

CP12/2^{★★}

Financial Services Authority

Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules

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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 26 April 2012.

Comments may be sent by electronic submission using the form on the FSA's website at: www.fsa.gov.uk/Pages/Library/Policy/CP/2012/cp12_02_response.shtml.

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A confidential response may be requested from us under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Tribunal.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

Abbreviations used in this paper

| | |
|-----------------|--|
| CFD | Contracts for differences |
| the Code | UK Corporate Governance Code |
| DTR | Disclosure Rules and Transparency Rules |
| ESMA | European Securities and Markets Association |
| FRC | Financial Reporting Council |
| FSMA | Financial Services and Markets Act 2000 |
| GAAP | Generally Accepted Accounting Principles |
| IPOs | Initial Public Offerings |
| LAAC | Listing Authority Advisory Committee |
| LR | Listing Rule |
| MTF | Multilateral Trading Facility |
| PD | Prospectus Directive |
| PDMR | Person discharging managerial responsibility |
| PRs | Prospectus Rules |
| RIE | Recognised Investment Exchange |
| RIS | Regulatory Information Service |
| SEDOL | Stock Exchange Daily Official List |
| SPA | Sale and Purchase Agreement |
| SPAC | Special purpose acquisition company |
| UKLA | UK Listing Authority |

1

Overview

Introduction

- 1.1 This consultation paper sets out proposals for changes to the Listing Rules to ensure that they reflect properly recent changes in market practices and so allow the UK Listing Authority (UKLA) to meet its objectives of:
- providing an appropriate degree of protection for investors in listed securities;
 - facilitating access to listed markets for a broad range of enterprises; and
 - seeking to maintain the integrity and competitiveness of UK markets for listed securities.
- 1.2 Since our Listing Regime came into force in 2000 we have reviewed it, either in whole or in part, on a regular basis, and where necessary we have, following consultation, made changes to help mitigate new risks and to maintain its overall effectiveness. The last such review¹, in 2008 to 2010, examined the overall structure of the Listing Regime. Following this we made changes to enhance its clarity and the standards denoted by its different segments so that investors would be better placed to make properly informed decisions and issuers would benefit from appropriate flexibility when raising capital in the UK.
- 1.3 It has, however, been some time since we have carried out an assessment of the technical content of the Listing Rules to identify specific areas where rules may need to be updated or clarified to reflect changes in existing market practices or the emergence of new ones. This is one of the objectives of this consultation. At the same time we are proposing to incorporate into the formal body of the Listing Rules other relevant material that we have, for example, in our Technical Notes.² We believe that this codification will benefit all users of the Listing Rules. Where, following consultation, we incorporate Technical Note material within the Listing Rules, we will subsequently update the Technical Notes to reflect this.

1 PS10/2: Listing Regime Review Feedback on CP09/24 and CP09/28 with final rules
www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_02.shtml

2 UKLA Technical Note: Listing Rules, www.fsa.gov.uk/Pages/Doing/UKLA/ukla_publications/index.shtml

- 1.4 In this consultation paper we are focusing on the changes that are required as a matter of priority to ensure that the operational effectiveness of the Listing Regime is maintained. The principal areas in which we are proposing changes are:
- reverse takeovers (LR Chapter 5);
 - sponsors (LR Chapter 8);
 - transactions (LR Chapters 10,11, 12 and 15);
 - financial information (LR Chapters 6 and 13); and
 - externally managed companies (LR Chapter 6, DTR 3.1 and PR 5.5.3).
- 1.5 These proposed changes are summarised below.
- 1.6 At the end of this introductory chapter we also raise some wider issues about the nature of the premium listing standard. We are taking the opportunity of this consultation to invite preliminary views from market participants on whether any specific changes need to be made to the Listing Rules further to enhance the shareholder protections and overall benefits that they currently afford. This discussion, and request for comment, is found at the end of this chapter.

Reverse takeovers

- 1.7 Reverse takeovers can be one of the most significant events for issuers. Reflecting this, our proposals seek to deliver three principal objectives:
- **Scope** – Currently an acquisition of one listed issuer by another is not treated as a reverse takeover. In order to prevent use of the reverse takeover regime as a ‘back-door’ route to obtaining a listing, we are proposing to narrow this exemption so that only acquisitions by a listed issuer of another listed issuer *in the same listing category* will not be treated as a reverse takeover.
 - **Proportionality** – Where the reverse takeover regime does apply we are proposing a number of changes to make its requirements more proportionate, while ensuring that the objectives of the regime are still delivered effectively. For example, we are proposing to reduce the information requirements that need to be met in order for a suspension to be avoided and to reduce the eligibility requirements following a cancellation of a listing.
 - **Consolidation** – The reverse takeover requirements are set out in a number of places including a Technical Note published in June 2010. We are also proposing to consolidate these in one place in the Listing Rules so that all the requirements and guidance are located together.

Sponsors

- 1.8** The sponsor regime is fundamental to ensuring the effectiveness of the Listing Regime. It ensures that premium listed issuers, and applicants seeking a premium listing, understand and are complying with the regulatory framework that they operate within and the obligations that it imposes on them, and that we can be confident that this is the case. It is therefore vital that the Listing Rules underpinning the sponsor regime are robust and clear, and that they allow us to monitor and supervise sponsors effectively.
- 1.9** We last reviewed the sponsor regime in 2008.³ Since then we have identified a number of areas where we believe that the current rules do not fully reflect the scope and nature of sponsor services, or of the information that they should provide to us, and where we can more clearly articulate the existing rules for sponsors; and, where we think it is appropriate to provide greater formal emphasis in the rules to the existing obligations with which sponsors are already required to comply.
- 1.10** Regarding scope, we are proposing to amend LR 8.2.1 so that it is clear that we consider a sponsor to be providing a sponsor service in all circumstances where sponsors are required to provide a key confirmation or assurance to us. We also propose to extend the remit of sponsor services so that a sponsor will be required to be appointed for other services provided to premium listed issuers. For example in relation to related party transactions, and extending the definition of sponsor services to include all communications made by sponsors with us in connection with the sponsor service.
- 1.11** Regarding the roles and responsibilities of sponsors, we are proposing four key changes:
- First, at present sponsors provide information and explanations of their own accord in a number of areas. We propose to extend LR 8.3.1 so that sponsors are required to provide us with any explanation or confirmation that we may reasonably require to ensure that the Listing Rules are being complied with by an issuer.
 - Second, we propose to strengthen the rules for sponsor communications, for example to oblige sponsors to take all reasonable steps to ensure that communications to us made as sponsors are accurate and complete.
 - Third, we propose to introduce a specific Principle for Sponsors that will require sponsors to act with honesty and integrity in relation to a sponsor service.
 - Fourth, we propose to clarify LR 8.3.7 to require a sponsor to take all reasonable steps to identify conflicts of interest that could adversely affect its ability to carry out its obligations under LR8.
- 1.12** In relation to information requirements, we are proposing a number of changes to the notification requirements in LR8.7.8 to ensure that sponsors are required to notify us of a number of new specific situations, for example, information that a sponsor reasonably believes could adversely affect market confidence in the sponsor regime. This will ensure

³ CP08/5: Sponsor regime – a targeted review, www.fsa.gov.uk/pages/Library/Policy/CP/2008/08_05.shtml

that we receive information promptly that may impact on a sponsor's compliance with the sponsor regime or of the regime as a whole.

Financial information requirements

1.13 LR Chapters 6 and 13 set out a number of requirements for financial information to be provided by issuers either seeking a premium listing or when, as premium listed issuers, they are circulating or publishing circulars to their shareholders. In some areas we are proposing to codify existing practice, much of which is dealt with by our Technical Notes. In others we are proposing changes where our rules are presently unclear or silent. The key proposals are to:

- clarify the application of LR6.1 in relation to the track record requirements for issuers seeking a premium listing;
- include detailed requirements in LR 13.5 for the disclosure of financial information for class 1 transactions and disposals of interests in undertakings that are not or have not been consolidated;
- increase disclosure requirements for figures relating to synergy benefits (LR 13.5); and to
- widen the scope of LR 13.5.27 to allow targets admitted to certain multilateral trading facilities (MTFs) and investment exchanges (where the FSA is satisfied with the assessment of the accounting standards and other standards of the MTF where the target is traded) to take advantage of reduced information requirements.

Transactions

1.14 The changes that we are proposing to make in relation to transactions are largely the codification of existing practice, much of which is contained in our Technical Notes. The relevant rules are mostly in LRs 10, 11 and 12. The key proposed changes are to:

- introduce the concept of supplementary circulars into the LRs, allowing issuers to provide, in certain circumstances, further information to shareholders so that they are in a better informed position prior to exercising their votes;
- clarify our approach to break fees, in particular clarifying that it is the substance of the arrangement that is important rather than the legal form; and to
- remove the concept of a class 3 transaction and allow issuers to be governed by the normal Disclosure Rules and Transparency Rules (DTR) 2 requirements, given that the nature of such transactions means that they are not material.

Externally managed companies

- 1.15** Recently we have seen the development of a new corporate structure that has been adopted by a small number of new listed companies, each a special purpose acquisition company (SPAC), that is, a cash shell incorporated with the intention of acquiring, running and transforming target businesses to create value. We are calling such companies ‘externally managed companies’ because they outsource significant management functions to an offshore advisory firm.
- 1.16** Currently only a very few such companies exist. However, we see no reason why the structure might not be more widely adopted by listed companies, which could seriously undermine the ability of shareholders to hold managements to account. This is because the advisory firm, in providing services such as the formulation of strategy, decision-making on acquisitions and leading in negotiations and on subsequent implementation, is in effect providing the executive management of the listed company. This means that the real management of the company is in effect placed beyond the reach of some of the key controls and protections for shareholders that are fundamental to the effectiveness of the Listing Regime. In addition, we consider that such companies should no longer be eligible for a premium listing because we believe that their management arrangements and provisions for accountability to shareholders are not consistent with the high standards that we attach to the premium listing benchmark.
- 1.17** So we are proposing two key changes to the Prospectus Rules (PRs), Disclosure Rules and Transparency Rules (DTRs), and the Listing Rules:
- First, we propose to make the principals of the advisory firm responsible for any prospectus published by the listed company (PR5.5) and to make the principals subject to the DTR requirements (DTR 3.1) in relation to disclosure of share dealings in the listed company’s shares by persons discharging managerial responsibilities (PDMRs).
 - Second, we propose to insert new rules and guidance in LR6.1 to state that companies incorporating this structure cannot be premium listed. This will give relevant companies the choice between adopting a more conventional corporate structure, with the management of the company represented on the board, or moving to a standard listing (or to an unregulated market such as AIM).

Premium listing: wider issues

- 1.18** The proposals set out above, and particularly in relation to externally managed companies, reflect our continuing concern to ensure that the standards set by the Listing Regime overall continue to be consistent with the objectives set for the UKLA. This is particularly important for the standards that we attach to the requirements for a premium listing. We, and the market, believe that these super-equivalent standards, taken together, should provide a clear benchmark for high standards of corporate governance and therefore for

the reputation and ‘quality’ of the market. This enhances both investor confidence and thus the attractiveness of the market to issuers.

- 1.19** In recent months there has been renewed debate about the nature of the premium listing standard. This debate has largely been driven by some high-profile listings of international issuers, and has focused in particular on aspects such as the operation of the free float requirements in the Listing Rules. Some stakeholders have expressed their concern both publicly and directly to us that these free float requirements should be used with a specific objective of assuring effective governance arrangements, particularly for the protection of minority shareholders. This issue has, however, broadened into a more fundamental discussion about whether the premium listing standard more generally needs to be further enhanced.
- 1.20** We welcome this discussion but it is important to set it in the correct context of what our formal remit is. On the specific issue of the free float requirements, these derive from Article 48 of the Consolidated Admissions and Reporting Directive (2001/34/EC) and are explicitly drawn in relation to liquidity, rather than governance, issues. It is not possible for us to use these requirements to decide whether any specific issuer is suitable for listing or not.
- 1.21** Further, the issue of the effectiveness of governance arrangements in non-UK issuers is often associated with the perception that some investors are forced into buying their securities by virtue of the inclusion of such issuers in the FTSE indices and the terms of the mandates under which their investments are managed, for example in relation to index-tracking. Again, it is important to be clear that the criteria for inclusion in the FTSE indices are not within the regulatory perimeter, and are entirely and solely for the FTSE itself to determine, taking into account the views of market participants. FTSE has recently concluded a consultation on whether it should amend its criteria for entry to the FTSE 100.
- 1.22** It is also important to be clear about the relationship between the Listing Rules and the UK Corporate Governance Code (the Code), which sets the overall framework of, and standards for, corporate governance for listed issuers. The content of the Code is the responsibility of the Financial Reporting Council (FRC). The Listing Rules require, for premium listed issuers, the inclusion of a ‘comply or explain’ statement in an issuer’s annual financial report.
- 1.23** We do of course view the Listing Rules as an integral element of the overall corporate governance architecture; we take carefully into account the interaction of the Listing Regime with the other key elements of this architecture in considering changes to our rules. Against this context, we would welcome the views of any market participants and other stakeholders both on the broad question of whether the premium listing standard, as set out in the Listing Rules, remains correctly positioned as a benchmark of high standards and also whether there are specific enhancements to the Listing Rules (reflecting our formal remit as set out above) that may be desirable in terms of providing additional protections to investors. For example, consideration could be given to:

- enhancing the rights of minority shareholders by giving them rights of veto over particularly important resolutions such as the election of directors;
- re-instating/strengthening the previous LR 3.12 requirements that set as conditions of listing that companies with controlling shareholders must be capable of carrying out their business independently of the controlling shareholder(s);
- introducing a new free float requirement that effectively allows minority shareholders to determine the governance arrangements of the company; or
- strengthening the related party transaction requirements/disclosures.

Q1: What, if any, changes to the Listing Rules do you believe may be necessary to provide additional protection to investors?

Next steps

1.24 The consultation period closes on 26 April 2012. In relation to our proposals set out in Chapters 2 to 6, we intend to publish our feedback and policy statement in the summer with the implementation of the rules coming into effect shortly afterwards. Regarding the wider issues set out in paragraphs 1.18 to 1.23, we will, subject to responses, consider developing specific options or proposals for discussion in a further paper later this year. As part of this, we would also intend to consult on a number of further, more technical, amendments to the Listing Rules that remain to be dealt with following this consultation.

Who should read this paper?

1.25 This paper will be of interest to:

- UK and overseas issuers with UK-listed securities or considering a UK listing of their securities.
- Firms advising on the issuance of UK-listed securities.
- Firms or persons investing in or dealing in UK-listed securities.

CONSUMERS

This consultation paper will be of interest to consumers who deal and invest in UK-listed securities either directly or indirectly through institutions. The policy proposals raise issues concerned with the protection of investors.

2

Reverse takeovers

2.1 Given their transformational nature, reverse takeovers will often represent one of the most important transactions in the life of an issuer. The changes proposed in this chapter recognise this fact, and seek to achieve three main aims:

- **Scope of the regime** – in recognition of the importance of the reverse takeover regime as a potential ‘back door’ listing route, we have rigorously considered which transactions should be caught, and which should be exempt. The effect of this is to increase regulation in some areas (although at the same time it introduces a degree of clarification), because we see this as essential to maintaining the integrity of the Official List.
- **Constructing the regime proportionately** – where the reverse takeover regime does apply, we propose to apply it in a way that is less disruptive and onerous, while maintaining standards. For example, we propose reducing information requirements to avoid suspension, not always requiring a prospectus, and moderating some of the financial information eligibility requirements.
- **Consolidation, codification and clarification** – we are also proposing to consolidate the rules into one chapter, codify our Technical Note⁴ published in June 2010, and generally clarify the regime.

Application of chapter

2.2 One of the overarching principles of the UKLA’s approach to reverse takeovers is to avoid scenarios where issuers are able to secure the listing of a business that would otherwise be ineligible for listing. This principle is relevant to all types of issuers; we therefore propose to clarify in new rule LR5.6.1R that the rules in relation to reverse takeovers apply equally to issuers of premium and standard listed shares and issuers with a standard listing of certificates representing equity securities.

⁴ UKLA Technical Note: Reverse Takeovers, www.fsa.gov.uk/Pages/Doing/UKLA/ukla_publications/index.shtml

Exemptions

- 2.3 Currently, when an issuer completes a reverse takeover, we will normally seek to cancel the listing of its shares (or certificates representing securities) and the issuer will be required to re-apply for listing. This requires the newly enlarged group to prepare a prospectus and satisfy the relevant eligibility requirements for listing. We have revisited the circumstances in which an issuer should be exempted from these requirements, as set out below.

Takeovers of listed issuers

- 2.4 Currently, we do not treat an acquisition by a listed issuer of another listed issuer as a reverse takeover. In the proposed LR 5.6.2R, we have narrowed this exemption to a listed issuer acquiring another listed issuer that is listed *within the same listing category*, so that reverse takeovers of listed issuers in different listing categories will be subject to the normal eligibility assessment process.
- 2.5 This approach is consistent with the principles of the transfer rules as set out in LR 5.4A that were introduced in April 2010 following the consultation on Listing Regime Review⁵; these set out the requirements and obligations for issuers wishing to transfer between listing categories. It reflects our concern that a reverse takeover should not be used as a way of avoiding the assessment of substantive eligibility conditions.

Q2: Do you agree with the proposal to amend the Listing Rules (LR 5.6.2R) to narrow the reverse takeover exemption so that it only applies to listed issuers acquiring another listed issuers listed within the same listing category?

Definition of a reverse takeover

- 2.6 The purpose of new rule LR5.6.4R is to provide a clear, standalone definition of a reverse takeover, removing any uncertainty as to which structures result in a reverse takeover. This follows the approach set out in our Technical Note, where we stated that we would consider the substance of a transaction over its legal form and, for example, not allow the imposition of a new shell company to take an acquisition outside the reverse takeover regime.
- 2.7 Our proposed new definition retains the reference to a fundamental change in the business, but we have included new guidance in LR5.6.5G to describe the factors that we would consider demonstrate a fundamental change to a business. We believe the key characteristics to be:

⁵ PS10/2: Listing Regime Review Feedback on CP09/24 and CP09/28 with final rules, www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_02.shtml

- the extent to which the transaction will change the strategic direction or nature of the business;
- the impact the transaction will have on the industry sector classification of the enlarged group; and,
- the impact on the end users and suppliers.

Q3: Do you agree that the proposed guidance on a fundamental change (LR5.6.5G) contains the key indicators? Do you think there are other factors that should be considered and if so what are they?

Suspensions

Requirement

- 2.8** Under LR 5.1.1R(1), the FSA may suspend the listing of any securities if the smooth operation of the market is, or may be, temporarily jeopardised or it is necessary to protect investors. Existing LR10.6.3G creates a rebuttable presumption that an issuer's equity shares will be suspended upon announcement or leak of a reverse takeover that has been agreed or is in contemplation, unless we are satisfied that there is sufficient publicly available information about the proposed transaction.
- 2.9** We propose to carry forward this presumption into the new rules by deleting LR 10.6.3G and inserting provisions at LR 5.6.6R and LR 5.6.7G. In addition, we propose to clarify within LR 5.6.6R that an issuer must contact us as soon as possible once a takeover is agreed or in contemplation to discuss whether a suspension of listing is appropriate. Similarly, where details of the transaction have leaked, an issuer must contact us as soon as possible to request a suspension.
- 2.10** We have set out the circumstances where the FSA will generally be satisfied that a suspension will not be required in the proposed rules and guidance LR 5.6.9G to LR 5.6.17R, which are described in more detail below.

Q4: Do you agree with the proposed changes to codify within the Listing Rules (LR5.6) the existing practice to contact the FSA as soon as possible once a takeover is agreed or details of the transaction have leaked, to discuss whether a suspension is appropriate?

Targets on regulated markets

- 2.11 The new provisions in LR 5.6.9G clarify that where an issuer is acquiring a target which is admitted to a regulated market and the issuer has announced by means of an RIS (LR 5.6.10R) that the target has complied with that market's disclosure requirements, a suspension should not be necessary.

Targets on other trading platforms

- 2.12 If the target is on a market that is not a regulated market, the FSA will nevertheless generally be satisfied that there is sufficient publicly available information if the issuer can confirm to the FSA *and* through an announcement by means of an RIS, that it has reviewed the disclosure requirements in relation to financial information and inside information of the market and that there are no material differences between the two regimes (LR5.6.11G). This is the current practice under our Technical Note. In the case of an issuer with a premium listing, the sponsor must make this confirmation (LR5.6.12R).

Q5: Do you agree with the proposal to amend the Listing Rules (at LR5.6) to require an issuer to make an RIS announcement in relation to disclosure requirements, in addition to confirmation from the issuer?

Targets not subject to a disclosure regime

- 2.13 Where the target business is not subject to a public disclosure regime or where the issuer or sponsor is unable to confirm that any applicable disclosure regime is equivalent, we will not suspend the issuer if we consider that sufficient information in relation to the target (LR5.6.14G) is provided to the market by an RIS (LR 5.6.15R). This is current practice as reflected in our Technical Note with some additional disclosure, such as trend information on the target. In the case of a premium listed issuer, the confirmation must be made by the sponsor (LR5.6.16R).
- 2.14 Where we have agreed that suspension is not necessary, we have also codified in LR5.6.17R the requirement for the issuer to comply with DTR 2.2.1R on the basis that the target already forms part of the enlarged group.

Cancellation

- 2.15 LR5.6.18G sets out the premise that the FSA will generally seek to cancel an issuer's listing when it completes a reverse takeover. In the case of a listed issuer taking over another listed issuer, LR 5.6.22G to LR5.6.28G explain the circumstances when cancellation will not normally be required.

- 2.16** Where a listing is *cancelled* following the completion of a reverse takeover, the issuer must re-apply for the listing and satisfy the relevant eligibility requirements. Two of these eligibility tests are: LR 6.1.3R(1)(b), which requires the latest accounts of the applicant to be not more than six months old, and LR6.1.3R(1)(e), which requires that audit reports must not contain a modification.
- 2.17** Currently, LR 10.6.2G exempts the listed issuer from having to satisfy the LR 6.1.3R(1)(b) eligibility requirement and we are proposing to include this within new LR 5.6.20R. We are also proposing in LR 5.6.20R to exempt the listed issuer from LR 6.1.3R(1)(e). Our proposals would mean the enlarged group would no longer be rendered ineligible due to a modification within the track record of the existing premium listed issuer.
- 2.18** However, we have clarified in LR5.6.21G that LR6.1.3R(b) and (e) will still apply to the *target* and the current LR6.1.4R(1) requiring the inclusion of additional financial information on the target, if necessary, will still apply.

Q6: Do you agree with the proposal to amend the Listing Rules (at LR 5.6) to allow a premium listed issuer to have a modification within its track record when undertaking a reverse takeover, without rendering the enlarged group ineligible?

Retention of listing category

- 2.19** Where a listed issuer is acquiring another listed issuer and intends to retain its existing listing category, its listing will not be cancelled providing it remains eligible for that category, but in future it will need to provide an eligibility letter (LR5.6.22G). The acquiring issuer will be required to publish an announcement or circular by means of an RIS (LR5.6.23R) explaining the background and the effect of the transaction and how the issuer will continue to be eligible.
- 2.20** The eligibility letter must be provided to the FSA not less than 20 business days prior to the announcement (LR5.6.24R) and, in the case of a premium listing, this letter should be provided by the sponsor (LR5.6.25R).

Transfer of listing category

- 2.21** We are proposing new guidance in LR5.6.26G to explain that cancellation is also generally not required where an issuer wishes to transfer listing categories and the enlarged group meets the eligibility criteria of the new category, although as stated above, it will in future need to go through the normal eligibility process. Similarly, where a premium listed issuer acquires a standard listed issuer but the enlarged group is unable to satisfy the eligibility requirements for a premium listing, the listing will not be cancelled if it satisfies the eligibility criteria for an alternative category.

- 2.22 However, we are proposing to replicate in LR 5.6.27G the guidance contained in LR5.4.A2G. This explains that a premium listed investment company cannot transfer its listing to a standard share listing, unless either it has ceased to be an investment company (for example it has become a commercial company) or it continues to have a premium listing of equity shares.
- 2.23 Where an issuer avoids the need for cancellation in the situations envisaged in LR5.6.26G, we will normally waive the requirement for shareholder approval under LR5.4A.4R(2)(c), where the issuer is obtaining separate shareholder approval for the acquisition.
- Q7:** Do you agree with the proposal to amend the Listing Rules (LR5.6) to follow the principles of our transfer provisions in the case of issuers acquiring targets which are also listed but in another category?

Small reverse takeovers (LR10.2.3R)

- 2.24 Under current LR10.2.3R, a transaction by an issuer with a premium listing that is a reverse takeover may be treated in certain circumstances as a class 1 transaction, avoiding the need for suspension and cancellation of the listing. The issuer must make a number of confirmations in relation to the target's ability to meet the eligibility requirements and the ultimate composition of the board.
- 2.25 In practice we have found that the exemption is rarely relied upon as sponsors are unable to provide the necessary confirmations in a timely way because of the risk of a leak. Moreover, upon further consideration we do not think that there is a strong policy rationale for maintaining the exemption.
- 2.26 We consider the relevant threshold for applying the protections embodied in the reverse takeover regime to be the point at which the existing listed group no longer constitutes a majority of the group and do not see a policy justification for this additional threshold. Therefore, we propose to delete LR 10.2.3R.
- Q8:** Do you agree with the proposal to delete LR 10.2.3R allowing an issuer with a premium listing undertaking a reverse takeover, to be treated in certain circumstances as a class 1 transaction?

3

Sponsors

Introduction

- 3.1 The sponsor regime seeks to minimise significant potential risks to the integrity of the premium equity market by:
- ensuring that premium listed companies undertaking transactions, and applicants seeking a premium listing, understand the regulatory framework imposed on them under part 6 of the Financial Services and Markets Act 2000 (FSMA); and
 - enabling the UKLA to receive assurance from an expert in the Listing Regime that premium listed companies undertaking transactions, and new applicants, are complying with this regulatory framework.
- 3.2 It is therefore vital that the Listing Rules in this area are clear and robust, and also that they allow the UKLA to monitor and supervise sponsors effectively.
- 3.3 During the course of our interactions with sponsors since we last consulted on the sponsor rules in 2008, and following our consideration of findings across a number of sponsor transaction reviews, we have identified certain anomalies and weaknesses in the sponsor regime that we are proposing to address in this consultation. We are also proposing to extend the sponsor regime in certain instances where, based on our experience, we believe it is appropriate to require a sponsor to be appointed.

In particular, we have:

- identified instances where we believe the current rules do not fully reflect the scope and nature of sponsor services or where we can better describe the existing rules for sponsors;
- encountered situations where it appears that sponsors have provided incomplete or inaccurate information or failed to apply the expected high standards of care to the provision of the information;
- witnessed apparent failures by sponsors in some cases to properly balance their duties to the UKLA with the commercial interests of their clients;

- identified situations where our rules have not required sponsors to notify us of information that would enable us to monitor in an efficient manner whether they continue to meet the requirements of the Listing Rules; and
- encountered situations where approved sponsors have failed to produce to us records capable of demonstrating whether sponsor services have been undertaken to the expected standard of care.

Sponsor services and when a sponsor is required

- 3.4 In previous consultations, we have sought to clarify the circumstances in which a sponsor is required, and the regulatory implications for a sponsor carrying out services for a listed company or applicant. In 2005, the Listing Review⁶ identified when a listed company or applicant was required to appoint a sponsor and further required a listed company to obtain guidance on the application of certain classification requirements under LR10 and LR11. In 2008, following the publication of CP08/5⁷, we clarified that the Principles for Sponsors in LR 8.3 applied to all such sponsor services.

Sponsor services

- 3.5 LR 8.2.1R sets out when a sponsor must be appointed and the term ‘sponsor services’ is defined by reference to LR 8.2. We are proposing a number of changes to this rule that will clarify when a sponsor appointment is required and will seek to ensure that, whenever certain key declarations, confirmations, assurances or opinions are required, a sponsor must be appointed for the purpose. We have, firstly, identified that it is not clear from the current wording of LR 8.2.1R that we consider a sponsor to be providing a ‘sponsor service’ in all circumstances when there is a requirement for a sponsor to provide a key confirmation or assurance to us. This includes ‘eligibility letters’ or ‘severe financial difficulty letters’, and we are proposing to address this by requiring a sponsor to be appointed in these circumstances. Secondly, we are proposing to extend the remit of sponsor services so that a sponsor will be required to be appointed for other services provided to premium listed companies where we believe it is appropriate to require such an appointment. This will include, for example, appointments required by proposed new rules relating to reverse takeovers. Further details of all the proposed amendments to LR 8.2.1R are set out below.
- 3.6 In addition to the *appointment* of a sponsor under LR 8.2.1R, in certain circumstances a sponsor’s *guidance* must be obtained by an issuer under LR 8.2.2R and LR 8.2.3R. As a result of our proposals it will be possible to categorise sponsor services as follows:

⁶ CP05/7: The Listing Review and Prospectus Directive, www.fsa.gov.uk/Pages/Library/Policy/CP/2005/05_07.shtml

⁷ CP08/5: Sponsor regime – a targeted review, www.fsa.gov.uk/pages/Library/Policy/CP/2008/08_05.shtml

- an *appointment* required by LR 8.2.1R(1)-(4) and, where relevant, LR 8.2.1R(5), which results in a formal declaration from a sponsor in relation to matters set out in LR 8.4 (we are proposing to make amendments to LR 8.2.1R(1)-(4) that do not affect the meaning of these rules);
- an *appointment* required by LR 8.2.1R(5)-(13) that requires or permits a sponsor to provide another form of submission, opinion or confirmation to the UKLA that is not a declaration of matters set out in LR 8.4 but which addresses a particular requirement of the Listing Rules (this includes existing sponsor requirements such as ‘eligibility letters’ under LR 8.4.3R(4) and ‘severe financial difficulty letters’ under LR 10.8.3G(2) as well as new appointments as discussed below); and
- advice given to a listed company complying with its obligation to *obtain guidance* as required under existing LR 8.2.2R and LR 8.2.3R. Further discussion of how we view any communications between the sponsor and the FSA about these matters is discussed below.

Proposed LR 8.2.1R (6) – Smaller related party transactions

3.7 Currently LR 11.1.10R(2)(b) requires issuers proposing certain smaller related party transactions to provide the FSA with confirmation from an ‘independent adviser acceptable to the FSA’ that the terms of the proposed transaction are ‘fair and reasonable’ as far as shareholders are concerned. In practice, this opinion takes the form of a confirmation that, together with advice given to the board of directors on the relevant transactions, is often provided by a sponsor. We believe that, instead of formalising an additional approval process for independent advisers, it would be more prudent and efficient for sponsors to carry out this role for listed companies. Therefore, where a confirmation is required under LR 11.1.10R(2) (b), we propose that a listed company will be required to appoint a sponsor for this purpose. We have reflected our proposal in LR 8.2.1R(6). We appreciate that, in some instances, as with the current regime where an independent adviser provides this opinion, a sponsor will seek expert advice to enable it to give the fair and reasonable opinion. Where this is the case (for instance, where the issuer is in a specialist area such as real estate or minerals exploration), we expect that the practice will continue.

Q9: Do you support the proposal to amend the Listing Rules (LR8.2.1R(6)) so that for smaller related party transactions a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are ‘fair and reasonable’ as far as shareholders are concerned?

Proposed LR8.2.1R (7) – Related Party Transactions

- 3.8 Under the current rules, where an issuer is proposing a related party transaction which, due to its size, means that the issuer must issue a circular to its shareholders that complies with LR 13.6R, the circular is required to include a statement by the board that the transaction is fair and reasonable and that the directors have been so advised by an independent adviser. In line with our proposals for smaller related party transactions set out above in paragraph 3.7, we propose that a listed company will now be required to appoint a sponsor to provide the LR 13.6.1(5)R confirmation. This has been reflected in the proposed LR 8.2.1R(7). It should be noted, however, that we are not proposing to require issuers to appoint a sponsor to submit the LR13 circular; the sponsor appointment will only be in relation to the fair and reasonable confirmation required to be included in the circular. As with smaller related party transactions discussed in paragraph 3.7, it is appreciated that sponsors may seek expert advice in order to be able to give the fair and reasonable opinion.

Q10: Do you support the proposal to amend the Listing Rules (LR 8.2.1R(7)) so that for Related Party Circulars a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?

Proposed LR 8.2.1R(8) – submission of eligibility letter

- 3.9 The proposed LR 8.2.1R(8) seeks to clarify that, under LR 8.4.3R(4), a new applicant must appoint a sponsor to submit a letter to the FSA setting out how the applicant satisfies the eligibility criteria in the Listing Rules. This proposed change is for clarification only and does not alter the existing practice of requiring an eligibility letter to be submitted by a sponsor.

Proposed LR 8.2.1R(9) – Reverse takeovers

- 3.10 The proposals for LR5 on reverse takeovers reflect the importance that the UKLA places on timely and appropriate decision-making in this important area of the Listing Regime. Our experience is that determining whether or not to suspend an issuer's listing in the context of a reverse takeover involves considering a number of issues and that such decisions can often be complex, and critical to ensuring that a disorderly market does not arise. For an issuer with a premium listing we believe that discussions with the UKLA on whether or not to suspend an issuer's listing should be conducted by a sponsor, given a sponsor's expertise in applying the relevant Listing Rules and in dealing with the UKLA. As such, LR 5.6.6R proposes that, in the case of an issuer with a premium listing, a sponsor must contact the FSA as early as possible to discuss whether a suspension of listing is appropriate prior to announcing a reverse takeover that has been agreed or is in contemplation or to request a suspension where details of the reverse takeover have leaked. To reflect this proposal, LR 8.2.1R(9) requires that a sponsor is appointed for this purpose.

Q11: Do you support the proposal to amend the Listing Rules (LR 8.2.1(9)) to require a premium listed company to appoint a sponsor to discuss with the FSA whether a suspension of the listing is appropriate, before announcing a reverse takeover (that has been agreed or is in contemplation or where details of the reverse takeover have been leaked)?

Proposed LR 8.2.1R(10) – Reverse takeovers

3.11 In addition, in circumstances where the target company in a proposed reverse takeover is subject to the disclosure regime of another market, the issuer may, under LR 5.6.11G(2), make a confirmation to the FSA regarding that disclosure regime. Given that this information may be critical to the UKLA in coming to an appropriate decision as to whether or not a suspension of listing is appropriate, the proposed LR 5.6.12R provides that where an issuer has a premium listing and chooses to provide such a confirmation, it must be made by a sponsor. LR 8.2.1R(10) therefore requires the appointment of a sponsor for this purpose. Furthermore, in circumstances where the target is not subject to a public disclosure regime, the issuer may make an announcement containing a declaration by the directors as set out in the proposed LR 5.6.14 G(3) and (4). Where an issuer with a premium listing chooses to do this, LR 5.6.16R requires a sponsor to provide a written confirmation to the FSA that, in its opinion, it is reasonable for the issuer to provide those declarations. LR 8.2.1R(11) therefore requires the appointment of a sponsor for this purpose.

Q12: Do you support the proposal to amend the Listing Rules (LR 8.2.1R(10) and LR8.2.1R(11)) so that where the target of a reverse takeover is not subject to a public disclosure regime, the premium listed company is required to appoint a sponsor in order to make a confirmations regarding the issuer's declarations, to the FSA?

Proposed LR 8.2.1R(12) – Reverse Takeovers and eligibility

3.12 Consistent with our other proposals in relation to reverse takeovers and our current requirement at LR 8.4.3R(4) for a sponsor to submit an eligibility letter on behalf of a new applicant, we are proposing LR 5.6.25R, which will require a sponsor to submit the eligibility letter for a listed company following a reverse takeover for the purposes of LR 5.6.22G. Consequently, LR 8.2.1R(12) reflects the proposal that an issuer must appoint a sponsor for this purpose.

Q13: Do you support the proposal to amend the Listing Rules (LR8.2.1R(12)) to require a premium listed company to appoint a sponsor for the purpose of submitting the eligibility letter required as a result of a reverse takeover?

Proposed LR 8.2.1R(13) – Severe financial difficulty

3.13 Where an issuer is in severe financial difficulty and proposes a class 1 disposal within a short timeframe to meet working capital requirements or to reduce its liabilities, under LR 10.8.1G(2) the issuer may ask the FSA to modify the requirements in LR 10.5 to prepare a circular and obtain shareholder consent for the disposal. In order to enable us to consider such a request, the issuer must provide us with a number of documents including, under LR 10.8.3G(2), confirmation from its sponsor in relation to the issuer's severe financial difficulty. We are proposing LR 8.2.1R(13) to capture this sponsor confirmation and to ensure that there is a corresponding obligation for an issuer to appoint a sponsor for this purpose.

Q14: Do you support the proposal to amend the Listing Rules (LR8.2.1R (13)) to require a sponsor to be appointed in relation to severe financial difficulty letters?

Proposed LR 8.2.1R(14) – Acquisitions of publicly traded companies

3.14 Our proposed amendments to LR 13.5.27R will allow the premium listed company a concession from having to provide (in a class 1 circular) a full restatement of the target's annual consolidated accounts where we are satisfied with the assessment of the accounting and other standards of the investment exchange or MTF where the target is traded. This will involve a qualitative assessment of the legal and regulatory framework applying to the target. We are proposing in LR 13.5.27B R that the issuer's sponsor submits a letter to the FSA detailing its view on the acceptability of a particular investment exchange or MTF. LR 8.2.1R(14) therefore requires the appointment of a sponsor for this purpose.

Q15: Do you support the proposal to amend the Listing Rules (LR8.2.1R(14)) to require a sponsor to be appointed in relation to the acquisition of a publicly traded company?

Definition of sponsor services

3.15 It will be clear from the above that we place great importance on our communications with sponsors, whether they comprise formal declarations, written confirmations and submissions, or more informal explanations or discussions. Indeed, in many cases we rely on oral explanations and assurances from sponsors. To reflect the importance with which

we regard all communications with sponsors, we believe it is appropriate to extend the definition of sponsor services so that it includes not only, as present, ‘a service relating to a matter referred to in LR 8.2R ...’ but also ‘...all the sponsor’s communications with the FSA in connection with the [sponsor] service’. The importance of this extension of the definition is that the Principles for Sponsors set out in LR8 apply to sponsor services (as defined) and thus the change will extend the application of the Principles so that they clearly attach to all communications between the FSA and a sponsor in connection with a sponsor service, whether written or oral. It should be noted that, notwithstanding this proposed extension of the definition of sponsor services, the relevant Principle, set out in proposed LR 8.3.1AR, limits the liability of a sponsor to the taking of ‘reasonable steps’ to ensure that any communication or information it provides to the FSA is ‘to the best of its knowledge and belief, accurate and complete in all material respects’. We do not, therefore, believe the proposed extended definition imposes an unreasonable burden on sponsors. LR 8.3.1AR is discussed further below.

- 3.16** Another reason for the proposed amendment to the definition of sponsor services is that it is currently unclear whether all of a sponsor’s communications with the FSA in relation to a sponsor service are governed by the Principles for Sponsors. For example, where a sponsor contacts the UKLA in relation to the giving of guidance to an issuer on the application of class tests or related party rules under LR 8.2.2R and LR 8.2.3R, with the exception of the Principle set out at LR 8.3.5R (the open and co-operative principle), which applies at all times, it is unclear whether the other Principles for Sponsors apply. By amending the definition of sponsor services to include a sponsor’s communications with the FSA in connection with a sponsor service, we are seeking to ensure that the Principles for Sponsor will apply to communications with the FSA for the purpose of giving guidance under LR 8.2.2R or LR 8.2.3R, as such communication is in connection with a sponsor service.
- 3.17** We have also experienced situations where it appears that a sponsor has failed to provide us with information in sufficient time or detail to enable us to give proper consideration to the request for advice or guidance. The proposal to extend the definition of sponsor services so that it includes communications between a sponsor and the FSA in connection with a sponsor service is therefore intended, not only to address a weakness in the current regime but, by ensuring that the Principles for Sponsors (including the due care and skill principle in LR 8.3.3R) apply to such communications, to ensure sponsors give proper consideration to the nature and content of their communications with the FSA before making contact. Furthermore, it would provide us with the ability to take action against a sponsor where the quality of the sponsor’s communications falls below the standard of care expected.
- 3.18** Overall, the proposed amendments to LR 8.2R are designed to provide greater clarity around when a sponsor is required, both by the existing rules and as extended by the proposals outlined in this document. By ensuring that all existing and new sponsor functions are captured by the definition of sponsor services, the Principles for Sponsors will apply when sponsors are carrying out these key roles. Furthermore, in proposing to amend the definition

of sponsor services, we are seeking to ensure that the Principles for Sponsors attach to all communications with the FSA in respect of sponsor services being carried out. For clarity, these amendments are not intended to make it necessary for a listed company to retain a sponsor at all times; the proposed amendments seek to ensure a proportionate use of the existing regime to assist the UKLA in mitigating potential risks to the premium equity markets in the UK.

Q16: Do you support the proposal to amend the Listing Rules in respect of the definition of sponsor services to include all sponsor communications with the FSA in connection with the sponsor service?

Role and responsibilities of sponsors

Communications with the FSA

LR 8.3.1R(1A) – requirement to provide explanations/confirmations

3.19 As we have explained in the previous section, the UKLA places great importance on its communications with sponsors. Currently, the relationship between the UKLA and a sponsor is characterised by the sponsor providing information, opinions and explanations of its own accord (rather than, or in addition to being requested or required to do so by the Listing Rules or by the UKLA). Sponsors and issuers should be aware that information and other communications provided by a sponsor to the UKLA are relied upon by the UKLA, either directly or indirectly, to reach an informed view of an issuer's or applicant's compliance with the Listing Rules. We are therefore proposing to extend LR 8.3.1R so that a sponsor is required, not only to provide to the FSA assurance in respect of certain transactions that a listed company or applicant is complying with its Listing Rule obligations (pursuant to LR 8.4R), but also to provide '... any explanation or confirmation as the FSA reasonably requires for the purposes of ensuring that the Listing Rules are being complied with by an applicant or listed company'. This proposal is reflected at LR 8.3.1R (1A). The proposed rule recognises the importance of sponsors providing information to assist the UKLA in its decision-making processes and we believe it is largely a reflection of current practice. As previously noted (in paragraph 3.15) and discussed below (in paragraph 3.21), the proposed LR 8.3.1 AR (1) will require a sponsor to take only 'reasonable steps' to ensure that any such information it provides to the FSA is 'to the best of its knowledge and belief accurate and complete in all material respects'.

Q17: Do you support the proposal to amend the Listing Rules (LR8.3.1R(1A)) so that a sponsor is required to provide any explanation or confirmation as the FSA reasonably requires for the purposes of ensuring that the Listing Rules are being complied with by an applicant or listed company?

LR 8.3.1AR – Standard of care

- 3.20** We have stated in the previous paragraph that, because of the value we place on our communications with sponsors and information that they provide to us in a variety of forms, it is critical that these communications are accurate, not misleading and provided in a timely manner. In particular transactions, sponsors are required under LR 8.4 to submit a declaration to the UKLA in respect of certain transactions, after having reached their own ‘reasonable opinion, after having made due and careful enquiry’. However, outside of these formal declarations, we do not consider that LR 8 is clear as to the expected standard of care in relation to a sponsor’s communications with the FSA with the exception of the open and co-operative principle (as set out at LR 8.3.5R). Furthermore, the UKLA has on occasion been required to make decisions on significant transactions on the basis of information provided by a sponsor that upon further challenge has been found to be incomplete or inaccurate. We are therefore seeking through the current proposals to better articulate our expectations of a sponsor in relation to communications with the UKLA while performing sponsor services.
- 3.21** We are proposing to do this in three ways. Firstly, as noted above (in paragraph 3.15), we are proposing to include ‘all the sponsor’s communications with the FSA in connection with the [sponsor] service’ within the definition of sponsor services, thereby ensuring that the Principles for Sponsors will apply to all such communications. Secondly, as described in paragraph 3.19, we are proposing to introduce LR 8.3.1R (1A), which gives the FSA the ability to request explanations or confirmations in connection with a sponsor service. Finally, we are proposing a new rule at LR 8.3.1AR that seeks to place an obligation on a sponsor to take all reasonable steps to ensure that any communication or information it provides to the FSA in carrying out a sponsor service is to the best of its knowledge and belief, accurate and complete in all material respects. Further, the proposed LR 8.3.1AR(2) will require that, where there is a material change to the information provided, it is updated accordingly; this obligation continues for the duration of the provision of the sponsor service.
- 3.22** It is not intended that LR 8.3.1AR should apply to ongoing discussions that sponsor firms may have with the UKLA in their role as a broker or adviser to a listed company in connection with its client’s continuing disclosure obligations as these are not within the remit of sponsor services. However, sponsors should be aware of the ability of the UKLA under the existing LR 8.6.9BG to take into account the quality of advice given in these situations in the event that it would be relevant in assessing the competence of a sponsor firm.

Q18: Do you support the proposed amendments to the Listing Rules (LR8.3.1AR) in relation to sponsor communications and standard of care?

LR8.3.2AG – responsibility for communications

- 3.23** The proposed LR 8.3.2AG seeks to reinforce the responsibility of the sponsor for communications with the UKLA, regardless of whether a sponsor relies on representations made by the listed company or applicant or a third party in order to assist it to fulfil its obligations to the UKLA. We are proposing the introduction of this guidance following a number of instances where the role of other transaction advisors has either marginalised the sponsor role or served to obscure the accountability for the information or assurances upon which the UKLA has made decisions.
- 3.24** In recognition that in some circumstances it may be appropriate for a sponsor to rely on third party expertise, we propose (as noted above) in LR 8.3.1AR that a sponsor's obligation to ensure accuracy and completeness of information provided to the FSA is limited to taking 'reasonable steps', and the sponsor's obligation extends only to the 'best of its knowledge and belief'. In this context, we would anticipate that 'reasonable steps' would include ensuring that the relevant third party has been provided with information that, to the best of the sponsor's belief, is accurate and complete in all material respects. We would further anticipate that it would be reasonable for the sponsor to discuss with the third party and, at the very least, to have knowledge of and understand the basis of any opinion or advice provided by the third party. The proposed changes are intended to recognise the appropriateness of the current practice of involving other advisers in a dialogue with the UKLA, or relying on an expert's advice, but also to emphasise the particular responsibilities owed by a sponsor in relation to that third party dialogue or advice.

Q19: Do you support the proposed amendments to the Listing Rules (LR 8.3.2AG) in relation to sponsor communications that seek to reinforce the responsibility of the sponsor for communications with the UKLA, in instances where a sponsor relies on representations made by the listed company or applicant or a third party?

Principles for sponsors

LR8.3.5B R – Principle of Integrity

- 3.25** One of the Principles for Sponsors requires sponsors at all times to deal with the FSA in an open and co-operative manner and to deal with all FSA enquiries promptly (LR 8.3.5R). We do not believe that our relationship with the sponsor community falls short of this Principle

in the majority of cases. However, we have identified an anomaly in the rules in that this Principle does not fully articulate our expectations of sponsors while carrying out sponsor services. Therefore we propose to insert a further Principle for Sponsors in LR 8.3.5BR that will require sponsors to act with honesty and integrity in relation to a sponsor service.

- 3.26** The Principle of Integrity already applies to all authorised persons under PRIN2.1. We believe that our proposal, which will apply in relation to the provision of sponsor services (and not at all times), will not impose an additional burden for the vast majority of sponsors who already operate to these standards. However, given the position of trust held by the sponsor, we believe it is appropriate and proportionate that this Principle should apply in connection with the provision of sponsor services. Furthermore, where standards fall below those expected, we will be in a better position to take appropriate action against a sponsor.

Q20: Do you support the proposal to amend the Listing Rules (LR 8.3.5BR) to introduce a Principle of Integrity for sponsors?

LR8.3.5AR – Notification of breach of Listing Rules

- 3.27** In addition we are proposing to clarify the operation of existing rule LR 8.3.5AR, which requires a sponsor to notify the FSA if it becomes aware of any breach of the Listing Rules, the disclosure rules or the transparency rules, without substantially altering its meaning.

LR8.3.7B R – identifying and managing conflicts

- 3.28** We recognise that there is potential for a conflict of interest to arise by virtue of the dual role a sponsor performs under LR 8.3.1R in providing assurance to the FSA of a listed company or applicant's compliance with the Listing Rules while at the same time guiding the listed company or applicant in understanding and meeting its Listing Rules obligations. For example, a sponsor's obligations to the UKLA may in some instances conflict with terms of engagement with, or implied duties to, its clients. While sponsors routinely consider conflicts of interest in relation to taking on new clients and transactions (a *client* conflict check), we have observed situations where sponsors have had to consider the more general possibility for conflict in balancing their responsibilities to their client with those owed to the UKLA (a *regulatory* conflict check). We are concerned that sponsors do not appear to be routinely identifying whether there may be a regulatory conflict and, where such a conflict is identified, managing it accordingly. We are therefore proposing to clarify LR 8.3.7BR so that a sponsor must, as part of its ongoing conflicts checking procedures, take all reasonable steps to identify conflicts that could adversely affect its ability to perform its functions properly under LR 8, including its obligations under LR 8.3.1R. The reasonableness of the steps a sponsor takes to identify and manage conflicts of interest is a matter of professional judgement and may vary according to the nature and circumstances (including whether the sponsor appointment is required as a matter of urgency, for instance in a rescue situation)

of the sponsor service in question. To the extent this does not already occur, we expect that sponsors will seek to ensure that terms of engagement entered into with issuers will explicitly recognise that the sponsor has regulatory duties that cannot be overridden. We also anticipate that sponsor firms will, if they do not already do so, arrange training and education on regulatory conflicts for staff engaged in the provision of sponsor services.

- 3.29** We are also proposing formal guidance at LR 8.3.12AG that seeks to clarify that the rules on conflicts identification and management apply before a sponsor begins to provide a sponsor service and for so long as it provides a sponsor service. As a result of our proposals on the definition of sponsor services, sponsors should therefore be aware that if, for example, they contact the UKLA to seek guidance on a proposed transaction, they would need to take all reasonable steps to identify conflicts of interest that may adversely affect their ability to carry out their LR 8 functions prior to doing so. As already noted above, what is reasonable depends on all the circumstances, including the urgency of the matter. Furthermore, a sponsor will need to ensure it refreshes its conflicts checks at appropriate points for the duration of the relevant sponsor service.
- 3.30** The proposed amendments to LR 8.3R, as described above, are designed to strengthen and provide greater clarity around the responsibilities of a sponsor. In addition, they seek to ensure that sponsors act with integrity and are clear about the standards of care expected of them when performing sponsor services. Furthermore, sponsors will be required to extend their conflicts checking procedures so as to ensure that they consider regulatory as well as client conflicts both before taking on, and throughout the course of, a sponsor mandate.

Q21: Do you support the proposal to amend the Listing Rules (LR8.3) to clarify that a sponsor must, as part of its ongoing conflicts checking procedures, take all reasonable steps to identify conflicts that could adversely affect its ability to perform its functions under LR8?

Document retention

- 3.31** Sponsors are required to have appropriate systems and controls in place under LR 8.6.5R. Currently, LR 8.6.12G provides formal guidance as to whether a sponsor will generally be regarded as having appropriate systems and controls. This guidance includes whether a sponsor has effective arrangements for creating and retaining adequate records regarding its provision of sponsor services. Similar guidance is found at LR 8.6.13AG(4) on recording conflicts decisions and deliberations.
- 3.32** Over the course of our reviews of sponsor transactions we have found a number of examples of sponsors finding it difficult to identify adequate records or retrieve records in a timely manner in relation to their provision of sponsor services. Additionally, we

have found that sponsor firms have retained insufficient documentation to demonstrate the basis on which important decisions in relation to the application of the Listing Rules have been taken or the basis upon which declarations, assurances or opinions have been provided to the UKLA. Consequently, we are proposing to strengthen and clarify sponsors' record management obligations.

LR8.6.16AR – Requirement to retain records

- 3.33** Firstly, we are proposing a new LR 8.6.16AR that will require sponsors to retain accessible records that are sufficient to demonstrate the basis on which sponsor services have been provided, including the basis on which declarations, opinions, assurances or confirmations have been given to the FSA or the issuer, the basis upon which it provides LR 8.2.2R or LR 8.2.3R guidance to a listed company or applicant and the steps taken by the sponsor to comply with its conflicts obligations under LR 8.3.7BR, LR 8.3.9R and LR 8.3.11R. Secondly, we are proposing a new LR 8.6.16BG that provides formal guidance about features we would expect to see in effective record management systems, including that records should be capable of timely retrieval and include material communications that record the provision of sponsor services, including the provision of guidance or advice.
- 3.34** It should be noted that, because sponsors are required to provide (under LR 8.7.7R) an annual confirmation that they satisfy the criteria for approval as a sponsor (set out in LR 8.6.5R), the record-keeping requirements set out at LR 8.6.16AR(2) will apply to this confirmation and therefore, sponsors will be required to keep records of their assessment of whether or not, and the basis upon which, they meet the eligibility criteria.
- 3.35** Compliance with the proposed document retention provisions will also assist sponsors in being able to comply fully with an information request made under LR 8.7.1AR.

Q22: Do you support the proposal to amend the Listing Rules (LR8.6.16) so that sponsors are required to retain accessible records which are sufficient to demonstrate the basis on which sponsor services have been provided?

Sponsor notifications

- 3.36** LR 8.7.8R requires sponsors to provide notice to the FSA in writing on a number of matters that affect the corporate person or group of persons that comprises the sponsor, or employees engaged in providing sponsor services. We are proposing to amend the notification requirements following a number of situations we have encountered where our rules have not required sponsors to notify us of information that would have enabled us to monitor efficiently whether the sponsor firm continued to meet the requirements in LR 8. The proposals aim to ensure the UKLA promptly receives information that may impact a firm's compliance with the sponsor eligibility criteria or the sponsor regime as a whole.

LR 8.7.8 R(1)(a) and (b) – Notification affecting market confidence

- 3.37** In line with the other changes proposed to the sponsor notification requirements set out in LR 8.7.8R (as discussed below), we are proposing to amend LR 8.7.8 R(1) by introducing LR 8.7.8R(1)(a) and (b) that will require a sponsor to inform the FSA not only of: (a) a matter which would be relevant to the FSA in considering whether the sponsor continues to comply with the eligibility requirements in LR 8.6.5R, but also (b) other information that the sponsor reasonably believes could adversely affect market confidence in the sponsor regime.

LR 8.7.8 R(10) and (11) – Notification regarding reorganisations

- 3.38** We are proposing to amend LR 8.7.8 R(10) to ensure that sponsors notify the UKLA at an early stage in the event that a reorganisation, restructuring or change of control is intended to be undertaken. The present rules require such notification only once a reorganisation or change of control has taken place and we believe it is important that we have prior notice of such an event. This is because in some circumstances such events may render a sponsor unable to meet the approval criteria (for example, where a reorganisation will result in sponsor services being provided by a different entity to the approved sponsor). Furthermore, our proposed amendments to LR 8.7.8 R(11) seek to ensure that sponsors are under an obligation to notify the UKLA in the event that there is an unexpected change in the financial or trading position of the sponsor or its group of companies that could affect its ability to provide sponsor services.

LR 8.7.8AR – Notification regarding ongoing approval as sponsor

- 3.39** At present, LR 8.7.8R simply requires notifications to be made without clarifying what, if any, action the UKLA may be likely to require as a result of this information. There are notifications that are unlikely to impact on a sponsor firm's ability to comply with the LR 8.6.5R, such as a simple change of name. However, in other situations (such as a corporate re-organisation), a sponsor may find itself in a position where it is potentially ineligible. Accordingly, we are proposing a new LR 8.7.8AR that makes clear that in the event that a sponsor is required to notify the UKLA of a matter that could impact its eligibility, a sponsor is required to provide assurance that it is still eligible and the basis upon which the assurance has been given.

Q23: Do you agree with the proposal to amend the Listing Rules (LR 8.7.8) so that sponsors are required to notify the FSA of matters that would be relevant to the FSA in respect to: market confidence; reorganisations; and, ongoing approval as sponsor?

LR 8.7.21AG – Sponsor cancellation request pursuant to LR 8.7.22R

- 3.40** We are proposing to introduce LR 8.7.21AG, which will apply in the event that a sponsor is unable to provide the requisite assurance of ongoing eligibility under LR 8.7.8AR either

because it recognises that it has ceased to comply with the sponsor approval criteria or, because of a change of control or restructuring, sponsor services will be provided by a different entity to the approved sponsor. In these circumstances a sponsor should seek voluntary cancellation under LR 8.7.22R. If the UKLA believes that the sponsor is in breach of LR 8.6.6R (ongoing compliance with approval criteria) and the sponsor has not applied for voluntary cancellation under LR 8.7.22R, the UKLA may exercise its existing right to seek to start proceedings to remove the sponsor from the list of approved sponsors.

- 3.41** It may be that, in some instances, the UKLA will be able to work with the sponsor to identify immediate ways in which it can address the identified failing(s), which will mean the sponsor can continue to provide sponsor services. This will not always be the case, however. Should a sponsor submit a notice under LR 8.7.8R(10) and, as a result of a change of control, reorganisation or restructuring, a new corporate entity wishes to undertake sponsor services, the existing sponsor will need to make an application for voluntary cancellation and the prospective new sponsor (the new corporate entity) will need to apply for approval as a sponsor before it can perform any sponsor services.

Q24: Do you support the proposal to amend the Listing Rules (LR 8.7.21AG) so that sponsors are required to submit a cancellation request in the event that they are unable to provide the requisite assurance of ongoing eligibility?

LR8.7.12 – Conflicts declarations

- 3.42** We are proposing that sponsors should no longer be required to submit a conflicts declaration under LR 8.7.12R. This particular declaration underpins the overarching Principle for Sponsors regarding the identification and management of conflicts and this principle applies on an ongoing basis to the broad provision of sponsor services. We have come to the view that requiring a conflicts declaration to be submitted to us at certain points in time on transactions is not consistent with the ongoing obligation to comply with the overarching conflicts identification and management principle. We therefore propose to delete LR 8.7.12R to LR 8.7.15R inclusive. We also propose to clarify, in LR 8.3.13G, that the rules on conflicts apply prior to a sponsor providing a sponsor service and for so long as it continues to do so. This proposal, together with the proposed extension of the definition of sponsor services to include sponsor communications with the FSA, means that a sponsor will need to comply with the rules on conflicts before having discussions with us in connection with a sponsor service. We will continue to monitor a sponsor's compliance with this important principle during the course of our transaction reviews and other ad hoc discussions that we may have with sponsors.

Q25: Do you support the proposal to amend the Listing Rules (LR8.7 and LR 8.3.13G) so that sponsors are no longer required to submit Conflicts Declarations?

LR 8.6.17R – Regular reviews

- 3.43 We are proposing to delete LR 8.6.17R, which is the requirement for a sponsor to carry out a regular review to ensure that it meets the approval criteria set out at LR 8.6.5R. We consider that this duplicates the need for a sponsor to meet the approval criteria at all times as required by LR 8.6.6R. We believe that it is implicit that sponsors are unable to comply with LR 8.6.6R unless they monitor their eligibility appropriately and on an ongoing basis. We therefore intend to rely on LR 8.6.6R in the event that we are not satisfied that a sponsor is able to comply with all requirements of LR 8.6.5R at any given time. The proposed changes to LR 8.6.16RA make clear that sponsors must ensure they keep records sufficient to demonstrate the basis upon which they comply with their ongoing eligibility obligations under LR 8.6.6R. Additionally, and as noted in paragraph 3.36, we are proposing to expand LR 8.7.8R(1) so that a sponsor must notify us should it become aware of any matter that, in its reasonable opinion, would be relevant to the FSA in considering whether the sponsor continues to comply with LR 8.6.6R. Furthermore, we are proposing LR 8.7.8R(9) so that a sponsor will be obliged to notify us where it identifies or otherwise becomes aware of material deficiencies in its sponsor systems and controls.

Q26: Do you support the proposal to amend the Listing Rules (LR8.6.17R and LR 8.7.8R(9)) so that sponsors are no longer required to carry out regular reviews?

Responsibilities of issuers

- 3.44 Listed companies and applicants are under an obligation to appoint a sponsor to meet their Listing Rule obligations, which include responsibilities and duties owed to the FSA. A sponsor will therefore have obligations both to its client and to the FSA, and these dual responsibilities of the sponsor can in some circumstances create a tension between the client's interests and those of the FSA. However, it is important that listed companies and applicants understand and are supportive of the sponsor regime and do not impede a sponsor's ability to meet its obligations to the FSA. We have identified situations where it appears that an issuer has compromised the ability of a sponsor to carry out its role properly. We therefore propose to introduce a specific obligation on issuers and applicants to co-operate with their sponsor to enable the sponsor to discharge its obligations to the FSA under LR 8.3 (which include the Principles for Sponsors). We have reflected this in LR 8.5.6R. We do not consider that this will be an onerous obligation on an issuer but consider that it is important to state our expectations in this area.

Q27: Do you support the proposal to amend the Listing Rules (LR8.6.5R) to introduce a specific obligation on premium listed companies and applicants to co-operate with their sponsor to enable the sponsor to discharge its obligations to the FSA?

Miscellaneous

- 3.45 The following minor drafting changes are proposed to address typographical errors or to clarify certain aspects of the rules or guidance as set out in LR 8:
- a) adding the words ‘and advisers’ at the end of LR 8.3.2G to reflect that the FSA will, where appropriate, communicate directly with not only the listed company or applicant, but their respective advisers;
 - b) re-wording LR 8.3.5AR to ensure that where, in the course of providing a sponsor service, a sponsor becomes aware that it or its client is failing or has failed to comply with any of its obligations under the Listing Rules or Disclosure Rules or the Transparency Rules, the sponsor must promptly notify the FSA;
 - c) including LR 8.4.1(4)R to mirror the requirements of LR 8.2.1R(d);
 - d) including references to LR6.1.1AR in LR8.4.1R and LR8.4.7R in order to be consistent with the proposed LR6.1.1AR. These changes will have the effect of requiring a sponsor to comply with the rules in relation to a further issue rather than a new application where LR6.1.1AR applies;
 - e) amending LR 8.4.14R to reflect the fact that this rule only applies ‘if’ a sponsor is appointed in accordance with LR8.2.1R (in connection with a transfer between listing categories);
 - f) to reflect the fact that sponsor firms, rather than individual employees, provide sponsor services, replacing any references (for example in LR 8.6.12G (2), (3) and (7)) to ‘employees providing sponsor services’ with references to ‘employees engaged in the provision of’ such services by the sponsor;
 - g) deleting LR 8.6.12G (5) (requirement to keep records in relation to the provision of sponsor services generally) as a consequence of the new record-keeping obligations in LR 8.6.16AR;
 - h) introducing as LR 8.6.12G(8) general guidance (in addition to the specific guidance relating to conflicts in LR 8.6.13AG) on a sponsor having effective systems and controls to identify and manage conflicts of interest;
 - i) deleting LR 8.6.13AG(4) (requirement to keep records in relation to the identification and management of conflicts) as a consequence of the new record-keeping obligations in LR 8.6.16AR(4);
 - j) amending LR 8.6.19(2)(b)R to reflect the availability of the UKLA from 7am (rather than 8am as previously) to 6pm in relation to sponsor transactions;
 - k) replacing, in LR 8.7.7R, the imprecise requirement for a sponsor to provide ‘details’ of the basis upon which it considers it satisfies the criteria in LR 8.6.5R with a requirement to provide ‘evidence’ of that opinion;

- l) deleting all references to Conflicts Declarations and regular reviews (or the findings thereof) as a consequence of the proposed rule changes outlined in this document; and
- m) reviewing and updating where relevant references to 'listed companies' and 'issuers' to reflect the recent changes to the listing categories (for example by introducing references in LR 8.2.2R and LR 8.2.3R to a company 'with a premium listing').

Q28: Do you agree with the proposed amendments set out in paragraph 3.45?

4

Transactions

LR 2 Requirements for all securities

- 4.1 As a result of our Listing Regime Review⁸, we extended the requirement to offer pre-emption rights to shareholders of overseas issuers of premium listed equity shares. Currently, this requirement (LR 2.2.15R) sits in LR 2 and we are proposing to move it to LR 6 as it relates specifically to companies seeking a premium listing of their equity shares and sits more appropriately there. Accordingly, we are also proposing to amend LR 15 to refer to LR 6.

LR5 Suspending cancelling and restoring listing: All securities

- 4.2 Currently, in the case of a takeover offer, a separate circular and prior approval of the cancellation of shares are not needed where an offeror meets the requirements in LR5.2.10R, i.e. it states in an offer document, or any subsequent related circular, that a notice period of not less than 20 business days before cancellation of listing will begin either on the offeror attaining 75% acceptances or on the first date of issue of compulsory acquisition notices under Section 979 of the Companies Act 2006.
- 4.3 In our Listing Rules Technical Note⁹, we highlighted to issuers that, in order to take advantage of LR5.2.10R and notify a cancellation in this way, it is not sufficient to refer to the notice period beginning when the offer is declared unconditional, as an offer declared unconditional at 50% acceptances would clearly not meet the 75% approval required under LR 5.2.10R(1). We are proposing to include new guidance as LR5.2.10AG to clarify this point.

8 PS10/2: Listing Regime Review Feedback on CP09/24 and CP09/28 with final rules
www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_02.shtml

9 UKLA Technical Note: Listing Rules, www.fsa.gov.uk/Pages/Doing/UKLA/ukla_publications/index.shtml

LR 9 Continuing obligations

Calculation of discount

- 4.4 LR 9.5.10R(1) specifies the maximum discount that can be applied to offers and placings. We are proposing to clarify when the calculation of the discount should be made by including wording based on our Listing Rules Technical Note. LR 9.5.10R(1) explains that, for a placing, the reference point for the discount is at the time the placing is agreed and, for an offer, the reference point for the discount is at the time of announcing the terms.

Reference point for discount

- 4.5 When calculating the discount, LR 9.5.10R(2) requires the reference point to be the middle market quotation for the shares, as derived from the daily official list of the London Stock Exchange (SEDOL) or any other publication of a RIE, showing quotations for listed securities for the relevant date.
- 4.6 SEDOL is available from 06.00 (GMT) each business day and includes the official closing quotation from the previous business day. While the use of SEDOL as a reference price would be appropriate when a placing is entered into at the start of the trading day, it can be problematic for a placing agreed during the course of the day.
- 4.7 We are proposing to introduce a new rule at LR 9.5.10R(2A) based on our Listing Rules Technical Note to clarify that, where an offer or placing is agreed during the trading day, the FSA may consider it appropriate to use an on-screen intra-day price as a reference point, provided it is from a reasonable source that is widely accepted by the market. The FSA will consider each incident on a case-by-case basis.

LR 10 Significant transactions: Premium listing

Revenue nature

- 4.8 We are proposing to remove the references to 'revenue nature' within LR 10.1.3R(3) and LR 11.1.5R. LR 10 is intended to cover transactions that are outside the ordinary course of the listed company's business (as set out in LR 10.1.4G). We find that the 'revenue nature' limb (i.e. accounting treatment) is no longer determinative of whether a transaction is within the ordinary course of business for a listed company. Market participants have also indicated that for some sectors, it can be difficult to distinguish some transactions as being capital or revenue in nature.

Q29: Do you support the proposal to remove reference to 'revenue nature' from LR 10.1.3R(3) and LR 11.1.5R of the Listing Rules?

Class tests

- 4.9** We are proposing to provide greater clarity to the application of the class tests. Firstly, we propose to make clear that where issuers wish to make adjustments to the figures used in calculating the class tests because they believe a class test result might be anomalous under item 10G within Annex 1 of LR 10, they must discuss this with the FSA before the class tests crystallise. This new guidance is set out in LR 10 Annex 1 11G and supports the current position that, if the class tests are proposed to be calculated other than as prescribed by the Listing Rules, this must first be discussed and agreed with the FSA.
- 4.10** Secondly, we are proposing to amend the rule on the profits test in LR 10 Annex 1 4R to make clear that the test is not applicable for an acquisition or disposal of an interest in an undertaking that does not result in consolidation or deconsolidation of that target. We also propose to add guidance to clarify that, for losses of the issuer and/or target, the profits test should still use the loss in the calculation and simply disregard the negative. These proposed changes reflect our current practice, with the former point set out in the Listing Rules Technical Note.
- 4.11** Thirdly, we are proposing to make clear within LR 10 Annex 1 8 R(3) that adjustments for post balance sheet transactions can only be made if those transactions have completed. This reflects our current practice and the position outlined in the Listing Rules Technical Note.
- 4.12** Lastly, we are proposing to include new guidance at LR 10.8.9G to clarify that, where the issuer enters into a put or call option in a joint venture exit arrangement where the exercise is controlled solely by the other party, such arrangements must be classified at the point the issuer loses the discretion over their exercise. This reflects our current practice and the position outlined in the Listing Rules Technical Note.

Class 3 transactions

- 4.13** We are proposing to dispense with the notification requirements for class 3 transactions by deleting LR 10.3 from the Listing Rules. Market participants have indicated that these rules provide no additional value above the disclosure obligations of the Disclosure Rules and Transparency Rules because DTR 2.2 already requires issuers to announce price-sensitive information when certain criteria are met. In addition, market participants consider that the class 3 notification requirements result in immaterial information being disclosed to the market because the Listing Rules do not set a minimum threshold for a class 3 transaction, or a time limit for transactions that must be included. So, a transaction entered into several years ago could come into scope if the company chooses to release details to the public.

- 4.14 We are also proposing three minor consequential amendments as a result of this change. The first of these is to substitute language that will still allow the operation of the concessionary provision within LR 10 Annex 1 5R (3A); the other changes are to remove the labelling provision at LR 10.2.2 (1) and within the Glossary.

Q30: Do you support the proposal to dispense with the notification requirements for class 3 transactions by deleting LR 10.3 from the Listing Rules?

Break fee arrangements

- 4.15 In the Listing Rules Technical Note we noted that there had been market developments concerning the type of arrangements that seem to be designed to serve a similar purpose to a conventional break fee. Consequently, we sought feedback from market participants via the Listing Authority Advisory Committee (LAAC) on our approach in this area, which suggested that the UKLA should retain a role in regulating break fees because there should be some shareholder control over the ability of issuers to enter into arrangements that may result in cost without any readily measurable benefit.
- 4.16 LR10.2.7R provides some shareholder control over the ability for issuers to enter into arrangements that may result in cost of this sort. The ‘money for nothing’ element of such arrangements is why such transactions have a much lower threshold before triggering the requirement for shareholder approval under the Listing Rules.
- 4.17 Given the Takeover Panel’s recent changes to the Takeover Code, it may be that fewer break fee arrangements are proposed but we still believe it is necessary to propose some changes to clarify further our approach in this area. Firstly, we propose to rename the term used within the Listing Rules to ‘break fee arrangement’. We believe that our current term ‘break fee’ may create confusion as transactions caught by LR 10.2.7R may take different forms to a simple fee, and there may be more than a single amount payable under such arrangements on a particular transaction, or in relation to the same target assets or business within a 12 month period.
- 4.18 Secondly, we are proposing to amend our definition to reflect that the purpose served by the arrangement is the key factor in determining whether something should be caught as a break fee arrangement. Our proposed new definition highlights that if the purpose of an arrangement is that a compensatory sum will become payable by an issuer to another party (or parties) to a proposed transaction if the proposed transaction fails or is materially impeded, and there is no independent substantive commercial rationale for the arrangement (i.e. an element of ‘money for nothing’), it will be caught as a break fee arrangement. In addition to considering the key question of what purpose is served by a particular arrangement, a crucial part of the test of a break fee arrangement is that the issuer must be obliged to make the payment *to or for the benefit of the other party* to the failed transaction. This is also reflected in the definition set out in LR 10.2.6AR.

4.19 We propose to complement the amended rule with some new guidance at LR 10.2.6BG to further clarify the types of arrangements that will, and will not, be caught under the rule and to illustrate the types of arrangements that might be described as having an independent substantive commercial rationale. Although the list of examples included within the guidance is not comprehensive, it has been included to illustrate how the rule should operate and to reinforce that the test of whether an arrangement is caught as a break fee arrangement should be applied irrespective of the form of a particular arrangement.

Q31: Do you agree that the proposed guidance on operation of our proposed new definition of break fee arrangements (LR10.2.6 and LR10.2.7) provides sufficient direction?

4.20 We are also proposing to amend the rules on the manner in which break fee arrangements should be calculated and/or aggregated. The proposed amendments to the rule at LR 10.2.7R make it clear that a number of separate arrangements for the same transaction may need to be added together for the purpose of calculating the total sums payable. The rule also reinforces that any break fee arrangements that have been paid (or have crystallised) or might become payable under separate transactions relating to the same target assets or business will fall to be aggregated under LR 10.2.7R(1A)(a), unless these arrangements have previously been approved by shareholders. The intention of this proposal is to ensure that the maximum amount payable under break fee arrangements for a particular transaction, or for transactions relating to the same target assets or businesses (if there have been any in the past twelve months before agreeing any new such arrangements) must be included within the total value of sums payable referred to at LR 10.2.7R.

Supplementary circulars

4.21 We have encountered situations where a significant change or a significant new matter has arisen following the publication of a circular but before the shareholder meeting convened to seek shareholder approval for a transaction that expressly requires such approval under the Listing Rules. We are proposing a new LR 10.5.4R, which will require listed companies to send a further circular to shareholders if a significant change or a significant new matter is considered to constitute necessary information to allow shareholders to make a properly informed decision, on the matters to be voted upon. This is an important shareholder protection so we are proposing that it applies to all transactions where a vote is expressly required by the Listing Rules.

4.22 We emphasise that a circular required in such circumstances will be subject to LR 13 requirements, including the proposed new LR13.1.9R. Therefore, if the significant change or significant new matter arises just before a convened shareholder meeting, it will be necessary to adjourn the meeting so that the supplementary circular is sent to shareholders at least seven days before the shareholder meeting i.e. allow sufficient time for shareholders to consider the new information before voting.

- 4.23** Currently, LR10.5.2R requires further shareholder approval for any material change to the terms of a class 1 transaction or reverse takeover, which arises following the production of a circular but before completion of the transaction. Our new rule, LR 10.5.4R, seeks to catch any significant change or any new significant matter arising following publication of a circular but before the shareholder vote. In order to address the overlap of these rules on the time period between the production of a circular and shareholder vote, we are proposing to amend LR 10.5.2R so that its application is confined to material changes that arise after shareholder approval has been obtained but before completion. The threshold for requiring a further circular either before or after shareholder approval has been obtained is different in each case. The requirement to seek fresh approval (i.e. material changes to the terms of the transaction, as set out in LR 10.5.2R) differs from the supplementary circular requirement arising from changes that are made or developments that arise before the receipt of shareholder approval (i.e. a broader range of matters is covered by the proposed LR10.5.4R because it relates to significant changes to a transaction or significant new matters that might arise and that would only need to constitute necessary information for shareholders to make a properly informed decision, rather than simply material changes to the terms of the transaction). The reason for this difference is that it is more onerous to obtain shareholder approval again than it is to send additional information to shareholders in advance of a vote that is yet to take place (even if that means potentially adjourning a shareholder meeting).
- 4.24** In addition, we are proposing to replicate the material change requirement within LR 11 (LR 11.1.7AR to LR 11.1.7CR) because we believe shareholders should be afforded similar protections for related party transactions.

Q32: Do you support the proposal to amend the Listing Rules (LR 10.5.2, LR10.5.4 and LR 11.1.7) to require premium listed companies to send a supplementary circular to shareholders in the event a significant change or a significant new matter is considered to constitute necessary information?

LR 11 Related party transactions: premium listing

Transactions in the ordinary course of business

- 4.25** We stated in the Listing Rules Technical Note that we would propose an amendment to LR 11.1.5R(2) to exclude transactions in the ordinary course of business from this limb of the related party transaction rules, to ensure consistency of treatment across the three limbs of LR11.1.5R, as the other two limbs already explicitly exclude transactions of a revenue nature in the ordinary course of business. We are therefore proposing to make this amendment now and also to incorporate a change to ensure that all limbs of LR 11.1.5R refer only to ‘transactions in the ordinary course of business’, with no

reference to ‘revenue nature’. This additional change will provide consistency with the proposed amendment at LR 10.1.3R(3) and is proposed for the same reasons outlined in paragraph 4.8.

Q33: Do you support the proposal to remove the reference to ‘revenue nature’ from LR 11.1.5R of the Listing Rules?

Aggregation of transactions in any 12 month period

4.26 There has been some confusion in the market as to whether the aggregation requirement contained in LR 11.1.11R(1) should apply to smaller related party transactions that are already captured by LR11.1.10R, and small related party transactions as described within item 1 of Annex 1R to LR 11. Smaller related party transactions captured by LR11.1.10R, and small related party transactions as described within item 1 of Annex 1R to LR 11 are not subject to shareholder approval and must therefore still be aggregated for the purposes of LR 11.1.11R. We are proposing to make this more explicit within the drafting of LR 11.1.11R.

Definition of associate

4.27 We are proposing to amend the definition of an ‘associate’ to include partnerships in which a related party holds a significant interest. This change is proposed to reflect existing practice and the position set out in the Listing Rules Technical Note. The associate rules in LR 11 are intended to extend the protections of LR 11 to transactions where it would be appropriate to look through the legal counter-party to a related party that can in substance be seen to be standing behind it. The current definition of ‘associate’ does not include a partnership in which a related party holds a significant interest. However, we consider that LR 11 should operate in the same way as a corporate counterparty. For example, a transaction between a listed company and a partnership in which one of its directors had a 30% interest should be treated as a related party transaction and so caught by LR 11. We are proposing to reflect this within the definition of an ‘associate’.

Directors’ indemnities and similar arrangements

4.28 Our intention for the treatment of directors’ indemnities and similar arrangements under the Listing Rules, as set out in PS07/8¹⁰, was to ensure that the related party transaction rules do not apply to directors’ ‘loans’ that function in broadly the same way as an indemnity and are exempted from the need for shareholder approval under the Companies Act 2006. However, we proposed to include ‘loans’ as permitted by sections 204 and 205 of the Companies Act 2006 as they operate in a similar way to an indemnity.

¹⁰ PS07/8: Amendments to the Prospectus and Listing Rules – Feedback on CP06/17 and made rules www.fsa.gov.uk/pages/Library/Policy/Policy/2007/07_08.shtml

- 4.29 There seems to be no reason that loans for the funding of defence and regulatory investigations, which are permitted by section 206 of the Companies Act, should be excluded from the exemption within LR 11 Annex 1.1 R 5 (c) since they operate in a similar way to an indemnity. We are therefore proposing to include such loans within the exemption.

Directors' indemnities and similar arrangements – exempted from LR10?

- 4.30 A question remains as to whether the exemption for loans granted to directors for the purposes set out in sections 204, 205 and 206 of the Companies Act 2006, which are exempted from the need for shareholder approval under the Companies Act, should also be exempt from the requirements of LR 10 (if so, proposed new guidance could be provided within LR 10.2.5 G(5)).
- 4.31 Our current approach in LR 10 means that such loans would be classifiable and, if above the 25% threshold, would be treated as a class 1 transaction and subject to shareholder approval. Market participants have indicated to us that directors are often unwilling to accept a cap on such loans because of the potentially significant costs of funding defence actions. They believe that loans granted to directors as permitted by sections 204, 205 and 206 of the Companies Act 2006 should be exempt from LR10. However, given the threshold for shareholder approval of such loans within LR 10 is already quite high (i.e. 25%) we are concerned that shareholders will want to exercise control over the ability for a listed company to enter into loans above this level. We would welcome further views on this point.

Q34: Do you support our proposals in relation to directors' indemnities and similar arrangements (LR10 and LR11)?

LR 12 Dealing in own securities and treasury shares: premium listing

- 4.32 We are proposing to amend LR 12.2.1R to make clear that the buyback programmes referred to in LR 12.2.1R(1) and (2) must be in place prior to the start of the relevant prohibited period.

Purchase of own equity shares

- 4.33 Due to an oversight when we implemented the new Listing Regime in July 2005, we created an unintended prohibition within LR 12.4.2R. This rule currently requires a listed company that purchases 15% or more of any class of its equity shares (except treasury shares) to do so by way of a tender offer to all shareholders of that class. The rule currently does not allow shareholders to agree to share buybacks above 15% unless in relation to a tender offer. We cannot see a reason for this prohibition to exist and therefore we are proposing to amend LR 12.4.2R to remove this.

- 4.34** Instead we are proposing to introduce a new rule LR12.4.2AR to make it clear that a listed company can purchase 15% or more of any class of its own equity shares, provided that the full terms of the share buyback are specifically approved by shareholders.
- 4.35** When considering the changes proposed above, we have reflected upon what we are seeking to achieve in this area of the Listing Rules. A principal reason for these rules is to ensure that management and substantial shareholders cannot implement a share buyback to concentrate control of a company among certain existing holders. While proposing to relax the provisions as outlined above we also propose to introduce a new rule at LR13.7.1R (1) (g) requiring listed companies to explain the potential impact of a proposed share buyback, including whether control may be concentrated following the transaction.

Q35: Do you agree with the proposed amendments to the Listing Rules (LR12.2, LR12.4 and LR13.7) in relation to the purchase of own equity shares?

Treasury shares

- 4.36** LR 12.6.4R requires an announcement to be made at a specific time when any sale for cash, transfer for the purposes of or under an employees' share scheme, or cancellation of treasury shares by a listed company is made. Such a transaction must be notified to a RIS as soon as possible and by no later than 7.30am on the business day following the calendar day on which the sale, transfer or cancellation occurred. One effect of this rule is that the company must make an announcement every time an employee exercises a share option and it is satisfied by the transfer of shares from treasury.
- 4.37** Market participants have suggested that LR 12.6.4R creates an unnecessary administrative burden on companies as the obligations go beyond what is required when a share option exercise is satisfied by a fresh issue of shares, or by a transfer of shares out of an employee benefit trust, even though the transaction is functionally equivalent and the net economic and accounting effect on the company is the same. Furthermore, they argue that, from the perspective of the market, the fact that treasury shares, rather than new shares, are being used to satisfy option exercises is irrelevant.
- 4.38** We are therefore proposing to introduce a threshold of 0.5% requiring companies to announce any issue, sale or cancellation of treasury shares under an employee share scheme over 0.5% of a company's issued share capital (excluding treasury shares).

Q36: Do you agree with the 0.5% threshold proposal (LR12.6.4R) requiring companies to announce any issue, sale or cancellation of treasury shares under an employee share scheme over 0.5% of a company's issued share capital (excluding treasury shares)?

LR 13 Contents of circulars: premium listing

Incorporation by reference

- 4.39 Under the Prospectus Rules, information about another company can be incorporated by reference into a company's prospectus provided it meets the requirements of PR 2.4. The approach under the Listing Regime is different. Only information that has previously been circulated to a company's shareholders, or information of the company that has been filed with the FSA under a regulatory requirement, can be incorporated by reference into a circular of that company. We are proposing to make this clear within LR 13.1.3R.

Information-only circulars

- 4.40 We often receive queries as to whether we vet and approve 'information only' circulars i.e. circulars that do not relate to a shareholder vote. We would very rarely vet such circulars unless they contain unusual features or unless they are of a kind prescribed by LR 13.4.3R. We are therefore proposing to include information circulars within the exemption in LR13.2.2R.
- 4.41 We do not consider this will significantly change our existing practice in this area because we will continue to approve 'information only' circulars that contain unusual features, for example, shareholder ratification circulars. We will also continue to approve circulars that may not convene a shareholder vote but which still relate to a shareholder vote, such as supplementary circulars described within the proposed new LR 10.5.4R and existing LR 10.5.2R (and the similar provisions proposed for LR 11).

Posting of circulars

- 4.42 We have encountered problems with issuers wishing to send circulars to shareholders containing information material to a shareholder vote required by the Listing Rules just prior to shareholder meetings. The problem is typically encountered when there has been a material change to the terms of a proposed transaction in between a circular being sent to shareholders and the proposed shareholder meeting to vote upon the resolutions contained in the original circular. We want to ensure that when information is sent to shareholders that is material to the shareholder approval (where such approval is expressly required under the Listing Rules), there is sufficient time for shareholders to consider that information before it is voted upon. We are therefore proposing to add wording to LR13.2.10R that the circular must be posted to shareholders as soon as it has been approved and add a rule at LR13.1.9R that a circular must be sent to shareholders to allow sufficient time for review and consideration of the circular in advance of a vote that is expressly required under the Listing Rules, and in no case later than seven days before the date of a meeting.

Q37: Do you support the proposal to amend the Listing Rules (LR13.1 and LR13.2) so that the circular must be posted to shareholders as soon as it has been approved and our proposals to require circulars to be sent to shareholders no later than seven days before the date of a meeting?

Responsibility statements

4.43 LR 13.4.1R(4) requires the directors of the company to include a declaration within a class 1 circular taking responsibility for its contents. This requirement is different from the requirement for an equity prospectus where both the company's directors (and proposed directors) and the issuer must be referred to within the statement declaring responsibility for the document.

4.44 We are proposing to extend LR 13.4.1R(4) to refer to the issuer and its directors in order to ensure consistency in relation to circulars and prospectuses between the two regimes.

Q38: Do you support the proposal to amend the Listing Rules (LR13.4.1R(4)) so that both the issuer and its directors will be referred to as taking responsibility for the contents of a class 1 circular?

Related party circular

4.45 LR 13.6.1R(7) states that for a transaction where any percentage ratio is 25% or more, the information required to be included in a class 1 circular must also be included within the related party circular. For example, such additional disclosures would include a responsibility statement and target financial information. For the reasons below, we are not convinced that this requirement offers significant value, therefore we are proposing to delete LR 13.6.1R(7).

4.46 We find that the only transactions that are caught under this rule, which would not already be caught under LR 10, are transactions such as placings to related parties or amendments to investment management agreements. We find in practice that many of the class 1 disclosure obligations are not relevant to such transactions and we are therefore asked to waive such requirements. We cannot envisage a transaction that would be caught under this rule where class 1 disclosure obligations are relevant and that would not already be caught under LR 10 in its own right.

4.47 We also consider that there is already sufficient protection provided under other areas of the Listing Rules and Prospectus Rules for transactions that may currently trigger the disclosure obligations for class 1 transactions under this rule. For example, if a placing to a related party is of sufficient size, there will be a requirement to produce a prospectus that

must include a working capital statement, or in the case of a debt for equity swap or similar arrangement that requires shareholder approval, the disclosure obligations required by LR 9.5.12R will offer protection.

Q39: Do you support the proposal to remove the requirement (LR13.6.1R(7)) for listed issuers to include class 1 disclosures within a related party circular, in the event a transaction has a percentage ratio greater than 25%?

Risk factors

- 4.48** We are increasingly concerned that class 1 circulars seek to disclose a vast number of risks that are not material to the consideration of the proposed transaction. The over-disclosure of risks within class 1 circulars may prevent shareholders from understanding those risks that are materially relevant to the vote in hand. We are proposing to include a new provision within LR13 Annex 1.1 to reinforce that it should be only those risk factors that are material to the proposed transaction or those risks that are new or changed risks to the group as a consequence of the transaction which should be disclosed in a class 1 circular.

Documents on display

- 4.49** The Sale and Purchase Agreement (SPA) is a key piece of information for shareholders when considering a class 1 transaction because it sets out the subject of the transaction. We are therefore proposing to expressly include the SPA within the requirement for documents to be put on display under LR 13 Annex 1 R.

LR15: Closed-Ended Investment Funds: premium listing

Transactions with related parties

- 4.50** If an investment manager is owned or controlled by another entity, or under common control with another entity, that party may be able to take advantage of its position (or there may be a perception it is able to do so). Therefore, we believe shareholders should be afforded the protection of the related party transaction rules set out in LR 11 and LR 15.5.
- 4.51** We are proposing to amend LR15.5.4R and LR15.5.5R to ensure consistency with the related party regime by clarifying that the related party also includes any member of the investment manager's group, to reflect current market practice.

5

Financial information

Introduction

- 5.1 This section proposes amendments and updates to Chapters 6 and 13 of the Listing Rules, neither of which have been substantially updated for several years. The proposals address the following issues:
- clarification of the FSA's existing approach;
 - codification of material currently contained in the Technical Note¹¹ on the Listing Rules published on the UKLA website;
 - introduction of new rules and guidance to reflect market practice;
 - updating of our rules to take account of new external guidance;
 - improvement to the clarity and transparency of some rules and guidance;
 - removal of confusion caused by the interaction of some current listing rules; and
 - re-ordering of some of the rules to add greater clarity of application.
- 5.2 The proposals focus on two main areas: the financial information required when assessing eligibility for a premium listing, and the financial information a premium listed company is required to include in a circular to its shareholders seeking their approval for a class 1 transaction.

Application of Chapter 6

- 5.3 We are proposing to amend LR 6.1.1R to provide for an exception to the application of Chapter 6. New rule LR 6.1.1A reflects the FSA's existing approach that Chapter 6 does not apply where an existing premium listed company sets up a new holding company, provided that no transaction is being undertaken that would increase the assets or liabilities of the group. 'Transaction' in this context has the meaning set out in Chapter 10 of the Listing Rules, relating to significant transactions undertaken by companies with a premium

11 UKLA Technical Note: Listing Rules, www.fsa.gov.uk/Pages/Doing/UKLA/ukla_publications/index.shtml

listing, and therefore would exclude, for example, a straight fundraising. Where the introduction of a new holding company results in the increase of the group's assets or liabilities, this will require a renewed eligibility exercise.

Q40: Do you support the proposal to amend the Listing Rules (LR6.1.1R and LR6.1.1A) to reflect the FSA's current approach of not applying Chapter 6 where an existing premium listed company sets up a new holding company, provided that no transaction is being undertaken that would increase the assets or liabilities of the group?

Historical financial information

- 5.4 We have taken the opportunity to refer to 'historical financial information' throughout LR 6 rather than 'accounts' as we believe that this is a more appropriate term to cover both audited accounts and financial information prepared specifically for the prospectus, which has been reported on.

Age of financial information

- 5.5 At present LR 6.1.3R(1)(b) requires that a new applicant has financial information that is less than six months old at the date of the prospectus. PR 5.1.1R (stemming from Article 10.1 of the Prospectus Directive) allows a prospectus to be valid for 12 months following its approval and thus there is a risk that the actual admission of the securities may not occur for a period of up to 18 months after the last balance sheet date of the information required under LR 6.1.3R. Therefore, in order to mitigate the risk that this poses, we propose to amend LR 6.1.3R(1)(b) to limit the date of admission to three months after the date of the prospectus, thereby limiting the age of the financial information to nine months.
- 5.6 We are mindful that the potential effect of this proposed change could be to shorten the timetable on some initial public offerings (IPOs), where an offer is being made prior to admission, or create potential problems with reverse takeovers, where there is a scheme of arrangement or issues where there are competition matters to be resolved. However, having studied the timetables of a sample of recent issues, we believe the proposed nine month period will accommodate these transactions.

Q41: Do you support the proposal to amend the Listing Rules (LR6.1.3R(1)(b)) to limit the date of admission of the securities to listing to a date not more than 3 months after the date of the prospectus?

Independence of reporter

- 5.7 Where financial statements are reported upon specifically for the purpose of a prospectus, it may be that the person undertaking this work is not regarded as an auditor for the purposes of the engagement, but is referred to by another title, such as reporting accountant. Therefore, we are proposing to amend LR 6.1.3R(2) to remove the reference to auditors and focus on the independence of the person providing the opinion.

Q42: Do you agree with the proposal to amend the Listing Rules (LR6.1.3R(2)) to remove the reference to auditors and focus on the independence of the person providing the opinion?

Modifications to opinions

- 5.8 We define modifications widely to include such items as emphases of matter, but we have deemed issuers to be eligible in certain circumstances, notwithstanding the presence of such modifications in some or all of their audit reports for the track record period. Hence we are proposing to include in LR 6.1.3AG new guidance describing the types of modification to the opinion on the audited accounts that may be acceptable to the FSA based on our practice to date. The two situations are: where the opinion on the final period is unmodified, but there is an emphasis of matter in the earlier years; and, where the final period is modified to record an emphasis of matter with regard to going concern, but the applicant has sufficient working capital for the next 12 months at the date of the prospectus, due to a concurrent fundraising.

Q43: Do you agree with the proposal to amend the Listing Rules (LR6.1.3AG) to include new guidance describing the types of modification to the opinion on audited accounts which may be acceptable to the FSA based on our current practice?

Sufficiency

- 5.9 We propose to include a new section dealing with the sufficiency of the historical financial information to give more clarity and transparency to our rule on the requirements for historical financial information which currently sits at LR 6.1.4R as we presently receive many questions relating to this area.
- 5.10 We are proposing to clarify our existing approach to the application of the 75% test by setting out the matters we take into consideration, at LR 6.1.3CG. The guidance explains that we will take account of all the acquisitions undertaken during the three year period as well as subsequent acquisitions up to the date of the prospectus, and compare the size of the acquired entities to the size of the group as enlarged by the relevant acquisitions.
- 5.11 Where an applicant has made one or more acquisitions during the period covered by its historical financial information, the applicant may need to provide pre-acquisition

financial information for one or more acquisitions in order to satisfy the requirement in LR 6.1.3BR that the historical financial information represents at least 75% of the new applicant's business.

- 5.12** In this situation, the applicant must be able to present published or filed pre-acquisition financial information on enough of the acquisitions to satisfy the 75% test. This pre-acquisition financial information should begin from at least the beginning of the period covered by the applicant's historical financial information up to at least the date of acquisition, be presented in conformity with the applicant's accounting policies, and have been reported on without modification. This proposal, set out in new rule LR 6.1.3DR, reflects our existing approach and is described in the Technical Note on the Listing Rules published on the UKLA website.
- 5.13** At LR 6.1.3CG we have set out guidance that incorporates the existing provision LR 6.1.5G together with information on the figures to be used for the 75% test. In doing so, we have noted that the class tests should be based on the latest available information. As we state in the Technical Note on the Listing Rules published on the UKLA website, in determining the '75% test', it is the entity that is to be listed at the date of admission that is relevant for eligibility purposes. Therefore, in theory, it would be best to perform those class tests for the acquired entity against the enlarged group as at the date of admission. However, we recognise that in practice, most entities will not have audited financial information for both the acquired entity and the enlarged group at this point, or there is no further financial information available on the acquired entity after the acquisition taking place. Therefore, we are always willing to discuss the most appropriate financial information to be used in the calculation.
- 5.14** As a final point, we are proposing to move the content of existing provisions LR 6.1.6G and LR6.1.7G with minor amendments to this section, as new guidance in LR 6.1.3EG.

Q44: Do you support our proposals in the related rules and guidance on the sufficiency of the historical financial information (LR6.1)?

Mineral and scientific research companies

- 5.15** We are proposing to modify the exemptions to comply with LR 6.1.3R(1)(a) for mineral companies and scientific research companies to clarify in LR6.1.8R and LR6.1.11R respectively that, if the mineral or scientific research company has not been operating for the required period of three years, it must have published or filed accounts since the inception of its business activities. We highlight that, in common with our approach in similar areas, in these circumstances we are primarily interested in the period of operation of the underlying businesses rather than simply the period for which the current group structure has been in place.

Q45: Do you agree with the proposed clarification of our approach in the Listing Rules (LR6.1.8R and LR6.1.11R) that if a mineral or scientific research company has not been operating for the required period of three years, it must have published or filed accounts since the inception of its business activities?

5.16 We propose to clarify in LR 6.1.12R that a scientific research company must have proved its ability to attract funds from sophisticated investors before the marketing at the listing date, in so doing demonstrating the credibility of the company's existing proposition, in order to obtain a premium listing.

Q46: Do you agree with the proposed clarification in the Listing Rules (LR6.1.12R) that a scientific research company must have proved its ability to attract funds from sophisticated investors prior to the marketing at the listing date?

Modification of accounts and track record requirements

5.17 In light of the changes proposed to LR 6.1.3R-LR 6.1.7G, we are proposing certain consequential amendments to LR 6.1.13G and LR 6.1.14G. The existing guidance describes the limited circumstances in which we may be willing to modify the requirements with regard to accounts. The proposed amendments involve updating the cross-references in LR 6.1.13G and LR 6.1.14G, both to make consequential amendments to align the proposed changes to LR 6.1.3R and also to clarify that we only derogate from the accounts and track record requirements in LR 6.1.4R(1), not the rules concerning control of assets (LR6.1.4R(2)) and independence (LR 6.1.4R(3)).

Q47: Do you agree with the proposed consequential amendments to the guidance (LR6.1.13G and LR6.1.14G) relating to the cases where the FSA can modify accounts and track record and the amendment to clarify that the guidance is only relevant to the accounts and track record requirements?

Shares in public hands

5.18 LR 6.1.19R states that a new applicant must have at least 25% of its shares in public hands. The intention behind this rule is to ensure that sufficient liquidity will exist in the secondary market, rather than to encourage wide public participation in an IPO (or indeed impact on the issuer's corporate governance arrangements). LR 6.1.19R(4)(e) states that shares are not held in public hands if they are held, directly or indirectly, by any person or persons in the same group, or persons acting in concert, who have an interest in 5% or more of the shares of the relevant class.

5.19 A strict reading of LR 6.1.19R(4)(e) would mean that shares held by different funds within a corporate group would be aggregated and, where the total exceeded 5%, the holding would be excluded from the 25% required to be in public hands. Our approach, as outlined in the Technical Note on the Listing Rules published on the UKLA website, is to allow holdings of individual fund managers in an organisation to be treated separately, provided investment decisions with regard to the acquisition of shares are made independently. We are proposing to include this as new guidance in LR 6.1.20AG.

Q48: Do you agree with the proposed new guidance in the Listing Rules (LR 6.1.20AG) clarifying that holdings of individual fund managers in an organisation will be treated separately, provided investment decisions with regard to the acquisition of shares are made independently?

5.20 Similarly, we consider that financial instruments that give a long economic exposure to shares, but do not control the buy/sell decision in respect of the shares, should not count as an interest for the purpose of the public hands threshold, other than where a contract for differences (CFD) provider has chosen to hedge its position by acquiring a long position in shares underlying the CFD which, when aggregated with other shares held by the CFD provider, exceed 5% of the relevant class of shares. We are proposing to include this as new guidance in LR 6.1.20BG.

Q49: Do you agree with the proposed new guidance in the Listing Rules (LR6.1.20BG) explaining that we consider that financial instruments that give a long economic exposure to shares, but do not control the buy/sell decision in respect of the shares, should not normally count as an interest for the purpose of the public hands threshold?

Settlement

5.21 LR 6.1.23R states simply that a company's equity shares must be eligible for electronic settlement, whereas there may be practical matters preventing electronic settlement. For example, the securities of many overseas companies cannot be settled in the CREST system without the use of Depositary Interests, which allows intermediaries and investors to trade in the company's securities while settlement is effected electronically in CREST. We propose to amend the rule to state that the company's constitution and the terms of its shares must be compatible with electronic settlement rather than requiring the shares to be settled electronically.

5.22 We also considered whether we should delete this requirement given that the Listing Rules deal primarily with primary markets activity and that such aspects of secondary market

activity may be viewed as matters for the markets upon which the listed shares are traded. Respondents may wish to consider this in their response to the question below.

Q50: Do you agree with the proposal to amend the Listing Rules (LR6.1.23R) so that a company's constitution and the terms of its shares must be compatible with electronic settlement, rather than requiring the shares to be settled electronically, or do you think we should delete the requirement altogether?

LR13 – Contents of circulars: premium listing

Class 1 circulars

Mineral reserves

5.23 Where a mineral company makes an acquisition or disposal, a mineral expert's report has historically been required under the Listing Rules. New guidelines produced by the European Securities and Markets Association (ESMA)¹² allow equivalent information to be produced in place of an expert's report in certain circumstances and therefore we propose to add guidance at LR 13.4.7G accordingly. Furthermore, we have clarified that mineral experts' reports and equivalent information should be drawn up in accordance with reporting standards that are acceptable to the FSA. While the list of standards that we would accept is aligned with the new ESMA Guidance, we are proposing to retain some discretion in this area. Finally, we have amended LR 13.4.7G to allow some discretion on whether an expert's report may be omitted for an acquisition as well as a disposal. This reflects our existing approach where, in certain limited circumstances (generally only where both the issuer and the target are premium listed), we have permitted the replacement of the expert's report with the LR 13.4.7G information.

Q51: Do you agree with the proposed amendments (LR13.4.7G) to the requirements for class 1 acquisitions of mineral assets?

General

5.24 Since the revision of Chapter 13 of the Listing Rules in 2005, we have received feedback from a number of stakeholders that the order of LR 13.5 has caused confusion as to which rules related to class 1 acquisitions and which to class 1 disposals. Therefore, we are proposing to take this opportunity to reorder LR 13.5, amend existing guidance, and add new guidance on a number of issues concerning the financial information required in a class 1 circular. This has resulted in a number of rules being moved and LR 13.5.29G being

¹² www.esma.europa.eu/index.php?page=groups&mac=0&id=40

deleted entirely, as we believe that the rules are clear as proposed that no accountant's opinion is required for a financial information table relating to a class 1 disposal.

Unconsolidated targets

- 5.25** It is increasingly common for class 1 acquisitions and disposals to involve holdings that will not be or have not been consolidated in the issuer's group accounts. We are proposing to clarify the financial information required by the insertion of new rules LR 13.5.3AR and BR, to deal with such situations, and clarify in LR 13.5.-1G that references in LR 13.5 to consolidation include proportionate consolidation. We believe that the rules will now be clearer on the financial information that is required where entities being acquired or disposed of will or have been investments, jointly controlled entities or fully controlled.
- 5.26** Where acquisitions or disposals of entities have been or will be accounted for as an investment, LR 13.5.3AR allows for share prices and dividend history to be used in place of financial information, where the entity has been admitted to a regularly functioning market.
- 5.27** For acquisitions of a minority interest in a company that will be equity accounted for and that has not been admitted to such a market, the proposed LR 13.5.3BR(1) requires a financial information table accompanied by a reconciliation to the issuer's accounting policies and an accountant's opinion on this (or director's statement that no material adjustment needs to be made to achieve consistency) together with an explanation from the directors of the proposed accounting treatment for the target in the issuer's future consolidated accounts.
- 5.28** We believe that in these circumstances a requirement to restate the target's financial information to conform to the issuer's accounting policies would be unduly onerous, given that the target will not be consolidated and therefore no amendment to the target's policies would result from the acquisition. We have accordingly provided a carve-out under the proposed LR 13.5.4R(2)(e).
- 5.29** This proposed treatment partly mirrors the treatment for targets that are admitted to appropriate exchanges (under the proposed LR 13.5.27R) and we believe that this will provide the appropriate level of comfort about the information but will stop short of a full restatement and opinion in true and fair terms. Currently, such acquisitions are considered on a case-by-case basis and we believe that full restatement of the entire financial information table (including accompanying notes) into the issuer's accounting policies and a full audit is unduly onerous. Conversely, we are concerned that the presentation of such information only in its original, unadjusted form is not sufficiently informative and risks being insufficiently reliable.
- 5.30** As a final point we are proposing that a statement is added confirming that the target financial information has been reported on without modification, or where such modifications have occurred, we are proposing that issuers simply follow the existing LR 13.4.2R and LR 13.5.25R treatment of modifications to opinions on class 1 circular financials.

- 5.31** In the case of a disposal of a minority interest, we propose in LR 13.5.3BR(2) the use of line entries relating to the target, extracted from the group's consolidated financial statements, or the consolidation schedules underlying them. This proposal should ensure that shareholders can understand better the impact that the target has had on the issuer's last balance sheet and last three income statements.

Q52: Do you agree with the proposed amendments to the Listing Rules (LR 13.5), which detail the acceptable treatment for entities that have been or will be equity accounted or treated as an investment in the accounts of the listed issuer?

Valuation reports

- 5.32** Where financial information is required but unavailable or inappropriate, such as in the case of the acquisition of tangible or intangible assets or an investment that is not admitted to an investment exchange, we are proposing to clarify in LR 13.5.3CR that a valuation report is required rather than no information at all, as has occasionally been suggested. We have not sought to include prescriptive guidance on the nature of such a report, given the wide variety of instances that this might include and would rather agree a reasonable approach with issuers and their sponsors on a case-by-case basis.

Q53: Do you support the proposal to amend the Listing Rules (LR 13.5.3CR) so that, where financial information is required but cannot be provided in the appropriate form, a valuation report should be included in the class 1 circular?

Form of accounting information

- 5.33** Under LR 13.5.4R(1), financial information in a class 1 circular is normally required to be prepared according to the accounting policies adopted in the issuer's latest annual consolidated accounts, but there are some notable exceptions to this rule. For example, LR 13.5.19R(1) currently allows the extraction of consolidated income statements for the last three years in a class 1 circular without adjusting the first two years' accounts to the latest year's accounting policies.

- 5.34** Therefore, we propose to amend LR 13.5.4R(2) so that it explicitly allows for the following exceptions:

- a) financial information for the issuer relating to periods after the balance sheet date of its last annual consolidated accounts (such as interim or preliminary financial statements or financial information given in current trading disclosures), which should be presented in accordance with DTR 4.2.6R;

- b) pro-forma financial information, which should be presented in accordance with LR 13.3.3R;
- c) financial information tables for class 1 acquisitions of publicly traded companies, which should be presented in accordance with LR 13.5.27R or LR 13.5.30R (both as amended under these proposals);
- d) financial information tables for class 1 disposals, which should be presented in accordance with the proposed LR 13.5.30BR (inserted under these proposals);
- e) where a class 1 acquisition is made, which will not result in the target's financial information being consolidated (under LR 13.5.3AR or LR 13.5.3BR(1), both as inserted under these proposals); or
- f) where the issuer has made public its restated audited consolidated financial statements on or before the date of the class 1 circular.

5.35 The last point above will also allow target financial information in class 1 circulars relating to reverse takeovers to be aligned properly with the Prospectus Directive requirements. Where an issuer is undertaking a reverse takeover, a class 1 circular will currently be required under LR 10.6.1R. Under the existing LR 13.5.22R(2) the financial information table in the class 1 circular must be prepared according to the accounting policies adopted in the listed company's *last* annual consolidated accounts. This creates a potential conflict as a prospectus will also be required for a reverse takeover and item 20.1 of the Annex 1 to the Prospectus Directive requires that at least the last two years of the financial information are presented in accordance with the accounting policies to be used in the *next* annual consolidated accounts.

5.36 While for many transactions this has made no difference to the presentation of the target financial information, it has occasionally resulted in a conflicting financial information requirement from the Listing and Prospectus regimes (for example where the target's policies are to be adopted by the issuer). We have dealt with this potential conflict by allowing the Prospectus Directive requirement to take precedence. The change set out at point (f) above will allow the target's financial information to be presented in accordance with the issuer's financial information restated for the purposes of the prospectus rather than in accordance with the historical accounting policies.

Q54: Do you find helpful the proposal to clarify in the Listing Rules (LR13.5.4R(2)) the exceptions to the rule that financial information in a class 1 circular must be prepared according to the accounting policies adopted in the issuer's latest annual consolidated accounts?

Synergy benefits

- 5.37 The most frequently quoted financial information in high profile acquisitions tends to be the figure relating to synergy benefits, which is an area where very few of the Listing Rules apply. We are concerned that the requirements attaching to such figures are currently insufficient to allow investors to be fully informed about the status, compilation and reliability of such figures.
- 5.38 Our general approach for forecast financial information is to require such information to be reproduced in the subsequent annual report and any major variances explained. However, this is impractical in this instance due to the fact that, by definition, synergies will not appear in future accounts.
- 5.39 We therefore considered three options:
- 1) rely on the existing rule in LR 13.5.8R(1) to ensure sufficient disclosures on the basis and assumptions underlying the figure;
 - 2) follow an approach similar to that of the Takeover Panel and require the circular to contain specific disclosure and in certain circumstances an accountant's opinion on the compilation of the synergy figure; or
 - 3) require specific disclosure, but not an accountant's opinion.
- 5.40 We have discussed the matter with the Takeover Panel, which has also been reviewing practice in this area, and we favour the third option above. This is because historically the application of LR 13.5.8R(1) has not resulted in particularly informative disclosures regarding synergies, and the second option would introduce further costs, which could dissuade issuers from making such statements and thereby reduce the utility of such circulars. We are therefore proposing to insert a new rule as LR 13.5.9AR requiring disclosure of the bases for the belief that the synergy will arise, an analysis and explanation of the constituent elements of the benefits (including when they are expected to be realised and if they will recur) and confirmations that they could not be achieved independently and that the estimated synergies reflect both the benefits and costs will also be required.

Q55: Do you support the proposal to amend the Listing Rules (LR13.5.9AR) so that listed issuers are required to make specific disclosures in respect of synergy benefits?

Information on targets

- 5.41 The interaction of the current LR 13.5.15R to LR 13.5.17G appears to be causing confusion amongst a number of stakeholders. As a result, we propose to delete these provisions in their current form and amalgamate them in a new rule LR 13.5.17AR.
- 5.42 When LR13.5.17G has been triggered, we have generally required information relating to at least 75% of the enlarged target be disclosed and this approach is reflected in the

proposed new rule. However, noting that a reverse takeover will also require a circular, we are proposing that, in this circumstance, the threshold is set at 75% of the *enlarged group* in order to align with the eligibility requirements proposed in LR6.1.3BR(1). In each case the pre-acquisition financial information should be given for the period up to the date of acquisition or the last balance sheet date presented for the target, whichever is earlier. We have added guidance in LR 13.5.17BG to clarify the approach that we will take to assess the relative size of such entities.

Q56: Do you agree with the proposal to amend the Listing Rules (LR13.5.17) to clarify that the financial information on companies acquired by targets should represent at least 75% of the enlarged target, or in the case of a reverse takeover 75% of the enlarged group?

Accountants' opinions on financial information tables

5.43 Currently, the Listing Rules require that for a class 1 acquisition an accountant provides positive comfort as to:

- 1) the truth and fairness of the financial information included in the financial information table for the purposes of the class 1 circular; and
- 2) the consistency of the accounting policies with those of the issuer's last published accounts.

5.44 The proposed amendments to LR 13.5.4R acknowledge that consistency of accounting policies will not always be achieved. Therefore, we have proposed an amendment to LR 13.5.21R to require that, where it has been prepared for the purposes of the document, the financial information table should detail the accounting policies used and thereby demonstrate compliance with the amended LR 13.5.4R and the accountant's opinion should address only point 1 above. This will also conform the wording used in such opinions with that used in reporting on financial information for inclusion in prospectuses.

Q57: Do you support the proposed amendments to the Listing Rules (LR13.5.21R) to require financial information tables to detail the accounting policies used and that the accountant's opinion need only state that the table gives a true and fair view?

Acquisitions of publicly traded companies

5.45 LR 13.5.28R grants a concession from full restatement of a target's annual consolidated accounts when a listed company acquires a company that has been admitted to trading or whose securities are listed on an overseas investment exchange. The rationale is that in such cases, the target's accounts are sufficiently robust and reliable, due to reporting and other requirements attaching to admission to certain public markets. However, the current rules

have several limitations since they exclude UK MTFs such as AIM and Plus Markets and are unclear as to which overseas markets are acceptable.

- 5.46** We are therefore proposing to amend LR 13.5.27R and delete LR 13.5.28R, to remove the condition for the concession to apply to an ‘overseas’ investment exchange and instead allow for the concession to apply where we are satisfied as to the appropriateness of this approach for a particular investment exchange or MTF. This will involve a qualitative assessment of the legal and regulatory framework applying to the target. Therefore, we have proposed a requirement for the issuer’s sponsor to submit a letter to the FSA detailing its view on the acceptability of a particular investment exchange or MTF, where target financial information is proposed to be presented in this manner. We are proposing LR 8.2.1R(14) that introduces this as a sponsor service.

Q58: Do you support the proposal to amend the Listing Rules (LR 13.5.27R) relating to acquisitions of companies traded on ‘overseas’ investment exchanges to allow the concession to apply where the FSA is satisfied as to the appropriateness of a particular investment exchange or MTF?

- 5.47** To aid the issuer in this assessment, we are proposing to incorporate at new LR 13.5.27AG the matters the FSA will consider when reviewing the appropriateness of an investment exchange or MTF. This list reproduces parts of the text previously published in the Technical Note on the Listing Rules published on the UKLA website. We would also highlight that the proposed list is not exhaustive and we propose to take into account other relevant factors when reaching a decision.
- 5.48** Given the work involved in restating the financial information if this route is not taken, it would be desirable for all parties that the letter is lodged with the FSA long before the circular is submitted to us for review. Therefore, we have added a requirement for the letter to be provided no later than the date upon which the first draft of the circular is submitted to the UKLA for review.

Q59: Do you agree with the proposal to include in the Listing Rules (LR 13.5.27AG) guidance as to the matters the FSA will consider and the timetable, when reviewing the appropriateness of a particular investment exchange or MTF?

- 5.49** Where a modified accountant’s opinion has been given on the target’s annual consolidated accounts, this will normally mean that the accounts are not sufficiently robust and reliable and therefore not acceptable. However, as outlined in the proposed new LR 6.1.3AG, there are certain circumstances where a modified opinion may be acceptable, so we are proposing new guidance to this effect in LR 13.5.27CR relating specifically to financial information tables.

- 5.50** Where this route is taken and the financial information is not fully restated for the purposes of the circular, the financials must be reconciled to the listed company's own accounting policies unless there are no material differences in the accounting policies of the two entities. The Listing Rules do not currently include a requirement for a positive assertion of consistency of accounting policies to be made in the circular. We believe that this is useful information for shareholders and we have proposed that such a statement is made where the directors of the issuer believe that there are no material differences between the two sets of accounting policies. The proposed amendment is shown at LR 13.5.27R(2)(b).

Q60: Do you support the proposal to amend the Listing Rules (LR13.5.27) to allow certain modified opinions in financial information tables and require a positive assertion that the accounting policies are consistent?

Half-yearly and quarterly financial information

- 5.51** We are proposing to allow the issuer to choose in future whether it includes interim and quarterly financial information in a circular. If it chooses to, we have been made aware that the existing LR 13.5.30R is not sufficiently clear whether interim and quarterly financial information of the target should be reconciled to the listed company's accounting policies with an accountant's opinion in all cases. The view taken when drafting this rule was that only those targets that were admitted to trading or on an investment exchange (and hence subject to LR 13.5.27R) would have interim financial information and thus that the rule need only provide for those situations. This assumption has proved to be false because, in particular, targets admitted to MTFs will often have such interim financial available but could not qualify for the LR 13.5.27R route.
- 5.52** While the proposed amendments to LR 13.5.27R noted above will widen its scope to include targets on MTFs, we are of the view that the cost and time involved in obtaining a full opinion on such interim financial information issued by a reporting accountant in true and fair terms required under proposed LR 13.5.27R(2), outweighs the benefit. Thus we propose to clarify that the financial information may be presented on an unadjusted basis and reconciled to the issuer's accounting policies but that such reconciliation need not be subject to a report by an accountant.
- 5.53** We are proposing to clarify that, where LR 13.5.27R does not apply, such interim financial information should comply with LR 13.5.4R and be restated in accordance with the accounting policies adopted by the issuer and accompanied by a confirmation from the directors regarding the consistency of the accounting policies with those of the issuer.
- 5.54** Where the listed company acquires an interest that will be equity accounted for under LR 13.5.3BR, the interim financial information should be reconciled with the issuer's accounting policies with an opinion or a statement given by the directors in accordance with LR 13.5.27R(2)(b).

Q61: Do you support the proposal to amend the Listing Rules (LR13.5.27) to allow the issuer to choose whether to include interim and quarterly financials in a circular and the proposed amendments to LR 13.5.30R?

Class 1 disposals

Financial information

- 5.55** By its very nature a class 1 disposal represents a disposal of a significant part of the listed issuer, so we would expect the limited disposal entity financial information required by the Listing Rules to be sourced from adequate accounting records, to ensure that shareholders are provided with financial information that is reliable as well as useful.
- 5.56** Currently, LR 13.5.19R states that the financial information table for the disposal entity in a class 1 disposal circular must be sourced from the audited accounts of the entity, or if it has none, the consolidation schedules underlying the issuer's group accounts. This suggests that where financial information on a disposal entity is available from that entity's own audited annual consolidated accounts, the financial information included in the class 1 disposal circular should be taken from those accounts in preference to that information being obtained from the issuer's consolidated accounts.
- 5.57** This has resulted in circumstances where the financial information on the disposal entity has been presented using different accounting policies or even entirely different GAAP from those used in the group annual consolidated accounts of the issuer. We believe that it is preferable for shareholders to be presented with such information in accordance with the accounting policies of the issuer's group rather than those of the disposal entity, with which they will be far less familiar.
- 5.58** Hence, we are proposing to reflect this in LR 13.5.30BR (which replaces much of the existing rule LR 13.5.19R). This states that the financial information table for the target must have been extracted from the consolidation schedules underlying the listed company's audited accounts, and be accompanied by a statement to that effect.
- 5.59** We have encountered situations where the financial information for the disposal entity could not be sourced from the issuer's accounting records and hence a statement to the effect that the information has been extracted from consolidation schedules could not be made. As the Listing Rules were silent about the approach to be taken in such situations, it has occasionally been suggested to us that the result was that no financial information should be required. We do not concur with this view. As a result, we are proposing to add in LR 13.5.30BR(3) a requirement that, where the target's financial information cannot be sourced from the consolidation schedules, the financial information table must be extracted from the target's accounting records, allowing this to be extracted on the basis of allocations of the actual incurred costs to the group that related to the disposal entity.

5.60 We are proposing that this resulting financial information table must be accompanied by an explanation of the basis for any allocation (rather than extraction) of any of the items of financial information along with a statement from the directors that these allocations provide a reasonable basis for shareholders to make a fully informed voting decision. While we have historically resisted detailed disclosures about the method of compilation of the financial information in disposal circulars, we believe that, provided that such disclosure is sufficiently clear and accompanied by the directors' statement, that this should add clarity rather than hinder it. As part of our vetting process, we would propose to seek to ensure that this route is utilised appropriately. No such statement would be required where the financial information is presented on the basis of extraction from consolidation schedules. We believe that this will cater for practically all situations but welcome the views of respondents.

5.61 This proposed amendment will not affect our current approach where the financial information for disposal entities that is made up of more than one subsidiary of a listed company is extracted on an aggregated basis and disclosed as being extracted from the consolidation schedules.

Q62: Do you support the proposal to amend the Listing Rules (LR13.5.30) to amend the order of preference for the sourcing of disposal entity financial information and to allow the limited use of allocated financial information where such allocation is necessary and appropriately explained?

5.62 The financial information for disposal entities should be sourced from the latest annual consolidated accounts, so it is possible that accounting policies (or GAAP) may have changed during that period. In such circumstances, we propose to stipulate in LR 13.5.30CR that the FSA will require issuers to disclose the required financial information under both the old and new bases for the year prior to that in which the new accounting policy is adopted.

Q63: Do you agree with the proposal to amend the Listing Rules (LR13.5.30CR) so that in circumstances where accounting policies (or GAAP) may have changed, the FSA will require issuers to disclose the required financial information under both the old and new bases? As before, we would be interested to know how often the 75% rule above would be applied in practice.

Allocation of central costs to disposal entities

5.63 In 2005 we included guidance in LR 13.5.20G on a concession that we had commonly granted where it was impossible to provide a meaningful allocation of costs (such as interest and tax) in a circular for a class 1 disposal. The purpose of the concession is to allow for the production of meaningful financial information on the disposal, while avoiding the need for

arbitrary allocations of items that one would ordinarily expect to be handled on a group-wide basis. Since this guidance was introduced we have encountered instances where issuers have sought to apply this guidance inappropriately, apparently believing that it applied to almost any financial information that could not be allocated easily.

- 5.64** Therefore, we have proposed a clarification in LR 13.5.30DG, which explicitly states that the concession applies only to non-operating costs such as interest and tax so as to prevent any suggestion that it would be appropriate to apply to other items such as cost of sales.

Q64: Do you agree with the proposal to amend the Listing Rules (LR13.5.30DG) in relation to the allocation of central costs to disposal entities to clarify that the concession applies only to non-operating costs such as interest and tax?

Profit forecasts

- 5.65** We added a concession in 2005 in LR 13.5.33R that allows issuers to step away from previously published profit forecasts that are no longer valid. Unfortunately, a practice has developed where certain forecasts are stated to be invalid only because they were made for a different purpose. This was not the original purpose of the rule and hence we are proposing to revise LR 13.5.33R to clarify this.
- 5.66** Where a previously issued profit forecast is seen as invalid, we believe that the forecast itself and the rationale of the directors in reaching their decision as to its invalidity is both useful and necessary information for shareholders in making their decision on the transaction.
- 5.67** At the same time we propose to include further guidance to clarify two areas of our existing practice. The first is reflected in the proposed LR 13.5.33AG and states that the fact the profit forecast or estimate was prepared for a reason other than the class 1 circular does not itself indicate invalidity. The second is shown in the proposed LR 13.5.33BG and explains that the phrase 'a significant part of the listed company group' in LR 13.5.33(1)R should be interpreted as at least 75% of that entity.

Q65: Do you agree with the proposal to amend the Listing Rules (LR13.5) relating to profit forecasts to clarify that the fact the profit forecast or estimate was prepared for a reason other than the class 1 circular does not itself indicate invalidity and that the phrase 'a significant part of the listed company group' in LR 13.5.33(1)R should be interpreted as at least 75% of that entity?

- 5.68** We are also proposing that the requirements for profit forecasts are extended to class 1 disposals as it is not logical that they are currently excluded. If an issuer makes a profit

forecast that is relevant to shareholders' consideration of a class 1 disposal, then we believe it should be treated with the same rigour as a class 1 acquisition. We are therefore proposing to delete LR 13.5.35G.

Q66: Do you agree with our proposal to delete LR 13.5.35G so that the requirements for profit forecasts are extended to class 1 disposals?

Unaudited financial information

- 5.69** We are proposing to delete LR 13.5.36R relating to the publication of unaudited financial information since it is duplicated (with several additional points) in LR 9.2.18R where it rightly sits, as it is in effect a continuing obligation, and will still apply to listed companies preparing class 1 circulars.

Circulars disapplying pre-emption rights

- 5.70** We are proposing to update LR 13.8.2R, which concerns circulars disapplying pre-emption rights, to embed the concept that pre-emption principles apply to all issuers irrespective of geography. We have deleted the reference to the UK Companies Act and replaced this with a reference to LR 9.3.11R.

6

Externally managed companies

- 6.1 Recently we have seen the development of a new corporate structure that has been adopted by a small number of new listed companies, each a special purpose acquisition company (SPAC), that is to say a cash shell incorporated with the intention of acquiring, running and transforming target businesses to create value. We are calling the companies with this structure ‘externally managed companies’ because they outsource significant management functions to an offshore advisory firm.
- 6.2 Currently, only a very few such companies exist. However, we see no reason why the structure might not be widely adopted by listed companies, which would seriously undermine the ability of shareholders to hold managements to account.
- 6.3 Not all SPACs have used the structure; some are conventionally structured and would therefore be unaffected by these proposals. There is also some structural variation between the different instances so far observed. However, in general terms the structure that concerns us works as follows:
- The listed company will be a newly incorporated off-shore company with a board comprised entirely of non-executive directors, the first of whom will have been recruited by the founders of the firm.
 - Those founders also form an off-shore advisory firm which, in addition to the original founders, might have a small professional staff plus support staff.
 - The advisory firm then signs a contract with the listed company at launch. Under the terms of that contract, the firm provides ‘advice’ to the listed company on the identification of potential target businesses, their acquisition, and then – post-acquisition – on their integration. The advisory firm’s remuneration is principally in the form of a private equity style ‘carry’, that is: locked-up equity in the underlying company or companies the firm goes on to acquire, which can be realised once milestones are achieved.

- The listed company at this stage does not have any staff and has an exclusively non-executive board. Clearly the non-executives have no capacity to seek acquisitions themselves and, prior to the SPAC acquiring a business, are limited to monitoring expenses and vetoing any acquisitions brought to them by the advisor. After the SPAC has acquired a business, they will have an operating group to monitor that will inevitably be put through a change programme of some sort. But the people leading that group will not sit on the main board.
- We understand the structure is tax-driven and designed to ensure the personal tax liabilities of the founders are minimised.

6.4 In all the cases seen so far, the advisory firm has been newly incorporated for the purpose of advising the listed company; it is not an existing financial services provider and nor does it seem to have other clients.

6.5 When a SPAC first lists it will be ineligible for premium listing as it does not have an independent business with a three year track record, so its listing is classified as a standard listing. At the point it acquires a business it will generally re-consider its options and it may apply for premium listing; equally it may decide not to, or that the business it has acquired is more suited to an investor base elsewhere in the world. At that point, some SPACs have unwound their external management structure.

Why this is a concern

6.6 In our view, the advisory firm is, in substance, providing the executive management of the listed company. The key services it provides – formulating strategy, decision-making on target identification, leadership of the negotiations, leadership of the integration process – are all matters that one would expect to fall under the remit of the CEO and other senior executives in a conventionally structured company.

6.7 This is a cause for concern because this structure places the real management of the company beyond a number of the key controls within the Listing Regime and degrades the ability of shareholders to hold the real management of their company to account. Examples of key controls evaded include: liability for any prospectuses issued, related party rules and the listing rules requiring disclosure of board remuneration.

6.8 We also think the structure is at odds with the legitimate expectations of stakeholders in the Listing Regime. We see the whole purpose of retaining the super-equivalent rules contained within in the premium listing regime as being to maintain – to the extent possible in a single capital market – high standards of UK corporate practice.

Proposed measures

- 6.9 To address these concerns we are proposing a package of measures addressing both the transparency and governance concerns highlighted above. We have divided the measures into two proposals and an explanation is provided in the sections following. We will consider what, if any, transitional arrangements might be needed and will address this when we give feedback on the responses we get to our proposals.

Proposal 1

- 6.10 We propose to amend the Prospectus rules and the Disclosure rules and Transparency rules to make the principals of the advisory firm responsible for any prospectus published by the listed company and to clarify that the principals are likely to be subject to the DTR rules on the disclosure of share dealings in the listed company's shares. These changes will impact both premium and standard listings.
- 6.11 Firstly, we intend to amend PR5.5 to require those individuals in the external advisory firms who we think exercise executive responsibilities to be responsible for any prospectuses the company it advises publishes, in the same way that the directors of the company are.
- 6.12 Although the Prospectus Directive harmonises prospectus content across the EU, it leaves individual Member States to specify the legal remedies for mis-statement in a prospectus. This includes the power to make rules on which parties are legally responsible for a prospectus, where one is published. In the UK, we have used that power to make rules that make the directors and the company itself responsible. Although shareholder claims in the courts against directors are very rare in the UK, the risk is taken extremely seriously and as a result we regard the legal liability imposed on directors by a prospectus as an essential market discipline.
- 6.13 Given the views we have formed on the role of the advisory firm, we propose a new rule in PR5.5.3R(2)(b)(iii) aimed at extending prospectus liability to the principals of the advisory firm in addition to the listed company and its board. In new rule PR5.5.3AR, we define an 'external management company' and in PR5.5.3BG we give guidance as to what the FSA will look at in determining whether an advisory firm is an external management company.
- 6.14 Secondly, we propose to add new guidance to DTR3.1 clarifying that it is the FSA's view that the definition of a 'person discharging managerial responsibility' (PDMR) as set out in s96B(1) of FSMA (which establishes who is caught by the transparency rules on share dealings) is not necessarily restricted just to persons with direct employment or a director's contract with the issuer.
- 6.15 The guidance on the statutory definition of PDMR that we are proposing will address an ambiguity in the present definition without which some people could conclude that any share dealings by the principals of the advisory firm do not fall to be disclosed to the market. Broadly, s96 states that PDMRs are either directors or certain senior executives 'of the issuer'. We have already commented publicly in *Market Watch* (June 2005) that a person who is employed by or is a director in a subsidiary can be senior management 'of the issuer'.

6.16 We now propose to issue new guidance in DTR 3.1.2AG stating that an individual can be a ‘senior executive’ of the issuer even without an employment or director’s service contract, provided the individual has regular access to inside information on the issuer and has the power to make managerial decisions affecting the future development and business prospects of the issuer.

Q67: Do you support the proposals to amend the Prospectus rules (PR 5.5.3) and the Disclosure rules and Transparency rules (DTR 3.1) to ensure the principals of the advisory firm are responsible (in addition to the company and its directors) for any prospectus the company publishes in the UK and to clarify that they are subject to transparency rules in their share dealings?

Proposal 2

- 6.17** In the second proposal, we intend to insert a new rule and guidance in LR6 to state that companies featuring this structure cannot be premium listed in future. Accordingly, this proposal will impact only the premium listing – commercial company category. It will not impact standard listed companies, nor companies subject to the premium listing – closed ended investment funds category.
- 6.18** The new proposed rule in LR6.1.26R requires the company to satisfy the FSA that the powers of its board to make strategic decisions are not limited or transferred to another person, and the guidance in LR6.1.27R gives an example of an unacceptable structure.
- 6.19** The intention is to give the small number of relevant companies affected a choice, either to adopt a more conventional corporate structure with the management of the company represented on the board and not provided by an outside contractor, or face having their Official Listing re-designated as a standard listing.
- 6.20** This proposal goes beyond the extension of liability proposed in the changes to prospectus responsibility Proposal 1 because that measure only deals with losses incurred by investors due to mis-statement or omission in a specific prospectus published in respect of a specific investment opportunity. Becoming a director (to comply with Proposal 2) would extend the responsibilities of the individuals managing the company more widely.
- 6.21** We are proposing this differentiated approach because we believe the purpose of retaining the obligations contained in the premium listing regime – even though they are super-equivalent to the various EU primary markets directives – is to ensure, to the extent possible in a single capital market, that the elements of corporate practice our stakeholders value are preserved for the benefit of investors in UK markets as a whole.

- 6.22** Broadly, a standard listing denotes a requirement to adhere to directive imposed obligations (mainly transparency rules), but no more. It would therefore be inconsistent with the standard listing concept to prohibit the structure entirely. Premium listing adds additional admission requirements as well as obligations around due diligence, governance and shareholder rights. It is, in other words, a regime which is prescriptive about how a company should order its affairs.
- 6.23** Consistent with its status as a UK-only (non-EU wide) system retained at the behest of UK stakeholders, the content of the premium listing regime reflects a set of UK assumptions on corporate practice and governance that are not necessarily shared by other jurisdictions (pre-emption rights, shareholder votes on substantial M&A transactions, full voting rights for shareholders and so forth). Premium listing signals adherence to these principles. Premium listing is available to both UK and foreign companies and it sits alongside the standard listing regime which is similarly equally available to UK and foreign companies. This arrangement ensures access to UK capital markets for companies from all over the world with a broad range of governance practices and arrangements – including arrangements and corporate practices that UK investors may be unfamiliar with.
- 6.24** We believe the externally managed company structure to be inconsistent with the expectations our stakeholders have of premium listed commercial companies. These are companies that, by definition, will always have extensive operations and therefore a need for executive management. But structurally they look like investment trusts with an entirely non-executive board and with all management provided by contract. Stakeholders have long been comfortable with the standard investment trust corporate structure (which has an exclusively non-executive board) on the basis it is appropriate for the level of activity an investment trust undertakes. However, stakeholders are unlikely to be as accommodating of the structure when used for complex enterprises, particularly when the motivating force is the tax arrangements of the founders (as opposed to the shareholders). We believe our stakeholders expect the actual leaders of a company to be on the board and accountable.
- 6.25** However, it should be noted that we do not believe this expectation that the actual leaders of a company should be present on its board equates to an expectation that there should be rigid regulation of board practice. Our judgement is that stakeholders remain supportive of the ‘comply or explain’ approach to the best practice set out in the FRC’s UK Corporate Governance Code and our proposed prohibition on premium listed companies externalising their management works in tandem with the best practice in the UK Corporate Governance Code. So stakeholders will tolerate, for example, an unusual ratio of executives to non-executives, provided there is a reasonable explanation. Similarly, a German-style split-board is not incompatible with our proposal on the basis that the practice of supervisory board and management board directors sitting separately represents a variant of board practice with a clear and visible presence of management among the directors.

Q68: Do you support the proposals to amend the Listing Rules (LR6.1) so that commercial companies featuring this structure do not qualify for the premium listing accreditation?

Annex 1

Cost benefit analysis

Introduction

1. Under the Financial Services and Markets Act 2000 (FSMA), we are required to provide an estimate of the costs and an analysis of the benefits that will arise from the policy proposals. A cost benefit analysis (CBA) is a statement of the differences between the baseline (broadly speaking, the current position) and the position that will arise if we implement the proposals.
2. In this section we describe the costs incurred by the FSA, the UKLA and other regulators and, for each subject chapter:
 - the compliance costs that firms will incur;
 - any indirect costs that may materialise in the market; and
 - the benefits that these proposals are likely to bring about.

Direct costs

3. The effect of the proposed changes to the listing rules on direct costs to the FSA and the UKLA will be of minimal significance. The proposed rules will not result in changes to systems and will not require additional resources to be supervised.

Reverse takeovers

4. The purpose of the proposed changes to the rules is to: bring together the existing rules on reverse takeovers; organise exiting technical notes; and consider the impact of listing categories on the reverse regime, within a single section of the Listing Rules. We have also taken the opportunity to rigorously consider which transactions should be caught to retain the integrity of the reverse regime and so provide greater clarity over the scope of the regime.

5. Since the current Listing Rules on reverse transactions were introduced in 2005, a body of precedent and market practice has developed to supplement the current rules. In the second quarter of 2010, the UKLA consulted with market practitioners to look more generally at how our rules work in this area with a view to ensuring that they were still appropriate. This resulted in the publication of the UKLA Technical Note ‘reverse takeovers’ in June 2010.¹ Our policy proposal seeks to clarify our approach to reverse takeovers, currently set out within LR 10, LR 5 and the UKLA Technical Note within one consolidated section of the Listing Rules. As such, many of the changes to the rules will already be familiar to advisers and the changes are generally expected to have limited cost-benefit implications.
6. When an issuer completes a reverse takeover, we would normally require them to cancel the listing of shares (or certificates representing securities). The enlarged group would then be required to produce a prospectus and satisfy the relevant eligibility requirements.
7. Currently, we do not treat an acquisition by a listed issuer of another listed issuer as a reverse takeover, so none of the above procedures apply. We are now proposing to narrow this exemption by limiting it to reverses of listed issuers in the same listing category. For other listed issuers not falling within the new proposed exemption, they can still avoid cancellation, but they will be subject to the normal eligibility assessment exercise for the listing category the enlarged group intends to join.

Costs

8. The eligibility exercise will entail a small cost to the issuer and the UKLA and, where the enlarged group wishes to have a premium listing, it will entail a sponsor producing the eligibility letter and will therefore incur a slightly higher cost. However, this should not result in a significant increase in the overall transaction costs, as a sponsor will in any case be required as it is a class 1 transaction.

Benefits

9. Our proposals will allow us to assess the eligibility of a listed issuer undertaking a reverse takeover with another listed issuer in a different category. This will preserve the integrity of the Official List and protect the interests of shareholders by avoiding ‘back door listings’ of entities that would otherwise be ineligible.
10. We are also allowing a premium listed issuer to have a modification within its track record when undertaking a reverse takeover, without the enlarged group becoming ineligible for a premium listing.

¹ UKLA Technical Note: Reverse Takeovers, www.fsa.gov.uk/Pages/Doing/UKLA/ukla_publications/index.shtml

Sponsors

11. Our proposals relate to where we believe our current rules do not reflect:
 - the scope and nature of sponsor services, the information that sponsors should provide to us and where we can more clearly articulate the existing rules; or
 - where we think it is appropriate to provide greater emphasis in the rules to the existing obligations with which sponsors are already required to comply.
12. There will be no significant change in costs or benefits as a result of the proposed amendments to the Listing Rules in this area. Sponsor firms and issuers will benefit from having access to the relevant rules and guidance available in one place, reducing the need to consult a number of different documents when providing sponsor services.
13. However, we have identified a limited number of instances where additional costs may be incurred. This is in relation to sponsor confirmations for reverse takeover transactions.

Costs

14. In LR 8.2.1R (9)-(11) we are proposing the formal appointment of a sponsor for confirmations required when a premium listed company contemplates or completes a reverse takeover transaction. These confirmations are already required either by the Listing Rules or by the UKLA's technical note on reverse takeovers. Although current practice is for sponsors to provide these confirmations, it is possible that additional costs may be associated with a requirement to make a formal appointment (such as agreeing contractual terms) and sponsors may pass these costs on to the premium listed company. We do not believe this to be a significant cost and it may be that certain sponsor firms currently require a formal appointment for such services and therefore there would not be any additional costs.
15. In LR 8.2.1R(12) we are proposing to require a sponsor appointment for the submission of an eligibility letter for the premium listed issuer to avoid cancellation. This is a new obligation on issuers. The cost implications of this are addressed in paragraph 8.

Benefits

16. Our proposals for LR 8.2.1R will improve the quality of the UKLA's interaction with sponsor firms and will ensure that relevant information is communicated clearly and timely.

Transactions

17. The proposed amendments set out in chapter 4 are to a large extent the codification of existing practice, much of which is already contained in the technical note on the Listing Rules on the UKLA website. Consequently for the majority of our proposals we believe there be no cost or benefit implications. However, there are a number of proposals that would result in a saving for issuers and will be beneficial through a reduction in compliance costs.
18. We describe the benefits arising from a reduction in compliance costs below.

Benefits

Class 3 Transactions

19. We propose to dispense with the notification requirements for class 3 transactions by deleting LR 10.3 from the Listing Rules. Market participants have indicated that these rules provide no additional value above the disclosure obligations of the Disclosure Rules and Transparency Rules because DTR 2.2R already requires issuers to announce price sensitive information when certain criteria are met. The proposals would save the issuer costs in connection with making class 3 announcements.

Supplementary circulars

20. We have encountered situations where a significant change or a significant new matter has arisen following the publication of a circular, but before the shareholder meeting to seek shareholder approval for a transaction that requires such approval under the Listing Rules. We are proposing new LR 10.5.4R, which will require listed companies to send a further circular to shareholders if a significant change or a significant new matter is considered to constitute necessary information to allow shareholders to make a properly informed decision on the matters to be voted on. This is an important shareholder protection, so we are proposing that it applies to all transactions where a vote is expressly required by the Listing Rules.
21. In the event that a significant change or new matter arises, our proposals will require a premium listed issuer to produce a supplementary circular. Shareholders will benefit as they will be able to make a more informed decision.
22. Under our current rules, the concept of a supplementary circular does not exist. In the event of a significant change or a new matter arising, the premium listed issuer would in theory have to abandon the transaction and start the process again. However, in practice we have allowed supplementary circulars to be issued in certain limited circumstances and our proposals will place such documents on a firmer regulatory footing. So, in theory, this change might be seen to reduce compliance costs, but in practice the effect will be negligible. The small fall in compliance costs for the affected issuers would likely be offset by the broader need to give further consideration to changes that take place after the issue of circulars.

Treasury shares – employee share schemes

23. Tens of thousands of employees of listed companies participate in employee share schemes, which results in numerous exercises throughout the year. Current LR 12.6.4R requires a notification to be made through a regulatory information service (RIS) every time even one of these employees exercise share options satisfied by the transfer of shares from treasury. Market participants have indicated that this presents companies with a considerable internal administrative burden as, in theory, a large issuer could be required to announce transfers made, in satisfaction of options, on every day of the year, outside any applicable close periods. DTR 5.6.1R requires such transaction details to be disclosed on a monthly basis.
24. We propose to introduce a threshold of 0.5%, requiring companies to announce any issue, sale or cancellation of treasury shares under an employee share scheme over 0.5% of a company's issued share capital (excluding treasury shares).
25. The proposed amendment would remove a significant administrative burden on listed companies and therefore a reduction in compliance costs.

Related party circulars

26. Currently LR 13.6.1R(7) requires, for a transaction where any percentage ratio is 25% or more, class 1 circular disclosures to be included within the related party circular. We find that the types of transactions typically affected by this obligation are placings to related parties or amendments to investment manager's agreements and therefore class 1 circular disclosures are not relevant. We are therefore proposing to delete LR 13.6.1R(7).
27. The proposed amendment would give issuers and advisors clarity and save the compliance costs associated with contacting the UKLA to discuss circular contents where requirements do not appear to be relevant.

Directors' indemnities and similar arrangements

28. Our proposal to include loans permitted by section 206 of the Companies Act within the LR 11 exemptions will save issuers compliance costs that may be incurred: in seeking to put equivalent arrangements in place that would not contradict LR 11; or in complying with the LR 11 requirements.

Risk factors

29. We propose to clarify the requirement that a premium listed issuer must disclose, in a class 1 circular, only the significant risk factors that relate to or arise from the transaction that is the subject of the document rather than all material risks that relate to the issuer and its securities irrespective of whether the risk is unchanged by the transaction. We believe our proposals will save on compliance costs due to the resultant reduction in the numbers of risk factors that are disclosed and subject to review and comment by the UKLA.

Financial information

30. The proposed amendments relating to financial information are, to a large extent, the codification of existing practice, much of which is already contained in the Technical Note on the Listing Rules on the UKLA website. As such, there should be few extra compliance, indirect or direct costs implications or new benefits for the market.

Costs

31. Where there are cost increases, they are expected to be small or incurred very infrequently. We have identified the following instances:
- 1) The new rules relating to synergy benefits – these will require the issuers to include in the circular, information (such as the bases and calculations underlying the benefits), which the issuer will have already at its disposal and that underpin their estimation of the synergy benefits.
 - 2) Requiring the restatement of a target's interim figures using the accounting policies of the issuer – this would only be required if the issuer chose to include the interims in the circular and would not apply if the target was trading on a regulated market or multilateral trading facility (MTF) with appropriate standards. It would be very rare that the target's interim figures would have to be restated. In such cases it would be difficult to estimate the increase in costs given the variables involved. They include the size of the listed company undertaking the transaction (and the target) and the number and nature of the adjustments required. All these features can vary widely and would have an impact on the cost accordingly. It is also worth noting that if an issuer is required to restate a target's interim figures, a three-year restatement of the target's accounts would also already be required. Therefore, the background work needed to fully understand the nature of the adjustments required to align the accounting policies would already have been done.

Benefits

32. Apart from the benefits of making the rules more transparent and having the rules and guidance in one place, there are also some other minor benefits arising from our proposals. These include:
- 1) Making inclusion of a target's interim accounts in the circular voluntary, and where it is included, removing the need for an accountant's opinion if the target is on a regulated market or appropriate investment exchange. This will result in reduced costs for listed companies.
 - 2) Avoiding the need to do a full restatement of a target's accounts, if it is traded on the Alternative Investment Market (AIM) or Plus Markets, which will produce savings for listed companies.

Externally managed companies

33. In Chapter 6 of this paper, we have explained in detail why we are concerned with the development of a new corporate structure, where significant management functions are outsourced to an offshore advisory firm. In essence we are concerned that, if it is more widely adopted, this structure would seriously undermine the ability of shareholders to hold management to account, resulting in a regulatory failure. The management of the advisory firm would not have the appropriate incentive to work in the interest of the shareholders of the listed entity if they were not subject to the same rules.
34. This regulatory failure is based on two underlying market failures, which existing rules attempt to correct. The market failures are in the form of information asymmetries and negative externalities. We describe these in this section.
35. Information asymmetry: Compared to other structures, the externally managed company structure places the real management of the company beyond a number of key controls within the listing regime and degrades the ability of shareholders to hold the real management of their company to account. Examples of key controls evaded include: liability for any prospectus issued; related-party rules; and the requirement to accept responsibility for any class 1 circular issued to shareholders. These premium listed structures offer a lower level of investor protection than other premium listed companies. Investors may rely on the premium listing 'label' and not fully be aware of the structure of these companies and the possible implications. If investors were aware of these structures they might behave differently and demand a greater return given the perceived increased risk.
36. Negative externality: By evading regulatory controls that should apply to companies that fulfil the requirements for a premium listing, externally managed issuers reduce the value attached to being premium listed. If market participants know that some premium listed companies adopt such structures, and the investors cannot easily identify these companies, this could cause the cost of capital for all premium listed firms to rise. It is likely that this effect would not be particularly large, however, it may contribute to the dilution of the premium 'label'.

Our proposals

37. To mitigate the regulatory and market failures described above we are proposing a package of measures to:
 - Amend the Prospectus Rules, the Disclosure Rules and Transparency Rules to make the principals of the 'external management' advisory firm responsible for any prospectus published by the listed company and to subject the principals to the disclosure of share dealings in the listed company's shares. These changes will have an impact on companies with either premium or standard listings.

- Insert a new rule and guidance in LR6 to state that companies featuring an ‘externally managed’ structure cannot be premium listed (accordingly this proposal will only have an impact on companies with premium listings).

Compliance costs

38. We can divide companies that use the ‘externally managed’ structure into three broad groups:

- companies that are currently premium listed;
- companies that are currently standard listed; and
- companies that are going to seek listing in the future (new applicants).

The costs to comply with the proposals set out in this paper will vary for these different companies.

39. In paragraph 6.10 of Chapter 6, we explained that our proposed amendments to the Prospectus Rules, the Disclosure Rules and Transparency Rules will have an impact on all premium and standard listed companies (and for new applicants once listed). We don’t believe the additional compliance costs associated with these proposals are significant.

Companies currently premium listed

40. Companies that are currently premium listed and wish to maintain a premium listing, could incur two types of costs. Firstly, costs associated in changing the structure and transferring the management into the listed issuer, the associated one-off legal costs we estimate to be less than £100,000.² Secondly, we estimate that the ‘external management’ advisory firm (or the principals of those firms themselves) could incur costs of around £50,000[^] for tax advice to individuals in the firm. In addition, the principals of the ‘external management’ advisory firm will probably lose some tax benefits associated with this particular structure. However, this is a transfer rather than a net cost.

41. Rather than incurring the costs to change the structure and senior management losing the associated tax benefits, companies that are currently premium listed may chose to be standard listed. As a result of choosing a standard listing, these companies may also lose the ability to be part of market indexes (for example, the FTSE 100). The cost of capital for these companies may also increase. It is difficult to estimate the magnitude of such effects.³ In addition, we estimate that the premium listed company would incur legal costs of

2 £100,000 = £20,000 ‘advice on whether to remain Premium Listed’ + £80,000 ‘restructuring management and negotiating new management arrangements’.

[^] Based on FSA’s understanding of how a law firm would charge for work of this nature.

3 For a discussion of these effects see:

Mazouz, K and B. Saadouni, The price effects of FTSE 100 index revision: what drives the long-term abnormal return reversal?, Applied Financial Economics, 2007, 17, 501–510.

Lynch, A. W. and Mendenhall, R. R. (1997) New evidence of stock price effects associated with changes in the S&P 500 index, Journal of Business, 70, 351–82.

Goodacre, A. and Lawrence, M. (1994) Price and volume effects associated with changes in the constituents of the FTSE 100 index, Working Paper, The University of Stirling.

around £20,000[^] in relation to gaining shareholder approval for the transfer to standard listing (assuming consent was gained at an annual general meeting).

42. We estimate that the ‘external management’ advisory firm could incur costs of £20,000[^] in connection with independent prospectus advice for management.

Companies currently standard listed

43. For companies that are currently standard listed, compliance costs will only be incurred to comply with our amendments to the Prospectus Rules and the Disclosure Rules and Transparency Rules. These will make the principals of the ‘external management’ advisory firm responsible for any prospectus published by the listed company and subject the principals to the Disclosure Rules and Transparency Rules relating to disclosure of share dealings in the listed company’s shares. We don’t believe these are significant.

Companies seeking listing in the future

44. If our proposals are implemented, any company seeking listing in the future and choosing to opt for an ‘externally managed’ structure would need to seek a standard listing as they would not be eligible for a premium listing. Companies will make their own commercial considerations and will take into account the effects of their choices when deciding what type of listing they want to apply for. The level of costs to seek any type of listing may be slightly higher, as the external management will now be subject to aspects of the Prospectus Rules and the Disclosure Rules and Transparency Rules. However, it is unlikely that these costs will be significant when considered in the context of getting listed: access to and the cost of capital are likely to be much more important in the decision taken by companies.

Indirect costs

45. As a result of the rule changes proposed here, companies will not be in a position to use an ‘externally managed’ structure and be premium listed. This may have the result of some companies requiring a standard listing instead. However, this is the expected policy outcome, as it is our intention that a premium listing provides investors with a higher level of investor protection. The number of companies that are premium listed may therefore decrease marginally.
46. Similarly, companies seeking a standard listing may choose to be listed elsewhere (e.g. Luxembourg or Ireland) to avoid the additional regulatory requirements that will be imposed. This would reduce the number of Standard Listed companies. However, our expectation is that these additional considerations are likely to be of marginal importance when companies consider the advantages and disadvantages of different exchanges so the overall effects will be small.
47. We did not identify any effects on the variety of transaction nor on the competitive process.

[^] Based on FSA’s understanding of how a law firm would charge for work of this nature.

Benefits

48. Benefits associated with these proposals will arise from the mitigation of the identified market and regulatory failures.
49. Firstly, making the management responsible for the prospectus and subject to the Disclosure Rules and Transparency Rules will put the incentives of the management more in line with those of the listed issuer. This would therefore increase investors' protection by reducing the likelihood that misleading information is provided in the prospectuses and making sure that any management dealings are properly disclosed to the market.
50. Secondly, the risk that the premium listed label is diluted will be mitigated and the potential negative effects on the overall cost of capital avoided. All shareholders of premium listed companies will benefit from this effect.
51. Thirdly, there should be greater allocative efficiency in the market as securities' prices will be based on more complete information and the level of protection expected from investment in premium listed companies.
52. **We might have overlooked some significant impact of the CBA. Differences of opinion may also arise over the nature and extent of some of the impacts we have covered. We would therefore welcome the input from respondents that would help us to better describe the costs and benefits.**

Annex 2

Compatibility with the FSA's general duties in its capacity as the UK Listing Authority

1. This Annex sets out our assessment of the compatibility of the proposals set out in this Consultation Paper (CP) with the general duties conferred on the FSA under section 73 of the Financial Services and Markets Act 2000 (FSMA) in its capacity as the UK Listing Authority (UKLA).

The need to use our resources in the most efficient and economic way

2. The proposals set out in this CP are consistent with an efficient and economic use of our resources.

The principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of the burden or restriction

3. We have undertaken a cost benefit analysis (CBA) to help inform this consultation (Annex 1) and believe that the costs associated with our proposals are proportionate to the benefits delivered.

The desirability of facilitating innovation in respect of listed securities

4. Our proposed changes should not have an impact on possible future innovation in respect of listed securities.

The international character of capital markets and the desirability if maintaining the competitive position of the UK

5. Our proposals do not impact on the competitiveness of the UK market. Our proposals in respect of externally managed companies would still allow a company adopting such a structure to seek a standard listing in the UK.

The need to minimise the adverse effects on competition of anything done in discharge of the FSA's functions

6. The CBA undertaken does not suggest there to be any adverse effects on competition.

The desirability of facilitating competition in relation to listed securities

7. The proposals seek to maintain the integrity and competitiveness of the UK markets for listed securities by up dating the Listing Rules to take account of developing market practise and to reflect the emergence of new ones.

Equality and Diversity

8. We have assessed that the amendments have little of no impact on the equality agenda and do not give rise to discrimination. We would nevertheless welcome any comments respondents may have on any equality issues they believe arise.

Annex 3

List of questions

Premium listing: wider issues

- Q1:** What, if any, changes to the Listing Rules do you believe may be necessary to provide additional protection to investors?

Reverse Takeovers

- Q2:** Do you agree with the proposal to amend the Listing Rules (LR 5.6.2R) to narrow the reverse takeover exemption so that it only applies to listed issuers acquiring another listed issuers listed within the same listing category?
- Q3:** Do you agree that the proposed guidance on a fundamental change (LR5.6.5G) contains the key indicators? Do you think there are other factors that should be considered and if so what are they?
- Q4:** Do you agree with the proposed changes to codify within the Listing Rules (LR5.6) the existing practice to contact the FSA as soon as possible once a takeover is agreed or details of the transaction have leaked, to discuss whether a suspension is appropriate?
- Q5:** Do you agree with the proposal to amend the Listing Rules (at LR5.6) to require an issuer to make an RIS announcement in relation to disclosure requirements, in addition to confirmation from the issuer?

- Q6:** Do you agree with the proposal to amend the Listing Rules (at LR 5.6) to allow a premium listed issuer to have a modification within its track record when undertaking a reverse takeover, without rendering the enlarged group ineligible?
- Q7:** Do you agree with the proposal to amend the Listing Rules (LR5.6) to follow the principles of our transfer provisions in the case of issuers acquiring targets which are also listed but in another category?
- Q8:** Do you agree with the proposal to delete LR 10.2.3R allowing an issuer with a premium listing undertaking a reverse takeover, to be treated in certain circumstances as a class 1 transaction?

Sponsors

- Q9:** Do you support the proposal to amend the Listing Rules (LR8.2.1R(6)) so that for smaller related party transactions a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?
- Q10:** Do you support the proposal to amend the Listing Rules (LR 8.2.1R(7)) so that for Related Party Circulars a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?
- Q11:** Do you support the proposal to amend the Listing Rules (LR 8.2.1(9)) to require a premium listed company to appoint a sponsor to discuss with the FSA whether a suspension of the listing is appropriate, before announcing a reverse takeover (that has been agreed or is in contemplation or where details of the reverse takeover have been leaked)?

- Q12:** Do you support the proposal to amend the Listing Rules (LR 8.2.1R(10) and LR8.2.1R(11)) so that where the target of a reverse takeover is not subject to a public disclosure regime, the premium listed company is required to appoint a sponsor in order to make a confirmations regarding the issuer's declarations, to the FSA?
- Q13:** Do you support the proposal to amend the Listing Rules (LR8.2.1R(12)) to require a premium listed company to appoint a sponsor for the purpose of submitting the eligibility letter required as a result of a reverse takeover?
- Q14:** Do you support the proposal to amend the Listing Rules (LR8.2.1R (13)) to require a sponsor to be appointed in relation to severe financial difficulty letters?
- Q15:** Do you support the proposal to amend the Listing Rules (LR8.2.1R(14)) to require a sponsor to be appointed in relation to the acquisition of a publicly traded company?
- Q16:** Do you support the proposal to amend the Listing Rules in respect of the definition of sponsor services to include all sponsor communications with the FSA in connection with the sponsor service?
- Q17:** Do you support the proposal to amend the Listing Rules (LR8.3.1R(1A)) so that a sponsor is required to provide any explanation or confirmation as the FSA reasonably requires for the purposes of ensuring that the Listing Rules are being complied with by an applicant or listed company?
- Q18:** Do you support the proposed amendments to the Listing Rules (LR8.3.1AR) in relation to sponsor communications and standard of care?

- Q19:** Do you support the proposed amendments to the Listing Rules (LR 8.3.2AG) in relation to sponsor communications that seek to reinforce the responsibility of the sponsor for communications with the UKLA, in instances where a sponsor relies on representations made by the listed company or applicant or a third party?
- Q20:** Do you support the proposal to amend the Listing Rules (LR 8.3.5BR) to introduce a Principle of Integrity for sponsors?
- Q21:** Do you support the proposal to amend the Listing Rules (LR8.3) to clarify that a sponsor must, as part of its ongoing conflicts checking procedures, take all reasonable steps to identify conflicts that could adversely affect its ability to perform its functions under LR8?
- Q22:** Do you support the proposal to amend the Listing Rules (LR8.6.16) so that sponsors are required to retain accessible records which are sufficient to demonstrate the basis on which sponsor services have been provided?
- Q23:** Do you agree with the proposal to amend the Listing Rules (LR 8.7.8) so that sponsors are required to notify the FSA of matters that would be relevant to the FSA in respect to: market confidence; reorganisations; and, ongoing approval as sponsor?
- Q24:** Do you support the proposal to amend the Listing Rules (LR 8.7.21AG) so that sponsors are required to submit a cancellation request in the event that they are unable to provide the requisite assurance of ongoing eligibility?
- Q25:** Do you support the proposal to amend the Listing Rules (LR8.7 and LR 8.3.13G) so that sponsors are no longer required to submit Conflicts Declarations?
- Q26:** Do you support the proposal to amend the Listing Rules (LR8.6.17R and LR 8.7.8R(9)) so that sponsors are no longer required to carry out regular reviews?

- Q27:** Do you support the proposal to amend the Listing Rules (LR8.6.5R) to introduce a specific obligation on premium listed companies and applicants to co-operate with their sponsor to enable the sponsor to discharge its obligations to the FSA?
- Q28:** Do you agree with the proposed amendments set out in paragraph 3.45?

Transactions

- Q29:** Do you support the proposal to remove reference to 'revenue nature' from LR 10.1.3R(3) and LR 11.1.5R of the Listing Rules?
- Q30:** Do you support the proposal to amend the Listing Rules to dispense with the notification requirements for class 3 transactions by deleting LR 10.3 from the Listing rules?
- Q31:** Do you agree that the proposed guidance on operation of our proposed new definition of break fee arrangements (LR10.2.6 and LR10.2.7) provides sufficient direction?
- Q32:** Do you support the proposal to amend the Listing Rules (LR 10.5.2, LR10.5.4 and LR 11.1.7) to require premium listed companies to send a supplementary circular to shareholders in the event a significant change or a significant new matter is considered to constitute necessary information?
- Q33:** Do you support the proposal to remove the reference to 'revenue nature' from LR 11.1.5R of the Listing Rules?
- Q34:** Do you support our proposals in relation to directors' indemnities and similar arrangements (LR10 and LR11)?

- Q35:** Do you agree with the proposed amendments to the Listing Rules (LR12.2, LR12.4 and LR13.7) in relation to the purchase of own equity shares?
- Q36:** Do you agree with the 0.5% threshold proposal (LR12.6.4R) requiring companies to announce any issue, sale or cancellation of treasury shares under an employee share scheme over 0.5% of a company's issued share capital (excluding treasury shares)?
- Q37:** Do you support the proposal to amend the Listing Rules (LR13.1 and LR13.2) so that the circular must be posted to shareholders as soon as it has been approved and our proposals to require circulars to be sent to shareholders no later than seven days before the date of a meeting?
- Q38:** Do you support the proposal to amend the Listing Rules (LR13.4.1R(4)) so that both the issuer and its directors will be referred to as taking responsibility for the contents of a class 1 circular?
- Q39:** Do you support the proposal to remove the requirement (LR13.6.1R(7)) for listed issuers to include class 1 disclosures within a related party circular, in the event a transaction has a percentage ratio greater than 25%?

Financial Information

- Q40:** Do you support the proposal to amend the Listing Rules (LR6.1.1R and LR6.1.1A) to reflect the FSA's current approach of not applying Chapter 6 where an existing premium listed company sets up a new holding company, provided that no transaction is being undertaken that would increase the assets or liabilities of the group?

- Q41:** Do you support the proposal to amend the Listing Rules (LR6.1.3R(1)(b)) to limit the date of admission of the securities to listing to a date not more than 3 months after the date of the prospectus?
- Q42:** Do you agree with the proposal to amend the Listing Rules (LR6.1.3R(2)) to remove the reference to auditors and focus on the independence of the person providing the opinion?
- Q43:** Do you agree with the proposal to amend the Listing Rules (LR6.1.3AG) to include new guidance describing the types of modification to the opinion on audited accounts which may be acceptable to the FSA based on our current practice?
- Q44:** Do you support our proposals in the related rules and guidance on the sufficiency of the historical financial information (LR6.1)?
- Q45:** Do you agree with the proposed clarification of our approach in the Listing Rules (LR6.1.8R and LR6.1.11R) that if a mineral or scientific research company has not been operating for the required period of three years, it must have published or filed accounts since the inception of its business activities?
- Q46:** Do you agree with the proposed clarification in the Listing Rules (LR6.1.12R) that a scientific research company must have proved its ability to attract funds from sophisticated investors prior to the marketing at the listing date?
- Q47:** Do you agree with the proposed consequential amendments to the guidance (LR6.1.13G and LR6.1.14G) relating to the cases where the FSA can modify accounts and track record and the amendment to clarify that the guidance is only relevant to the accounts and track record requirements?

- Q48:** Do you agree with the proposed new guidance in the Listing Rules (LR 6.1.20AG) clarifying that holdings of individual fund managers in an organisation will be treated separately, provided investment decisions with regard to the acquisition of shares are made independently?
- Q49:** Do you agree with the proposed new guidance in the Listing Rules (LR6.1.20BG) explaining that we consider that financial instruments that give a long economic exposure to shares, but do not control the buy/sell decision in respect of the shares, should not normally count as an interest for the purpose of the public hands threshold?
- Q50:** Do you agree with the proposal to amend the Listing Rules (LR6.1.23R) so that a company's constitution and the terms of its shares must be compatible with electronic settlement, rather than requiring the shares to be settled electronically, or do you think we should delete the requirement altogether?
- Q51:** Do you agree with the proposed amendments (LR13.4.7G) to the requirements for class 1 acquisitions of mineral assets?
- Q52:** Do you agree with the proposed amendments to the Listing Rules (LR 13.5), which detail the acceptable treatment for entities that have been or will be equity accounted or treated as an investment in the accounts of the listed issuer?
- Q53:** Do you support the proposal to amend the Listing Rules (LR 13.5.3CR) so that, where financial information is required but cannot be provided in the appropriate form, a valuation report should be included in the class 1 circular?
- Q54:** Do you find helpful the proposal to clarify in the Listing Rules (LR13.5.4R(2)) the exceptions to the rule that financial information in a class 1 circular must be prepared according to the accounting policies adopted in the issuer's latest annual consolidated accounts?

- Q55:** Do you support the proposal to amend the Listing Rules (LR13.5.9AR) so that listed issuers are required to make specific disclosures in respect of synergy benefits?
- Q56:** Do you agree with the proposal to amend the Listing Rules (LR13.5.17) to clarify that the financial information on companies acquired by targets should represent at least 75% of the enlarged target, or in the case of a reverse takeover 75% of the enlarged group?
- Q57:** Do you support the proposed amendments to the Listing Rules (LR13.5.21R) to require financial information tables to detail the accounting policies used and that the accountant's opinion need only state that the table gives a true and fair view?
- Q58:** Do you support the proposal to amend the Listing Rules (LR 13.5.27R) relating to acquisitions of companies traded on 'overseas' investment exchanges to allow the concession to apply where the FSA is satisfied as to the appropriateness of a particular investment exchange or MTF?
- Q59:** Do you agree with the proposal to include in the Listing Rules (LR 13.5.27AG) guidance as to the matters the FSA will consider and the timetable, when reviewing the appropriateness of a particular investment exchange or MTF?
- Q60:** Do you support the proposal to amend the Listing Rules (LR13.5.27) to allow certain modified opinions in financial information tables and require a positive assertion that the accounting policies are consistent?
- Q61:** Do you support the proposal to amend the Listing Rules (LR13.5.27) to allow the issuer to choose whether to include interim and quarterly financials in a circular and the proposed amendments to LR 13.5.30R?

- Q62:** Do you support the proposal to amend the Listing Rules (LR13.5.30) to amend the order of preference for the sourcing of disposal entity financial information and to allow the limited use of allocated financial information where such allocation is necessary and appropriately explained?
- Q63:** Do you agree with the proposal to amend the Listing Rules (LR13.5.30CR) so that in circumstances where accounting policies (or GAAP) may have changed, the FSA will require issuers to disclose the required financial information under both the old and new bases? As before, we would be interested to know how often the 75% rule above would be applied in practice.
- Q64:** Do you agree with the proposal to amend the Listing Rules (LR13.5.30DG) in relation to the allocation of central costs to disposal entities to clarify that the concession applies only to non-operating costs such as interest and tax?
- Q65:** Do you agree with the proposal to amend the Listing Rules (LR13.5) relating to profit forecasts to clarify that the fact the profit forecast or estimate was prepared for a reason other than the class 1 circular does not itself indicate invalidity and that the phrase 'a significant part of the listed company group' in LR 13.5.33(1)R should be interpreted as at least 75% of that entity?
- Q66:** Do you agree with our proposal to delete LR 13.5.35G so that the requirements for profit forecasts are extended to class 1 disposals?

Externally managed companies

- Q67:** Do you support the proposals to amend the Prospectus rules (PR 5.5.3) and the Disclosure rules and Transparency rules (DTR 3.1) to ensure the principals of the advisory firm are responsible (in addition to the company and its directors) for any prospectus the company publishes in the UK and to clarify that they are subject to transparency rules in their share dealings?
- Q68:** Do you support the proposals to amend the Listing Rules (LR6.1) so that commercial companies featuring this structure do not qualify for the premium listing accreditation?

Appendix 1: Draft Handbook text

Reverse takeovers

LISTING RULES (REVERSE TAKEOVERS) INSTRUMENT 2012

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Notes

- E. In Annex B to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

Citation

- F. This instrument may be cited as the Listing Rules (Reverse Takeovers) Instrument 2012.

By order of the Board
[*date*]

Annex A**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text and striking through indicates deleted text.

reverse takeover (in *LR*) a transaction classified as a *reverse takeover* under *LR*
~~10~~ 5.6.

target (in *LR*) the subject of a *class 1 transaction* or *reverse takeover*.

Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

5 Suspending, cancelling and restoring listing and reverse takeovers: All securities (LR 5)

...

- 5.2.3 G The FSA will generally seek to cancel the *listing of a ~~listed company's~~ an issuer's equity shares or certificates representing equity securities* when it completes a *reverse takeover*.

[Note: LR 5.6 contains further detail relating to reverse takeovers.]

After LR 5.5 insert the following new section. The text is not underlined.

5.6 Reverse takeovers

Application

- 5.6.1 R This section applies to an *issuer* with:
- (1) a *premium listing*;
 - (2) a *standard listing (shares)*; or
 - (3) a *standard listing of certificates representing equity securities*.

Categories of reverse takeover to which this section does not apply

- 5.6.2 R LR 5.6 does not apply where an *issuer* acquires the *shares or certificates representing equity securities* of a *target* with the same category of *listing* as the *issuer*.

Class 1 requirements

- 5.6.3 G Notwithstanding the effect of LR 5.6.2R, an *issuer* with a *premium listing* must in relation to a *reverse takeover* comply with the requirements of LR 10.5 (Class 1 requirements) for that transaction.

Definition

- 5.6.4 R A *reverse takeover* is a transaction, whether effected by way of a direct acquisition by the *issuer* or a subsidiary, an acquisition by a new holding

company of the *issuer* or otherwise, of a business, a *company* or assets:

- (1) where any *percentage ratio* is 100% or more; or
- (2) which in substance results in a fundamental change in the business or in a change in the board or voting control of the *issuer*.

When calculating the *percentage ratio*, the *issuer* should apply the *class tests*.

- 5.6.5 G For the purpose of LR 5.6.4R(2), the *FSA* considers that the following factors are indicators of a fundamental change:
- (1) the extent to which the transaction will change the strategic direction or nature of its business; or
 - (2) whether its business will be part of a different industry sector following the completion of the transaction; or
 - (3) whether its business will deal with fundamentally different suppliers and end users.

Requirement for a suspension

- 5.6.6 R An *issuer*, or in the case of an *issuer* with a *premium listing*, its *sponsor*, must contact the *FSA* as early as possible:
- (1) before announcing a *reverse takeover* which has been agreed or is in contemplation, to discuss whether a suspension of *listing* is appropriate; or
 - (2) where details of the *reverse takeover* have leaked, to request a suspension.
- 5.6.7 G Generally, when a *reverse takeover* is announced or leaked, there will be insufficient publicly available information about the proposed transaction and the *issuer* will be unable to assess accurately its financial position and inform the market accordingly. In this case, the *FSA* will often consider that suspension will be appropriate, as set out in LR 5.1.2G(3) and (4). However, if the *FSA* is satisfied that there is sufficient publicly available information about the proposed transaction it may agree with the *issuer* that a suspension is not required.
- 5.6.8 G LR 5.6.9G to LR 5.6.17R set out circumstances in which the *FSA* will generally be satisfied that a suspension is not required.

Target admitted to a regulated market

- 5.6.9 G The *FSA* will generally be satisfied that there is sufficient information in the market about the proposed transaction if:
- (1) the *target* has *shares* or *certificates representing equity securities*

admitted to a *regulated market*; and

- (2) the *issuer* makes an announcement stating that the *target* has complied with the disclosure requirements applicable on that *regulated market* and providing details of where information disclosed pursuant to those requirements can be obtained.

- 5.6.10 R An announcement made for the purpose of LR 5.6.9G(2) must be published by means of an *RIS*.

Target subject to the disclosure regime of another market

- 5.6.11 G The *FSA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction if the *target* has *securities* admitted to an investment exchange or trading platform that is not a *regulated market* and the *issuer*:

- (1) confirms, in a form acceptable to the *FSA*, that the disclosure requirements in relation to financial information and *inside information* of the investment exchange or trading platform on which the *target's securities* are admitted are not materially different from the disclosure requirements under *DTR*; and

- (2) makes an announcement to the effect that:

- (a) the *target* has complied with the disclosure requirements applicable on the investment exchange or trading platform to which its securities are admitted and provides details of where information disclosed pursuant to those requirements can be obtained; and

- (b) there are no material differences between those disclosure requirements and the disclosure requirements under *DTR*;

- 5.6.12 R Where an *issuer* has a *premium listing*, a written confirmation provided for the purpose of LR 5.6.11G(2) must be given by the *issuer's sponsor*.

- 5.6.13 R An announcement made for the purpose of LR 5.6.11G(2) must be published by means of an *RIS*.

Target not subject to a public disclosure regime

- 5.6.14 G Where the *target* in a *reverse takeover* is not subject to a public disclosure regime, or if the *target* has *securities* admitted on an investment exchange or trading platform that is not a *regulated market* but the *issuer* is not able to give the confirmation and make the announcement contemplated by LR 5.6.11G, the *FSA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction such that a suspension is not required where the *issuer* makes an announcement containing:

- (1) financial information on the *target* covering the last three years. Generally, the *FSA* would consider the following information to be sufficient:
 - (a) profit and loss information to at least operating profit level;
 - (b) balance sheet information, highlighting at least net assets and liabilities;
 - (c) relevant cash flow information; and
 - (d) a description of the key differences between the *issuer's* accounting policies and the policies used to present the financial information on the *target*;
 - (2) a description of the *target* to include key non-financial operating or performance measures appropriate to the *target's* business operations and the information as required under *PR* Appendix 3 Annex 1 item 12 (Trend information) for the *target*;
 - (3) a declaration that the *directors* of the *issuer* consider that the announcement contains sufficient information about the business to be acquired to provide a properly informed basis for assessing its financial position; and
 - (4) a statement confirming that the *issuer* has made the necessary arrangements with the *target* vendors to enable it to keep the market informed without delay of any developments concerning the *target* that would be required to be released were the *target* part of the *issuer*.
- 5.6.15 R An announcement made for the purpose of *LR* 5.6.14G must be published by means of an *RIS*.
- 5.6.16 R Where an *issuer* has a *premium listing*, a *sponsor* must provide written confirmation to the *FSA* that in its opinion, it is reasonable for the *issuer* to provide the declarations described in *LR* 5.6.14G (3) and (4).
- 5.6.17 R Where the *FSA* has agreed that a suspension is not necessary as a result of an announcement made for the purpose of *LR* 5.6.14G the *issuer* must comply with *DTR* 2.2.1R on the basis that the *target* already forms part of the enlarged *group*.
- Cancellation of listing
- 5.6.18 G The *FSA* will generally seek to cancel the *listing* of an *issuer's* shares or certificates representing equity securities when the *issuer* completes a *reverse takeover*.
- 5.6.19 G *LR* 5.6.22G to *LR* 5.6.28G set out circumstances in which the *FSA* will generally be satisfied that a cancellation is not required.

- 5.6.20 R Where the *issuer's listing* is cancelled following completion of a *reverse takeover*, the *issuer* must re-apply for the *listing* of the *shares* or *certificates representing equity securities* and satisfy the relevant requirements for *listing*, except that for an *issuer* with a *premium listing*, LR 6.1.3R(1)(b) and LR 6.1.3R(1)(e) will not apply in relation to the *issuer's* accounts.
- 5.6.21 G Notwithstanding LR 5.6.20R, financial information provided in relation to the *target* will need to satisfy LR 6.1.3R(1)(b) and LR 6.1.3R(1)(e).

Acquisitions of targets from different listing categories: issuer maintaining its listing category

- 5.6.22 G Where an *issuer* acquires the *shares* or *certificates representing equity securities* of a *target* with a different *listing* category from its own and the *issuer* wishes to maintain its existing *listing* category, the *FSA* will generally be satisfied that a cancellation is not required on completion of a *reverse takeover* if:
- (1) the *issuer* will continue to be eligible for its existing *listing* category following completion of the transaction;
 - (2) the *issuer* provides an eligibility letter setting out how the *issuer* as enlarged by the acquisition satisfies each *listing rule* requirement that is relevant to it being eligible for its existing *listing* category; and
 - (3) the *issuer* makes an announcement or publishes a *circular* explaining:
 - (a) the background and reasons for the acquisition;
 - (b) any changes to the acquiring *issuer's* business that have been made or are proposed to be made in connection with the acquisition;
 - (c) the effect of the transaction on the acquiring *issuer's* obligations under the *Listing Rules*;
 - (d) (where appropriate) how the acquiring *issuer* will continue to meet the eligibility requirements referred to in LR 5.6.20R; and
 - (e) any other matter that the *FSA* may reasonably require.
- 5.6.23 R An announcement or *circular* published for the purpose of LR 5.6.22G must be published by means of an *RIS*.
- 5.6.24 R An eligibility letter prepared for the purposes of LR 5.6.22G must be provided to the *FSA* not less than 20 *business days* prior to the announcement of the transaction.

- 5.6.25 R Where an *issuer* has a *premium listing*, the eligibility letter provided for the purposes of LR 5.6.22G must be provided by a *sponsor*.

Acquisitions of targets from different listing categories: issuer changing listing category

- 5.6.26 G The *FSA* will generally be satisfied that a cancellation is not required on completion of a *reverse takeover* if the *target* is *listed* with a different *listing* category from that of the *issuer* and the *issuer* wishes to transfer its *listing* to a different *listing* category in conjunction with the acquisition and the *issuer* as enlarged by the relevant acquisition complies with the relevant requirements of LR 5.4A to transfer to a different *listing* category.
- 5.6.27 G An *issuer* wishing to transfer a *listing* of its *equity shares* from a *premium listing (investment company)* to a *standard listing (shares)* should note LR 5.4.A.2G which sets out limitations resulting from the application of LR 14.1.1R (application of the *listing rules* to a *company* with or applying for a *standard listing of shares*).
- 5.6.28 G Where an issuer is applying LR 5.4A in order to avoid a cancellation as contemplated by LR 5.6.26G, the *FSA* will normally waive the requirement for shareholder approval under LR 5.4A.4R(2)(c) where the *issuer* is obtaining separate shareholder approval for the acquisition.

Amend the following as shown.

10.2 Classifying transactions

...

- 10.2.2 R Except as otherwise provided in this chapter, transactions are classified as follows:
- ...
- (2) ...; and
- (3) ...; ~~and~~
- (4) ~~Reverse takeover: a transaction consisting of an acquisition by a listed company of a business, an unlisted company or assets where any percentage ratio is 100% or more or which would result in a fundamental change in the business or in a change in board or voting control of the listed company. [deleted]~~
- 10.2.2A G If an issuer is proposing to enter into a transaction classified as a reverse takeover it should consider LR 5.6.

~~Certain reverse takeovers to be treated as class 1 transactions~~

- 10.2.3 R ~~A reverse takeover is to be treated as a class 1 transaction if all of the following conditions are satisfied in relation to the transaction:~~
- ~~(1) none of the *percentage ratios* resulting from the calculations under each of the *class tests* in LR 10 Annex 1G (as modified or added to by LR 10.7 where applicable) exceed 125%;~~
 - ~~(2) the subject of the acquisition is in a similar line of business to that of the acquiring *company*;~~
 - ~~(3) the undertaking the subject of the acquisition complies with all relevant requirements of LR 6;~~
 - ~~(4) there will be no change of board control of the *listed company*; and~~
 - ~~(5) there will be no change of voting control of the *listed company*.
[deleted]~~

...

10.6 Reverse takeover requirements

- 10.6.1 R ~~A listed company must in relation to a reverse takeover comply with the requirements of LR 10.5 (Class 1 requirements) for that transaction.
[deleted]~~

Material change to terms of reverse takeover

- 10.6.1A G ~~LR 10.5.2R and LR 10.5.3G will apply if there is a material change to the terms of a reverse takeover. [deleted]~~

Cancellation of listing

- 10.6.2 G ~~When a listed company completes a reverse takeover, the FSA will generally cancel the listing of its equity shares (see LR 5.2.3G) and the company will be required to re-apply for the listing of the equity shares and satisfy the relevant requirements for listing (except that LR 6.1.3R(1)(b)) will not apply in relation to the listed company's accounts). [deleted]~~

Suspended listing

- 10.6.3 G ~~Before a listed company announces a reverse takeover which has been agreed or is in contemplation or where details of the reverse takeover have leaked, a listed company should consider whether a suspension of listing is appropriate. Generally, when a reverse takeover is announced or leaked, because of its significant size there will be insufficient information in the market about the proposed transaction and the company will be unable to assess accurately its financial position and inform the market accordingly. So, suspension will often be appropriate (see LR 5.1.2G(3) and (4)). But, if the FSA is satisfied that there is sufficient information in the market about the proposed transaction it may agree with the company that a suspension is~~

not required. ~~[deleted]~~

...

15.5 Transactions

...

- 15.5.2 R *A closed-ended investment fund* must comply with LR 10 (Significant transactions) and LR 5.6, except in relation to transactions that are executed in accordance within the scope of its published investment policy.

...

Appendix 1.1 Relevant definitions

| | |
|-------------------------|---|
| <i>reverse takeover</i> | (in LR) a transaction classified as a <i>reverse takeover</i> under LR 40 <u>5.6</u> . |
| <i>target</i> | (<u>in LR</u>) the subject of a <i>class 1 transaction</i> <u>or reverse takeover</u> . |

Appendix 2: Draft Handbook text

Sponsors

LISTING RULES (SPONSORS) (AMENDMENT NO 2) INSTRUMENT 2012

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules sourcebook of the Handbook.

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Notes

- E. In Annex B to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- F. This instrument may be cited as the Listing Rules (Sponsors) (Amendment No 2) Instrument 2012.

By order of the Board
[*date*]

Annex A**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text and striking through indicates deleted text.

sponsor service a service relating to a matter referred to in *LR 8.2* that a *sponsor* provides or is requested or appointed to provide, ~~and that is for the purpose of the *sponsor* complying with *LR 8.3.1R* or *LR 8.4*. This definition includes~~ including preparatory work that a *sponsor* may undertake before a decision is taken as to whether or not it will act as *sponsor* for a *listed company* or *applicant* or in relation to a particular transaction, and including all the *sponsor's* communications with the *FSA* in connection with the service. ~~But nothing in this definition is to be taken as requiring a *sponsor* to agree to act as a *sponsor* for a *company* or in relation to a transaction.~~

Annex B

Amendments to Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

8.2.1 R A *company* with, or applying for, a *premium listing* of its *equity shares* must appoint a *sponsor* on each occasion that it:

- (1) ~~makes~~ is required to submit any of the following documents to the FSA in connection with an application for admission of equity shares which:
 - (a) ~~requires the production of a prospectus or equivalent document;~~ or
 - (b) ~~is accompanied by a certificate of approval from another competent authority;~~ or
 - (c) ~~is accompanied by a summary document as required by PR 1.2.3R(8);~~ or
 - (d) ~~requires the production of listing particulars and is referred to in LR 15.3.3R or LR 16.3.4R;~~ or
- (2) is required to ~~produce~~ submit to the FSA a class 1 circular for approval; or
- (3) is ~~producing~~ required to submit to the FSA a circular that proposes a reconstruction or a refinancing which does not constitute a class 1 transaction is required by LR 9.5.12R to include a working capital statement; or
- (4) is ~~producing~~ required to submit to the FSA a circular for the proposed purchase of own shares which is required by LR 13.7.1R(2) to include a working capital statement; or

[Note: This does not include a circular issued by a closed-ended investment company.]

- (a) ~~which does not constitute a class 1 circular; and~~
 - (b) ~~is required by LR 13.7.1R(2) to include a working capital statement;~~ or
- (5) is required to do so by the FSA because it appears to the FSA that there is, or there may be, a breach of the *listing rules* or the *disclosure rules* and *transparency rules* by the *listed company*; or

- (6) is required by LR 11.1.10R(2)(b) to provide the FSA with a confirmation that the terms of the proposed *related party transaction* are fair and reasonable; or
- (7) is required to submit to the FSA a *related party circular* which is required by LR 13.6.1R(5) to include a statement by the board that the transaction or arrangement is fair and reasonable; or
- (8) is required by LR 8.4.3R(4) to submit to the FSA a letter from a *sponsor* in relation to the *applicant's* eligibility; or
- (9) is required to make an announcement or request a suspension in connection with a *reverse takeover* under LR 5.6.6R; or
- (10) provides to the FSA a disclosure regime confirmation in connection with a *reverse takeover* under LR 5.6.11G(2); or
- (11) makes a disclosure announcement in connection with a *reverse takeover* under LR 5.6.14G that contains a declaration described in LR 5.6.14G(3) or (4); or
- (12) submits to the FSA a letter in relation to the *issuer's* eligibility in connection with a *reverse takeover* under LR 5.6.22G(2);
- (13) provides confirmation to the FSA of its severe financial difficulty for the purposes of LR 10.8.3G(2); or
- (14) is required to provide an assessment of the appropriateness of an *investment exchange* or *multilateral trading facility* under LR 13.5.27BR.

...

Other transactions where a ~~listed~~ company with a premium listing must obtain a sponsor's guidance

- 8.2.2 R If a ~~listed~~ company with a premium listing is proposing to enter into a transaction which due to its size or nature could amount to a *class 1 transaction* or a *reverse takeover* it must obtain the guidance of a *sponsor* to assess the application of the *listing rules* and *disclosure rules* and *transparency rules*.
- 8.2.3 R If a ~~listed~~ company with a premium listing is proposing to enter into a transaction which is, or may be, a *related party transaction* it must obtain the guidance of a *sponsor* in order to assess the application of the *listing rules* and *disclosure rules* and *transparency rules*.

8.3 Role of a sponsor: general

Responsibilities of a sponsor

- 8.3.1 R A *sponsor* must in relation to a *sponsor service*:
- (1) referred to in *LR 8.2.1R(1) to (4), LR 8.2.1R(11), LR 8.2.1AR* and, where relevant *LR 8.2.1R(5)*, provide assurance to the *FSA* when required that the responsibilities of the *listed company* or *applicant* under the *listing rules* have been met; ~~and~~
 - (1A) provide to the *FSA* any explanation or confirmation in such form and within such time limit as the *FSA* reasonably requires for the purposes of ensuring that the *listing rules* are being complied with by an *applicant* or *listed company*; and
 - (2) ~~referred to in *LR 8.2.1R, LR 8.2.2R* or *LR 8.2.3R*~~, guide the *listed company* or *applicant* in understanding and meeting its responsibilities under the *listing rules* and *disclosure rules* and *transparency rules*.
- 8.3.1A R A *sponsor* must, for so long as it provides a *sponsor service*:
- (1) take all reasonable steps to ensure that any communication or information it provides to the *FSA* in carrying out the *sponsor service* is, to the best of its knowledge and belief, accurate and complete in all material respects; and
 - (2) immediately provide to the *FSA* any information of which it becomes aware that materially affects the accuracy or completeness of information it has previously provided.
- 8.3.2 G The *sponsor* will be the main point of contact with the *FSA* for any matter referred to in *LR 8.2*. The *FSA* expects to discuss all issues relating to a transaction and any draft or final document directly with the *sponsor*. However, in appropriate circumstances, the *FSA* will communicate directly with the *listed company* or *applicant*, or its advisers.
- 8.3.2A G A *sponsor* remains responsible for complying with *LR 8.3* even where a *sponsor* relies on the *listed company* or *applicant* or a third party to provide an assurance or confirmation to the *FSA*.

Principles for sponsors: due care and skill

...

Principles for sponsors: standard of conduct ~~relations with the *FSA*~~

...

- 8.3.5A R ~~A *sponsor* must in relation to a~~ If, in connection with the provision of a *sponsor service*, a *sponsor* becomes aware that it, a *listed company*, or an *applicant* is failing or has failed to comply with its obligations under ~~disclose to the *FSA* in a timely manner any material information relating to the *sponsor* or to a *listed company* or *applicant* of which it has knowledge which concerns non-compliance with the *listing rules*, the or *disclosure rules* or the *and transparency rules*, the~~

sponsor must promptly notify the FSA.

8.3.5B R A sponsor must, in relation to a sponsor service, act with honesty and integrity.

...

Principles for sponsors: identifying and managing conflicts

8.3.7A G The purpose of LR 8.3.7BR to ~~LR 8.3.12G~~ 8.3.13G is to ensure that conflicts of interest do not adversely affect:

...

8.3.7B R A sponsor must take all reasonable steps to identify conflicts of interest that could adversely affect its ability to perform its functions properly under this chapter, including its obligations to the FSA under LR 8.3.1R.

...

8.3.11 R If, in relation to a ~~transaction~~ sponsor service, a sponsor is not reasonably satisfied that its organisational and administrative arrangements will ensure that a conflict of interest will not adversely affect its ability to perform its functions properly under this chapter, it must decline or cease to provide the sponsor services on the transaction.

...

8.3.12A G LR 8.3.7BR, LR 8.3.9R and LR 8.3.11R apply before a sponsor begins to provide a sponsor service and for so long as the sponsor provides a sponsor service.

...

8.4 Role of a sponsor: transactions

Application for admission: new applicants

8.4.1 R LR 8.4.2R to LR 8.4.4G apply in relation to an application for *admission of equity shares* if an *applicant* does not have *equity shares already listed* and LR 6.1.1R does not apply because of the operation of LR 6.1.1AR, and:

...

(3) the application is accompanied by a summary document as required by PR 1.2.3R(8); or

(4) the production of listing particulars is required and in the circumstances referred to in LR 15.3.3R or LR 16.3.4R.

...

8.4.7 R LR 8.4.8R to LR 8.4.10G apply in relation to an application for *admission of equity shares* of an *applicant* that has *equity shares already listed* or in

circumstances in which LR 6.1.1AR applies.

...

Applying for transfer between listing categories

- 8.4.14 R In relation to a proposed transfer under LR 5.4A, if a sponsor is appointed in accordance with LR 8.2.1AR, it must:

...

...

Reverse takeovers

- 8.4.17 R A sponsor acting on a reverse takeover where the issuer decides to make a disclosure announcement under LR 5.6.14G must:

- (1) submit to the FSA under LR 5.6.16R a completed Sponsor's Disclosure Announcement Declaration;
- (2) not submit to the FSA the Sponsor's Disclosure Announcement Declaration unless it has come to a reasonable opinion, after having made due and careful enquiry, that it is reasonable for the issuer to provide the declarations described in LR 5.6.14G(3) and (4); and
- (3) ensure that all matters known to it which, in its reasonable opinion, should be taken into account by the FSA in considering a proposed disclosure announcement under LR 5.6.14G have been disclosed with sufficient prominence in the announcement or otherwise in writing to the FSA.

[Note: The Sponsor's Disclosure Announcement Declaration can be found on the UKLA section of the FSA website.]

...

Facilitating sponsor compliance with its obligations

- 8.5.6 R A company with or applying for a premium listing must cooperate with its sponsor to enable the sponsor to discharge its obligations under LR 8.3, including by providing to the sponsor all information reasonably requested by the sponsor for the purpose of carrying out the sponsor service in accordance with LR 8.

...

- 8.6.4 G When considering an application for approval as a sponsor the FSA may:

...

- (2) request that the applicant or its specified representative answer questions and explain any matter the FSA considers relevant to the application; and

...

...

8.6.12 G A *sponsor* will generally be regarded as having appropriate systems and controls if there are:

- (1) clear and effective reporting lines in place (including clear and effective management responsibilities);
- (2) effective systems and controls for the appropriate supervision of *employees providing engaged in the provision of sponsor services by the sponsor*;
- (3) effective systems and controls to ensure its compliance with all applicable *listing rules at all times, including* when performing *sponsor services*;
- (4) ...
- (5) ~~effective arrangements for creating and retaining for 6 years, adequate records of all matters relating to the provision of *sponsor services* to a *listed company or applicant*; [deleted]~~
- (6) effective systems and controls to ensure that it has appropriate staffing arrangements for the performance of *sponsor services* with due care and skill; ~~and~~
- (7) effective systems and controls to ensure that employees ~~performing engaged in the provision of *sponsor services* by the *sponsor*~~ receive appropriate guidance and training for the performance of those services with due care and skill; ~~and~~
- (8) effective systems and controls to identify and manage conflicts of interest.

...

8.6.13A G A *sponsor* will generally be regarded as having appropriate systems and controls for identifying and managing conflicts if it has in place effective policies and procedures:

...

- (2) to monitor whether arrangements put in place to manage conflicts are effective; ~~and~~
- (3) to ensure that individuals within the *sponsor* are appropriately trained to enable them to identify, escalate and manage conflicts of interest; ~~and~~
- (4) ~~to ensure that appropriate records are kept of decisions relating to identification and management of conflicts and the basis upon which it has reached those decisions. [deleted]~~

...

Systems and controls: record management

8.6.16A R A sponsor must have in place effective arrangements to create and retain for six years accessible records which are sufficient to be capable of demonstrating that it has provided sponsor services and otherwise complied with its obligations under LR 8 in accordance with the listing rules, including:

- (1) where a declaration is to be submitted under LR 8.4.3R(1), LR 8.4.9R(1), LR 8.4.13R(1), LR 8.4.14R(2) or LR 8.4.17R or where relevant pursuant to an appointment under LR 8.2.1R(5), the basis of each confirmation given;
- (2) where any opinion, assurance or confirmation is provided to the FSA or a company with, or applying for, a premium listing in relation to a sponsor service, the basis of that opinion, assurance or confirmation;
- (3) where a sponsor provides guidance to a listed company or applicant pursuant to LR 8.2.2R, LR 8.2.3R or LR 8.3.1R(2), the basis upon which the guidance is given and upon which any judgments or opinions underlying the guidance have been made or given; and
- (4) the steps taken to comply with its conflicts obligations under LR 8.3.7BR, LR 8.3.9R and LR 8.3.11R and its ongoing eligibility obligations under LR 8.6.6R.

8.6.16B G Records should:

- (1) be capable of timely retrieval; and
- (2) include material communications which record the provision of sponsor services including any advice or guidance given to listed companies or applicants in relation to their responsibilities under the listing rules or disclosure rules and transparency rules.

Regular review

~~8.6.17 R A sponsor must carry out a regular review to ensure that:~~

- ~~(1) it continues to be competent to provide sponsor services; and~~
- ~~(2) it has appropriate systems and controls in place to ensure that it can continue to carry out its role as a sponsor in accordance with this chapter. [deleted]~~

~~8.6.18 R A sponsor must create, and retain for 6 years, adequate records to demonstrate that it has carried out the regular reviews referred to in LR 8.6.17R setting out the basis upon which it has reached any conclusions about whether it continues to meet the criteria in that rule. [deleted]~~

Contact persons

8.6.19 R For each transaction for which it provides *sponsor services*, a *sponsor* must:

...

(2) ensure that the contact *person* or *persons*:

...

(b) are available to answer queries from the *FSA* on any business day between 8am and 6pm.

...

Annual notifications

8.7.7 R A *sponsor* must provide to the *FSA* on an annual basis:

...

(1A) for each of the criteria in that rule, ~~details~~ evidence of the basis upon which it considers that it meets ~~the criteria~~ that criterion.

...

General notifications

8.7.8 R A *sponsor* must notify the *FSA* in writing as soon as possible if:

(1) (a) the *sponsor* ceases to satisfy the criteria for approval as a *sponsor* set out in LR 8.6.5R or becomes aware of any matter which, in its reasonable opinion, would be relevant to the *FSA* in considering whether the *sponsor* continues to comply with LR 8.6.6R; or

(b) the *sponsor* becomes aware of any fact or circumstance relating to the *sponsor* or any of its employees engaged in the provision of *sponsor services* by the *sponsor* which, in its reasonable opinion, could adversely affect market confidence in the sponsor regime; or

(2) the *sponsor*, or any of its *employees engaged in the provision of* ~~who provide *sponsor services* by the *sponsor*~~, are:

...

(3) any of its *employees who provide* engaged in the provision of *sponsor services* by the *sponsor* are disqualified by a court from acting as a *director* of a *company* or from acting in a management capacity or conducting the affairs of any *company*; or

(4) the *sponsor*, or any of its *employees who provide* engaged in the provision of *sponsor services* by the *sponsor*, are subject to any public criticism, regulatory intervention or disciplinary action:

...

- (9) ~~a review carried out under LR 8.6.17R reveals it identifies or otherwise becomes aware of any material deficiencies~~ deficiency in the sponsor's systems and controls; or
- (10) ~~there is intended to be a change of control of the sponsor, or any restructuring of the sponsor's group, carries out any restructuring, which results in or a re-organisation of or a substantial change to the directors, partners or employees who provide engaged in the provision of sponsor services by the sponsor; or~~
- (11) there is expected to be a change in the financial or trading position of the sponsor or any of its group companies that could adversely affect the sponsor's ability to perform the sponsor services or otherwise comply with LR 8.

8.7.8A R Where a sponsor is of the opinion that notwithstanding the circumstances giving rise to a notification obligation under LR 8.7.8R, it continues to satisfy the ongoing criteria for approval as a sponsor in accordance with LR 8.6.6R, it must include in its notification to the FSA a statement to that effect and the basis for its opinion.

...

~~Transaction notification rules: conflicts declaration~~

- 8.7.12 R (1) ~~Each time a sponsor is appointed to act as a sponsor as required by the listing rules it must complete a Conflicts Declaration. [deleted]~~
- (2) ~~The completed Conflicts Declaration must be submitted to the FSA at the same time as any documents in connection with a transaction are first submitted to the FSA. [deleted]~~

~~[Note: The Conflicts Declaration form can be found on the UKLA section of the FSA's website.]~~

8.7.13 R ~~If, after submitting a Conflicts Declaration but prior to the day of approval of the prospectus, listing particulars, circular or announcement, a sponsor becomes aware that it is no longer able to comply with LR 8.3.9R or LR 8.3.11R, it must notify the FSA immediately. Details must be confirmed promptly to the FSA in writing. [deleted]~~

- 8.7.14 R ~~On the day of approval of the prospectus, listing particulars, circular or announcement:~~
- (1) ~~a written confirmation that there has been no material change to the Conflicts Declaration; or~~
- (2) ~~an updated Conflicts Declaration reflecting any and all changes;~~

must be submitted to the *FSA*. ~~[deleted]~~

- 8.7.15 G The *FSA* will notify the *sponsor* of any concerns it has in relation to the *sponsor's* independence as soon as possible following receipt of the Conflicts Declaration as set out in *LR 8.7.12R* or *LR 8.7.14R* or other notification regarding the *sponsor's* independence. ~~[deleted]~~

...

Cancellation of a sponsor's approval at the sponsor's request

- 8.7.21 G A *sponsor* that intends to request the *FSA* to cancel its approval as a *sponsor* ~~will need to~~ should comply with *LR 8.7.22R*.
- 8.7.21A G A *sponsor* should submit a *sponsor* cancellation request pursuant to *LR 8.7.22R* if:
- (1) it ceases to satisfy the ongoing criteria for approval as a *sponsor* in accordance with *LR 8.6.6R*; or
 - (2) there is a change of control of the *sponsor* or any restructuring of the *sponsor's* group that will result in *sponsor services* being provided by a different *person*, in which case the *person* that is intended to provide the *sponsor services* should apply for approval as a *sponsor* under *LR 8.6* before it provides any *sponsor services*.

- 8.7.22 R A request by a *sponsor* for its approval as a *sponsor* to be cancelled must be in writing and must include:

...

- (4) a signed confirmation that the *sponsor* will not ~~participate in~~ provide any ~~services~~ *sponsor services* ~~described in *LR 8.2*~~ as of the date the request is submitted to the *FSA*; and

...

...

Modified requirements for smaller related party transactions

- 11.1.10 R (1) ...
- (2) Where this rule applies, *LR 11.1.7R* does not apply but instead the *listed company* must before entering into the transaction or arrangement (as the case may be):
 - (a) ...
 - (b) provide the *FSA* with written confirmation from ~~an independent adviser acceptable to the *FSA*~~ a *sponsor* that the terms of the proposed transaction or arrangement with the *related party* are fair and reasonable as far as the shareholders of the *listed company* are

concerned; and

...

...

13.2.4 R The following documents (to the extent applicable) must be lodged with the *FSA* in final form before it will approve a *circular*:

...

- (2) for a *class 1 circular* or *related party circular*, a letter setting out any items of information required by this chapter that are not applicable in that particular case; and
- (3) ~~the *sponsor's Conflicts Declaration*; and [deleted]~~
- (4) any other document that the *FSA* has sought in advance from the *listed company* or its *sponsor*.

...

Related party circulars

13.6.1 R A *related party circular* must also include:

...

- (5) a statement by the board that the transaction or arrangement is fair and reasonable as far as the *security* holders of the *company* are concerned and that the *directors* have been so advised by ~~an independent adviser acceptable to the *FSA*~~ a *sponsor*;

...

...

13.6.3 G For the purpose of advising the *directors* under *LR* 13.6.1R(5), ~~an independent adviser~~ a *sponsor* may take into account but not rely on commercial assessments of the *directors*.

...

15.3.3 R ~~In addition to the circumstances set out in *LR* 8.2.1R when a *sponsor* must be appointed, an *An applicant*~~ must appoint a *sponsor* on each occasion that it makes an application for *admission* of *equity shares* which requires the production of *listing particulars*.

...

16.3.4 R ~~In addition to the circumstances set out in *LR* 8.2.1R when a *sponsor* must be appointed, an *An applicant*~~ must appoint a *sponsor* when it makes an application for *admission* of *equity shares* which requires the production of *listing*

particulars.

Appendix 3: Draft Handbook text

Transactions

LISTING RULES SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2012

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on *[date]*.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Listing Rules Sourcebook (Amendment No 8) Instrument 2012.

By order of the Board
[date]

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

break fee arrangement (in LR) an arrangement falling within the definition in LR 10.2.6AR.

Amend the following as shown.

associate (1) (in LR) (in relation to a *director, substantial shareholder, or person exercising significant influence*, who is an individual):

- (a) that individual's spouse, civil partner or child (together "the individual's family");
- (b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an *occupational pension scheme* or an *employees' share scheme* which does not, in either case, have the effect of conferring benefits on persons all or most of whom are related parties;
- (c) any *company* in whose *equity securities* the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:
 - (i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
 - (ii) to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters;
- (d) any partnership whether a limited partnership or limited liability partnership in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they

hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:

(i) a voting interest greater than 30% in the partnership; or

(ii) at least 30% of the partnership.

For the purpose of paragraph (c) ...

break fee ~~(in LR) a fee payable by a listed company if certain specified events occur which have the effect of materially impeding a transaction or causing the transaction to fail.~~

class 3 transaction ~~(in LR) a transaction classified as a class 3 transaction under LR 10.~~

Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

~~Overseas company applying for a premium listing~~

2.2.15 R ~~If the law of the country of its incorporation does not confer on *shareholders* rights which are at least equivalent to LR 9.3.11R, an *overseas company* applying for a *premium listing* must:~~

- ~~(1) ensure its constitution provides for rights which are at least equivalent to the rights provided for in LR 9.3.11R (as qualified by LR 9.3.12R); and~~
- ~~(2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation. [deleted]~~

...

Cancellation in relation to takeover offers

5.2.10 R LR 5.2.5R does not apply to the cancellation of *equity shares* with a *premium listing* when in the case of a takeover offer:

- (1) the *offeror* has by virtue of its shareholdings and acceptances of the offer, acquired or agreed to acquire issued *share* capital carrying 75% of the voting rights of the *issuer*; and
- (2) the *offeror* has stated in the offer *document* or any subsequent *circular* sent to the *security* holders that a notice period of not less than 20 *business days* prior to cancellation will commence either on the *offeror* attaining the required 75% as described in LR 5.2.10R(1) or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006 (Right of offeror to buy out minority shareholder).

5.2.10A G For the purposes of LR 5.2.10R(2), the offer *document* or *circular* must make clear that the notice period begins only when the *offeror* has acquired or agreed to acquire *shares* representing 75% of the voting rights, i.e. once the offer has been declared unconditional at that level.

...

Pre-emption rights

6.1.25 R If the law of the country of its incorporation does not confer on *shareholders* rights which are at least equivalent to LR 9.3.11R, an *overseas company*

applying for a premium listing must:

- (1) ensure its constitution provides for rights which are at least equivalent to the rights provided for in LR 9.3.11R (as qualified by LR 9.3.12R); and
- (2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation.

...

Discounts not to exceed 10%

- 9.5.10 R (1) *If a listed company makes an open offer, placing, vendor consideration placing, offer for subscription of equity shares or an issue out of treasury (other than in respect of an employees' share scheme) of a class already listed, the price must not be at a discount of more than 10% to the middle market price of those shares at the time of announcing the terms of the offer for an open offer or offer for subscription of equity shares or at the time of agreeing the placing for a placing or vendor consideration placing (as the case may be).*
- (2) In paragraph (1), the middle market price of *equity shares* means the middle market quotation for those *equity shares* as derived from the daily official list of the *London Stock Exchange* or any other publication of an *RIE* showing quotations for *listed securities* for the relevant date.
- (2A) *If a listed company makes an open offer, placing, vendor consideration placing or offer for subscription of equity shares during the trading day it may use an appropriate on-screen intra-day price derived from another market.*

...

- 9.5.10A G On each occasion that the listed company plans to use an on-screen intra-day price it should discuss the source of the price in advance with the FSA. The FSA may be satisfied that there is sufficient justification for its use if the alternative market has an appropriate level of liquidity and the source is one that is widely accepted by the market.

...

Meaning of "transaction"

- 10.1.3 R In this chapter (except where specifically provided to the contrary) a reference to a transaction by a *listed company*:

...

- (3) excludes a transaction of a revenue nature in the ordinary course of business;

...

...

Classifying transactions

...

- 10.2.2 R Except as otherwise provided in this chapter, transactions are classified as follows:

- (1) ~~Class 3 transaction: a transaction where all percentage ratios are less than 5%; [deleted]~~

...

...

Indemnities and similar arrangements

- 10.2.4 R (1) ...
- (2) Paragraph (1) does not apply to a *break fee arrangement* (see LR 10.2.6AR, LR 10.2.6BG and LR 10.2.7R which ~~deals deal~~ with *break fees fee arrangements*).
- 10.2.5 G For the purpose of LR 10.2.4R(1), the FSA considers the following indemnities not to be exceptional:

...

- (3) those given to advisers against liabilities to third parties arising out of providing advisory services; ~~and~~
- (4) any ~~other~~ indemnity that is specifically permitted to be given to a *director* or auditor under the Companies Act 2006; ~~and~~
- (5) loans granted to directors pursuant to sections 204, 205 and 206 of the Companies Act 2006.

Break fees fee arrangements

- 10.2.6A R An arrangement is a *break fee arrangement* if the purpose of the arrangement is that a compensatory sum will become payable by a *listed company* to another party (or parties) to a proposed transaction if the proposed transaction fails or is materially impeded and there is no

independent substantive commercial rationale for the arrangement.

- 10.2.6B G (1) The following arrangements will meet the definition of *break fee arrangements* in LR 10.2.6AR (although this list is not intended to be exhaustive): ‘no shop’ provisions, which require payment of a sum to a party in the event the seller finds an alternative purchaser; a requirement to pay another party’s wasted costs in the event a transaction fails; non refundable deposits; ‘go shop’ provisions, which require a seller to pay a fee to the initial purchaser if it finds an alternative purchaser.
- (2) In contrast, payments in the nature of damages (whether liquidated or unliquidated) for a breach of an obligation with an independent substantive commercial rationale, for example the typical business protection covenants that will apply between exchange and completion of a share or asset acquisition agreement or co-operation and information access obligations relating to obtaining merger or other clearances, are not *break fee arrangements*.
- 10.2.7 R (1) ~~A *break fee* or *break fees*~~ Sums payable pursuant to *break fee arrangements* in respect of a transaction are to be treated as a *class 1 transaction* if the total value of ~~the fee or the fees in aggregate~~ those sums exceeds:
- (a) if the *listed company* is being acquired, 1% of the value of the *listed company* calculated by reference to the offer price; and
- (b) in any other case, 1% of the market capitalisation of the *listed company*.
- (1A) The total value of sums payable pursuant to *break fee arrangements* for the purpose of paragraph (1) is the sum of:
- (a) any amounts paid or payable pursuant to *break fee arrangements* in relation to the same transaction or in relation to the same target assets or business in the 12 months prior to the date the most recent arrangements were agreed unless those arrangements were approved by shareholders; and
- (b) the aggregate of the maximum amounts payable pursuant to *break fee arrangements* in relation to the transaction;
- save that if the arrangements are such that a particular sum will only become payable in circumstances in which another sum does not, the lower sum may be left out of the calculation of the total value.

...

...

- 10.2.10 R (1) ...
- (2) Paragraph (1) does not apply in relation to ~~break fees~~ a break fee arrangement (see LR 10.2.6AR, LR 10.2.6BG and LR 10.2.7R which deal with break fee arrangements).

LR 10.3 (Class 3 requirements) is deleted in its entirety. The deleted text is not shown struck through.

Amend the following as shown.

Material change to terms of transaction

- 10.5.2 R If, after ~~the production of a circular and obtaining shareholder approval but~~ before the completion of a *class 1 transaction* or a *reverse takeover*, there is a material change to the terms of the transaction, the *listed company* must comply again separately with LR 10.5.1R in relation to the transaction.

...

Supplementary circulars

- 10.5.4 R (1) If a listed company becomes aware of a matter described in (2) after the publication of a circular that seeks shareholder approval for a transaction expressly requiring a vote by the listing rules and containing notice of a meeting, but before the date of a general meeting, it must, as soon as practicable:
- (a) advise the FSA of the matters of which it has become aware; and
- (b) send a supplementary circular to shareholders providing an explanation of the matters referred to in (2).
- (2) The matters referred to in (1) are
- (a) a material change affecting any matter the listed company is required to have disclosed in a circular; or
- (b) a material new matter which the listed company would have been required to disclose in the circular if it had arisen at the time of its publication.
- 10.5.5 G LR 13 applies in relation to a supplementary circular. It may be necessary to adjourn a convened shareholder meeting if a supplementary circular cannot be sent to shareholders at least 7 days prior to the convened shareholder meeting as required by LR 13.1.9R.

...

Joint ventures

10.8.9 G ...

- (5) Where an issuer enters into a joint venture exit arrangement which takes the form of a put or call option and exercise of the option is solely at the discretion of the other party to the arrangement, the transaction should be classified at the time it is agreed as though the option had been exercised at that time.

10 Annex 1G The Class Tests

Class tests

...

The Profits test

- 4R (1) The profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the *listed company*.
- (2) For the purposes of paragraph (1), profits means:
- profits after deducting all charges except taxation; and
 - for an acquisition or disposal of an interest in an undertaking referred to in paragraph 2R (3)(a) or (b) of this Annex, 100% of the profits of the undertaking (irrespective of what interest is acquired or disposed of).
- (3) If the acquisition or disposal of the interest will not result in consolidation or deconsolidation of the target then the profits test is not applicable.

4AG The amount of loss is relevant in calculating the impact of a proposed transaction under the profits test. A listed company should include the amount of the losses of the listed company or target i.e. disregard the negative when calculating the test.

The Consideration test

...

- (3A) If the total consideration is not subject to any maximum (and the other class tests indicate the transaction to be a class 3 transaction a transaction where all percentage ratios are less than 5%) the transaction is to be treated as a class 2 transaction.

...

Figures used to classify assets and profits

8R ...

- (3) (a) The figures of the *listed company* must be adjusted to take account of subsequent completed transactions which have been notified to a *RIS* under *LR 10.4* or *LR 10.5*.
- (b) The figures of the target company or business must be adjusted to take account of subsequent completed transactions which would have been a *class 2 transaction* or greater when classified against the target as a whole.

...

Adjustments to figures

11G Where a listed company wishes to make adjustments to the figures used in calculating the class tests pursuant to 10G they should discuss this with the FSA before the class tests crystallise.

...

Definition of “related party transaction”

- 11.1.5 R In *LR*, a “*related party transaction*” means:
- (1) a transaction (other than a transaction ~~of a revenue nature~~ in the ordinary course of business) between a *listed company* and a *related party*; or
 - (2) an arrangement (other than an arrangement in the ordinary course of business) pursuant to which a *listed company* and a *related party* each invests in, or provides finance to, another undertaking or asset; or
 - (3) any other similar transaction or arrangement (other than a transaction ~~of a revenue nature~~ in the ordinary course of business) between a *listed company* and any other *person* the purpose and effect of which is to benefit a *related party*.

...

Requirements for related party transactions

...

- 11.1.7A R If, after obtaining shareholder approval but before the completion of a *related party transaction*, there is a material change to the terms of the transaction, the *listed company* must comply again separately with *LR 11.1.7R* in relation to the transaction.
- 11.1.7B G The *FSA* would (amongst other things) generally consider an increase of 10% or more in the consideration payable to be a material change to the terms of the transaction.
- 11.1.7C R A *listed company* must comply with *LR 10.5.4R* in relation to a *related party transaction*.

...

Aggregation of transactions in any 12 month period

- 11.1.11 R (1) If a *listed company* enters into transactions or arrangements with the same *related party* (and any of its *associates*) in any 12 month period and the transactions or arrangements have not been approved by shareholders the transactions or arrangements, including transactions or arrangements falling under *LR 11.1.10R*, or small *related party transactions* under *LR 11 Annex 1.1R(1)*, must be aggregated.

...

11 Annex 1R Transactions to which related party transaction rules do not apply

...

Directors' indemnities and loans

- 5 (1) A transaction that consists of:
- (a) ...
 - (b) ...
 - (c) a loan or assistance to a *director* by a *listed company* or any of its *subsidiary undertakings* if the terms of the loan or assistance are in accordance with those specifically permitted to be given to a *director* under section 204, ~~or~~ 205 or 206 of the Companies Act 2006.
- (2) ...

...

12.2 Prohibition on purchase of own securities

12.2.1 R A *listed company* must not purchase or redeem (or make any early redemptions of) its own *securities* and must ensure that no purchases in its *securities* are effected on its behalf or by any member of its *group* during a *prohibited period* unless:

- (1) prior to the commencement of the *prohibited period* the *company* has put in place a buy-back programme ~~where in which~~ the dates and quantities of *securities* to be traded during the relevant period are fixed and have been disclosed in a notification made in accordance with LR 12.4.4R; or
- (2) prior to the commencement of the *prohibited period* the *company* has put in place a buy-back programme managed by an independent third party which makes its trading decisions in relation to the *company's securities* independently of, and uninfluenced by, the *company*; or

...

...

Purchases of 15% or more

12.4.2 R Purchases by a *listed company* of 15% or more of any *class* of its *equity shares* (excluding *treasury shares*) pursuant to a general authority by the shareholders must be by way of a *tender offer* to all shareholders of that *class*.

12.4.2A R Purchase of 15% or more of any class of its own *equity shares* may be made by a *listed company*, other than by way of a *tender offer*, provided that the full terms of the *share* buyback have been specifically approved by

shareholders.

...

Notification of capitalisation issues and of sales, transfers and cancellations of treasury shares

...

- 12.6.4 R Any sale for cash, transfer for the purposes of or pursuant to an *employees' share scheme* or cancellation of *treasury shares* that represents over 0.5% of the listed company's share capital must be notified to a *RIS* as soon as possible and in any event by no later than 7:30 a.m. on the *business day* following the calendar day on which the sale, transfer or cancellation occurred. The notification must include:

...

...

Incorporation by reference

- 13.1.3 R Information may be incorporated in a *circular* issued by a *listed company* by reference to relevant information contained in:
- (1) a an approved prospectus or listing particulars of that listed company; or
 - (2) any other published *document* of that listed company that has been filed with the *FSA*.

...

Sending information to holders of listed securities

- 13.1.9 R A circular must be sent to holders of listed equity shares to allow sufficient time for review and consideration of the circular in advance of a vote which is expressly required under the listing rules, and in no case later than 7 days prior to the date of a meeting.
- 13.1.10 G It may be necessary for a convened shareholder meeting to be adjourned to comply with LR 13.1.9R.

...

Circulars not requiring approval

- 13.2.2 R A *circular* does not need to be approved under *LR 13.2.1R* if:
- (1) it is of a type referred to in *LR 13.8₂* or only relates to a proposed change of name₂ or, ~~in other case, the FSA has agreed that it does not need to be approved~~ is an information-only circular which does not

relate to a shareholder vote, other than of a type referred to in LR 13.4.3R(3);

- (2) it complies with LR 13.3 and also, if it is a *circular* referred to in LR 13.8, any relevant requirements in that section; and
- (3) neither it, nor the transaction or matter to which it relates, has unusual features.

13.2.2A G The FSA may agree to waive the requirement for approval of a *circular* in circumstances other than those set out in LR 13.2.2R.

...

13.2.10 R A *listed company* must send a *circular* to holders of its *listed equity shares* as soon as practicable after it has been approved.

...

Class 1 circulars

13.4.1 R A *class 1 circular* must also include the following information:

...

- (4) a declaration by the issuer and its directors in the following form (with appropriate modifications):

"The [issuer] and the directors of [the company issuer], whose names appear on page [], accept responsibility for the information contained in this document. To the best of the knowledge and belief of the [issuer] and the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.";

...

Related party circulars

13.6.1 R A *related party circular* must also include:

...

- (7) ~~for a transaction where any *percentage ratio* is 25% or more, the information required to be included in a *class 1 circular*; [deleted]~~

...

...

13.7 Circulars about purchase of own equity shares

Purchase of own equity shares

- 13.7.1 R (1) A *circular* relating to a resolution proposing to give the *company* authority to purchase its own *equity securities* must also include:
- ...
- (e) ...; ~~and~~
- (f) ...; and
- (g) an explanation of the potential impact of the proposed *share buyback*, including whether control of the *listed company* may be concentrated following the proposed transaction.

13 Annex 1R Class 1 circulars

...

...

3 The information required by this Annex is modified as follows:

...

- (2) ...; ~~and~~
- (3) ...; and
- (4) information required by Annex 1 item 4 should be provided only in respect of those risk factors which:
- (a) are material risk factors to the proposed transaction;
- (b) will be material new risk factors to the *group* as a result of the proposed transaction; or
- (c) are existing material risk factors to the *group* which will be impacted by the proposed transaction;
- (5) information required by Annex 1 item 24 must include a copy of the Sale and Purchase Agreement (or equivalent document) if applicable.

...

- 15.2.1 R To be *listed*, an *applicant* must comply with:

...

(2) (c) *LR 6.1.16R to LR ~~6.1.24G~~ 6.1.27G*; and

...

...

Transactions with related parties

...

15.5.4 R In addition to the definition in *LR 11.1.4R* a *related party* includes any *investment manager* of the *closed-ended investment fund* and any member of such *investment manager's group*.

Additional exemption from related party requirements

15.5.5 R (1) *LR 11.1.7R to LR 11.1.11R* do not apply to an arrangement between a *closed-ended investment fund* and its *investment manager* or any member of such *investment manager's group* where the arrangement is such that each invests in or provides finance to an entity or asset and the investment or provision of finance is either:

...

...

...

Appendix 1 Relevant definitions

Note: The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

associate in relation to a *director*, *substantial shareholder*, or *person exercising significant influence*, who is an individual:

- (1) that individual's spouse, civil partner or child (together "the individual's family");
- (2) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an *occupational pension scheme* or an *employees' share scheme* which does not, in either case, have the effect of conferring benefits on persons all or most of whom are related parties;
- (3) any *company* in whose *equity securities* the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent

entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:

(a) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or

(b) to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters;

(4) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:

(a) a voting interest greater than 30% in the partnership; or

(b) at least 30% of the partnership.

For the purpose of paragraph (3),

...

break fee a fee payable by a *listed company* if certain specified events occur ~~which have the effect of materially impeding a transaction or causing the transaction to fail.~~

break fee arrangement an arrangement falling within the description in *LR 10.2.6AR*.

~~*class 3 transaction*~~ a transaction classified as a class 3 transaction under *LR 10*.

Appendix 4: Draft Handbook text

Financial information

**LISTING RULES (FINANCIAL INFORMATION) (AMENDMENT)
INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

- C. The modules of the FSA's Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

| (1) | (2) |
|----------------------------------|---------|
| Glossary of definitions | Annex A |
| Listing Rules sourcebook (LR) | Annex B |
| Prospectus Rules sourcebook (PR) | Annex C |

Citation

- D. This instrument may be cited as the Listing Rules (Financial Information) (Amendment) Instrument 2012.

By order of the Board
[*date*]

Annex A**Amendments to the Glossary of definitions**

In this Annex, underlining indicates new text and striking through indicates deleted text.

| | |
|---|--|
| CE <u>SR</u> <u>ESMA</u> <i>recommendations</i> | the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004 published by the Committee of European Securities Regulators <u>European Securities and Markets Authority</u> . |
| <i>mineral expert's report</i> | (in <i>LR</i>) a report prepared in accordance with the CE <u>SR</u> <u>ESMA</u> <i>recommendations</i> . |

Annex B

Amendments to Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

6 Additional requirements for listing for premium listing (commercial company)

6.1 Application

6.1.1 R This chapter applies to an *applicant* for the *admission* of *equity shares* to *premium listing (commercial company)* except where LR 6.1.1AR applies.

6.1.1A R This chapter does not apply where a *company* with an existing *premium listing of equity shares* introduces a new *holding company* to its existing *group* and no transaction as defined in LR 10.1.3R is being undertaken that would otherwise increase the assets or liabilities of the *group*.

...

~~Accounts~~ Historical financial information

- 6.1.3 R (1) A new applicant for the admission of equity shares to a premium listing must have published or filed ~~audited accounts~~ historical financial information that:
- (a) ~~cover~~ covers at least three years; [**Note:** article 44 *CARD*]
 - (b) ~~are the latest accounts for a period ended~~ has a latest balance sheet date that is not more than six months before the date of the *prospectus* or *listing particulars* for the relevant *securities shares* and not more than nine months before the date the *shares* are *admitted to listing*;
 - (c) ~~are~~ includes the consolidated accounts for the *applicant* and all its *subsidiary undertakings*;
 - (d) have been ~~independently audited; or reported on~~ in accordance with the auditing standards applicable in an EEA State or an equivalent standard acceptable under item 20.1 of Annex I of the *PD Regulation*; and
 - (e) have been reported on ~~by the auditors~~ without modification.
- (2) A new applicant must:
- (a) take all reasonable steps to ensure that ~~its auditors~~ the person providing the opinion pursuant to LR 6.1.3R(1)(e) is ~~are~~ independent of it; and

- (b) obtain written confirmation from ~~its auditors~~ the person providing the opinion pursuant to LR 6.1.3R(1)(e) that they ~~comply~~ it complies with guidelines on independence issued by ~~their~~ its national accountancy and or auditing bodies.

6.1.3A G The FSA may accept that LR 6.1.3R(1)(e) has been satisfied if either:

- (1) the opinion is modified only with reference to an emphasis of matter in any of the earlier periods required by LR 6.1.3R and the opinion on the final period is unmodified; or
- (2) the opinion on the historical financial information for the final period under LR 6.1.3R is modified only with reference to an emphasis of matter with regard to going concern and LR 6.1.16R is complied with.

6.1.3B R The financial information required by LR 6.1.3R(1) must:

- (1) represent at least 75% of the new applicant's business for the full period referred to in LR 6.1.3R(1)(a); and
- (2) put prospective investors in a position to make an informed assessment of what the future prospects of the applicant's business might be.

6.1.3C G (1) In determining what amounts to 75% of the new applicant's business for the purpose of LR 6.1.3BR(1), the FSA will consider the size, in aggregate, of all of the acquisitions that the new applicant has entered into during the period required by LR 6.1.3R(1)(a) and up to the date of the prospectus, relative to the size of the new applicant as enlarged by the acquisitions.

(2) In ascertaining the size of the acquisitions relative to the new applicant for the purposes of LR 6.1.3BR, the FSA will take into account factors such as the assets, profitability and market capitalisation of the businesses.

(3) The figures used should be the latest available for the acquired entity and the new applicant as enlarged by the acquisition or acquisitions.

6.1.3D R Where the new applicant has made an acquisition or series of acquisitions such that its own consolidated financial information is insufficient to meet the 75% requirement in LR 6.1.3BR, there must be historical financial information relating to the acquired entity or entities which has been published or filed and that:

(1) covers the period from at least three years prior to the date under LR 6.1.3R(1)(b) up to at least the date of acquisition by the new applicant;

(2) is presented in a form that is consistent with the accounting policies adopted in the financial information required by LR 6.1.3R;

- (3) has been reported on without modification; and
- (4) in aggregate with the issuer's own historical financial information represents at least 75% of the enlarged new applicant's business for the full period referred to in LR 6.1.3R(1)(a).

- 6.1.3E G The purpose of LR 6.1.3BR is to ensure that the issuer has representative historical financial information throughout the period required by LR 6.1.3R(1)(a). If a new applicant's business meets the requirements of LR 6.1.3R but a significant part or all of its business has one or more of the following characteristics, its equity shares may not be eligible for a premium listing:
- (1) a business strategy that places significant emphasis on the development or marketing of products or services which have not formed a significant part of the new applicant's historical financial information;
 - (2) the value of the business on admission will be determined, to a significant degree, by reference to future developments rather than past performance;
 - (3) the relationship between the value of the business and its revenue or profit-earning record is significantly different from those of similar companies in the same sector;
 - (4) there is no record of consistent revenue, cash flow or profit growth throughout the period of the historical financial information;
 - (5) the new applicant's business has undergone a significant change in its scale of operations during the period of the historical financial information or is due to do so before or after admission;
 - (6) it has significant levels of research and development expenditure or significant levels of capital expenditure.

~~Nature and duration of business activities~~ Control of assets and independence

- 6.1.4 R A new applicant for the admission of equity shares to a premium listing must demonstrate that:
- (1) ~~at least 75% of the applicant's business is supported by a historic revenue earning record which covers the period for which accounts are required under LR 6.1.3R(1); [deleted]~~
 - (2) it controls the majority of its assets and has done so for at least the period referred to in ~~paragraph (1)~~ LR 6.1.3R(1)(a); and
 - (3) it will be carrying on an independent business as its main activity.
- 6.1.5 G ~~In determining what amounts to 75% of the applicant's business for the~~

purposes of *LR 6.1.4R(1)*, the *FSA* will take into account factors such as the assets, profitability and market capitalisation of the business. ~~[deleted]~~

6.1.6 G *LR 6.1.4R* is intended to enable prospective investors to make a reasonable assessment of what the future prospects of the *applicant's* business might be. Investors are then able to consider the *company's* historic revenue earning record in light of its particular competitive advantages, the outlook for the sector in which it operates and the general macro-economic climate. ~~[deleted]~~

6.1.7 G If an *applicant's* business has been in existence for the period referred to in *LR 6.1.4R* but part or all of its business has one or more of the following characteristics it may not satisfy that rule:

- (1) a business strategy that places significant emphasis on the development or marketing of products or services which have not formed a significant party of the issuer's historic revenue earning record; or
- (2) the value of the business on admission will be determined, to a significant degree, by reference to future developments rather than past performance; or
- (3) the relationship between the value of the business and its revenue or profit earning record is significantly different from those of similar companies in the same sector; or
- (4) there is no record of consistent revenue, cash flow or profit growth throughout the historic revenue earning period; or
- (5) the applicant's business has undergone a significant change in its scale of operations during the period of the historic revenue earning period; or
- (6) it has significant levels of research and development expenditure or significant levels of capital expenditure. ~~[deleted]~~

Mineral companies

6.1.8 R If a *mineral company* applies for the admission of its equity shares and cannot comply with *LR 6.1.3R(1)(a)* because it has been operating for a shorter period:

- (1) *LR 6.1.3 R(1)(a)* does not apply to the application it must have published or filed audited accounts since the inception of its business; and
- (2) *LR 6.1.3R(1)(b) to (e)* and (2) apply to the *mineral company* only to the extent that it has published accounts with regard to the period for which it has published or filed audited accounts pursuant to (1).

- 6.1.9 R LR 6.1.3BR(1) and LR 6.1.4R ~~does do~~ not apply to a *mineral company* that applies for the *admission* of its *equity shares*.

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Scientific research based companies

- 6.1.11 R If a *scientific research based company* applies for the *admission* of its *equity shares* and cannot comply with LR 6.1.3R(1)(a) because it has been operating for a shorter period:
- (1) LR 6.1.3 R(1)(a) does not apply to the application it must have published or filed audited accounts since the inception of its business; and
 - (2) LR 6.1.3 R(1)(b) to (e) and (2) apply to the scientific research based company only to the extent that it has published accounts with regard to the period for which it has published or filed audited accounts pursuant to (1).
- 6.1.12 R An *applicant* for the *admission* of *equity shares* of a *scientific research based company* does not need to satisfy LR 6.1.3BR or LR 6.1.4R but must:
- (1) demonstrate its ability to attract funds from sophisticated investors prior to the marketing at the time of listing;

...

Other cases where the FSA may modify accounts and track record requirements

- 6.1.13 G The *FSA* may modify or dispense with LR 6.1.3R(1)(a) or LR 6.1.4R 6.1.3BR if it is satisfied that it is desirable in the interests of investors and that investors have the necessary information available to arrive at an informed judgment about the *applicant* and the *equity shares* for which *listing* is sought. [Note: article 44 *CARD*]
- 6.1.14 G Before modifying or dispensing with LR 6.1.4R 6.1.3BR, the *FSA* must also be satisfied that there is an overriding reason for the *applicant* seeking *listing* (rather than seeking *admission* to a market more suited to a *company* without a historic revenue earning record sufficient historical financial information to be eligible for a premium listing).

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Shares in public hands

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- 6.1.20A G When calculating the number of shares held in public hands for the purposes of LR 6.1.19R(4)(e) the FSA may disregard the holdings of investment managers in the same group where investment decisions are made independently by the individual in control of the relevant fund and

those decisions are unfettered by the organisation to which the *investment manager* belongs.

- 6.1.20B G A financial instrument that provides a long-term economic exposure to shares, but does not provide for control over decisions in respect of those shares, should not be treated as an interest for the purposes of LR 6.1.19R(4)(e) except where the provider of a contract for difference acquires a long position in shares underlying the contract for difference which results in the provider having an interest of 5% or more of the relevant class of shares when aggregated with its other interests.

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Settlement

- 6.1.23 R To be listed, the constitution of the company and the terms of its equity shares must be ~~eligible for~~ compatible with electronic settlement.

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13.4 Class 1 circulars

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Acquisition or disposal of mineral resources

- 13.4.6 R If a class 1 transaction relates to an acquisition or disposal of mineral resources the class 1 circular must include:
- (1) a mineral expert's report; and
 - (2) a glossary of the technical terms used in the mineral expert's report.
- 13.4.7 G ~~For a disposal, the~~ The FSA may modify the information requirements in LR 13.4.6R if it considers that the information set out would not provide significant additional information. In those circumstances the FSA would generally require only the following information, provided it is presented in accordance with reporting standards acceptable to the FSA:
- (1) details of mineral resources, and where applicable reserves (presented separately) and exploration results or prospects;
 - (2) anticipated mine life and exploration potential or similar duration of commercial activity in extracting reserves;
 - (3) an indication of the duration and main terms of any licences or concessions and the legal, economic and environmental conditions for exploring and developing those licences or concessions;
 - (4) indications of the current and anticipated progress of mineral

exploration and/or extraction and processing including a discussion of the accessibility of the deposit; and

(5) an explanation of any exceptional factors that have influenced the matters in (1) to (4).

13.4.8 R If a *class 1 transaction* relates to the acquisition of a *scientific research based company* or related assets, the *class 1 circular* must contain an explanation of the transaction's impact on the acquirer's business plan and the information set out in Section 1c of Part III (Scientific research based companies) of the *CESR ESMA recommendations*.

13.5 Financial information in Class 1 Circulars

13.5.-1 G For the purposes of LR 13.5 references to consolidation include both consolidation and proportionate consolidation.

When financial information must be included in a class 1 circular

13.5.1 R Financial information, as set out in this section, must be included by a *listed company* in a *class 1 circular* if:

- (1) the *listed company* is seeking to acquire an interest in a *target* which will result in a consolidation of the *target's* assets and liabilities with those of the *listed company*; or
- (2) the *listed company* is seeking to dispose of an interest in a *target* which will result in the assets and liabilities subject of the disposal no longer being consolidated; or
- (3) the *target* ("A") has itself acquired a *target* ("B") and:
 - (a) A acquired B within the three year accounting reporting period set out in LR 13.5.13R(1) or after the date of the last published accounts; and
 - (b) the acquisition of B, at the date of its acquisition by A, would have been classified as a *class 1 acquisition* in relation to the *listed company* at the date of acquisition of A by the *listed company*.

13.5.2 G ~~A listed company that is entering into a class 1 transaction which does not fall within LR 13.5.1R must include in a class 1 circular such financial information as the FSA may specify. [deleted]~~

13.5.3 G ~~LR 13.5.1R will not normally apply to a property company making an acquisition or disposal of property. [deleted]~~

13.5.3A R When a listed company is acquiring an interest in a target that will be accounted for as an investment, or disposing of an interest in a target that

has been accounted for as an investment; and the *target's securities* that are the subject of the transaction are admitted to an investment exchange that enables intra-day price formation, the *class 1 circular* should include:

- (1) the amounts of the dividends or other distributions paid in the last three years; and
- (2) the price per *security* and the imputed value of the entire holding being acquired or disposed of at the close of business at the following times:
 - (a) on the last *business day* of each of the six months prior to the issue of the *class 1 circular*;
 - (b) on the day prior to the announcement of the transaction; and
 - (c) at the latest practicable date prior to the submission for approval of the *class 1 circular*.

13.5.3B R When a *listed company* is acquiring or disposing of an interest in a *target* that will be accounted for using the equity method in the *listed company's* annual consolidated accounts, the *class 1 circular* should include:

- (1) for an acquisition,
 - (a) a narrative explanation of the proposed accounting treatment of the *target* in the *issuer's* next audited consolidated accounts;
 - (b) a *financial information table* for the *target*;
 - (c) a statement that the *target* financial information has been audited and reported on without modification or a statement addressing *LR 13.5.25R* and *LR 13.4.2R* with regard to any modifications; and
 - (d) a reconciliation of the financial information and opinion thereon in accordance with *LR 13.5.27R(2)(a)* or, where applicable, a statement from the *directors* in accordance with *LR 13.5.27R(2)(b)*.
- (2) for a disposal, the line entries relating to the *target* from its last audited consolidated balance sheet and those from its audited consolidated income statement for the last three years together with the equivalent line entries from its interim consolidated balance sheet and interim consolidated income statement, where the *issuer* has published subsequent interim financial information.

13.5.3C R A *listed company* that is entering into a *class 1 transaction* which falls within *LR 13.5.1R*, *LR 13.5.3AR* or *LR 13.5.3BR* but cannot comply with *LR 13.5.12R* (inclusion of financial information table) or, for an investment, *LR 13.5.3AR(2)* (inclusion of price per *security* and the

imputed value of the entire holding), must include an appropriate independent valuation of the *target* in the *class 1 circular*.

Form of accounting information

- 13.5.4 R (1) A *listed company* must present all financial information that is disclosed in a *class 1 circular* in a form that is consistent with the accounting policies adopted in its own latest annual consolidated accounts.
- (2) The requirement set out in ~~paragraph (1)~~ does not apply to financial information presented in accordance with ~~LR 13.5.36R~~:
- (a) DTR 4.2.6R, in relation only to financial information for the *listed company* presented for periods after the end of its last published annual accounts; or
 - (b) LR 13.3.3R (in relation to pro forma financial information); or
 - (c) LR 13.5.27R or LR 13.5.30R (in relation to financial information presented for entities that are *admitted to trading* on a regulated market or admitted to an appropriate *multilateral trading facility* or overseas investment exchange); or
 - (d) LR 13.5.30BR (in relation to financial information on disposal entities extracted from financial records from previous years); or
 - (e) LR 13.5.3AR or LR 13.5.3BR (in relation to *targets* that are or will be treated as investments or accounted for using the equity method in the *listed company's* consolidated accounts); or
 - (f) the accounting policies to be used in the *issuer's* next financial statements, where the *issuer's* audited consolidated financial statements have been made public on a restated basis on or before the date of the *class 1 circular*.

...

Synergy benefits

- 13.5.9A R Where a *listed company* includes details of estimated synergies or other quantified estimated financial benefits expected to arise from a transaction in a *class 1 circular*, it must also include in the *class 1 circular*:
- (1) the basis for the belief that those synergies or other quantified estimated financial benefits will arise;

- (2) an analysis and explanation of the constituent elements of the synergies or other quantified estimated financial benefits (including any costs) sufficient to enable the relative importance of those elements to be understood, including an indication of when they will be realised and whether they are expected to be recurring;
- (3) a base figure for any comparison drawn;
- (4) a statement that the synergies or other quantified estimated financial benefits are contingent on the *class 1 transaction* and could not be achieved independently; and
- (5) a statement that the estimated synergies or other quantified estimated financial benefits reflect both the beneficial elements and relevant costs.

...

Financial information table

- 13.5.12 R *A listed company that is required by LR 13.5.1R or LR 13.5.3BR(1) to produce financial information in a class 1 circular must include in the circular a financial information table.*

Class 1 acquisitions

- 13.5.12 R LR 13.5.13R to LR 13.5.30R apply only in relation to a class 1 acquisition.
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Financial information table: reporting period

- 13.5.13 R *A financial information table for a class 1 acquisition must cover one of the following reporting periods:*
- (1) a period of three years up to the end of the latest financial period for which the *target* or its parent has prepared audited accounts; or
 - (2) a lesser period than the period set out in ~~paragraph~~ (1) if the *target's* business has been in existence for less than three years; ~~or~~
 - (3) ~~for a class 1 disposal, the period set out in LR 13.5.19R.~~

Financial information table: class 1 acquisitions

...

- 13.5.15 R *~~A listed company must include in a separate financial information table, financial information that covers those undertakings which are to become the target's subsidiary undertakings, if applicable. [deleted]~~*
- 13.5.16 R (1) ~~This rule applies if a listed company is seeking to acquire an interest~~

in a *target* (“A”) that has itself acquired a *target* (“B”) and:

- (a) A acquired B within the three year reporting period set out in LR 13.5.13R(1) or after the date of the last published accounts; and
- (b) the acquisition of B, at the date of its acquisition by A, would have been classified as a *class 1 acquisition* in relation to the *listed company* at the date of acquisition of A by the *listed company*. [deleted]

- (2) *A listed company* must include in a *financial information table* pre-acquisition financial information on B that covers the period from the commencement of the three year reporting period set out in LR 13.5.13R(1) up to the date of acquisition by A. [deleted]

13.5.17 G If the *target* made a series of acquisition that:

- (1) are not caught individually by LR 13.5.16R; and
- (2) were made during or subsequent to the reporting period set out in LR 13.5.13R(1) or (2);

the *FSA* may require additional financial information about those acquisitions to be included in the *financial information table*. [deleted]

13.5.17 A R If the *target* has made an acquisition or a series of acquisitions that were made during, or subsequent to, the reporting periods set out in LR 13.5.13R the *listed company* must include additional *financial information tables* so that the financial information presented by the *listed company* represents at least the lower of:

- (1) 75% of the enlarged target; or
- (2) in the case of a reverse takeover, 75% of the enlarged group;

for the period from the commencement of the three year reporting period set out in LR 13.5.13R(1) up to the date of the acquisition by the *listed company*, whichever is earlier.

13.5.17B G For the purposes of assessing whether the financial information presented in accordance with LR 13.5.17AR represents at least 75% of the enlarged *target* or enlarged group the *FSA* will take into account factors such as the assets, profitability and market capitalisation of the business.

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Financial information table: class 1 disposal

13.5.19 R (1) In the case of a *class 1 disposal*, a *financial information table* must include for the *target*:

- (a) ~~the last audited consolidated balance sheet;~~
- (b) ~~the audited consolidated income statements for the last three years;~~

~~if audited accounts have been prepared for the *target*. [deleted]~~

- (2) ~~If audited accounts have not been prepared for the *target*, the information required by paragraph (1) must be extracted from the consolidated schedules that underlie the *listed company's* audited consolidated accounts. The income statements must be drawn up to at least the level of profit or loss for the period. [deleted]~~
- (3) ~~If the *target* has not been owned by the *listed company* for the entire reporting period set out in paragraph (1)(b), the information required by paragraph (1) may be extracted from the *target's* accounting records. [deleted]~~

- 13.5.20 G ~~If a dispensation of LR 13.5.19R has been granted because it is not possible to provide a meaningful allocation of costs, such as interest and tax, the *class 1 circular* should contain a statement to this effect. [deleted]~~

Financial information table: accountant's opinion

- 13.5.21 R A financial information table must include a statement of the accounting policies used in its preparation based on LR 13.5.4R(1) or (2) and be accompanied by an accountant's opinion under LR 13.5.22R, unless LR 13.5.3AR, LR 13.5.3BR or LR 13.5.27R, LR 13.5.28R or LR 13.5.29G applies.

- 13.5.22 R An accountant's opinion must set out:
- (1) ~~whether, for the purposes of the *class 1 circular*, the *financial information table* gives a true and fair view of the financial matters set out in it;~~
 - (2) ~~whether the *financial information table* has been prepared in a form that is consistent with the accounting policies adopted in the *listed company's* latest annual accounts.~~

...

- 13.5.26 R If the accounts historical financial information of a *target* that falls within LR 13.5.14R to LR 13.5.16R or LR 13.5.17AR ~~contain a *modified auditor's report*~~ is subject to a modified opinion, details of the material matters giving rise to the modification must be set out in the *class 1 circular*.

Accountant's opinion: acquisitions of publicly traded companies

- 13.5.27 R (1) ~~This rule LR 13.5.27R(2) applies if~~ where the *target* is:

- (a) admitted to trading on a regulated market; or
- (b) a company whose securities are listed on an *overseas investment exchange* that is not a regulated market or admitted on an ~~overseas regulated market~~ a multilateral trading facility where appropriate standards as regards the production, publication and auditing of financial information are in place;

~~and a material adjustment needs to be made to the target's financial statements to achieve consistency with the listed company's accounting policies and none of the financial information included in the target's financial information table is subject to a modified audit opinion from the auditor, except where a dispensation has been granted under LR 13.5.27CR.~~

- (2) Where LR 13.5.27R(1) applies the A listed company must include the following in the class 1 circular either:
 - (a) a reconciliation of financial information on the *target*, for all periods covered by the *financial information table*, on the basis of the *listed company's* accounting policies; ~~accompanied by an accountant's opinion that sets out:~~
 - (i) whether the reconciliation of financial information in the financial information table has been properly compiled on the basis stated; and
 - (ii) whether the adjustments are appropriate for the purpose of presenting the financial information (as adjusted) on a basis consistent in all material respects with the listed company's accounting policies; or
 - (b) ~~an accountant's opinion that sets out:~~ a statement by the directors that no material adjustment needs to be made to the target's financial information to achieve consistency with the listed company's accounting policies.
 - (i) ~~whether the reconciliation of financial information in the financial information table has been properly compiled on the basis stated; and~~
 - (ii) ~~whether the adjustments are appropriate for the purpose of presenting the financial information (as adjusted) on a basis consistent in all material respects with the listed company's accounting policies.~~

13.5.27 G The FSA will make its assessment of whether the accounting and other standards of an investment exchange or multilateral trading facility are appropriate for the purpose of LR 13.5.27R(1)(b) having regard to at least the following matters in relation to the legal and regulatory framework
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applying to the *target*:

- (1) the quality of auditing standards compared with International Standards on Auditing;
- (2) requirements for independence of auditors;
- (3) the nature and extent of regulation of audit firms;
- (4) the quality of accounting standards compared with International Financial Reporting Standards;
- (5) the requirements for the timeliness of publication of financial information;
- (6) the presence and effectiveness of monitoring of the timely production and publication of the accounts; and
- (7) the existence and level of external independent scrutiny of the quality of accounts and the disclosures therein.

13.5.27B R Where a *listed company* proposes to rely on LR 13.5.27R(1)(b) its *sponsor* must submit to the *FSA* an assessment of the appropriateness of the investment exchange or *multilateral trading facility* against the factors set out in LR 13.5.27AG(1) to (7) and any other matters that it considers should be noted. The assessment must be submitted before or at the time the *listed company* submits the draft *class 1 circular*.

13.5.27C R The *FSA* may grant a dispensation from LR 13.5.27R(1) to allow the application of LR 13.5.27R(2) where an opinion on the *target's* financial information contains a modification. In considering the modification the *FSA* will have regard to the factors set out in LR 6.1.3AG.

~~When an accountant's opinion is not required~~

~~13.5.28 R An accountant's opinion is not required if the *target* is:~~

- ~~(1) *admitted to trading*; or~~
- ~~(2) a *company* whose *securities* are listed on an overseas investment exchange or admitted to trading on an overseas regulated market;~~

~~and no material adjustment needs to be made to the *target's* financial statements to achieve consistency with the *listed company's* accounting policies. [deleted]~~

~~13.5.29 G In the case of a *class 1 disposal* a *listed company* is not required to include an accountant's opinion with the *financial information table*. [deleted]~~

Half-yearly and quarterly financial information

13.5.30 R If the *target* of an acquisition has published half-yearly or quarterly

~~financial information subsequent to the period set out in LR 13.5.13R(1) or (2), such financial information must be: If a class 1 circular includes half-yearly or quarterly or other interim financial information for the target, the financial information should be presented as follows:~~

- ~~(1) reproduced in the class 1 circular if LR 13.5.27R(1) applies, the financial information should be presented in accordance with LR 13.5.27R(2) except that no accountant's opinion is required; or~~
- ~~(2) reconciled in accordance with LR 13.5.27R(2), if applicable if LR 13.5.3BR applies, the financial information should be presented in accordance with LR 13.5.3BR(1)(b) and LR 13.5.3R(1)(d); or~~
- ~~(3) if LR 13.5.27R(1) or LR 13.5.3BR do not apply, in accordance with LR 13.5.4R(1), and be accompanied by a confirmation from the directors of the consistency of the accounting policies with those of the issuer.~~

Class 1 disposals

13.5.30 R LR 13.5.30BR to LR 13.5.30DG apply only in relation to a class 1 disposal.
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- 13.5.30B R (1) In the case of a class 1 disposal, a financial information table must include for the target:
- (a) the last audited consolidated balance sheet;
 - (b) the audited consolidated income statements for the last three years drawn up to at least the level of profit or loss for the period; and
 - (c) the consolidated balance sheet and consolidated income statement (drawn up to at least the level of profit or loss for the period) at the issuer's interim balance sheet date if the issuer has published interim financial statements since the publication of its last annual audited consolidated financial statements.
- (2) The information in (1) must be extracted without material adjustment from the consolidation schedules that underlie the listed company's audited consolidated accounts or, in the case of (c), the interim financial information, and must be accompanied by a statement to this effect.
- (3) If the information in (1) is not extracted from the consolidation schedules it must be extracted from the issuer's accounting records and where an allocation is made, the information must be accompanied by:
- (a) an explanation of the basis for any financial information

presented; and

(b) a statement by the *directors* of the *listed company* that such allocations provide a reasonable basis for the presentation of the financial information for the *target* to enable shareholders to make a fully informed voting decision.

(4) If the *target* has not been owned by the *listed company* for the entire reporting period set out in (1)(b), the information required by (1) or (3) may be extracted from the *target's* accounting records.

13.5.30C R Where a change of accounting policies has occurred during the period covered by the *financial information table* required by LR 13.5.30BR the financial information must be presented on the basis of both the original and amended accounting policies for the year prior to that in which the new accounting policy is adopted and therefore the *financial information table* should have four columns (or more where changes have occurred in more than one year).

13.5.30 G The *FSA* may modify LR 13.5.30BR(1)(b) where it is not possible for the *listed company* to provide a meaningful allocation of non-operating costs, such as interest and tax in its audited consolidated income statements. The *class 1 circular* should contain a statement to this effect where this modification has been granted.

...

Profit forecasts and profit estimates

...

13.5.33 R If, prior to the *class 1 transaction*, a *profit forecast* or *profit estimate* was published that:

- (1) relates to the *listed company*, a significant part of the *listed company group*, ~~or~~ the *target* or a significant part of the *target*; and
- (2) ~~is still outstanding~~ relates to a period for which figures are customarily published or will be published by the *listed company*; and
- (3) the financial information has yet to be published at the date of the *class 1 circular*;

the *listed company* must either include that *profit forecast* or *profit estimate* in the *class 1 circular* and comply with LR 13.5.32R, or include the *profit forecast* or *profit estimate* in the *class 1 circular* together with an explanation of why the *profit forecast* or *profit estimate* is no longer valid and why reassessment of the *profit forecast* or *profit estimate* in the *class 1 circular* is not necessary for the *listed company* to comply fully with LR 13.3.1R(3).

13.5.33 A G For the purposes of LR 13.5.33R, the fact that the *profit forecast* or *profit estimate* was prepared for a reason other than the *class 1 circular* does not itself indicate invalidity.

13.5.33B G For the purposes of LR 13.5.33R(1) a significant part of the *listed company* or *target* is any part that represents over 75% of the *listed company's group* or the *target* respectively. For these purposes the *FSA* will take into account factors such as the assets, profitability and market capitalisation of the business.

13.5.34 G A *listed company* should consider LR 9.2.18R regarding information that must be published after a *class 1 transaction*.

13.5.35 G ~~LR 13.5.32R and LR 13.5.33R do not apply to class 1 disposals. [deleted]~~

~~Subsequent publication of unaudited financial information~~

13.5.36 R (1) ~~A *listed company* that publishes unaudited financial information in a *class 1 circular* must:~~

~~(a) reproduce that financial information in its next annual report and accounts;~~

~~(b) produce and disclose in the annual report and accounts the actual figures for the same period covered by the information reproduced under paragraph (a); and~~

~~(c) provide an explanation of the difference, if there is a difference of 10% or more between the figures required by paragraph (b) and those reproduced under paragraph (a). [deleted]~~

(2) Paragraph (1) does not apply to:

(a) ~~pro forma financial information prepared in accordance with Annex 1 and Annex 2 of the *PD Regulation*; or~~

~~(b) any preliminary statements of annual results or half-yearly or quarterly reports that are reproduced in the *class 1 circular*; or~~

~~(c) any additional analysis of financial information that is set out in a *financial information table*. [deleted]~~

...

13.8 Other circulars

...

Disapplying pre-emption rights

13.8.2 R A *circular* relating to a resolution proposing to disapply the statutory pre-emption rights under section 561 of the Companies Act 2006 (~~Existing shareholders' right of pre-emption~~) provided by LR 9.3.11R must include:

...

...

Appendix 1 Relevant definitions

...

~~*CESR ESMA recommendations*~~ the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004 published by the ~~Committee of European Securities Regulators~~ European Securities and Markets Authority.

Annex C

Amendments to Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

~~CE~~SR ESMA recommendations

- 1.1.8 G In determining whether Part 6 of the *Act*, these *rules* and the *PD Regulation* ~~has~~ have been complied with, the *FSA* will take into account whether a *person* has complied with the ~~CE~~SR ESMA recommendations.

...

Property valuation reports

- 5.6.5 G To comply with paragraph 130 of the ~~CE~~SR ESMA recommendations, the *FSA* would expect a valuation report for a property company to be in accordance with either:

...

...

Appendix 1

...

~~CE~~SR ESMA recommendations the recommendations for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004 published by the ~~Committee of European Securities Regulators~~ European Securities and Markets Authority.

Appendix 5: Draft Handbook text

Externally managed companies

**LISTING, PROSPECTUS AND DISCLOSURE RULES (MISCELLANEOUS
AMENDMENTS NO 2) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 Rules);
 - (b) section 84 (Matters which may be dealt with by prospectus rules); and
 - (c) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on [*date*].

Amendments to the Handbook

- C. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

| (1) | (2) |
|--|---------|
| Glossary of definitions | Annex A |
| Listing Rules sourcebook (LR) | Annex B |
| Prospectus Rules sourcebook (PR) | Annex C |
| Disclosure Rules and Transparency Rules sourcebook (DTR) | Annex D |

Citation

- D. This instrument may be cited as the Listing, Prospectus and Disclosure Rules (Miscellaneous Amendments No 2) Instrument 2012.

By order of the Board
[*date*]

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

external management company (in *LR* and *PR*) has the meaning in *PR* 5.5.3AR.

Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Externally managed companies

6.1.26 R An applicant for the admission of shares must satisfy the FSA that the discretion of its board to make strategic decisions on behalf of the company has not been limited or transferred to another person, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a third person.

6.1.27 G LR 6.1.26R applies to every commercial company which is applying for a premium listing. Examples of governance structures that are unlikely to satisfy this requirement include those where the board of the issuer consists solely of non-executive directors and where significant elements of the strategic decision-making of or planning for the company take place outside the issuer's group, for example with an external management company.

...

Externally managed companies

9.2.20 R An issuer must at all times ensure that the discretion of its board to make strategic decisions on behalf of the company has not been limited or transferred to another person, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a third person.

Appendix 1 Relevant definitions

...

external management company has the meaning in PR 5.5.3AR (i.e., in relation to an issuer that is a commercial company, a person who is appointed by the issuer (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by officers of the issuer and to make recommendations in relation to strategic matters).

Annex C

Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

5.5.3 R ...

(2) Each of the following *persons* are responsible for the *prospectus*:

...

(b) if the *issuer* is a *body corporate*:

- (i) each *person* who is a *director* of that *body corporate* when the *prospectus* is published; ~~and~~
- (ii) each *person* who has authorised himself to be named, and is named, in the *prospectus* as a *director* or as having agreed to become a *director* of that *body corporate* either immediately or at a future time; and
- (iii) each *person* who is a senior executive of any *external management company* of the *issuer*;

...

5.5.3A R In PR 5.5.3R(2)(b)(iii), *external management company* means in relation to an *issuer* that is a *commercial company*, a *person* who is appointed by the *issuer* (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by *officers* of the *issuer* and to make recommendations in relation to strategic matters.

5.5.3B G In considering whether the functions the *person* performs would ordinarily be performed by *officers* of the *issuer*, the *FSA* will consider, among other things:

- (1) the nature of the board of the *issuer* to which the *person* provides services, and whether the board has the capability to act itself on strategic matters in the absence of that *person*'s services;
- (2) whether the appointment relates to a one-off transaction or is a longer term relationship; and
- (3) the proportion of the functions ordinarily performed by *officers* of the *issuer* that is covered by the arrangement.

Annex D

Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text.

- 3.1.2A G (1) The *Act* provides that an individual who is not a *director* can still be a *person discharging managerial responsibilities* in relation to an issuer if they are a “senior executive of such an issuer” and they meet the criteria set out in the *Act*.
- (2) An individual may be a “senior executive of such an issuer” irrespective of the nature of any contractual arrangements between the individual and the *issuer* and notwithstanding the absence of a contractual arrangement between the individual and the *issuer*, provided the individual has regular access to inside information relating, directly or indirectly, to the *issuer* and has power to make managerial decisions affecting the future development and business prospects of the *issuer*.

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