

Primary Market Procedural Note

Eligibility process

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

Rules

UK Listing Rules

When a person applies to us to admit securities to the Official List for the first time, or in certain circumstances set out below, we carry out a review aimed at ensuring those securities are eligible for listing under the UK Listing Rules. We call this process the 'eligibility review'.

This procedural note explains to applicants and their advisers how the eligibility review process works and what they can do to help us ensure the process runs smoothly.

Eligibility reviews often occur ahead of an initial public offering ('IPO') or reverse takeover. IPOs and reverse takeovers are complex transactions and we explain in this note how the eligibility review process interacts with other FCA regulatory processes that also occur during the course of such transactions.

In what circumstances do we review eligibility?

We perform eligibility reviews where we have a new applicant- these are applicants for listing that do not have any class of securities already listed on the Official List. For the avoidance of doubt, this can include instances where the applicant is applying for a listing of shares, non-voting or non-equity shares, GDRs, convertible bonds, other (non-convertible) debt instruments, securitised derivatives or miscellaneous securities. It includes applicants for readmission following a reverse takeover. We also perform eligibility reviews ahead of a transfer of an existing issuer's listing under UKLR 21.5.5R and where an applicant has only listed debt securities and wishes to apply for an additional listing of shares or GDRs.

We do not carry out an eligibility review ahead of further issues of securities already admitted to the Official List.

Finally, we also perform an eligibility review in two other instances:

- **new top company transactions:** these are transactions aimed at putting a new holding company on top of a previously existing listed issuer, which are often called 'new topco transactions', and
- **new lines of shares:** where an existing listed issuer issues a new line of equity shares.

However, in both these instances, we follow a slightly amended process. This is explained below in 'New lines of shares/new topco transactions'.

How do we review eligibility for listing?

To assess a new applicant's eligibility for listing, we use a range of resources:

- For a listing of shares or GDRs we ask that the applicant, its advisers or, where the application is for a listing in the equity shares (commercial companies), closed-ended investment funds or equity shares (shell companies) categories, the applicant's sponsor writes us a letter setting out how the applicant satisfies the admission criteria of the relevant category of listing it is applying for. We call this the eligibility letter. It should introduce the applicant, explaining at a high level what the applicant does and who its key people are. The eligibility letter is an opportunity to put the transaction in

context and to draw our attention to the key issues likely to arise as we assess the transaction, with the ultimate aim of speeding up the overall process.

- Checklists should be submitted setting out how each of the admission criteria is met.

These checklists can be downloaded from the Markets section of our website, where there are also instructions on how to complete the checklists. In addition to any review of the draft prospectus or listing particulars we conduct to ensure compliance with the Prospectus Regulation ('PR') requirements or the requirements in UKLR 23 respectively, we review the draft prospectus or draft listing particulars or other draft document submitted (for example, a draft equivalent document) to familiarise ourselves with the applicant and ensure that there is nothing in its contents that causes us to question the eligibility of the applicant for admission to the Official List.

- We carry out our own background research on the applicant and its directors.
- Where we have internal expertise or knowledge (usually in instances where the applicant operates in financial services and is supervised by us) we will discuss the applicant with relevant colleagues, including supervisors at the PRA.
- In addition, where the listing category requires a sponsor, we work with the applicant's sponsor and have regard to their opinions and views.

In exceptional cases, where we think there may be a high risk that admission of the applicant's securities may be, for a reason relating to the applicant, detrimental to investors' interests, we may ask to see the applicant or sponsor's own due diligence and may also commission our own private due diligence.

When does the eligibility review occur?

Figure 1 shows a typical transaction in terms of the sequence of the regulatory processes that will need to occur during the course of the transaction.

Figure 1: Typical sequence of regulatory processes ahead of the admission of a new applicant



*or review of other document (e.g. listing particulars)

We conduct our eligibility reviews at the same time as reviewing the prospectus or other document, completing them when the document is approved, if applicable. Both document review and eligibility review processes occur ahead of marketing the securities that are the subject of the transaction. Once marketing is complete, the securities are subject to a formal listing application process and after that the transaction can be completed (assuming that all the relevant conditions are met) and the securities admitted to the Official List.

Where the applicant or its adviser have concerns about complying with any of the specific admission criteria, individual guidance can be obtained on the application of a particular rule in accordance with UKLR 1.2.5G and chapter 9 of our Supervision Manual ('SUP'). Obtaining individual guidance can clear up uncertainties and greatly help the applicant and its advisers prepare for an IPO. However, such guidance gives comfort on the particular rule in question and will not give the applicant an overall view of whether we think it is eligible for admission to listing.

Finally, applicants should note that the listing application process is a separate process. It does not happen automatically after completing an eligibility or document review. It must be initiated by the applicant or its advisers submitting an application for admission to the Official List under UKLR 20. (See our website for details of how to do this).

Interaction of the prospectus review and the eligibility review

The listing regime and the prospectus regime are different regulatory regimes with different aims and objectives.

In the vast majority of cases we are the competent authority for reviewing the prospectus under the PR. In these instances, although we treat the eligibility review and prospectus review as distinct matters, we will try to make sure that the same staff works on the two cases to streamline the process.

Overview of the eligibility review

To complete an eligibility review, we will need an eligibility letter (in the case of applicants for listing of shares and GDRs), a draft of the prospectus or other document, completed UK Listing Rule checklists and (if relevant) Prospectus Regulation Rule cross-reference lists (see the Markets Checklists section of our website) and (if applicable) our review fee (again, see the Fees section of our website).

Where the applicant is seeking a listing in a category that requires a sponsor, it must appoint such sponsor and we would expect the sponsor to submit all documents to us and be our point of contact throughout the process.

Documents should be submitted via the Electronic Submission System (ESS). After we receive your submission, you will be notified of the staff we have allocated to your case. Our staff will then start work, and will observe (except in exceptional circumstances) the guidelines on timings published on our website.

Our approach to eligibility reviews resembles our approach to reviewing other documents. Our review style is to take extra time on the initial draft of the documents submitted to concentrate on identifying a full list of issues regarding the admission criteria as early in the process as possible. We then work through and resolve the issues we have identified with the applicant's advisers. At the same time, we continue to review and respond to changes in the transaction and the related documents as the deal evolves. We therefore need the draft prospectus or other document submitted for the eligibility review to be a substantially complete draft.

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We give the applicant's advisers written comments on the draft document, if applicable. We then expect the applicant's advisers to give us new drafts of the document marked up to show changes made since the last proof we reviewed. We also expect the applicant's advisers to respond in writing to each of the written comments we make, including page references to where we will find the change in the document if one has been made.

In our experience the majority of eligibility reviews will end with a successful outcome from the applicant's perspective. In these cases, when the prospectus or listing particulars is approved, or when our review of the equivalent document is complete, we will inform the applicant's advisers we are satisfied that the applicant is eligible for listing. In many cases, certain conditions for listing will still be outstanding at that point – for example, because the securities have yet to be marketed, the distribution of securities to the public will be unknown and therefore it will not be clear that the shares in public hands rules have been satisfied. As a result we will express our view conditionally, citing the conditions still to be met, if any. The notification will be provided in writing. Later, when the formal listing application is made at the end of the process, we check to ensure these conditions have been fulfilled.

In a small number of cases our review may identify serious concerns that the applicant may be ineligible for listing, should a formal application for listing be made. In these instances, we will highlight our concerns and discuss them with the applicant and its advisers. These discussions will often address our concerns. However, sometimes they do not. Where we cannot reach agreement with the applicant and the applicant wishes to make a formal application for admission to listing in accordance with UKLR 20, we will generally refer the application to our Markets Regulatory Committee.

The Markets Regulatory Committee is a committee of senior staff. It is empowered under 'executive procedures', as set out in the Decision Making and Penalties Manual ('DEPP'), to take a number of statutory notice decisions, including the refusal of an application for listing (see DEPP2.5.9G(1)).

Can the eligibility letter be sent in before a draft of the accompanying document is ready?

To run the process as efficiently as possible, we recommend the eligibility letter is submitted at the same time as the draft prospectus or other document. This should occur as soon as a draft of the relevant document is ready.

However, in some cases, the applicant's advisers may wish to submit an eligibility letter before the draft prospectus or other document is submitted. An example of where this facility may be useful is where the applicant has concerns that it may be ineligible for listing and wishes to seek guidance from us on the matters causing it concern before incurring substantial costs. In these instances, we can allocate staff to the case and discuss the concerns raised in the eligibility letter with you. However, reviewing the eligibility letter without the full information being available only enables us to form a view on the issues identified by the applicant in the eligibility letter. These discussions regarding eligibility are not a substitute for the proactive review of eligibility we need to conduct to be satisfied an applicant is eligible, which will happen once a prospectus or other document is submitted. As a result, choosing this option is likely to lengthen the eligibility review process. However, the option is there for applicants for whom it may be appropriate.

New lines of shares/new topco transactions

We will also perform an eligibility review in two other instances.

Firstly, we perform one where an issuer with equity shares already listed issues a new line of listed equity shares. An example of this sort of transaction is the common practice among investment companies of issuing 'C shares'.

Secondly, we will perform an eligibility review ahead of a 'new topco transaction'. 'New topco transactions' are aimed at putting a new holding company on top of an already listed group and where there is no other transaction being undertaken which would increase the assets or liabilities of the group.

As with other eligibility reviews, these will be carried out with the review of the prospectus or other document. However in these

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instances, because the applicant already has shares listed (in the case of new lines of shares) or is substantively the same group as the one already listed (in the case of new topcos), we will not perform background checks on the applicant and we do not ask the applicant's advisers to submit an eligibility letter – we only need completed eligibility checklists and drafts of the accompanying prospectus or other document. The focus of our review will be on whether the new securities meet the requirements of UKLR 3 and any other applicable rules in the relevant listing categories.