FINANCIAL CONDUCT AUTHORITY

Primary Market Technical Note

Choice of Home Member State under the Prospectus Regulation

The information in this note is designed to help issuers and practitioners interpret our 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.

P Reg – Article 2(m) (ii); ESMA Questions and Answers on Prospectuses (Q&As)

Market participants have enquired about the application of Article 2(m)(ii) of the Prospectus Regulation (P Reg), particularly regarding convertible securities and Global Depositary Receipts (GDRs). Under Article 2(m)(ii), if certain conditions are met, the issuer, offeror or person seeking admission may choose their Home Member State.

It appears that Article 2(m)(ii) sets out two different categories of securities. Firstly, non- equity securities whose denomination amounts to at least €1,000 (or a near equivalent amount in an alternative currency) and secondly non-equity securities giving the right to acquire any transferable securities or to receive a cash amount, as a consequence of their being converted or the rights conferred by them being exercised. In the ESMA document 'Questions and Answers on the Prospectus Regulation', ESMA considers that the amount should be calculated at the time the draft prospectus is submitted (Q&A 6.1). The €1,000 threshold does not appear to apply to the second category. Also, the second category only applies to non-equity securities that are not issued by the issuer of the underlying securities or an entity belonging to that issuer's group. So, the choice of Home Member State, as detailed in Article 2(m)(ii) may be exercised, for example, by issuers of non-equity securities whose denomination amounts to at least €1,000 as well as issuers of convertibles and GDRs (irrespective of their denomination) to which the second category of Article 2(m)(ii) applies.

GDRs fall within the definition of non-equity securities. GDRs, could therefore fall within the second category of Article 2(m)(ii) if they give a right to acquire the underlying securities or to receive a cash amount. However, it is up to the issuer to determine whether the rights attaching to a particular GDR confer such a right and so would enable it to fall within the second category of Article 2(m)(ii), and therefore benefit from the ability to choose their Home Member State.