

THE CITY OF LONDON LAW SOCIETY

COMPANY LAW COMMITTEE

**Issues for the Financial Conduct Authority's consideration
regarding the UKLRs and related rules**

Thank you for inviting us to submit issues for the FCA to consider as part of a possible 'clean-up' of the UK Listing Rules.

This document is structured as follows:

- Part A discusses provisions of the UKLRs and related rules which seem to contain errors or can be difficult to interpret or apply.
- Part B discusses other provisions which we believe would benefit from a review. We encourage the FCA to consider the purpose and scope of these provisions and our suggested changes.
- Part C comments on the recently-launched Beta version of the FCA Handbook online.

This document has been prepared by a working party of the Company Law Committee of the City of London Law Society (**CLLS**). The CLLS represents approximately 20,000 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, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 22 specialist committees.

The working party is made up of senior and specialist corporate lawyers from the CLLS who have a particular focus on issues relating to equity capital markets.

We would welcome the opportunity to discuss these issues with you further if that would assist.

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PART A

“Clean-up” issues for the Financial Conduct Authority’s consideration regarding the UKLRs and related rules

UK Listing Rules (UKLR)

Distributing regulated information to 2+ national newspapers when RIS is closed (UKLR 1.3.4R(1), DTR 1.3.6G(1) and DTR 1A.3.3R(1))

In practice, the requirement to distribute regulated information to not less than two national newspapers in the UK when a RIS is closed creates administrative friction and may not achieve the desired aim of bringing the information to the attention of the public in the UK (given the ongoing decline in newspaper readership). This can encourage issuers to try to conclude that the obligation to notify information to an RIS does not crystallize until the next day when a RIS is open for business.

We suggest that paragraph (1) of UKLR 1.3.4R, DTR 1.3.6G and DTR 1A.3.3R is deleted, amended (e.g. to permit an issuer to publish the information on its website instead) or updated to reflect current media channels.

Contact details (UKLR 1.3.5R)

UKLR 1.3.5R requires an “issuer” to provide the FCA with contact details of at least two executive directors or (where the issuer has no executive directors) at least two directors. Where a corporate group includes more than one issuer, it seems clear that each issuer must provide contact details under this rule. So for example, if the group’s parent company has listed shares and the group’s main trading subsidiary has listed debt securities then each company must provide details of two of its directors.

We presume this is how the FCA intends this rule to operate. If not then please let us know.

Application of ESCC listing criteria (UKLR 5.1.1R)

UKLR 1.1.1R provides a general indication that UKLR 5 only applies to applicants for admission to the equity shares (commercial companies) (ESCC) category. However, as written UKLR 5.1.1R extends UKLR 5 to applicants for admission of equity shares under UKLR 14 or UKLR 16 as well. Applicants in these listing categories are not excluded by UKLR 5.1.1R(1) to (4).

This could be addressed by amending UKLR 5.1.1R to begin as follows. This wording is consistent with UKLR 5.1.2R, UKLR 14.1.1R and the definition of “equity shares (commercial companies)”:

This chapter applies to an *applicant* for the *admission* of equity shares to the equity shares (commercial companies) category, other than those of:

Free float and shares subject to >180 day lock-up (UKLR 5.5.3R(2), UKLR 6.2.22R and related provisions)

Under UKLR 6.2.22R, an ESCC issuer must comply with the free float requirement on a continuing basis, as well as on initial admission. However, we suggest that, once the issuer is listed, UKLR 5.5.3R(2) is not intended to apply – i.e. when assessing on a continuing basis whether an issuer has sufficient free float, shares that are subject to a lock-up of more than 180 days do count towards the free float.

The same comment applies to:

- UKLR 13.2.4R(3)(b) (as applied by UKLR 13.3.4R(1));
- UKLR 14.2.2R(3)(b) (as applied by UKLR 14.3.1R);

- UKLR 15.2.9R(3)(b) (as applied by UKLR 15.3.1R(2));
- UKLR 16.2.1R(3)(b) (as applied by UKLR 16.3.2R(1)); and
- UKLR 22.2.2R(3)(b).

Certain unaudited financial information to be repeated in next annual results (UKLR 6.2.23R and UKLR 6.2.24G)

The meaning of the exemption in UKLR 6.2.24G(2) is not entirely clear. We understand this applies to “any preliminary statements of annual results or half-yearly or quarterly reports that are included in a reverse takeover circular or prospectus”. This is consistent with what we understand to be meaning of former LR 13.5.36R(2)(b), which applied from 1 July 2005 until 30 September 2012. (Former LR 9.2.18R (now UKLR 6.2.23R) was originally a continuing obligation counterpart to former LR 13.5.36R, and ultimately LR 13.5.36R was deleted because it duplicated this continuing obligation – see “Our response” under paragraph 5.63 of FSA CP05/07 and paragraph 5.69 of FSA CP12/02.) However, it would be clearer if UKLR 6.2.24G(2) was amended to reflect this.

Voting and dual class share structures (UKLR 6.2.32G)

UKLR 6.2.32G refers to “specified weighting voting rights shares”. This should be a “specified weighteding voting rights shares”.

Announcing a change in capital structure (UKLR 6.4.4R(1) and related provisions)

Although market practice around UKLR 6.4.4R(1) is fairly well established, it is not always clear whether an issue of shares or other change in an issuer’s share capital amounts to a “change in capital structure”. We suggest the FCA considers amending or clarifying this wording.

The same comment applies to UKLR 13.3.20R(1), UKLR 14.3.17R(1), UKLR 16.3.16R(1) and UKLR 22.2.17R(1).

Notification of significant transactions (UKLR 7.3.2R)

It would provide helpful clarity if UKLR 7.3.2R could be amended to state that the announcement obligations are satisfied where an issuer: (i) includes the relevant information required by UKLR 7 Annex 2 in a circular; and (ii) following publication, releases an RIS announcement notifying the market of the publication of the circular.

For example, this could apply where the issuer’s shareholders must pass resolutions to implement a significant transaction (e.g. approving a scheme of arrangement or granting authority to allot shares). The issuer could include the relevant UKLR 7 Annex 2 information with its notice of general meeting rather than setting it out in full in an announcement. This was the approach taken under the former LRs, which required these types of information to be included in a Class 1 circular not an announcement.

Details of related party transactions in significant transaction announcements (UKLR 7 Annex 2, paragraph 3.1R)

Paragraph 3.1R of UKLR 7 Annex 2 requires a significant transaction announcement under UKLR 7.3.2R to include the information required by item 17.1 of Annex 1 to the PR Regulation (unless this has already been published – see paragraph 3.4R). Item 17.1 of Annex 1 requires “details of related party transactions... that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document”.

Where the significant transaction is a disposal, the “period covered by the historical financial information” is two years (see paragraph 2.2R of UKLR 7 Annex 2). It is not clear what this period should be on an acquisition, where no historical financial information is required. In our view an issuer undertaking an acquisition should provide details of related party transactions from the end of the latest financial year for which it has published an annual financial report or preliminary statement of annual results until the date of its announcement under UKLR 7.3.2R. It would be helpful if the FCA could amend paragraph 3.4R to clarify this. For example:

The information required by Annex 1 item 17.1 (Related party transactions):

(1) need only be given if it is relevant to the transaction; ~~and~~

(2) need not be given if it has already been published before the notification is made-; and

(3) where the transaction involves an acquisition, should cover related party transactions entered into by the *listed company* from the end of the latest financial year for which it has published an annual financial report or preliminary statement of annual results until the date of the notification required by UKLR 7.3.2R.

Non-financial information in significant transaction announcements (UKLR 7 Annex 2, paragraph 3.2R(1))

On an acquisition, information regarding the listed company’s material contracts and legal proceedings must be announced (under paragraph 3.2R(1) of UKLR 7 Annex 2 and items 20.1 and 18.6.1 of Annex 1 to the PR Regulation). Information regarding material contracts and legal proceedings of the issuer’s subsidiary undertakings was expressly required under former paragraph 1(1)(a) of LR 13 Annex 1.1. Such information is still required on a disposal under paragraph 3.2R(2).

Were the issuer’s subsidiary undertakings intentionally omitted from paragraph 3.2R(1)? If so then this sits oddly with paragraph 3.2R(2) and the wording of items 20.1 (which requires summaries of material contracts entered into by any member of the issuer’s group) and 18.6.1 (which requires information on any legal proceedings with significant effects on the group’s financial position or profitability).

It would be helpful if the FCA could clarify the position and consider whether paragraph 3.2R(1) reflects its intentions. A missing word (“and”) also needs to be restored:

(1) for an acquisition, in separate statements for the *listed company* and [its subsidiary undertakings and] for the undertaking, business or assets to be acquired; or

Wholly intra-group related party transactions (UKLR 8)

Unlike DTR 7.3 and UKLR 7, UKLR 8 contains no exemption for transactions between a listed company and its wholly-owned subsidiaries or for transactions between wholly-owned subsidiaries. Where such transactions are large enough to be caught by UKLR 8.2.1R, a common sense approach is generally adopted and the transaction is taken to fall outside the spirit and intention of the related party rules. It would be preferable to include a specific exemption in UKLR 8 (similar to those in DTR 7.3.5R(1) and UKLR 7.1.6R(2)(c)) which would promote greater clarity for the market.

A firm on our working group raised this in its response to FCA CP23/31. The FCA responded that it would consider this point in due course, as it did not seem sufficiently material to address in the short term last year (see “Our response” under paragraph 7.3 in FCA PS24/6). We encourage the FCA to revisit this.

**Definition of related party
(UKLR 8.1.11R(1)(b))**

There is a word missing from UKLR 8.1.11R(2)(b). This should read:

(b) any other *company* which is one of the following (and, if that *person* has ceased to **be** a *director* or *shadow director*, any other *company* which was one of the following while that *person* was a *director* or *shadow director* of such other *company*);

**Private confirmation by sponsor that transaction is fair and reasonable
(UKLR 8.2.1R(3))**

We consider that UKLR 8.2.1R(3) could be deleted. When there was only a need for private confirmation from the sponsor in the event of a related party transaction announcement, UKLR 8.2.1R(3) was necessary (formerly included in LR 11.1.10R(2)). This requirement is now redundant because of the public notification requirements regarding the sponsor's advice under UKLR 8.2.2R(4). Under the LRs, there was no requirement for a private sponsor confirmation where a related party transaction circular citing the sponsor's advice was made publicly available (see former LR 13.6.1R(5)).

**Sponsors may take into account the commercial assessments of directors
(UKLR 8.2.2R(4))**

An announcement of a related party transaction must include a statement by the board that the transaction is fair and reasonable as far as shareholders are concerned and that the directors have been so advised by a sponsor (UKLR 8.2.2R(4)). Related party transaction circulars were previously required to include such a statement under former LR 13.6.1R(5).

In moving this required board statement from the circular to the announcement, we do not think the FCA intended to delete the guidance in former LR 13.6.3G, which allowed the sponsor to take into account the commercial assessments of the directors. In our view this guidance should be reinstated as part of UKLR 8.2. We note this guidance survives as a rule in respect of relevant related party transaction circulars (see UKLR 11.6.8R).

**Aggregation of related party transactions
(UKLR 8.2.7R)**

The requirement to aggregate transactions in UKLR 8.2.7R does not expressly exclude transactions in the ordinary course of business. However, excluding them is consistent with the definition of a related party transaction (UKLR 8.1.7R), the approach taken in UKLR 7 (see below) and market practice. In other words, transactions which cannot be related party transactions (because they are in the ordinary course of business) should not be aggregated. It would be helpful if the FCA could clarify this by amending UKLR 8.2.7R(1) to better reflect UKLR 8.1.7R:

(1) Subject to (3), if a *listed company* enters into transactions or arrangements (other than transactions or arrangements in the ordinary course of business) with the same *related party* (and any of its *associates*) in any 12-month period, the transactions or arrangements must be aggregated.

This also reflects the approach taken in UKLR 7. While the aggregation rules in UKLR 7.2.11R and UKLR 7.2.15R do not expressly exclude transactions in the ordinary course of business, UKLR 7.1.6R(2)(a) excludes them (by providing that a "transaction" in UKLR 7 excludes a transaction in the ordinary course of business).

**Supplementary notifications for related party transactions
(UKLR 8.2.8R(1))**

Under UKLR 7.3.13R(1), supplementary notifications regarding significant transactions must now only be made if a material change, new matter, etc. occurs before completion of the transaction. This change was made in the UKLRs in response to feedback from us and others. This was discussed in FCA PS 24/6 which concluded: "We have clarified that a supplementary notification relates to matters arising before a transaction

has completed (issuers are not required to apply the requirements to subsequent matters)” (paragraph 5.48 and “Our response” under paragraph 5.51).

For consistency, the same change should be made to the obligation to make supplementary notifications for related party transactions. UKLR 8.2.8R(1) should be amended to begin:

(1) *A listed company* must notify a *RIS* as soon as possible if, after the notification under UKLR 8.2.1R(4) and before completion of the transaction, it becomes aware that:

This would also be consistent with UKLR 8.2.5R, which only requires the issuer to comply with UKLR 8 again if there is a material change to the transaction terms before completion.

Overlapping requirements for share buybacks (UKLR 9.6)

There is overlap between (i) the obligations of ESCC issuers under UKLR 9.6 when buying back equity shares and (ii) the requirements of the safe harbour for share buyback programmes under Articles 5(1) to (3) of UK MAR and Chapter II of the UK version of Regulation (EU) 2016/1052. When buying back equity shares ESCC issuers will normally seek to comply with both sets of provisions, to avoid any risk of buyback transactions constituting market abuse.

It would achieve a more streamlined rule book if these obligations were set out in one place and ideally required less frequent market disclosures (as under the US regime). Alternatively, UKLR 9.6 should at least state that an issuer which complies with the UK MAR safe harbour requirements will also satisfy the requirements of the relevant UKLRs.

Price for purchases of <15% of own shares without a tender offer (UKLR 9.6.2R(1)(b))

Although market practice around UKLR 9.6.2R is well-established, the wording of UKLR 9.6.2R(1)(b) does not quite work. We believe it should say “~~that the technical standards~~ stipulated by article ~~3(2) 5(6)~~ of the Buy-back and Stabilisation Market Abuse Regulation; or”. Our revised wording essentially mirrors former LR 12.4.1R(2) as it was prior to 3 July 2016. The Buy-back and Stabilisation Regulation is referred to in Article 5(6)(a) of UK MAR.

Continuing obligations of closed-ended investment funds (UKLR 11.4.3R)

UKLR 11.4.3R refers to a “close-ended investment fund”. This should be a “closed-ended investment fund”.

Relevant related party transactions (UKLR 11.5.4R)

In UKLR 11.5.4R(1) and (2), the defined term “relevant related party transaction” should be italicised both times it appears.

Written confirmations from sponsor (UKLR 13.4.11R, UKLR 13.4.15R and UKLR 13.4.19R(2))

UKLRs 13.4.11R, 13.4.15R and 13.4.19R(2) require sponsors to provide “written confirmations”. It is not clear from the rules but these confirmations are in a prescribed form and included on the FCA forms and checklists webpage (see the three documents contained within the “Sponsor's written confirmation for an initial transaction announcement” at <https://www.fca.org.uk/markets/primary-markets/forms>). The parts of these confirmations not specific to UKLR 13.4 reflect the wording in sponsor declarations used for other purposes.

It would be helpful to know if there is a reason why UKLR 13.4 refers to “written confirmations” when those documents appear to be akin to sponsor declarations. If there is no substantive difference between the content or treatment of these two types of document then it would provide greater clarity and consistency to refer to

the written confirmations as sponsor declarations and to include the notes to the relevant rules that accompany references to sponsor declarations in UKLR 24.3. For example, the note under UKLR 24.3.3R currently reads: “[Note: The Sponsor’s Declaration on an Application for Listing, the Shareholder Statement and the Pricing Statement forms can be found on the Primary Markets section of the FCA’s website.]”

Place of central management and control (UKLR 14.2.4R and UKLR 14.3.1R)

A UKLR 14 issuer’s place of central management and control must at all times be situated in its country of incorporation or the country of its qualifying home listing (UKLR 14.2.4R and UKLR 14.3.1R).

Issuers should know what is needed to comply with this requirement. However, “place of central management and control” is not defined. It would be very helpful if the FCA could provide guidance on how it will determine the location of an issuer’s place of central management and control.

The same phrase formerly appeared in paragraph 3(a)(ii) of the Introduction to the Takeover Code. The Takeover Panel explained that an issuer’s place of central management and control would usually be the country in which a majority of the issuer’s directors were resident (paragraphs 2.7 to 2.9 of consultation paper PCP 2012/3 at <https://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/PCP201203.pdf>). This provided reasonable clarity to issuers. We would encourage the FCA to adopt a test which is no less clear and certain. Even under this test, it was often impossible for outside parties such as shareholders to determine the place of central management and control for themselves, because it relied on non-public information and (to some extent) subjective judgements of the Panel (paragraph 2.10(c) of PCP 2012/3).

Admission to trading of GDRs (UKLR 15.3.1R(2), UKLR 3.2.3R and UKLR 15.2.12R)

Under the LRs, GDRs were required to be admitted to trading on a UK regulated market for listed securities at all times (former LR 18.4.3R(2) and LR 14.3.1R (as amended by LR 18.4.3BR)).

However, under the UKLRs, GDRs must only be admitted to trading on a recognised investment exchange’s market for listed securities at all times (UKLR 15.3.1R(2) and UKLR 3.2.3R (as amended by UKLR 15.2.12R)).

It appears this change was not intended. FCA PS24/6 states: “In relation to UKLR 15, regarding depositary receipts, we have made minor amendments to clarify the final rules, including to ensure that the existing continuing obligation for depositary receipts to be listed on a regulated market is carried over to the UKLRs to maintain the status quo” (“Our response” under paragraph 11.45). If this remains the FCA’s intention, then UKLR 15 should be amended accordingly.

Procedures, systems and controls confirmation by the applicant’s board (UKLR 20.3.1R)

In our view, UKLR 20.3.1R should be amended to clarify that the Procedures, Systems and Controls Confirmation required to be made by the board of an applicant applying for its first admission to listing is not required where the applicant is a new holding company applying for admission to listing in respect of a group with an existing admission to listing on the Official List (i.e. a “topco” insertion restructuring). This reflects recent approaches agreed with the FCA, which have had to be separately confirmed.

Cancellation of listing as a result of scheme of arrangement (UKLR 21.2.19R(1))

Under UKLR 21.2.19R(1), a cancellation of listing as a result of takeover or restructuring of the issuer effected by a scheme of arrangement under Part 26 or Part 26A of the Companies Act 2006 (**CA 2006**) is exempt from the requirements of UKLR 21.2.8R and UKLR 21.2.17R. These include, among other things, the requirements to send a circular to shareholders, obtain shareholders’ approval by way of a special resolution at a general meeting and give 20 business days’ notice of the cancellation.

In our view, UKLR 21.2.19R(1) should be amended to clarify that takeovers or restructurings effected by way of “equivalent” or “similar” schemes of arrangement, operation of law restructurings or statutory migration

procedures under laws in other jurisdictions are also exempt from these requirements (and not just UK Part 26 or 26A schemes). This reflects recent approaches agreed with the FCA in respect of non-English law governed “topco” insertion statutory migrations, which have had to be separately confirmed with the FCA. This would give issuers additional clarity when structuring these types of transactions.

Certificate from Registrar of Companies regarding a scheme of arrangement (UKLR 21.3.2R(3)(a))

A scheme of arrangement under Part 26 of CA 2006 takes effect when the Court order sanctioning the scheme is delivered to the Registrar of Companies (s.899(4) CA 2006). An issuer requesting the cancellation of its listing following a scheme which involves listing a new company must provide the FCA with either: (a) a copy of the certificate from the Registrar of Companies that the scheme has become effective; or (b) documents which adequately demonstrate that the scheme will become effective on a specified future date (UKLR 21.3.2R(3)).

Companies House will not provide any certificate, receipt or proof of delivery of the Court order, even if requested to do so. This renders UKLR 21.3.2R(3)(a) impossible to satisfy as written. However, FCA Procedural Note 913 indicates that, in practice, providing the FCA with confirmation of the delivery of the Court order is sufficient to satisfy the requirement for a “certificate”. A letter from the issuer confirming delivery should suffice for this purpose.

This is similar to the approach taken when the issuer relies on UKLR 21.3.2R(3)(b). In that case, Procedural Note 913 indicates that “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”. However, UKLR 21.3.2R(3)(b) is only available where the scheme will become effective on a future date. After the scheme becomes effective issuers can only use UKLR 21.3.2R(3)(a).

Procedural Note 913 extends to schemes under Part 26 of CA 2006 where an existing issuer (i) imposes a new holding company, (ii) issues consideration shares on an acquisition or merger with another listed issuer effected by a scheme, or (iii) restructures and cancels its listing, with or without listing a new company (see final paragraph on page 1 of Procedural Note 913). This Note is not limited to schemes which involve listing a new holding company (unlike UKLR 21.3.2R(3)). This seems sensible, as the process of delivering the Court order to Companies House is the same for all schemes.

We recommend amending UKLR 21.3.2R(3) to better reflect Procedural Note 913. For example:

(3) if a cancellation is to take place after a scheme of arrangement becomes effective under section 899 of the Companies Act 2006 ~~and a new company is to be listed as a result of that scheme~~, either:

(a) ~~confirmation that the Court order has been delivered to a copy of the certificate from~~ the Registrar of Companies ~~(and accordingly~~ that the scheme has become effective); or

(b) documents which demonstrate adequately that the scheme will become effective on a specified date in the future.

Free float requirement for transition category issuers (UKLR 22.2.2R(1))

In UKLR 22.2.2R(1), the terms “equity shares” (when used the second time) and “class” should be italicised as these are defined terms. This would be consistent with the related provisions in UKLR 5.5.1R, UKLR 13.2.4R(1), UKLR 14.2.2R(1) and UKLR 16.2.1R(1).

Disclosure Guidance and Transparency Rules (DTR)

Distributing regulated information to 2+ national newspapers when RIS is closed (UKLR 1.3.4R(1), DTR 1.3.6G(1) and DTR 1A.3.3R(1))

See our comments in the UKLR section.

Exclusion of GDR issuers from DTR 7.3 (DTR 1B.1.11G)

Before the UKLRs came into force, it was clear that DTR 7.3 only applied to issuers of premium listed GDRs not standard listed GDRs (see paragraph 3.23 of FCA PS19/13 and paragraphs 4.18 and 4.19 of FCA CP19/7). DTR 1B.1.11G noted that former LR 21.8.17AR extended the application of DTR 7.3 to sovereign controlled commercial companies with premium listed GDRs.

LR 21 was revoked when the UKLRs came into force, and so the reference to LR 21.8.17AR was removed from DTR 1B.1.11G.

However, DTR 1B.1.11G still refers to DTR 7.3 extending to “certain *listed companies* which have... *certificates representing shares* admitted to the *official list*”. This is clearly an error, because the UKLR provisions now cited in DTR 1B.1.11G only extend DTR 7.3 to certain share issuers (not GDR issuers). In addition, UKLR 14.3.22R and UKLR 14.3.23R are expressly excluded from the provisions which UKLR 15.3.1R(3) applies to GDR issuers.

To fix this, DTR 1B.1.11G should be amended to read:

UKLR 13.3.25R, UKLR 14.3.22R, UKLR 16.3.21R and UKLR 22.2.22R extend the application of DTR 7.3 (Related party transactions) for certain listed companies which have equity shares ~~or certificates representing shares~~ admitted to the official list maintained by the FCA in accordance with section 74 (The official list) of the Act.

Ability to publish regulated information in PDF format (DTR 6.3.5R(1A))

Most issuers now understand that DTR 6.3.5R(1A) permits them to disseminate regulated information by uploading a PDF document to the NSM and making a RIS announcement that this has been done and, where the regulated information is an annual financial report, half-yearly financial report or report on payments to governments, giving details of the website where the relevant document is available in accordance with DTR 6.3.5R(3). However, initial take-up was quite slow partly because the wording of the rule is difficult to follow, especially the reference to “the regulated information” in DTR 6.2.5R(1A)(b). We believe “the regulated information” must be understood to mean the RIS announcement mentioned above, and not the “full” regulated information that is included in the PDF.

DTR 6.3.5R(1A) should be amended to make this clear. For example:

(1A) An issuer or person who discloses regulated information is exempt from paragraph (1) if:

(a) the regulated information in unedited full text has been filed with the FCA by uploading it to the national storage mechanism; and

~~(b) the regulated information has been communicated to the media; and~~

(c) the issuer or person ~~communication to the media contains a statement~~ that the regulated information is available in unedited full text on the national storage mechanism.

As a communication under DTR 6.3.5R(1A)(c) would itself be regulated information (as defined), the issuer or person would be required to make it via a RIS announcement under DTR 6.3.3G(2). There is no need for DTR 6.3.5R(1A)(b) to reiterate this point.

Glossary in the FCA Handbook

“Associate” – There is a bracket missing at the end of paragraph 1(b) of this definition. It should read:

(b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an *occupational pension scheme* or an *employees' share scheme* which does not, in either case, have the effect of conferring benefits on persons, all or most of whom are related parties);

The missing bracket appears in paragraph (4)(b) of this definition, which otherwise mirrors this paragraph.

“Book value of property” – It seems this definition was retained for the purposes of UKLR 7.2.3R(3)(b). However, this is not entirely clear as the defined term is not italicised in that rule and there are some wording differences between that rule and this definition. If this definition is retained, then “(in *LR*)” should be updated to “(in *UKLR*)”.

“Combined Code” – This definition does not appear to be used in the UKLRs, DTRs or elsewhere in the Glossary. If it is retained, then “(in *LR* and *DTR*)” should be updated to “(in *UKLR* and *DTR*)”.

“Home Member State” – This definition does not appear to be used in the UKLRs, DTRs or elsewhere in the Glossary. DTR TP 1.4R(1)(b) uses the term “home Member State” but it is not italicised. If this definition is retained, then “(in *DTR* and *LR*)” should be updated to “(in *DTR* and *UKLR*)”.

“Host Member State” – This definition does not appear to be used in the UKLRs, PRRs or elsewhere in the Glossary. If this definition is retained, then “(in *PR* and *LR*)” should be updated to “(in *PRR* and *UKLR*)”. PRR should be updated to PRM when this comes into force on 19 January 2026.

“IAS” – The words “(in *LR* and *DTR*)” should be updated to “(in *UKLR* and *DTR*)”.

“Intermediaries offer” – This definition does not appear to be used in the UKLRs or elsewhere in the Glossary. If it is retained, then “(in *LR*)” should be updated to “(in *UKLR*)”.

“MAD” – This definition does not appear to be used in the UKLRs or elsewhere in the Glossary. If it is retained, then “(in *LR*)” should be updated to “(in *UKLR*)”.

“Regulated information” – Paragraph “(c) *LR*” should be updated to “(c) *UKLR*”.

“Technical note on PR disclosure and specialist issuers” – The words “*LR*, *PRR*, and *DTR*” should be updated to “*UKLR*, *PRR*, and *DTR*”. PRR should be updated to PRM when this comes into force on 19 January 2026.

PART B

Other issues for the Financial Conduct Authority's consideration regarding the UKLRs and related rules

UK Listing Rules (UKLR)

Limits on dual class share structures (UKLR 5.4.5R, UKLR 5.4.6G, UKLR 6.2.27R(1) and UKLR 6.2.31R to UKLR 6.2.33G)

While we welcome the increased flexibility given to dual class share structures (**DCSS**) in the UK Listing Rules, it would be preferable if all limitations on DCSS for ESCC issuers were removed.

DCSS should be adaptable by issuers and shareholders to suit their business and strategic context and the evolving requirements of investors. We consider that the market will then form a view as to the impact of DCSS on the desirability and pricing of the issuer's shares, which should in turn shape market practice regarding DCSS. For example, weighted voting rights shares may well often be subject to a sunset period, but we would prefer to see flexibility given to issuers, shareholders and investors to reflect and adapt market practice as it evolves (which could then potentially be flexed for issuers with specific reasons that investors find persuasive). We think this is preferable to subjecting all ESCC issuers to inflexible eligibility criteria. This market-driven dynamic has already been evident in the targeted forms of DCSS put in place by issuers with shares listed in other listing categories.

Part 26A schemes and pre-emption rights (UKLR 9.2.2R)

UKLR 9.2.2R should be amended to add an exception which reflects section 566A of CA 2006. This would apply where an issuer allots equity securities under a Part 26A scheme of arrangement.

Under section 566A of CA 2006, statutory pre-emption rights under section 561 of CA 2006 do not apply to allotments of equity securities that are carried out as part of a compromise or arrangement sanctioned in accordance with Part 26A of CA 2006. This enables a UK-incorporated company to allot equity securities under a Part 26A scheme without obtaining a special resolution (75%+) of its shareholders disapplying pre-emption rights under section 570 or 571 CA 2006.

This is consistent with the policy aims of Part 26A of CA 2006, which permits the Court to approve a Part 26A scheme even where 75%+ in value of a particular class of creditors or shareholders did not vote in favour (provided that 75%+ of another class voted in favour) – see section 901G CA 2006. So for example, if 75%+ of creditors vote to approve a Part 26A scheme but 75%+ of shareholders do not, then the Court may still approve it.

However, if the company undertaking a Part 26A scheme is listed in the ESCC category, it must still obtain a special resolution of shareholders to disapply pre-emption rights under UKLR 9.2.2R(1) or (4). This potentially undermines the policy aims of Part 26A by enabling dissenting shareholders to block an allotment of equity securities necessary to implement a Court-approved Part 26A scheme.

Excess application mechanics for rights issue (UKLR 9.4.4R)

The UK Secondary Capital Raising Review recommended that the listing regime should be amended to cater for the ability to have excess application mechanics attached to rights issues – where existing shareholders can apply to take up shares that are not taken up by other shareholders, at the offer price (recommendation 16).

At present, this is not possible under the UKLRs, as UKLR 9.4.4R requires that the listed company undertakes a rump placing for any rights to subscribe not taken up by the existing shareholders.

We would encourage the FCA to consider revising UKLR 9.4.4R to address recommendation 16, namely by permitting companies to choose to allow existing shareholders to apply for additional shares that would be allocated before any rump placing to new investors.

Minimum offer period for rights issues and open offers (UKLR 9.4.6R and UKLR 9.4.8R)

UKLR 9.4.6R specifies that a listed company must ensure that the offer relating to a rights issue remains open for acceptance for at least 10 business days. UKLR 9.4.8R imposes an equivalent requirement for open offers. At the same time, section 562(5) of CA 2006 states that when a UK company makes a pre-emptive offer of shares, the offer must remain open for at least 14 days.

The UK Secondary Capital Raising Review recommended that these minimum offer periods be reduced to seven business days (recommendation 12).

We would encourage the FCA to consider revising UKLRs 9.4.6R and 9.4.8R to address recommendation 12, recognising that section 562(5) of CA 2006 would also require amendment.

Board confirmation regarding compliance with home listing rules (UKLR 14.2.7G)

Concerns were raised when this requirement was first proposed in the draft UKLRs instrument on 7 March 2024. In particular, the required board confirmation that the applicant has at all times complied with the applicable rules of the market of its qualifying home listing is not limited in time nor by materiality or directors' awareness. The confirmation covers instances of non-compliance which: (i) may not be known to the directors (or even other current or former personnel of the applicant) or where they believed or were advised that the applicant was compliant; (ii) may have taken place before the current directors were appointed, as the applicant's home listing may date back years or even decades; and (iii) may have been minor, quickly rectified and/or isolated.

In PS24/6, the FCA stated that "it is important that we have the ability to consider what is relevant or material non-compliance on a case-by-case basis. However, we will monitor the notifications received and keep the suggestion for a possible materiality threshold under review." We would also encourage the FCA to monitor the number of new listings under UKLR 14 and whether this meets expectations. In our view the broad nature of this confirmation reduces the attractiveness of a UKLR 14 listing.

Similar concerns arise regarding the continuing obligation in UKLR 14.3.3R (to the extent it relates to UKLR 14.3.2R).

Admission of shares underlying GDRs (UKLR 15.2.8R and UKLR 15.3.1R(2))

The shares underlying listed GDRs must at all times be admitted to trading on an overseas regulated, regularly operating, recognised open market (UKLR 15.2.8R and UKLR 15.3.1R(2)).

This requirement was added late in the development of the UKLRs. It was not flagged in CP23/31 and was first proposed in the draft UKLRs instrument published on 7 March 2024.

In PS24/6, the FCA said this requirement "ensures consistency of the principle that is also applied to the secondary listing category in relation to the standards expected of overseas listings. It also supports the wider approach to the new listing structure by closing routes by which issuers may seek to avoid the consistent standards applied by the new listing regime" ("Our response" under paragraph 11.45).

For some overseas issuers, listing GDRs may be their only feasible option for a London listing. For example, where the law of the jurisdiction in which an issuer is incorporated does not recognise trusts, it cannot list its shares in London using depositary interests (which is the only way to get shares in a non-UK and non-Channel Islands company into CREST). Some other issuers (e.g. Saudi companies) are prevented by other local law reasons from listing shares in London. As a result, none of these issuers can access the ESCC category. Their only option for a London listing is to list GDRs. If they wish to list GDRs in London, it seems excessive

to require them to first list their shares on an overseas market. This creates a considerable obstacle to a London listing and makes London less competitive with other potential listing venues. Investors in London-listed GDRs are sufficiently protected by the UK listing regime and an additional overseas listing is not necessary.

**Accountants' reports on working capital and financial position & prospects procedures (FPPP)
(UKLR 24.3.2R(3) & (5), UKLR 24.3.6R(3) and UKLR 24.3.13R(4))**

Sponsor declarations on an application for listing or listing transfer must address the issuer's working capital and/or FPPP. Sponsors expect accountants' reports on working capital and FPPP to be prepared to support these declarations. This is time-consuming and expensive. In our view such reports are not necessary to identify and address any issues in these areas.

We welcome the FCA's comments on working capital reports in Technical Note 704 (September 2024): "[A] sponsor need not presume that a working capital report, prepared by a reporting accountant, is required in all cases. The decision as to the nature, scope and extent of any additional procedures or reporting required to enable the sponsor to come to its opinion is an important aspect of the sponsor's judgement." However, this has not been sufficient to change long-standing market practice. Sponsors remain reluctant to risk varying their existing approach to record-keeping.

The FCA should specifically state in a Technical Note or Primary Market Bulletin that a perfectly acceptable alternative way to proceed would be (for example) for an issuer board memorandum regarding working capital or FPPP to be prepared and subject to appropriately rigorous sponsor due diligence (e.g. by being reviewed, stress-tested, sensitised and general diligenced by accountants, bankers and lawyers, with appropriate records retained). This would achieve the same outcomes but with less time and cost.

More generally, the FCA should state that sponsors should take a proportionate approach which:

- takes into account the circumstances of the issuer and the deal when determining the nature, scope and extent of any procedures or records required to support their declaration to the FCA;
- does not assume that any particular reports are required for this purpose (including working capital reports, FPPP reports or long-form due diligence reports prepared by accountants); and
- focuses on substantive outcomes rather than generating documents in a particular format.

The need for the FCA's statement to specifically address long-form accountants' due diligence reports is less acute. A more proportionate approach to these is increasingly being taken in practice.

Conduct of Business (COBS) rules

**Access by unconnected research analysts in connection with IPOs
(COBS 11A.1.4AR to 11A.1.4FR)**

We encourage the FCA to consider removing the requirement for unconnected research analysts to have access in connection with IPOs (under COBS 11A.1.4AR to 11A.1.4FR). In our view this has not significantly improved the listing process, has been taken up on a relatively limited basis, extends the public phase of an IPO timetable and adds additional work and cost for issuers. We note that the UK Listings Review recommended in March 2021 that this rule be reviewed (recommendation 14).

PART C

Comments on the Beta version of the FCA Handbook online

We have the following comments on the recently launched [beta FCA Handbook website](#):

- The new beta site no longer includes (via the “timeline” function) old versions of the former Listing Rules (LR) (from 1 July 2005 to 28 July 2024) or the Prospectus Rules (PR) (from 1 July 2005 to 20 July 2019). This is a major omission and will hamper our ability to advise on both the current rules (as this often requires understanding the origins, development and purpose of a rule or amendment) and historical issues. This content should be reinstated.
- The new beta site no longer allows users to download the entire UKLRs, DTRs or PRRs as a single PDF document. This functionality should be reinstated. It enables the entire rulebook to be searched (using CTRL+F) for relevant provisions. Without this we could not have identified some issues flagged in this document. It also allows urgent printing of hard copies if needed. This is important because hard copy updates of the UKLRs, DTRs and PRRs have been increasingly delayed. E.g. hard copy UKLR / DTR / PRR subscribers only received hard copy UKLRs (in force from 29 July 2024) from the publisher in January 2025.
- The new beta site no longer allows users to search “Forms” by module or chapter. This should not affect us or our clients if forms relating to UK listed companies will continue to be available on the FCA website pages for [Primary Markets forms](#), [PRR cross reference lists](#) and [UKLR checklists](#). However, if this may change in future then the beta site should allow forms to be searched or filtered by relevant module (e.g. UKLR, PRR, DTR) or Regulation (e.g. UK MAR). There are currently 809 forms on the beta site which is a lot to sift through.