



The Law Society

**Response to UKLA Consultation on
Draft Technical and Procedural Notes**

April 2013



Introduction

This response has been prepared by the Listing Rules 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 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. 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 Listing Rules 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 the Listing Rules (LR) and the UK Listing Regime.

We set out below our comments on the draft technical and procedural notes ("**Notes**") referred to in the FSA's (or at the time of submission of this response, the new FCA's) Primary Market Bulletin Issue No.5 ("**PMB No.5**"). We do not have any comments in respect of the Notes that are not referred to in this response.

PROCEDURAL NOTES

Eligibility process (UKLA/PN/901.2)

In the Procedural Note, the FCA acknowledges that "*in a small number of cases*" applicants and their advisers may wish to submit an eligibility letter before the draft prospectus is submitted where they have significant concerns that the applicant may be ineligible for listing and states that in these instances the FCA can allocate staff to the case and discuss the concerns raised. We hope that, even if a significant number of applicants wished to raise eligibility issues with the FCA before submitting a draft prospectus, the FCA would be willing to allocate staff to discuss these issues with the applicants and will not itself seek to limit the number of applicants to which it is willing to provide initial guidance. It would be helpful if the FCA would confirm this.

TECHNICAL NOTES

Supplementary prospectuses (UKLA/TN/605.2)

We note that PMB No.5 states that the Technical Note has been revised to incorporate provisions in the Amending Directive (2010/73/EU) regarding withdrawal rights but the draft Technical Note does not appear to comment on the relevant changes (for example, that withdrawal rights arise only where the prospectus relates to an offer of securities to the public and that the withdrawal period is two working days following publication of the supplementary prospectus). We also note that the revised Technical Note deletes the section in the current Technical Note (December 2012) regarding "Withdrawal rights – specifically in relation to takeover offers or

rights issues" and we are not aware of the FCA's reasons for the deletion. We consider that the deleted sections provide helpful and relevant guidance and consequently, we suggest that they are reinstated into the new Technical Note.

In PMB No.5, the FCA states that it may update or amend its guidance, once ESMA has completed its review of supplementary prospectuses. We suggest that the FCA considers the draft Technical Note in light of the draft technical and regulatory standards concerning situations which trigger the publication of a supplementary prospectus, which were published by ESMA on 15 March and consider whether any additional revisions are appropriate at this stage.

Sponsor services (UKLA/TN/710.1)

Under the sub-heading '*Listing and transfer of listing category*', the Technical Note provides that it is the sponsor's role to submit a sponsor declaration on the matters set out in the relevant section of LR 8.4. The Technical Note further provides that "*therefore those declarations must continue to meet the required standards of care at the date of their submission*". It is not clear over what period the declaration must continue to meet these standards. We assume that the FCA merely has in mind the period up to the date of admission of the securities of the relevant applicant and, if so, we suggest that this is expressly stated.

Under the same sub-heading, the Technical Note provides that a sponsor is under an obligation to inform the FCA immediately if any further information which could fall under LR 8.4.3R(3), LR8.4.9R(3) or LR8.4.1R(3) comes to its attention before the date of admission or effective date of transfer of listing. The Technical Note goes on to provide that sponsors need to ensure that its client and "*all its advisers*" must inform the sponsor immediately of any such information up to that date.

Whilst it is appropriate for the client to inform the sponsor immediately of any such information, we do not believe that it is appropriate for all advisers of the client to be under the same duty. The accountants and the lawyers will provide confirmatory comfort letters to the sponsor before admission to support the confirmation required by the FCA from the sponsor. In practice, we also expect there to be dialogue between advisers on any relevant issues which do come to light but it is not appropriate or realistic for the advisers to conduct a rolling assessment up to admission and be under a duty to inform the sponsor "immediately" of such issues. The sponsor should require its client to inform it of any issues immediately but, as regards advisers, they should not be expected to do more than bring down their formal comfort letters to the time of admission. So, we would suggest that the Technical Note is amended so that the duty to inform applies only to the sponsor's client.

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