



Primary Market Bulletin 58

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Introduction

1. The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 21,000 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.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to takeovers.

FOR FURTHER INFORMATION PLEASE CONTACT:

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Response

5. Given the focus of the Joint Working Party, this response relates solely to proposed Technical Note 608.1 (**TN 608**) insofar as it relates to the prospectus exemption to be set out in new PRM 1.4.9R (equity securities offered in connection with a takeover) and we do not comment on the other proposals put forward for consultation in Primary Market Bulletin 58 (**PMB 58**). More broadly we note that bidders may in any event (depending on the circumstances) instead choose to rely on the separate annual exemption for further admissions as set out in PRM 1.4.3R (rather than the takeovers exemption in PRM 1.4.9R).
6. We strongly support the FCA's proposal that (on a contractual offer or scheme which is subject to the UK Takeover Code (Code)) the offer/scheme document should automatically be treated as satisfying the requirement for an exemption document provided that the requirements of PRM 1.4.9R(2) (that the securities are equity securities fungible with those already admitted to trading and the transaction is not a reverse acquisition) are met. We agree that, where this is not the case, the specific content requirements for the exemption document should be set out in FCA guidance rather than by reference to the Code as it is for the Takeover Panel (rather than the FCA) to police application of/compliance with the Code rules.
7. We also agree with the FCA's general approach of closely basing its proposed guidance on the content of other forms of exemption document on the EU content requirements for exemption documents under Regulation (EU) 2021/528 but omitting some EU requirements which seemed unnecessary. The final TN should not impose any requirements more onerous than the EU requirements, to preserve consistency and minimise regulatory friction for takeovers which are subject to both the EU and UK prospectus regimes.
8. In terms of minor drafting comments, in Section 5 of Annex I to TN 608 under "Impact of the transaction on the issuer: Pro forma financial information", we believe the two

references to TN 633 should be amended to refer to “TN 619 and TN 633”. Under the new UK prospectus regime, “significant gross change” will be defined in these Technical Notes rather than in PRM or POATR (see “Definitions” on p14 of draft revised TN 619 and “What is a ‘significant gross change’?” on p2 of draft revised TN 633, both published with Primary Market Bulletin 58). However, important additional guidance appears in paragraphs 87-92 of draft revised TN 619, which sets out the indicators of size to be used and how to make the necessary calculations. Accordingly we think TN 608 should also expressly cite TN 619. Ideally TN 633 would also cross-refer to TN 619.