

Primary Market Technical Note

Ratification circulars

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

UKLR 11.1.58.1.7R

Ratification circulars arise when a resolution is put to shareholders proposing to ratify or otherwise fix some action or inaction by the directors, which has resulted in an actual or potential breach of law or regulation. A typical example would be the passing of a resolution to remedy the invalid declaration of a dividend.

Legally there is doubt about the effectiveness of such a resolution, but as this action could have the effect of removing an actual or theoretical liability of the directors, such proposals could be viewed as related party transactions under UKLR 11.1.58.1.7R(3). Where we have treated such proposals as related party transactions in the past, issuers and their advisers have typically stated that this is only an ancillary and unintended effect of the circular.

We are of the opinion that it will normally not be appropriate to treat these as related party transactions, as the potential benefit to directors is very remote. In many cases, it would appear that the law excludes affected directors from voting on the issue. Furthermore, the level of disclosure required by law is usually sufficient to allow a fully informed

~~voting decision, and further LR requirements are not necessary.~~ There may, of course, still be instances where a proposed ratification resolution confers a clear benefit on a related party, and should properly be regulated by the provisions of UKLR 8~~11~~. If issuers or their advisers have concerns that this might be the case they should contact us at an early stage.

In assessing whether the potential benefit to directors is only an ancillary or unintended effect of the circular, we are of the opinion that it is very difficult to come to this conclusion where a specific resolution (or part of a resolution) is included in the circular that has the effect of expressly releasing the directors from liability.