



11 April 2013

Our ref: ICAEW Rep 55/13

Hanna Teshome
UK Listing Authority
Financial Services Authority
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Dear Ms Teshome

Primary Market Bulletin Issue 5, proposed guidance for inclusion in the UKLA Knowledge Base

ICAEW welcomes the opportunity to comment on the proposed guidance for inclusion in the UKLA Knowledge Base set out in *Primary Market Bulletin Issue 5* and published by the Financial Services Authority in February 2013, a copy of which is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 140,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

This response reflects consultation with ICAEW's Corporate Finance Faculty and Business Law Committee. The Corporate Finance Faculty is the voice of Corporate Finance within ICAEW. The Faculty is responsible for submissions to regulators on corporate finance issues on behalf of ICAEW. ICAEW's Business Law Committee includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies.

The Appendix sets out our comments on the following areas of proposed guidance:

- Procedural Note UKLA/PN/901.2 Eligibility process;
- Technical Note UKLA/TN/310.1 Indemnities, guarantees and similar arrangements; and
- Technical Note UKLA/TN/710.1 Sponsor services: principles for sponsors.

Please do not hesitate to contact me if you would like to discuss those points further.

Yours sincerely

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APPENDIX

Comments on aspects of the proposed guidance in Primary Market Bulletin Issue 5

Procedural Note UKLA/PN/901.2 Eligibility process

1. We are concerned that the FSA proposes to change the process for reviewing the eligibility of an applicant for listing in order that this will happen at the same time as the draft prospectus is reviewed.
2. The eligibility review provides an early opportunity to consider and discuss with the UKLA the key and potential issues likely to arise. The proposed process will, other than for a minority of cases, remove that useful window of opportunity.
3. The proposed process also means that an applicant will need to incur significant costs getting the draft prospectus to the 'substantially complete' stage necessary for submission, before the UKLA provides a view on potential eligibility issues.
4. The principle of encouraging early consultation by applicants exists in other markets such as AIM. The London Stock Exchange's publication [Inside AIM Issue 3](#) stresses the need to deal with any potential issues of concern to the Exchange at an early stage before significant work has been completed. The FSA's rationale is to ensure that, where possible, the same staff can review an applicant's eligibility and the prospectus so as to make the process more efficient and effective. We believe that staff continuity is a management issue and that the proposed solution carries potentially significant disadvantages.

Technical Note UKLA/TN/310.1 Indemnities, guarantees and similar arrangements

5. The current approach on non-wholly-owned subsidiaries in UKLA/TN/310.1 ensures that the position of large subsidiaries with substantial minority shareholdings is regulated. However for some situations this approach could be seen as disproportionate. One example is where subsidiaries of listed companies have a small number of shares owned by the management of the subsidiary who would be likely to consent to the use of the audit exemption, but in order to utilise the exemption, the listed parent would require a class 1 circular and shareholder approval.
6. Has the UKLA considered the possibility, on a case by case basis, of including in the 'not exceptional' category proposals for subsidiary audit exemptions, examples such as:
 - where the subsidiary is immaterial/not material and only a small percentage of the shares is not held by the issuer; and
 - guarantees - up to a predetermined threshold - provided to non-wholly-owned subsidiaries?

We believe that if the UKLA were to adopt this approach it would be helpful if it set out the parameters by which it would make the 'not exceptional' assessment.

7. Under the heading *Implications for debt issuers*, we note that UKLA/TN/310.1 refers to the need for an audit under the Prospectus Directive for a debt issuer. We believe it would be helpful if UKLA/TN/310.1 were expanded to point out that the section 479C exemption will not override the

obligation of certain issuers of debt securities that are admitted to trading on a regulated market to prepare audited accounts under the Disclosure Rules and Transparency Rules (DTR).

Technical Note UKLA/TN/710.1 Sponsor services: principles for sponsors

8. We believe that proposed UKLA/TN/710.1 contains some useful new material in relation to sponsor services.
9. However we have serious concerns about material relating to the responsibility of sponsors following submission of a sponsor's declaration and prior to the date of admission to listing or the effective date of transfer. Paragraph (2) of proposed UKLA/TN/710.1 states that 'a sponsor is under an obligation to inform the FSA immediately if any further information, which could fall under LR8.4.3R(3), LR8.4.9R(3) or LR8.4.14R(3), comes to its attention' before that date. It then states that 'sponsors will therefore need to ensure that its client and all its advisers are under an obligation to inform the sponsor immediately of any such information up to that date.'
10. This guidance appears to imply that sponsors should seek to make it the responsibility of advisers to discharge the same responsibilities as the sponsor in relation to LR8.4.3R(3), LR8.4.9R(3) and LR8.4.14R(3). This is clearly not appropriate. Only the sponsor has the expertise to form a view on what information might need to be taken into account by the FSA in considering, for example the application for listing and whether the admission of shares would be detrimental to investors' interests, and only the sponsor has knowledge of what has been disclosed to the FSA.
11. Advisers focus on specific matters falling within their own area of expertise and receive instructions from sponsors to address matters that the sponsors determine, based on their own knowledge and experience of the FSA requirements, will provide them with the information that they need in order to discharge their obligations. It is therefore sufficient that the guidance should reiterate the sponsor's ongoing obligation but not what contractual arrangements the sponsor must enter into in order to fulfil their obligations. It is not appropriate to suggest that this can or should become an obligation of an issuer's advisers and we believe that the second sentence of paragraph (2) should be deleted.
12. In addition to the above point of principle, there are practical flaws to the proposal; namely that advisers may be obliged to report matters to the sponsor that may be beyond the scope of their work and to report matters to the sponsor after they have delivered their reports.
13. The proposal would require advisers to agree engagement terms that extend to the duration of the sponsor service ie until the date of admission of an applicant or transfer of listing category. At present however, where it is agreed that a 'bring down' letter is to be provided by an adviser, it is normal practice for the adviser to stop work some time prior to the date of such letter. Such work is generally also restricted in scope.
14. We believe that the FSA's intention to address events occurring between the date of an adviser's report and the admission date or effective date of transfer, could usefully draw from the FRC's guidance for reporting accountants in Standard for Investment Reporting (SIR) 1000 *Investment Reporting Standards applicable to all engagements in connection with an Investment Circular*, paragraph 75:

'If, in the period between the date of the reporting accountant's report and the completion date of the transaction, the reporting accountant becomes aware of events and other matters which, had they occurred and been known at the date of the report, might have caused it to issue a different report or withhold consent, the reporting accountant should discuss the implications of them with those responsible for the investment circular and take additional action as appropriate.'