

# New FCA Requirement for Issuers to Provide Description of Rights for Listed Securities

*April 29, 2020*

On March 26, 2020, the Financial Conduct Authority (the “FCA”) approved changes to the Listing Rules to introduce a new requirement for issuers to keep publicly available and up-to-date information regarding the rights attached to UK listed securities. To the extent this information is not already available on the National Storage Mechanism (“NSM”), the new rule requires issuers to forward this information to the FCA for publication on the NSM. With investor rights remaining a key focus for policymakers, and against the back-drop of recent high-profile securities litigation in the UK, this requirement came into force on April 27, 2020.

The FCA expects the new rule to be particularly relevant to issuers of listed securities that were first admitted to the Official List after the Prospectus Directive came into force in July 2005 but before November 2013, when the FCA amended the Prospectus Rules Sourcebook to require issuers to file their prospectuses electronically with the NSM. While the impact of the new rule on such issuers is generally not expected to be burdensome, it may have a greater impact on issuers of securities that were admitted to listing before the transposition of the Prospectus Directive, as such issuers may be required to produce and publish a new disclosure document.

In the FCA’s Quarterly Consultation Paper ([No. 26](#))<sup>1</sup> (the “Consultation Paper”), the FCA stated the objective of the change was to ensure that, regardless of when a security was first admitted to the Official List, holders and potential holders of listed securities have ready access to information in relation to the rights attached to them. The FCA hopes the new rule will help to provide better transparency to the market, allow investors to make better informed decisions and avoid potential market disruption.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

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<sup>1</sup> See: <https://www.fca.org.uk/publication/consultation/cp19-33.pdf>  
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## I. New continuing obligation for issuers

The new rule requires issuers with securities admitted to the UK's Official List to keep publicly available on the NSM at least one of the following (each a "Securities Rights Disclosure"):

- the securities' approved prospectus or listing particulars;
- the relevant agreement or document that sets out the terms and conditions of the securities; or
- a description of the rights attached to the securities, including any limitations of those rights, and the procedure for the exercise of those rights, in accordance with the relevant Annex of the Prospectus Regulation ("PR")<sup>2</sup> that would have to be applied if the issuer were required to produce a prospectus for the securities.

In the FCA's Handbook Notice (No 75) released on March 27, 2020,<sup>3</sup> the FCA clarified that any such Securities Rights Disclosure forwarded for publication will be regulated information. Accordingly, affected issuers should publish a notice on a Regulatory Information Service ("RIS") stating that this information has been filed with the NSM.

This information must be kept available at all times while the securities remain admitted to the Official List (and therefore for potentially longer than required under the PR, which obliges issuers to keep prospectuses publicly available for at least 10 years after their publication).

<sup>2</sup> We expect that the FCA intended to refer to Annexes 1 to 29 of the PR Regulation (i.e., Commission Delegated Regulation (EU) 2019/980).

<sup>3</sup> See:

<https://www.fca.org.uk/publication/handbook/handbook-notice-75.pdf>

The new rule also requires issuers to keep this information up to date. To the extent that filed information specifically pertaining to the rights attached to the listed securities is no longer accurate,<sup>4</sup> issuers are required to forward to the NSM for publication either a new Securities Rights Disclosure, or a document setting out the changes that have occurred in respect of such rights.

## II. Issuers and affected securities

The new rule applies to, *inter alia*, issuers of shares, debt and debt-like securities, depositary receipts and securitised derivatives admitted to the Official List. With respect to depositary receipts, the required information should relate both to the rights attaching to the depositary receipts themselves and to those of the underlying securities.

The new rule does not apply to open-ended investment companies ("OEICs") on the basis that OEICs are already required to comply with similar disclosure requirements under the relevant funds regulation.

In practice, issuers of securities admitted to the Official List on or after November 8, 2013,<sup>5</sup> when the FCA introduced the requirement for issuers to file prospectuses electronically with the NSM, are not expected to be immediately impacted by the new rule as the relevant prospectus would already be publicly available, unless the information has changed.

The FCA expects that issuers of securities listed after the Prospectus Directive came into force on

<sup>4</sup> The FCA has confirmed that extraneous information, i.e., not relating to the rights attached to the securities need not be updated.

<sup>5</sup> Former Prospectus Rules sourcebook 3.2.1R and 3.2.1AR. Following the application of the PR (from July 21, 2019) the FCA uploads prospectuses it approves to the NSM (see Article 21 PR and FCA Prospectus Regulation Rules sourcebook 3.2.5EU and 3.2.6G).

July 1, 2005 but before November 8, 2013 should only be required to file the approved prospectus with the FCA (unless the information has changed). Such prospectuses may not otherwise be publicly available or easily accessible to investors. In particular, prospectuses relating to securities admitted to listing prior to 2010 may not otherwise be publicly available since, under the regime existing at the time, such documents were only required to remain available for inspection for 10 years following admission.

However, all issuers are obliged under the new rule to review and update information regarding the rights attached to listed securities on a continuing basis to ensure it remains accurate.

The FCA has stated that the new rule is not intended to require listed issuers to produce or maintain a consolidated version of all information related to the rights and obligations attached to listed securities (which the FCA acknowledged would be an onerous requirement); nor are listed issuers required to produce any new documentation to the extent that the specified information is available elsewhere.

In this respect, the approach taken by the FCA is markedly different to that taken by the U.S. Securities and Exchange Commission (the “SEC”) when it adopted amendments in March 2019 to the requirements governing the preparation of annual reports by foreign private issuers on Form 20-F. Following the SEC’s changes in 2019, issuers filing Form 20-Fs during the first quarter of 2020 for the 2019 financial period were required to include a comprehensive description of all of the issuer’s securities registered under Section 12 of the Exchange Act. (Our memorandum

summarising the changes made by the SEC is available [here](#).<sup>6</sup>)

However, there may be a small number of issuers whose securities were first admitted to the Official List prior to July 2005 in respect of which the relevant Securities Rights Disclosure may not be available. In this case, such issuers will be required to produce and publish a document containing a description of the rights attached to the listed securities, including any limitations of those rights, and the procedure for the exercise of those rights, in accordance with the relevant Annex of the PR Regulation that would have to be applied if the issuer were required to produce a prospectus for the securities in question. For these issuers, the FCA acknowledges the cost of compliance with the new rule will be greater, as they will have to add to the cost of publication the expense of producing such a document.

The FCA will not accept electronic links to documentation (including, for example, the issuer’s articles of association) that is stored in other locations. This includes any documentation that may be available on Companies House Beta site and/or the issuer’s website.

#### **IV. Compliance**

The new rule does not stipulate a compliance or ‘grace’ period from the effective date of April 27, 2020. Relevant issuers that are experiencing delays in meeting the filing deadline, notably because of the impact of COVID-19, should consider contacting the FCA.

Such issuers should nonetheless act promptly to ensure that a Securities Rights Disclosure, or document setting out changes to the rights

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<sup>6</sup> See: <https://www.clearygottlieb.com/-/media/files/alert-memos-2019/2020-guide-for-preparing-form-20f-v2-pdf.pdf>

attaching to securities, as applicable, is made available on the NSM as soon as possible.

Issuers should consult legal counsel in relation to the preparation of any new document setting out the rights attaching to the securities, or setting out the changes that have occurred in respect of such rights.

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