arrangement is a transaction sanctioned by the court under section 899 of the Companies Act 2006 where (i) an existing issuer enters into a scheme of arrangement for the purpose of imposing a new holding company (ii) an existing issuer issues consideration shares following an acquisition of/merger with another listed issuer which is effected by a scheme of arrangement or (iii) an existing issuer restructures in such a way that issuer's listing is cancelled, with or without admission to listing of shares in a new company.

Since there are different ways of structuring transactions, the purpose of this procedural note is to illustrate examples of approaches that we consider meet the requirements of chapters 2, 3 and 5 of the Listing Rules. Whatever structure you propose, it is important you engage with the FCA as early as possible, providing a draft timetable, and you consider how the proposed structure meets the relevant requirements of the Listing Rules.

Usually transactions <sup>(d)</sup> are intended to be structured so that the transaction as a whole *is* completes ~~simultaneously~~ upon the scheme of arrangement becoming effective.

*immediately*

For example, in the case of a new holding company, this means that the listing of the shares in the existing issuer is cancelled simultaneously with admission to the Official List of the shares in the new holding company.

One approach that issuers have used to ensure that this is the case is to ask us to suspend the listing of the existing issuer at 7.30 am on the morning of the day on which the scheme of arrangement court hearing takes place. The issuer then delivers the court order sanctioning the scheme of arrangement to Companies House during trading hours without breaching the eligibility conditions i.e. that the shares will no longer be transferable on delivery (LR 2.2.4R). Confirmation of the delivery of the court order would be provided to FCA's Issuer Management team by 3pm (as required by LR 5.3.6G) enabling simultaneous admission of the new shares to listing and cancellation of the existing issuer's listing at 8am on the next business day.

We appreciate that issuers may want to avoid the loss of trading that such a suspension creates. An alternative approach is for issuers not to ask for suspension, but to submit documents to the FCA by 3pm on the business day before the day on which the transaction is to become effective, which demonstrate adequately <sup>that</sup> the scheme will become effective on a specified date in the future as referred to in LR 5.3.2R(3)(b). Issuers should submit a letter confirming that the scheme has been sanctioned by the court, all conditions have been satisfied or waived and the scheme ~~is~~ irreversible. The issuer should be aware of the impact if the scheme does not become effective as expected. For example, when the listing has been cancelled, it is not possible to restore the listing – an admission application would need to be made and a new prospectus produced.

becoming effective and therefore irreversible.

there is  
no impediment  
to

## UKLA Technical Note

### Compliance with the Listing Principles and Premium Listing Principles

LR 2.2.4R and  
LR 7

The Listing Principles and Premium Listing Principles, which are set out in LR 7, are a general statement of the fundamental obligations of listed companies. Companies with a standard listing must comply with the Listing Principles. Companies with a premium listing of their equity shares must, in addition, comply with the Premium Listing Principles. They were introduced to ensure adherence to the spirit as well as the letter of the various rules, including the Disclosure Guidance and Transparency Rules, comprising the wider listing regime.

Issuers should therefore be aware of the importance we place on complying with the Principles on an ongoing basis. As our Handbook notes, breaching a Listing Principle or Premium Listing Principle will make a listed company liable to disciplinary action by us. While cases may be brought in conjunction with action for a breach of a specific rule or rules, we are prepared to take enforcement action on the basis of the Principles alone, taking account of the standard of conduct required by the Principle in question.

#### Interaction of the Listing Principles and Premium Listing Principles with the Sponsor Regime

Issuers undertaking a sponsor service as set out under LR 8.2 are required to appoint a sponsor.

Listing Principle 1 and Premium Listing Principle 1 are reflected in the sponsor regime by sponsors providing assurances to us under LR 8.3.4R, LR 8.4.2R(3), LR 8.4.2R(4) and LR 8.4.12R(2) that directors understand the nature of their responsibilities under the listing regime rules and that issuers have procedures, systems and controls in place to comply with these rules on an ongoing basis. In order for sponsors to discharge their obligations to us, we expect issuers to cooperate with sponsors and allow them to carry out their work.

Under LR 8.5.6R, issuers are required to cooperate with their sponsor(s) by providing all information reasonably requested by the sponsor(s) for the purpose of carrying out the sponsor service in accordance with LR 8. This is likely to include ~~access to relevant~~ meetings with directors and, where applicable, senior management.

Access to

### **LR 7.2.1AR: Articles containing compulsory acquisition provisions**

Compulsory acquisition or redemption powers need to be considered carefully to ensure they do not offend the principle of equality of treatment of all shareholders in LR 7.2.1AR (Premium Listing Principle 5) if they do not generally treat shareholders equally. Please see LR 2.2.4R for further details about such powers.

## Procedural Note

### Primary Market Oversight and Listing Transactions – decision making and individual guidance processes

#### Introduction

This note summarises how FCA decision making powers in relation to our responsibilities under Part VI of the Financial Services and Markets Act 2000 (FSMA) are delegated to FCA staff and exercised by them. This note also briefly sets out the procedure for individual guidance, appeals and complaints.

The FCA's functions under Part VI of FSMA are carried out by the Primary Market Oversight (PMO) Department and the Listing Transactions Department, which are both part of the FCA's Market Oversight directorate.

#### Statutory and non-statutory notice decisions

Part VI FSMA grants us a number of powers which result in a decision being made. There are two categories of decision which result from the exercise of these powers:

- 1) Statutory notice decisions, which include decisions to refuse an application for admission of securities to the Official List, discontinue the listing of securities on our own initiative, suspend listing, ov
- 2) Non-statutory notice decisions, which include the decision to approve a prospectus (or refusal to approve a prospectus) and granting admission to the Official List.

We set out below a summary of the process relating to each category of decision.

#### Statutory notice decision making

The provisions in FSMA set out the decisions where we are required to serve a statutory notice. A statutory notice is a written notice that our formal powers are proposed to be, or will be, exercised. Statutory notices include warning notices, decision notices and supervisory notices. For example, if we decide to refuse an application to admit securities to the Official List, we issue a decision notice to the applicant that applied for admission.

The Decision Procedure and Penalties Manual (DEPP), which forms part of the FCA Handbook, sets out our decision making procedure for giving statutory notices. The Enforcement Guide (EG) (which does not form part of the FCA Handbook but

is an FCA regulatory guide) sets out our policy in relation to publicity for statutory notices (EG 6).

DEPP 2 provides further information on the allocation of decision making within the FCA. In particular, the annexes to DEPP 2 set out who the appropriate decision maker will be in relation to decisions which we take under Part VI of FSMA. The decision maker will be either the Regulatory Decisions Committee (RDC) or 'FCA staff under executive procedures'.

### **RDC**

Information on decision making by the RDC can be found in DEPP 3 and on our website. The RDC is an FCA Board Committee that is operationally separate from the rest of the FCA. The FCA Board appoints the RDC Chair and members, who are drawn from across a spectrum of business, consumer and industry backgrounds.

In the case of our role under Part VI of FSMA, decisions that will be taken by the RDC include a decision to discontinue the listing of securities on the FCA's own initiative (DEPP 2.5.10G).

### **'FCA staff under executive procedures'**

Information on decision making by 'FCA staff under executive procedures' can be found in DEPP 4. However, in the case of our role under Part VI of FSMA, in certain instances the executive procedures decision maker for statutory notices will be the Markets Regulatory Committee, often called 'Markets RegCo'. For example, a decision to refuse an application for admission to the Official List is likely to be referred to Markets RegCo.

Further information on Markets RegCo is set out below.

### **Decisions not subject to statutory notice decision making**

Decisions not subject to statutory notice decision making are usually taken by FCA staff and notified to the parties affected through means other than statutory notices. An example of such a decision includes granting admission to the Official List (although please note that refusing an application for admission is a statutory notice decision).

In all cases, staff taking these decisions do so through the Chief Executive Officer's Delegations and are accountable to the FCA Board through line management. In arriving at their decision, FCA staff will, in addition to considering the substantive facts of the case, generally consider whether they have sufficient authority to take the decision or whether the decision or aspects of it should be escalated within the FCA. Where staff decide to escalate decisions this may be to individual senior staff members

or to senior staff committees depending on the nature of the decision. Again, the senior staff committee to which FCA staff carrying out functions under Part VI of FSMA most commonly escalate issues is Markets RegCo. Prior to taking a decision to Markets RegCo, we will usually escalate the matter to a meeting of management within the Market Oversight division first.

### Individual guidance

A person may ask the FCA for individual guidance on how any of FCA's rules and general guidance (including LR, PR and DTR) apply in their particular circumstances.

The procedure for requesting individual guidance is set out in SUP 9 of the FCA Handbook. However, we would like to highlight the following points.

- Any query should be specific and clearly set out what question the FCA is being asked to consider. We expect the person requesting guidance to be familiar with the context in which the guidance is being sought. All relevant facts should be presented to us in a clear and transparent manner.
- We do not expect to give guidance on a no names basis about the affairs of an individual issuer.
- We expect a person to have taken reasonable steps to research and analyse their query – we would expect this analysis to be set out in the request for individual guidance.
- We will provide you with a named contact person, typically on the business day following receipt of your request.
- We will respond fully to all reasonable requests for guidance and will normally do so in writing.
- Where we respond in writing, in most instances (depending on the facts of the particular case) the recipient is able to rely on the guidance in relation to the specific circumstance contemplated by the guidance and to the extent it remains effective and current (for example, if the circumstances change, the guidance may no longer be effective).

Further information specifically relating to the individual guidance procedure can be found on the "Request individual guidance" section of the FCA website.

As with non-statutory decision making, individual FCA staff are able to provide individual guidance through the Chief Executive Officer's Delegations. FCA staff providing individual guidance (in writing or orally) will ensure that they have sufficient authority to do so and that matters are escalated to senior staff members or senior staff committees (including Markets RegCo) as they deem appropriate.



## Markets RegCo

RegCo is a senior staff committee within the FCA. It is chaired by an FCA Director and includes directors and/or heads of department from the Policy and Market Oversight directorates and the Supervision and Authorisations divisions. Representatives from certain other parts of the FCA attend in an advisory capacity, including staff from the General Counsel and Risk and Compliance Oversight divisions.

## Appeals

Where a person is not satisfied with the statutory decision made, they may refer the matter to the Upper Tribunal (Tax and Chancery Chamber). The Upper Tribunal is an independent judicial body established by the Tribunals Courts and Enforcement Act 2007. Further information on the Upper Tribunal can be found on the FCA website.

## Complaints Scheme

Part VI of the Financial Services Act 2012 requires us to have arrangements for the investigation of complaints against us. These arrangements are known as the Complaints Scheme. Further information on the scheme is available on the FCA website.