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THE NEW UK LISTING RULES ONE YEAR ON – TRENDS IN M&A ANNOUNCEMENTS

The new UK Listing Rules, effective from Summer 2024, removed the shareholder vote for significant transactions meaning established market practice for announcing M&A transactions has changed. One year on, we explore new and emerging market practice.

AT A GLANCE

- **A clear trend is emerging for single initial significant transaction announcements.** Most UK-listed companies undertaking significant transactions include all relevant disclosure in a single announcement when the deal is signed. Only a small number are taking advantage of the new flexibility to defer some disclosure to a follow-on RNS. The key exception is Takeover Code-governed deals, as Code requirements dictate timing and content of disclosure.
- **There continues to be a focus on investor engagement.** UK-listed companies are wall-crossing investors even where no shareholder vote is required. Recent FCA guidance and case law mean this remains an area for caution.
- **Controlling shareholder agreements remain.** Although no longer mandatory, existing agreements tend to remain in place and new ones are being entered into, on a voluntary basis, on listing.
- **More substantial break fees are being seen in specific situations.** Following the removal of the effective cap of 1% on break fees paid by UK-listed companies, there is evidence of an increase in break fees paid by these issuers in M&A processes. This flexibility may allow parties to tailor risk allocation more closely to the specifics of the deal.
- **Issuer and director liability for RNS announcements has been in the spotlight since the *Metro Bank* decision.** Companies are focusing on mitigating issuer and director liability for these announcements.

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TAKEAWAYS FROM THE FIRST YEAR

1. A single initial announcement is becoming standard for significant transactions

- An initial announcement is required on signing, with mandatory content under UKLR 7. Additional disclosure (for example, financial information for a disposal) may be included in the initial or follow-up announcement(s).
- Most issuers now make a single, comprehensive announcement when deal terms are agreed, meeting all UKLR 7 disclosure requirements. This helps avoid a period when potentially significant information has yet to be announced and should help mitigate the risk that investors are disadvantaged by a two-stage disclosure process. A further trend is for any other information to be set out in one follow-up announcement only, as soon as possible after it becomes available.
- The key exception is for Takeover Code-governed significant transactions:
  - The UKLR disclosure requirements are typically included in the bidder's Rule 2.7 firm offer announcement, under Code requirements. Therefore, few additional UKLRs requirements need to be built into the 2.7 announcement (for example, a board recommendation). The 2.7 announcement also serves as the initial UKLRs announcement.
  - UKLRs information that was not disclosed in the 2.7 announcement is usually included in the subsequent scheme document.
- Our review of significant transaction announcements shows a range of detail, from minimalist and 'essentials-only' to comprehensive.
- If financial information for a significant disposal is not available at signing, or cannot be produced to the required standard, alternative forms of disclosure are permitted if accompanied by a fairness statement from the board. The FCA cautioned in PS 24/6 that 'formulaic and highly caveated explanations are unlikely to satisfy the market' or the FCA. Our review of these market disclosures shows announcements vary from light-touch to detailed.
- Where financial information is included in a disposal announcement, there is no longer a UK Listing Rules requirement for independent assurance.
- Market practice for risk factor disclosure is emerging. This is to address risks relating to the transaction and additional risks for the company arising in respect of the transaction.

2. Trends on investor engagement still developing

- MAR restricts the timing and selective disclosure of inside information. With the removal of the shareholder vote, DTR 2.5.7G(5) was updated in July 2024 to clarify that an issuer may be permitted to selectively disclose details of a proposed transaction which constitutes inside information to major shareholders, even when there is no need to seek their support for a vote. This is only permitted 'to ensure the viability of the transaction'.
- The FCA has reminded the market in Primary Market Bulletin 42 that any selective engagement must comply with MAR. In particular, in order for disclosure to be in 'the normal exercise of the employment, profession or duties' of the discloser, and therefore lawful and permitted, it must be reasonable, necessary and proportionate and kept confidential. It should not be simply to provide certain investors with prior notice of the proposed disclosure of inside information.
- Companies should seek specific advice before sharing information about transactions with select investors.
- The FCA will continue to monitor practice in relation to the timing of announcements and UKLRs compliance and will conduct a formal review in five years.

3. Disclosure trends: controlling shareholder agreements

- Although listed companies are no longer required to enter into a mandatory relationship agreement with a controlling shareholder (30%+), voluntary use of these agreements is continuing, including on some IPOs announced in 2025. We expect it will remain the norm to retain an existing relationship agreement or, for new applicants, put one in place on an investor-driven basis.

- Where there is a controlling shareholder, a dual independent shareholder vote is still required for the election and re-election of independent directors, together with disclosures and a mechanism for a directors' opinion on resolutions. See our July 2024 publication.

4. More substantial break fee arrangements are being seen in certain situations

- The removal of break fees from the significant transactions category has led to an increase in their use and size. Previously these fees had in effect been capped at 1% of market capitalisation under the former Listing Rules.
- In the first year of the new regime, some transactions included a break fee in the range of 1 to 3% of market capitalisation.

5. All announcements, including smaller transaction (and other voluntary) announcements, require careful verification

- For transactions below the significant transaction threshold (where any ratio is between 5% and 25% on the Class Tests) there are no longer any UKLR announcement requirements. Disclosure obligations are governed by investor relations and the overarching MAR announcement obligation. Issuers must ensure all RNS announcements are not misleading and do not omit anything important, under UKLR 1.3.3.R.
- First, companies must assess whether the fact of there being a potential transaction constitutes inside information and whether there is a MAR obligation to announce it.
- Where there is no MAR obligation on the company to announce the matter publicly, voluntary announcements are at the company's discretion. These must be prepared with the same level of care as any other RNS announcement and the company would want to verify it in the same way as it would any significant transaction announcement.
- The Upper Tribunal recently considered what it means for an issuer to be in breach of the predecessor to UKLR 1.3.3 (and for its directors to be 'knowingly concerned' in that breach). The decision underscores the need for robust internal governance (including procedures to identify and control inside information), as well as careful verification of all market disclosures to mitigate both company and personal risk. It is clear the liability of the issuer and its directors for voluntary announcements is the same as for mandatory announcements (see Box on Metro Bank decision).
- The Metro Bank decision highlighted the importance for companies of caveating figures or statements that may need future adjustment. This is increasingly reflected in announcements; for example, in the 29 August statement on the John Wood Group acquisition, the parties noted the delayed 2024 audit and stated: "Any financial information included within this announcement may therefore be subject to change pending the conclusion of the Audit." Such language signals that disclosures may change once the 2024 accounts are published. Generally, it is advisable to consider in advance how transaction disclosures may be interpreted by the market in hindsight.

Metro Bank decision - managing liability in respect of RNS announcements

The Upper Tribunal's decision in Donaldson and Arden v FCA (Metro Bank) highlights the significant personal liability directors can face for market disclosures.

The Upper Tribunal confirmed the FCA's sanction of Metro Bank's former CEO and CFO for being *'knowingly concerned'* in the company's breach of LR 1.3.3R. This was because the company's trading update included statements about its capital ratios and risk-weighted assets that were known by the CEO and CFO to be materially incorrect yet the relevant disclosures were unqualified.

The tribunal confirmed that a breach of LR 1.3.3 only arises where information in an RNS is materially misleading, false or deceptive or omits material facts. If a company knows information it intends to publish via RNS is materially incorrect, it has to omit it, use an estimate or qualify the disclosure.

Directors need to ensure that the scope of any legal advice they may want to rely on is clear. Omitting or withholding information when instructing counsel can negate the value of legal advice and is likely to limit the ability of the director (or the company) to rely on it later.

The tribunal also clarified that directors must have actual awareness of and involvement in the breach to be found *'knowingly concerned'*; passive knowledge is not sufficient. They must also have knowledge of all the elements which made up the breach of the applicable law.

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LOOKING AHEAD

Future changes to the listing regime include:

- Removal of further issuance listing applications: as a result of changes to the UKLRs under the prospectus reforms (PS 25/9)
  - The FCA is proceeding with some changes to the UKLRs, from 19 January 2026, in particular removing the further issuance listing applications process (as consulted on in CP25/2); this abolishes the current block listing regime.
  - Instead, any further issuance of securities fungible with existing securities already admitted to trading will need to be admitted to listing within 60 days of the issue date of those new securities (PRM 1.6.2R) with an announcement within a further 60 days (PRM 1.6.4R).
  - This announcement is required to state the total number of transferable securities admitted to trading, taking into account the further issuance (PRM 1.6.5R). This allows some scope for issuers to time and draft their announcements in a way that reduces the possibility for confusion with the monthly total voting rights notification (under DTR 5) and duplicating information.
  - This is good news for companies that issue new shares on a regular basis, for example for employee share plans, as the rules now give companies 60 days from admission (120 days from issuance) to notify the market about a share issue; the announcement can cover multiple share issues. This improves on the draft rules which required an immediate announcement for every share issue, which would have been overly onerous for companies with regular option exercises or award vesting under its share plans.
- Future changes to the National Storage Mechanism Primary Market Bulletin 57 reminds companies of FCA changes in November 2025 that require enhanced metadata in National Storage Mechanism filings. To avoid NSM rejections, companies will need to maintain their Legal Entity Identifier and 'issued' status annually, use headline codes and categories and ensure they provide their Primary Information Provider with the LSE and name of relevant related companies.

Contact details to the FCA – reminder:

Listed companies are reminded (Primary Market Bulletin 56) of the need to satisfy the requirements in the UKLRs in relation to the provision of contact details to the FCA as soon as possible, as the transitional period expired in January 2025.

- Key person contact details (UKLR 1.3.5) – companies must provide the FCA with the contact details of at least two executive directors (or, where the issuer has no executive directors, at least two of its directors); and
- Service of notices (UKLR 1.3.7 and 1.3.8) – an issuer must ensure the FCA has, at all times, up-to-date contact details of a nominated person at the issuer, including their address for receiving service of relevant documents.

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