

Insights

FCA PUBLISHES PRIMARY MARKET BULLETIN NO. 46

19 December 2023

SUMMARY

This edition of [Primary Market Bulletin](#) examines:

- whether major shareholders can discuss their stewardship plans on particular issuers with other shareholders with similar ESG strategies without disclosing this to the market in accordance with the market abuse regime; and
- the results of an assessment of how sponsors have made changes to their procedures to assess whether new applicants are able to comply with the new TCFD-aligned disclosure requirements in the Listing Rules.

UNLAWFUL DISCLOSURE OF INSIDE INFORMATION AND ESG STEWARDSHIP

In December 2022 the FCA [commented](#) on the earlier fine imposed on Sir Christopher Gent for unlawful disclosure of inside information (see our [August briefing](#)). Since then, the FCA has received various questions from stakeholders in the context of shareholder co-operation regarding Environmental, Social and Governance (ESG) stewardship which Primary Market Bulletin (PMB) No.46 seeks to address. Questions raised include whether:

- a major shareholder's voting intentions on significant transactions, influenced perhaps by ESG stewardship concerns, may constitute inside information; or
- the rules on unlawful disclosure of inside information might apply where major shareholders wish to discuss their stewardship plans for particular issuers with other shareholders with similar ESG strategies; and whether the shareholder may or should disclose its voting intentions to the market.

The FCA are generally supportive of collective shareholder engagement with boards of investee companies. [PMB No.20](#) previously considered the scenario where a market participant identified a

possible strategy which involved building upon or acquiring a stake in a target company and questioned whether this strategy could be inside information which would need to be disclosed to the market. The FCA are unlikely to consider that the UK market abuse regime (MAR) has been breached where a shareholder trades based simply on its own intentions and knowledge of its own strategy. They may reach a different conclusion if other market participants also trade based on the knowledge of that party's voting intentions or stewardship plans.

These observations and those in the [letter](#) from the FSA (predecessor to FCA) to the ABI are still relevant when considering issues of shareholder activism, engagement and co-operation. Fundamentally, MAR '*is not intended to prohibit discussions of a general nature regarding the business and market developments between shareholders and management concerning an issuer. Such relationships are essential for the efficient functioning of markets and should not be prohibited by this Regulation*' (Recital 19 MAR).

However, when collaborating, shareholders should bear in mind their disclosure obligations under the Disclosure Guidance and Transparency Rules DTR 5.2.1R(a), which may require shareholdings to be aggregated in certain circumstances.

TCFD- ALIGNED DISCLOSURES: SPONSOR PROCEDURES

Premium and standard issuers must now include a statement in their annual financial report on whether they have made disclosures consistent with the TCFD recommendations and explain any departures (LR 9.8.6R(8) and LR 14.3.27R). Sponsors also have a responsibility, where a sponsor service is being provided to a new applicant, to assess whether the issuer has established procedures to enable it to comply with the Listing Rules and the DTRs on an ongoing basis, including compliance with the TCFD-aligned disclosures.

The FCA have recently conducted an assessment of a sample group of sponsors to see what changes they have made to their own procedures to assess whether new applicants have procedures in place to comply with the relevant requirements. The findings were generally positive and included the following:

POLICIES, PROCEDURES AND APPROACH TO THE PROVISION OF SPONSOR SERVICES

- Most of the sponsors in the sample had made changes to their internal policies and procedures to take account of the increased focus on climate-related matters.
- About half of the sponsor firms consulted had updated their risk appetite framework to include an emphasis on climate-related matters, and some had established ESG committees through which all IPOs have to be cleared to assess whether there are any climate-related issues.

OBTAINING COMFORT ON CLIMATE RELATED MATTERS AND COMPLIANCE WITH TCFD-ALIGNED DISCLOSURES

- Most sponsors, particularly the larger organisations, relied on internal expertise, either from specialist teams or using a ‘virtual team’ to bring in relevant expertise from individuals in other areas of the organisation.
- Around half of the sponsors consulted referenced some degree of “upskilling” in relation to ESG issues generally, including the introduction of mandatory training for investment banking employees.
- Most sponsors had responded to the TCFD-aligned disclosure requirements by expanding the scope of the reporting accountants’ work in relation to the new applicants’ financial position and prospects procedures (FPPP), to include the TCFD-aligned disclosure requirements. However, in most cases the FCA saw only a limited comment on those procedures in the FPPP reports produced based on those instructions.
- In most cases, the FCA saw little additional work being specified by sponsors although they recognise that the inclusion of TCFD requirements as part of the FPPP report or Long-Form Report is relatively new and acknowledge that the nature and extent of the impact of the requirement varies depending on the type of business and operations of the issuer.

Overall, the FCA were encouraged to see that sponsors appear to be giving increased focus to climate-related matters and are taking steps to ensure their staff and procedures are well positioned to reflect the latest requirements of the Listing Rules.

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