

Primary Market Technical Note

Equality of treatment – Listing Principle 5

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 2.2.1R; Listing Principle 5

The Listing Principles set out in UKLR 2.2.1R apply to every listed company. Under Listing Principle 5, a listed company must ensure that it treats all holders of the same class of its listed securities equally in respect of the rights attaching to such listed securities except where holders are in a different position.

In particular, issuers proposing capital reorganisations should be wary of offending Listing Principle 5. For example, in certain capital reorganisations a share consolidation is immediately followed by a share split. After the share consolidation, such reorganisations involve the sale of fractional entitlements resulting in the compulsory sale of shareholdings below a certain level. The intention and effect of such transactions is to remove small shareholders from the share register.

There are a few limited sets of circumstances where the FCA has accepted that an issuer can treat a category of shareholders, such as for example smaller or minority shareholders, differently from other shareholders. If an issuer wished to treat a category of shareholders

differently it would need to satisfy us both that the group being treated differently is genuinely in a different position, and that there was a sound and objective rationale for doing so. Furthermore, all shareholders in that category would be treated equally. For example, a sound and objective rationale may include where, without different treatment of shareholders, an issuer would have to comply with onerous legislation (see the explanation in Primary Market/TN/101 regarding restrictions on transfer and in Primary Market/TN/310 regarding share buybacks). We would generally take the view that carrying out a capital reorganisation with the express aim of removing small shareholders from the register is not, in itself, proper justification.

Each circumstance presented to us would be considered on a case-by-case basis. As such, we would urge issuers and their advisers to contact us to discuss the application of Listing Principle 5 if there is any doubt that an issuer's proposals may offend this principle.