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Primary Market Technical Note

Open-ended investment companies

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 126, UKLR 234.2.3R

The open-ended investment company listing category set out in UKLR 126 is available for either authorised investment companies with variable capital or overseas recognised schemes. The latter category consists of UCITS compliant schemes, the preferred format of most European exchange traded fund (ETF) issuers. It is not available to unrecognised overseas schemes. New applications for listing follow the same process as for other premium-listing categories ~~(and in particular must be made on behalf of the issuer by a sponsor)~~ save for the following exceptions set out below that the Prospectus Regulation does not apply to open-ended investment companies so they cannot produce a prospectus under the Prospectus Regulation. Further, 'listing particulars' under UKLR 23 are not required to be produced for open-ended investment companies.

We keep our listing functions separate from our other functions. Therefore the recognition of overseas schemes is a separate process from the listing of shares in an open-ended investment company and a separate application must be made to the FCA to achieve recognition.

~~The key differences for companies subject to the open-ended investment companies listing category are:~~

Listing documentation

~~The Prospectus Regulation does not apply to open-ended investment companies so they cannot produce a prospectus under the Prospectus Regulation. UKLR 234 deals with applications for the listing of securities in instances where no prospectus is required and instead requires that issuers produce a 'listing particulars' document which, under UKLR 234.2.3R has the same disclosure requirements as a Prospectus Regulation compliant prospectus. Listing particulars are not, however, documents that can be passported under the Prospectus Regulation. A UCITS compliant prospectus will not be accepted for the purposes of UKLR 234.2.3R.~~

Working capital statements

~~An exception to the above is generally made in the case of working capital statements. Where an issuer is an authorised open-ended fund, or is a UCITS scheme from within the EEA, we are unlikely to insist on a working capital statement in an issuer's listing particulars.~~

New classes of securities – multi class or umbrella funds

Where, after admission, an open-ended investment company creates a new class of securities without increasing the share capital for which listing has previously been granted, it may do so by redesignating a certain amount of a share class already admitted to listing and no application is required (UKLR 126.23.36R), although it is still necessary to arrange a listing hearing to ensure the Official List is amended. However, because there is no new application for listing, further listing

~~particulars are not required to be published. Instead, market practice is to publish an information-only circular describing the new securities.~~

Transfer restrictions

Admission to the Official List for open-ended investment companies is available where such applicants meet the requirements of UKLR 12.2.1R. ~~LR 16.1.1R (1)~~ UKLR 12.2.1R explicitly covers investment companies with variable capital which have been granted an authorisation order by the FCA or an overseas collective investment scheme that is a recognised scheme. ~~However,~~ Additional requirements for listing apply, including requirements for all securities in UKLR 3 as provided by UKLR 3.1.1R. ~~as provided by LR 16.2.1R, an applicant must still comply with the additional eligibility requirements,~~ This includes all of the requirements of UKLR 3.2, {which includes the requirement for securities to be freely transferable and free from any restriction on transfer as required by LR 2.2.4R (UKLR 3.2.4R)}.

~~We would highlight to~~ We expect potential new applicants ~~that there are different types of authorisation orders the FCA may grant. We expect applicants to satisfy themselves that the particular authorisation order or scheme they are planning to operate under they are seeking will not prevent them from complying with the requirements set out under LR 16.2.1R, including LR 2~~ UKLR 3, including UKLR 3.2.