Consultation Paper

CP12/25**

Financial Services Authority

Enhancing the effectiveness of the Listing Regime and feedback on CP12/2

Supplementary consultation on proposed changes to the Listing Rules resulting from the implementation of the Alternative Investment Fund Managers Directive

October 2012

Financial Services Authority

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The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 2 January 2013. There is no deadline for providing comments in relation the feedback on CP12/2.

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/cp12-25-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

AIFMD	Alternative Investment Fund Managers Directive
CESR	Committee of European Securities Regulators
CFD	Contracts for Differences
the Code	UK Corporate Governance Code
DTR	Disclosure Rules and Transparency Rules
EGM	Extraordinary General Meeting
EMC	Externally Managed Companies
ESMA	European Securities and Markets Association
FCA	Financial Conduct Authority
FRC	Financial Reporting Council
FTSE	Financial Times Stock Exchange
FSMA	Financial Services and Markets Act 2000
GAAP	Generally Accepted Accounting Principles
GDR	Global Depositary Receipt
IPO	Initial Public Offering
LR	Listing Rule
MTF	Multilateral Trading Facility
PD	Prospectus Directive

PDMR	Person Discharging Managerial Responsibility
PR	Prospectus Rules
PRA	Prudential Regulation Authority
RIS	Regulatory Information Service
SPA	Sale and Purchase Agreement
SPAC	Special Purpose Acquisition Company
UKLA	UK Listing Authority

Introduction

Structure of this publication

In CP12/2 we set out some proposals for changes to the Listing Rules, Prospectus Rules and Disclosure Rules and Transparency Rules which we had identified as being required to ensure that the operational effectiveness of the Listing Regime is maintained. The first part of this publication covers the **feedback** relating to CP12/2 and includes the final rules.

At the end of the introductory chapter of CP12/2, we also raised some wider issues about the nature of the premium listing standard and undertook, subject to responses, to consider developing specific options or proposals for discussion in a further paper this year.

The second part of this publication therefore contains a **consultation** on proposed amendments to the Listing Rules to enhance the effectiveness of the Listing Regime, and draft rules. At the same time, we are also **consulting** on proposed amendments to the Listing Rules relating to the implementation of the Alternative Investment Fund Managers Directive (AIFMD). This is also in the second part of this consultation, again with draft rules.

Who should read this paper?

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; and
- firms or persons investing in or dealing in UK-listed securities.

CONSUMERS

This publication 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.

1 Overview

Feedback on CP12/2

Introduction

1.1 On 26 January 2012 we consulted in CP 12/2 (the CP) on proposed changes to the substantive content of the Listing Rules to ensure that they reflected properly recent changes in market practices and so would allow the UKLA to meet its objectives. The 45 respondents to the CP represented a good cross-section of our stakeholders generally, and were overall very supportive of our proposals. With the exception of some relatively minor amendments – for the most part to make things clearer – we are proceeding substantially as proposed. We are very grateful to our stakeholders for the responses provided.

1.2 There were five chapters in the CP and we address each chapter separately below.

Reverse takeovers

1.3 Our proposals in this area were aimed at preventing 'back-door' listings of entities that would otherwise not be eligible for listing; ensuring that our approach was proportionate and that the requirements are consolidated and located in one area of the Listing Rules.

1.4 We are making a small number of amendments to the rules proposed in the CP, as we received majority support for most of the proposals. These are mostly to make things clearer, so the cost benefit analysis (CBA) in the CP is still appropriate.

Sponsors

1.5 We proposed changes that would ensure the Listing Rules fully reflected the scope and nature of a sponsor's role, and updates to the information they should give us. We also proposed some changes to more clearly articulate some existing rules and indicated and, where we felt

it was appropriate, to provide greater formal emphasis in the rules to the existing obligations, with which sponsors are already required to comply.

1.6 In response to the feedback received, we have made some minor drafting changes to the instrument and in some cases added guidance to clarify our intentions.

Financial information requirements

1.7 Our proposals in this area sought to codify existing practice, much of which was contained in the UKLA Technical Notes and to clarify our approach where we felt the rules were unclear or silent.

1.8 We received majority support for most of the proposals so we are making only a few amendments to the rules proposed in the CP. The amendments we are putting through include some further guidance on applying the rules and mainly to make things clearer; as such there is no change to the CBA in the CP.

Transactions

1.9 Our proposed changes in relation to transactions were largely the codification of existing practice much of which was contained in the UKLA Technical Notes.

1.10 Overall we received a good level of support to our proposals. We have made only a few minor drafting changes to the instrument, that seek to further clarify our original policy intention. None of the respondents raised comments about our Transactions CBA, so the CBA in CP12/2 is still appropriate.

Externally managed companies

1.11 In the CP we said that we had seen the development of a new corporate structure where significant management functions were outsourced to an offshore advisory firm and we described such structures as 'externally managed companies'. We explained that we were concerned that the real management of the company is, in effect, placed beyond the reach of some of the controls and protections for shareholders that are fundamental to the effectiveness of the Listing Regime. In addition we proposed that where such structures are already premium listed, they should no longer be eligible for this status.

1.12 We received a good level of support for our proposals and have made only some minor drafting changes to the instrument as a result of the feedback. We are providing a transitional period of 15 months aimed at giving existing externally managed companies the opportunity to give notice on external management contracts they have and put new arrangements in place. There is no change to the CBA in the CP.

Next steps

1.13 These rules will come into effect on 1 October 2012, except for the new rules for Sponsors, which will take effect on 31 December 2012. However, because some of the new rules relating to Reverse Takeovers and Financial Information make new rules imposing obligations to appoint sponsors, we have made transitional rules to suspend the operation of these rules (or the parts affected) until 31 December 2012.

1.14 The following rules are affected in this way: LR 5.6.6R; LR 5.6.13R; LR 5.6.17R; LR 5.6.26R; and LR 13.5.27BR.

1.15 In addition, we are making the new rule LR 9.2.20R relating to Externally Managed Companies transitional in order to mitigate the cost of restructuring, for those premium listed issuers who presently use an external management structure. This rule will not come into force until 1 January 2014, which will provide issuers affected by this rule the opportunity to give notice on their existing external management contracts and put new arrangements in place.

Consultation

Enhancing the effectiveness of the Listing Regime

1.16 At the end of last year there was significant debate in the market about the overall 'quality' of the premium listing regime. We have taken the lead in analysing these concerns thoroughly and have discussed widely with market participants, on both buy and sell side, possible actions that could be taken to enhance the effectiveness of the Listing Regime as a whole. We set out in summary our analysis of the underlying issues and the measures that we are proposing to implement to respond to the concerns expressed.

1.17 In the introduction to CP12/2 we explained that our overall and continuing purpose in regularly reviewing the Listing Rules is to ensure that they reflect properly changes in market practice 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.

1.18 For this purpose we set out proposals for consultation on a range of technical issues, presenting the feedback and our final policy positions in the Feedback section of this publication. These included proposals in relation to externally managed structures, where we took the broader view that their management arrangements and provisions for accountability to shareholders were not consistent with the high standards that we attach to the premium listing benchmark.

1.19 Consistent with this broader view, CP12/2 initiated a high-level discussion of the wider issues around the quality of the premium listing regime, the free float, minority shareholder protection (especially in situations where there is a controlling shareholder) and governance. This discussion originated in part from a debate between various market participants, including with us, prompted by the perceived operation of the free-float requirement in a number of specific high profile cases, and concerns held particularly by the investment community. Some stakeholders had argued that the free-float requirements, which are at present derived from European legislation and are explicitly framed in reference to liquidity consideration alone, should also be used for specific governance purposes and in particular for the protection of minority shareholders.

1.20 Discussion of this specific issue with investor stakeholders touched on a set of related market operational concerns, to which we have been giving active consideration for some time. In particular we had been discussing the pressures on the ability of London to continue attracting new issues, given the requirements of the existing free-float requirements. So it has been timely that we have been able to lead a debate on this set of issues taken together, to include the full range of stakeholder views, as an opportunity to assess the premium listing regime as a whole and whether it remains correctly positioned in order for the UKLA to be confident of meeting its current statutory objectives, especially in relation to investor protection on the one hand and maintaining competitiveness on the other.

1.21 CP12/2, therefore, provided some initial discussion of the relevant issues, set out in high-level terms some illustrative examples where consideration could be given to providing additional protections for investors and sought views on what, if any, changes to the Listing Rules might be necessary to provide such additional protection.

1.22 The comment we received reflected the views of a wide range of participants from both the buy and sell sides, together with legal, accounting and other advisory stakeholders. We also engaged extensively during the consultation period with a wide number and range of market participants, many of whom also responded to the consultation. We have also discussed our thinking and proposals as they have developed with the Financial Reporting Council (FRC) and FTSE.

1.23 The responses and informal discussions highlighted the remaining significant degree of polarity on the issues of free float, minority shareholder protection and the IPO market in general. So we have sought to identify carefully the nature and scale of the underlying problems and concerns and to propose specific measures to address them that are effective and proportionate.

1.24 Our analysis of the issues suggests that the underlying concerns of market participants do not represent systemic failure of the Listing Regime. However, we recognise that the concerns may represent the beginning of a longer-term pattern of issues that could continue to grow in severity if no action were taken and risk undermining the integrity of the Listing Regime. We have also concluded that the concerns mostly relate to misaligned behaviour in some areas, so there is no single remedy. Our proposals should therefore be seen both as

individual measures which are designed to correct in a proportionate way specific points of misaligned behaviour but which we also intend to be taken together as a restatement of what we see as the high standards of governance required of Premium listed issuers.

1.25 We believe that the great majority of issuers already fully subscribe to these standards both in theory and practice and that by restating them in this way we will facilitate their further adoption by all those issuers wanting to raise capital in London on the basis of its clear and high quality standards. We believe that this will be in the long-term interests of London in maintaining its pre-eminent attractiveness to both issuers and investors.

1.26 In developing and setting out our proposals we have sought first to explain clearly the nature of the Listing Regime and the way in which other players and regulatory regimes interact with it, and, second, our view of the key issues underlying the policy debate. In particular:

- The Listing Regime itself focuses on the eligibility of securities for admission to the Official List. The UKLA does not subject to its overarching power to refuse admission based on potential investor detriment make subjective qualitative judgements about a company's suitability for listing.
- The Listing Regime is a self-standing regime that sets out for issuers the behavioural and governance obligations that they must meet, and for investors a regime that is based on the provision of information to allow them to make active and properly informed decisions.
- So, while we recognise the importance attached to indexation by both issuers and investors, we do not believe that the Listing Regime should be driven by the needs of issuers seeking indexation or by the needs of investors who have chosen to base their investment decisions on passively tracking an index.
- In relation to corporate governance, we believe that the current comply or explain approach against the FRC's UK Governance Code, as required by the Listing Regime for premium listed issuers, is overall the right one. But we also recognise that an effective framework for securing the high standards of behaviour required within the premium segment needs to accommodate situations where disparate shareholders are less able to exert influence on an issuer's governance. This is particularly so where the low number of shares held in public hands means that a single dominant shareholder can exert effective control over an issuer's decision making. In these situations we believe there is a case for incorporating into the Listing Rules some requirements for Premium listed issuers that are at present only part of the comply or explain provisions of the FRC's Code.
- We believe that investors play a very important role in holding companies to account, that an important function of the Listing Rules is to ensure that investors have the tools to exercise this influence and that the effectiveness of these tools will be diminished if investors choose not to exercise their stewardship responsibilities.

- In relation to free float, we are keenly aware of the potential role that the amount of shares in public hands plays in giving shareholders sufficient power to counterbalance a dominant shareholder. But we also believe that free float would be a blunt tool even if used explicitly to ensure effective governance in a company. In addition we are aware of the concerns held by the sell-side that any increase in free float would risk damaging London's attractiveness as a market for IPOs.

1.27 Our proposals therefore reflect our view of these issues and centre around four key elements which we believe are fundamental to ensuring better aligned behaviour, both as eligibility requirements and where appropriate on a continuing basis. Taken together, these proposals represent a significant enhancing of the Listing Rules in the area of governance but at the same time recognise the potential for the standard listing segment to accommodate issuers that are not yet able to comply with the strict requirements applicable within the premium segment:

Optimising the entry criteria to the Premium segment so as to maintain the strength of the Premium Listing brand:

- implementing the concept of a controlling shareholder and requiring that an agreement is put in place to regulate the relationship between such a shareholder and the listed company;
- insisting on a majority of independent directors on the board where a controlling shareholder exists; and
- prohibiting certain voting arrangements which lower investor protection within the premium segment.

Ensuring that the eligibility requirements continue to apply as meaningful ongoing obligations:

- requiring a premium listed issuer to notify the FSA when it is not in compliance with its ongoing obligations;
- introducing a new dual voting requirement for the election of independent directors;
- providing guidance on what constitutes an independent business that is eligible for premium listing;
- clarifying the requirement for an applicant to control the majority of its business and providing guidance regarding areas where such control may not exist;
- mandating the content of a relationship agreement and requiring that it is adhered to on an ongoing basis; and
- empowering independent shareholders to approve material changes to the relationship agreement.

Clarifying the operation of the free-float provisions:

- explicitly excluding shares subject to a lock up for a prolonged period, since they do not provide any liquidity;
- detailing the circumstances where we might consider modifying the 25% free-float requirement, indicating that any modification beneath 20% would be unlikely; and
- removing the requirement for a minimum absolute percentage free float within the standard segment, provided that sufficient liquidity is present.

Providing shareholders with better quality information:

- requiring fuller and more comparable disclosures for smaller related party transactions in the annual report;
- mandating disclosure in an annual report made as a result of the issuer's premium listing to be clearly identifiable as such;
- introducing statements regarding the operation of the relationship agreement on an annual basis; and
- clearly expressing the applicable standard when assessing compliance with the UK Governance Code with respect to directors' knowledge of their responsibilities and obligations, including fiduciary duties (or local equivalent).

1.28 In addition, we have taken this opportunity to **review the Listing Principles** as well as the scope of their application. Currently, the Listing Principles only apply to companies that have a premium listing of equity shares with the result that certain expectations that we would expect to apply across all listed companies have been perceived as pertaining only to premium listed issuers. While we are conscious of the desire that the standard segment should accord as closely as possible to the standards imposed by the various European Directives, we are proposing that two of the existing six Listing Principles should be applicable to all listed companies.

1.29 We have also proposed some amendments that we believe are appropriate and added some new principles to the Premium Listing Principles to ensure that they better reflect the high standards applicable within the premium segment.

1.30 At the same time, we recognise that there is space for **increasing flexibility in the standard listing segment.** Therefore, while proposing measures to augment the rules applying to the premium segment, we propose to take this opportunity to seek stakeholders' views on relaxing our approach to enabling companies with smaller free floats to test the market by listing on the standard segment.

1.31 We believe that these proposals are necessary at this time and present a proportionate response to the issues encountered and are consistent with our statutory objectives. We have articulated the potential tension between our objectives and those of our stakeholders

but believe that these proposals will both augment the investor protections afforded by the regime and increase the attractiveness of our regime to companies considering an IPO in London. The proposals themselves should not present any problems for the vast majority of issuers that already comply fully but will serve to highlight those that are not applying the highest standards and put off those that are not willing to do so. We also believe that the proposals empower shareholders further and that it is the responsibility of shareholders to ensure that the powers and information that they have been provided with are used.

Implementation of AIFMD

1.32 In January 2012 the FSA published a Discussion Paper on the 'Implementation of the Alternative Investment Fund Managers Directive' (AIFMD), which covered all aspects of the implementation including proposals to change the investment entities Listing Rules.

1.33 The AIFMD sets out certain obligations on fund managers, some of which currently sit with the board of an investment trust. We perceived there is a risk of conflict arising from overlapping obligations falling on the manager and the board of the investment entity. As such we proposed that to manage this conflict, the obligations should fall on the investment fund itself rather than the manager.

1.34 While some of the respondents acknowledged the potential for conflict, our original policy proposal was not supported overall. The general view was that it would be better to be less prescriptive, and that there is good evidence for market-based solutions. Our revised proposal introduces a rule requiring boards of listed issuers to effectively monitor and manage the performance of their key service providers, which includes investment managers. We will expect boards to ensure appropriate contracts are in place upon listing and to ensure they are in a position to take action if the contractual obligations are breached or the contractual arrangements are no longer in the best interest of shareholders. This rule clearly articulates our current (and continuing) expectations of the boards of listed investment entities, but allows each issuer to find an individual solution for dealing with any conflicts arising.

Next steps

1.35 The consultation period closes on 2 January 2013. We intend to publish our feedback in the spring.

Section I

Feedback on CP12/2

2

Reverse takeovers

Introduction

2.1 Overall the proposals in this chapter received a good level of support. We are making few amendments to the rules proposed in the CP12/2, most of which relate to matters of clarification.

Takeovers of listed issuers

> ***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 issuer listed within the same listing category?*

2.2 Despite some disagreement from some of the 19 respondents to this question, there was still a good level of support for this proposal. Three respondents believed that applying the reverse takeover provisions to GDRs, in particular, was a change of policy and not a clarification; two others wanted a standard company acquiring a premium company to be exempt from the reverse takeover provisions. A further three respondents felt that the proposals would mean that the chapter 10 class tests would become applicable to standard and GDR listings and therefore they would no longer be subject only to EU minimum requirements.

Our response

As we explained in paragraph 2.2 of CP12/2, our overarching objective is to avoid the scenario where issuers, by undertaking a reverse takeover, are able to secure the listing of a business, which would otherwise be ineligible for listing. This objective applies equally to all types of issuer.

Also, it should also be noted that where the provisions of LR 5.6 do apply, we are simply applying some of the eligibility requirements to the enlarged group as a new applicant and not raising the disclosure standards above the EU minimum requirements. We are not applying chapter 10, but merely using the class tests set out in LR 10 Annex 1.

So we have proceeded as proposed.

Definition of a reverse takeover

Q3: Do you agree that the proposed guidance on a fundamental change (LR 5.6.5G) contains the key indicators? Do you think there are other factors that should be considered and if so what are they?

2.3 This proposal received a very high level of support. Of the 21 respondents to this question, only two disagreed; believing that LR 5.6.5G was too widely drafted and subjective. Two other respondents thought that we should include other factors but did not make any suggestions, while another two respondents requested guidance on what constituted a 'change in the board or voting control' in LR 5.6.4R(2) and in particular whether this related to any change in the composition of the board.

Our response

Generally it was felt by respondents that the proposed guidance in LR 5.6.5G regarding a 'fundamental' change in the business contained the appropriate key indicators. We have gone ahead largely as proposed, although we will monitor the position.

We have, however, amended the definition of a reverse takeover in LR 5.6.4R(2) by clarifying that it relates to a change in board *control* and not to any change in the *composition* of the board.

Suspensions – requirement

Q4: Do you agree with the proposed changes to codify within the Listing Rules (LR 5.6) 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?

2.4 This proposal received the support of most respondents. However, six of the 15 respondents to this question felt that the circumstances in which a reverse takeover would be 'in contemplation' was unclear and required further guidance. Three respondents wanted the rule to be brought into line with rule 2.2 of the City Code on Takeovers and Mergers.

Our response

Although there was good support for our proposal, there was clearly some concern as to what was meant by a reverse takeover being 'in contemplation' (although this is the wording used in the existing LR 10.6.3G and the Technical Note on Reverse Takeovers published in June 2010), so we have decided to include guidance in a new LR 5.6.7G. We have based this guidance on the examples given in the Technical Note of when we would regard a potential transaction as being sufficiently advanced to be described as a 'proposed transaction'.

We have not brought our rules into line with those of the Panel on Takeover and Mergers in this instance, as we have different regulatory objectives and the scope of the Listing Rules and the City Code are different.

Targets on other trading platforms

Q5: Do you agree with the proposal to amend the Listing Rules (at LR 5.6) to require an issuer to make an RIS announcement in relation to disclosure requirements, in addition to confirmation from the issuer?

2.5 This proposal was the least well supported of our proposals relating to reverse takeovers. Of the 20 respondents to this question, seven believed that LR 5.6.12G would be onerous and may not be possible in practice for the issuer to give the confirmation on behalf of the target company. Four respondents also suggested that instead, the issuer should be asked to confirm that 'having made due and careful enquiry, it is not aware of any non-compliance' with the relevant disclosure requirements. In some cases respondents felt that the UKLA was best placed to comment on differences between disclosure regimes, and that perhaps it should publish a list of acceptable markets.

2.6 In relation to the sponsor giving the confirmation (LR 5.6.13R), two respondents believed the sponsor was not qualified to do this – one also felt that there should be an explicit acknowledgement that sponsors are entitled to rely on other advisers and a rule requiring the issuer to provide the sponsor with full and accurate information. There was confusion as to whether the sponsor was being asked to confirm LR 5.6.12G (1) or (2) and concern that there was no time limit regarding either making the announcement or the confirmation. Three respondents requested clarification that the financial information

required for lifting a suspension did not need to be audited (as set out in the Technical Note on Reverse Takeovers published in June 2010).

Our response

With regard to the need for a written confirmation and announcement, we would point out that LR 5.6.12G is not *a requirement*, but rather a *concession* from the normal requirement for the suspension of an issuer's securities.

Our over-arching policy objective in this area is to ensure that there is sufficient publicly available information to enable an issuer's securities to continue to trade. We are clear that if the issuer itself is not able to confirm that this is the case, it would not be appropriate to grant the concession.

We have in the past considered maintaining a list of acceptable markets for other purposes, but discarded this concept as unworkable in practice.

In relation to issuers with premium listings where the sponsor will be required to give the written confirmation, this point is discussed in the Sponsor section of this Feedback under our response to Question 11. However, we have amended LR 5.6.13 & 14R to make it clear that it is the confirmation (LR 5.6.12G(1)) and not the announcement (LR 5.6.12G(2)), which the sponsor must provide. We have otherwise proceeded as proposed.

Cancellation

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?*

2.7 This proposal received a high level of support with only two out of the 17 respondents to this question believing there should be no exceptions.

Our response

We have proceeded as proposed.

Transfer of listing category

Q7: Do you agree with the proposal to amend the Listing Rules (LR 5.6) to follow the principles of our transfer provisions in the case of issuers acquiring targets which are also listed but in another category?

2.8 There was strong support for this proposal, with only two out of the 17 respondents believing that to have to provide the eligibility letter 20 days before the announcement was too onerous, particularly if there was a leak.

Our response

In relation to providing the eligibility letter 20 days before announcement, we think it is important to note that the announcement or circular referred to in LR 5.6.24R would in the vast majority of cases differ from any announcement obligations arising under LR 5.6.6R – LR 5.6.18R and the obligation to publish the circular at a later date. To clarify this point, we have amended LR 5.6.25R to explain that this relates to the announcement set out in LR 5.6.24R.

We have otherwise proceeded as proposed.

Small reverse takeovers (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?

2.9 There was a significant degree of support for this proposal. However, four of the 17 respondents wanted to keep the rule to allow for 'substance over legal form' cases.

Our response

As explained in paragraph 2.25 of CP12/2, the exemption is rarely relied upon in practice and we do not believe there is a strong policy rationale for retaining it. So we have deleted the existing LR 10.2.3R.

3 Sponsors

Introduction

3.1 The sponsor regime is fundamental to ensuring the effectiveness of the Premium Listing Regime. It ensures that both premium listed issuers and applicants seeking a premium listing understand and comply with the regulatory framework that they operate within and that we in turn can be confident this is the case. So it is vital that the Listing Rules which underpin the sponsor regime are robust and clear and that they allow us to monitor and supervise sponsors effectively.

3.2 In paragraph 3.3 of CP12/2, we explained that during the course of our interactions with sponsors since we last consulted on the sponsor regime in 2008, and following our consideration of findings across several sponsor transaction reviews, we had identified certain anomalies and weaknesses in the sponsor regime that we proposed to address. In addition, we proposed to extend the application of the sponsor regime to specific circumstances where, based on our experience, we believed it appropriate to require the appointment of a sponsor.

3.3 Overall we received a good level of support for our proposals in Chapter 8 of CP12/2, with majority support received in relation to all of our questions. However, there were some aspects of our consultation where respondents raised concerns and we have sought to address these in our responses below.

Sponsor services and when a sponsor is required

3.4 LR 8.2.1R sets out the circumstances when a sponsor must be appointed. In CP12/2 we proposed the addition of several new sponsor appointments to LR 8.2.1R. While considering the consultation responses in relation to these proposals, we have realised that LR 8.2.1R could be read as requiring a sponsor to be appointed when a premium listed company wishes to list standard equity shares. This was not our intention and we have

reworded LR 8.2.1R(1) to make it clear that a sponsor would only be required where there was an application for admission of equity shares to premium listing.

3.5 In addition we have noted that LR 8.2.1R(1) does not include supplementary circulars or supplementary listing particulars. It is current practice for a premium listed company to appoint a sponsor when it is required to submit a supplementary prospectus or supplementary listing particulars in relation to the admission of equity shares to premium listing. We intend to consult on making this a requirement via LR 8.2.1R in our Quarterly Consultation Paper in October 2012.

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

Q9: Do you support the proposal to amend the Listing Rules (LR 8.2.1R(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?

3.6 This proposal received the support of most respondents. However, of the 22 respondents to this question, ten believed that the listed company should be able to choose which expert is best placed to give the confirmation, suggesting in certain circumstances lawyers, accountants or investment banks may be better placed. In addition, they raised concerns that our proposals would increase in costs with no proportionate increase in benefits. One respondent was concerned that the proposal would reduce competition in the market amongst advisers. Two stated that the proposal did not take into account possible conflicts of interest.

3.7 One respondent who supported the proposal stated that in most cases the sponsor would be able to give the confirmation, but urged the FSA to acknowledge that the sponsor should be able to rely on other experts.

3.8 One respondent suggested that LR 11.1.10R letters are made available to shareholders.

Our response

As we explained in paragraph 3.7 of CP 12/2, we believe that, instead of introducing a formal approval process for independent advisers, it would be more prudent and efficient for sponsors to provide the 'fair and reasonable' confirmation to the FSA. Sponsors frequently provide this confirmation and are already subject to the sponsor regime, including requirements that seek to ensure the objectivity of a sponsor's work. The alternative of establishing a process for assessing and approving advisors would be a more costly and less efficient option.

To demonstrate that in many cases sponsors already provide 'fair and reasonable' confirmations and that, therefore, what we proposed reflects existing market practice, we reviewed the LR 11.1.10R(2) confirmations over the last six weeks. We found that all were provided by existing sponsors. So in most cases, our proposal would have no impact on competition amongst advisers and issuers would not incur additional costs. We have therefore gone ahead with our intention to require a sponsor to be appointed.

We would expect any conflicts to be managed through the existing sponsor conflicts framework which would apply to any sponsor service.

As noted in paragraph 3.7 of CP 12/2, we recognise that in certain circumstances it may be appropriate for a sponsor to seek expert advice to enable it to give a fair and reasonable opinion. Where this is the case (for instance, where the issuer operates in a specialist area such as real estate or minerals exploration) we expect that the current practice will continue. Please also see our response to Q19.

In terms of disclosing LR 11.1.10R(2)(c) transactions, existing LR 9.8.4R(3) requires these details to be disclosed in the company's annual financial report. We have provided additional clarification in this area – please see our Consultation on the Enhancing the effectiveness of the Listing Regime.

Proposed LR 8.2.1R (7) – Related Party Transactions

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?

3.9 This proposal received a good level of support. However, of the 22 respondents to this question seven did not entirely agree. Those disagreeing gave similar reasons as they did for Q9, such as: issuers should be able to go directly to an expert; the change would decrease competition/choice; any benefit would not be proportionate to the costs; the proposal does not take into account possible conflicts of interest.

3.10 One respondent suggested that the proposals should not reduce the responsibility of the relevant directors to ensure that related party transactions are fair and reasonable for the company.

Our response

In line with our proposal for a sponsor appointment in relation to smaller related party 'fair and reasonable' confirmations (please see Q9 above) we propose to require a similar appointment for related party circulars.

We have reviewed the LR 13.6.1R(5) statements received by the UKLA over the last two years and have found that most were provided by sponsors. We can therefore say that, for the majority of cases, listed companies see the sponsor as being the expert in providing such confirmations. As explained in our response to Q9 above, we also consider that it would be more prudent and efficient for sponsors to provide the 'fair and reasonable' confirmation to the FSA, rather than establishing a new approval framework for independent financial advisers.

We believe that our proposal should not detract from the existing requirement for the directors of issuers to ensure related party transactions are fair and reasonable as far as the shareholders of the company are concerned.

We have therefore proceeded as proposed.

Proposed LR 8.2.1R(9) – Reverse takeovers

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)?

3.11 The large majority of respondents to this question supported our proposal with only four raising some concern. Two raised issues with the wording 'in contemplation', and we have addressed this in our response to Q4 of CP12/2 where the underlying obligation on the issuer is proposed, by adding additional guidance at LR 5.6.7G.

3.12 Two respondents questioned whether the sponsor was best placed to have such a discussion, suggesting that the corporate broker was better suited.

Our response

Most respondents to this question supported our view that a sponsor should be required to be appointed before announcing a reverse takeover. We have proceeded as originally proposed.

A sponsor may consider it appropriate to seek the input of a corporate broker prior to discussing the matter with the FSA. Please see our response to Q19

which sets out our approach to the reliance by sponsors on other experts' advice. Here we make it clear that a sponsor is responsible for its communications with the UKLA regardless of whether the sponsor relies on representations made by a listed issuer, applicant or third party to help it fulfil its obligations to the UKLA.

Proposed LR 8.2.1R(10) – Reverse takeovers

Q12 *Do you support the proposal to amend the Listing Rules (LR 8.2.1R(10) and LR 8.2.1R(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 confirmations regarding the issuer's declarations, to the FSA?*

3.13 This proposal received a good level of support. However, of the 17 respondents to this question, five raised some minor concerns. Two suggested that sponsors were not best placed to make these confirmations and accountants or lawyers would be more appropriate.

3.14 Two respondents questioned whether the UKLA could maintain a list of acceptable markets.

Our response

We have proceeded as proposed. We believe that to require a sponsor to make such confirmations is in line with other circumstances (as set out in LR 8.2.1R) where a premium listed company undertakes a significant transaction and is required to give a confirmation or opinion to the FSA. Where issuers are required to seek the objective opinion of an expert, we believe that a sponsor, which is subject to the sponsor regime, is the appropriate person to give the opinion.

Please see our response to Q19 for our approach where a sponsor relies on a third party in order to give a confirmation or opinion to the FSA.

We have in the past considered maintaining a list of acceptable markets for other purposes but discarded this concept as unworkable in practice.

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

Q13: *Do you support the proposal to amend the Listing Rules (LR 8.2.1R(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?*

3.15 All the respondents to this question supported this proposal.

Our response

We have proceeded as proposed.

Proposed LR 8.2.1R(13) – Severe financial difficulty

Q14: Do you support the proposal to amend the Listing Rules (LR 8.2.1R (13)) to require a sponsor to be appointed in relation to severe financial difficulty letters?

3.16 All the respondents to this question supported this proposal.

Our response

We have proceeded as proposed.

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

Q15: Do you support the proposal to amend the Listing Rules (LR 8.2.1R(14)) to require a sponsor to be appointed in relation to the acquisition of a publicly traded company?

3.17 This proposal received the support of most respondents. However, of the18 respondents to this question seven queried whether the sponsor was best placed to provide an opinion on the acceptability of a particular investment exchange or MTF, explaining that other experts such as accountants and auditors would be better suited. Three respondents requested that the UKLA maintain a list of acceptable exchanges.

3.18 In addition, one respondent requested that the FSA make an explicit acknowledgement that the sponsor would be entitled to rely on other advisers.

Our response

Our proposals in this area will allow a premium listed company a concession from having to provide a full restatement of the target's financials where we

are satisfied with the assessment of the accounting and other standards of investment exchange or MTF where the target is traded. As this is a concession from a full restatement of a target's financials, we believe it is appropriate to require a sponsor to provide this assessment.

We have proceeded as proposed to require a sponsor to be appointed to provide a qualitative assessment of the legal and regulatory framework applying to the target.

Please see our response to Q19 which sets out our approach to sponsors relying on other experts.

Definition of sponsor services

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?

3.19 This proposal received a good level of support. Seven respondents, however, suggested that general enquiries and informal communications on technical issues not associated with live transactions should not be caught by the definition and therefore not be subject to the expected high standard of care (LR 8.3.1AR). In addition, five respondents requested further clarity so it is clear that non sponsor services fall outside of the definition.

3.20 Two respondents said that widening the definition in this way would allow the FSA an unacceptably broad basis upon which to review sponsor communications.

3.21 In addition, one respondent asked why we had deleted the last sentence of the definition.

Our response

We believe the proposed drafting of the definition of sponsor services is sufficiently clear and does not catch non-sponsor services as it specifically refers to 'a service relating to a matter referred to in LR 8.2 that a sponsor provides…' and LR 8.2 lists the specific occasions when a sponsor is required.

As we explained in CP12/2 paragraphs 3.15 to 3.18, the UKLA attaches a great deal of importance to all communications it has with sponsors. We have experienced situations where a sponsor has failed to give us information in sufficient time or detail to enable us to give proper consideration to the request for advice or guidance. The intention behind extending the definition of sponsor services to all communications with the FSA in connection with the sponsor service is to ensure that the Principles for Sponsors (LR 8.3) clearly apply

to such communications. We would therefore expect sponsors to give proper consideration to the nature and content of their communications with the FSA before they make contact.

We believe that it is appropriate for the FSA to be able to review all of the communications it has with a sponsor, whether written or oral, where the communications are in connection with a sponsor service. In doing so, we would be seeking to ensure that a sponsor's communications accord with the Principles for Sponsors and the proposed standard of care set out at LR 8.3.1A R. Despite this, we are required to exercise our functions in a proportionate and reasonable manner and will tend to focus on material communications that are relevant to the issue in question.

We had proposed to delete the last sentence of the definition but, on reflection and in light of the responses we have received, have re-instated it with one minor amendment. The sentence is intended to address concerns from sponsors that our definition may have implied that a sponsor was obliged to provide a sponsor service when requested, but had not yet agreed or been appointed to do so.

Role and responsibilities of sponsors

Communications with the FSA

Q17: *Do you support the proposal to amend the Listing Rules (LR 8.3.1R(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?*

3.22 This proposal received a significant level of support with only six out of 20 respondents to this question not agreeing entirely. Of those who disagreed, most thought our proposal was too broad and could give us excessive scope to require confirmations from sponsors not required by the Listing Rules. Three respondents went on to suggest that we narrow the scope of our proposed rule by limiting it to the relevant transaction to which the sponsor has been appointed, thereby limiting the information the sponsor can reasonably provide in its capacity as a sponsor on that transaction.

3.23 Two respondents specifically commented on our proposed wording in LR 8.3.1R(1A) regarding sponsors 'providing' rather than 'obtaining' information, suggesting that the use of the word 'provide' implies that the sponsors are in control of information rather than recognising that sponsors are often reliant on issuers and or other advisers for information.

3.24 One respondent questioned the practical implications of our proposals for joint sponsors.

Our response

In our view, the proposed LR 8.3.1R (1A) is a codification of existing practice. The UKLA routinely seeks explanations and confirmations during the transaction vetting process and our proposed provision formalises this.

The introductory wording to LR 8.3.1R specifically refers to a sponsor service so we are satisfied that our requests in line with LR 8.3.1 R(1A) would not be excessive and could only be used in relation to sponsor services.

We recognise that there is an existing obligation (LR 8.3.5AR) for sponsors to disclose to the FSA any non-compliance with the Listing Rules or Disclosure Rules and Transparency Rules of which they are aware. However, this obligation to disclose is placed on the sponsor while our proposal gives us the ability to request information of our own initiative on a real time basis.

We believe that the use of the word 'provide' in LR 8.3.1R(1A) is more appropriate than 'obtain', as 'obtain' suggests that sponsors are simply messengers of information and this does not accord with our expectations of sponsors.

Joint sponsors have always had to deal with various practical implications of having two or more sponsors providing the same sponsor service for an issuer or applicant. As such, we do not see that the new LR 8.3.1 R(1A) should have any impact on the way in which joint sponsors comply with their responsibilities pursuant to LR 8.3.14R and LR 8.5.3R.

Apart from some minor drafting changes to LR 8.3.1R to correct references to a 'company with or applying for a premium listing of its equity shares', we have proceed as proposed.

LR 8.3.1AR – Standard of care

Q18: Do you support the proposed amendments to the Listing Rules (LR 8.3.1AR) in relation to sponsor communications and standard of care?

3.25 Although all respondents to this question supported it, 13 respondents raised some minor concerns, primarily in relation to the drafting of LR 8.3.1 AR(1) and (2). Respondents said the word 'all' should be removed from LR 8.3.1AR(1) as an obligation to take 'all reasonable steps' is too onerous and, in any event, is not necessary because the test of 'best of its knowledge and belief' is sufficiently high. In addition they felt that expecting sponsors to provide information 'immediately' in LR 8.3.1 AR(2) was too onerous as well as impractical.

3.26 Other minor concerns raised were:

- in relation to the application of LR 8.3.1 AR(1) and (2) for joint sponsors; and
- a request for LR 8.3.1 AR(1) and (2) to be extended to the issuer to ensure all communications from issuer to sponsor are accurate.

Our response

We agreed to a certain extent with the drafting points raised and have deleted the 'immediate' timing obligation in LR 8.3.1AR(2) with an 'as soon as possible' obligation. In respect of the objection to 'all' reasonable steps, we have clarified in LR 8.3.1AR(1) that sponsors must take 'such reasonable steps as are sufficient' to ensure that communications or information provided to the FSA are, to the best of the sponsor's knowledge and belief, accurate and complete in all material respects. To have removed 'all' without further clarification would have enabled sponsors to take any number of steps, as long as each step was reasonable, to provide accurate information, without any consideration of whether sufficient steps had been taken.

Apart from these changes, we have proceeded as proposed.

In relation to the implications for joint sponsors, please see our response to Q17.

We consider a blanket obligation regarding the accuracy of all communications from the issuer to the sponsor to be excessive and not appropriate for the Listing Rules. We would expect contractual arrangements between issuers or applicants and sponsors to continue to deal with such issues. Please also see our response to Q27.

LR 8.3.2AG – responsibility for communications

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?*

3.27 Three respondents stated they would be supportive of this proposal provided the FSA extended the standard of care obligation to issuers to ensure all communications from issuer to sponsor are accurate.

3.28 Five respondents suggested that LR 8.3.2 AG should be extended to acknowledge that sponsors are not guarantors of the substance of experts' and advisors' assurances or confirmations. They requested further guidance to clarify our expected approach.

3.29 One respondent questioned whether our proposal was dealing with: a) a situation where the sponsor relies on information provided to it by the issuer or third party in communicating with the FSA; or b) where the issuer or third party communicates with the FSA. The same respondent noted that a sponsor has to act with due skill and care under LR 8.3.3R, including where the sponsor relies on information provided by another party, and commented that the new rule does not appear to be necessary.

3.30 One supportive respondent agreed that sponsors should be the main conduit for communications, but recognised that it was sometimes appropriate for the FSA to speak to another adviser on technical matters in conjunction with the sponsor. The respondent sought confirmation that our proposal would not have an impact on this useful current practice.

Our response

As stated in paragraphs 3.24 and 3.25 of CP12/2, we recognise that in some circumstances it may be appropriate for a sponsor to rely on third party expertise. Our proposal in LR 8.3.2AG sought to reinforce the responsibility of the sponsor for communications with the UKLA, regardless of whether the sponsor relies on representations made by a listed issuer, applicant or third party in order to assist it to fulfil its obligations to the UKLA. Our proposal was in response to a number of instances where the role of other transaction advisors had either marginalised the sponsor's role or served to obscure the accountability for information or assurances upon which the UKLA has made decisions.

Where a sponsor does rely on third party expertise the sponsor will be required by LR 8.3.1AR to take reasonable steps to ensure the information provided is to the best of its knowledge and belief, accurate and complete in material respects. Paragraph 3.24 of CP12/2 explained 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 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 for any opinion or advice provided by the third party. There is no suggestion that sponsors should be the guarantors of confirmations or assurances given by other experts but, at the same time, it is not possible for sponsors to delegate their own responsibility to the FSA to a third party. We have added new guidance at LR 8.3.1BG to further clarify what steps might be considered 'reasonable' for sponsors to take in this context. LR 8.3.1BG explains

that we would expect the sponsor to have appropriately used its own knowledge, judgement and expertise to review and challenge the information provided by the third party.

We would expect our proposals to apply where the sponsor relies on information provided to it by the issuer, an applicant or a third party in communications with the FSA and also in the very limited occasions where the issuer, new applicant or third party communicates directly with the FSA. We would, in most cases, expect the sponsor to be the main point of contact with the FSA, but we do recognise (see LR 8.3.2G) that in some circumstances it may be appropriate for the FSA to deal directly with the issuer, new applicant or third party advisers.

In addition to adding new guidance at LR 8.3.1BG (as noted above) we have made two minor drafting changes to LR 8.3.2AG; firstly to refer correctly to a 'company with or applying for a premium listing of equity shares' and secondly to correct the tense within the rule.

Please see Q25 for our response in relation to the extension of a similar obligation onto the issuer.

Principles for sponsors

LR 8.3.5B R – Principle of Integrity

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

3.31 All the respondents to this question supported our proposal.

Our response

We have proceeded as proposed.

LR 8.3.7B R – identifying and managing conflicts

Q21: *Do you support the proposal to amend the Listing Rules (LR 8.3) 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 LR 8?*

3.32 Respondents raised concerns in two main areas: regulatory conflicts and practical implications.

1 Regulatory conflicts

3.33 Five respondents questioned what we meant by 'regulatory conflict' (a term we used in paragraphs 3.28 to 3.30 in CP12/2). There was a general request for more guidance to clarify what the FSA meant by this term.

3.34 While some respondents explained that checking for regulatory conflicts was part of their formal engagement processes, four respondents questioned the practicalities of such conflicts being the subject of typical conflicts checks. In their view the term 'regulatory conflict' is in fact describing the overriding duty owed by the sponsor to the FSA that the issuer needs to understand and cooperate with.

2 Practical implications

3.35 Nine respondents raised concerns with our proposal to require sponsors to carry out a conflicts check *before* a sponsor is appointed to provide a sponsor service. These respondents urged a more flexible approach, explaining it may not be practical to carry out a full conflicts check in all circumstances in advance of communications with the UKLA, especially in urgent cases such as where an issuer is in severe financial difficulty. One respondent suggested a pragmatic approach could be to allow sponsor services to be supplied in the absence of awareness of any sponsor conflicts provided a full conflicts check is then carried out in a timely manner, whilst another suggested that we should allow a sponsor to provide a negative assurance in relation to regulatory conflicts.

3.36 Four respondents did not think it should be necessary to complete a regulatory conflicts check at the early stage when a transaction is being initiated (including, for instance, early stage class tests and when giving general advice on the application of the Listing Rules).

3.37 One respondent stated that a continuous conflicts check is not feasible while another suggested a staggered schedule of conflicts checks.

3.38 Two respondents questioned what was meant by 'all reasonable steps' in LR 8.3.7BR.

Our response

As we explained in CP12/2 at paragraph 3.28, we recognise that there is potential for a conflict of interest to arise by virtue of the dual role a sponsor performs 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 (LR 8.3.1R). In other words, a sponsor's overriding obligations to the UKLA may, in some instances, conflict with terms of engagement with, or expressed

and implied duties to, its clients. While sponsors routinely consider conflicts of interest in relation to taking on new clients and transactions (a 'client' conflict), in other situations sponsors will need to consider the more general possibility for conflict between their responsibilities to their client with those owed to the FSA (a 'regulatory' conflict). We believe that the Listing Rules should make explicit reference to this additional type of potential conflict of interest as it is important that sponsors take steps to identify and manage such conflicts. It is also important for sponsors and issuers to understand that if a regulatory or client conflict cannot be managed effectively, the only resolution would be for the sponsor firm to resign as envisaged by LR 8.3.11R.

Having considered the responses made to Q21 and, in particular, the view that LR 8.3.7BR is not sufficiently clear in explaining what we mean by a regulatory conflict, we have inserted clarificatory guidance at LR 8.3.8G(2). We agree that to understand the term 'regulatory conflict' it is essential to be aware of the overriding duty owed by the sponsor to the FSA. Both the issuer and the sponsor need to be aware of this duty and to cooperate if this duty is to be met. This new guidance refers to a regulatory conflict possibly arising where there are circumstances that could compromise the ability of the sponsor to fulfil its obligations to the FSA.

We agree with those respondents who felt that a regulatory conflict is not something that can necessarily be identified by a routine point-in-time conflicts check. Rather, it is something that the sponsor should consider on a continuous basis throughout the course of the sponsor service. As noted in paragraph 3.28 of CP12/2 we would expect sponsor firms to arrange training and education on identifying and managing regulatory conflicts for staff engaged in the provision of sponsor services.

In response to the comments received in relation to the practical implications of our proposals, we have removed the word 'before' from LR 8.3.12A. We accept that this implied (by reference to the definition of sponsor services) that conflicts checking should take place before preparatory work, and this was not our intention. We would expect a sponsor, at the point at which it begins to provide a sponsor service (which can include preparatory work, including for example early stage class tests) to have carried out appropriate conflicts checks.

As recognised in paragraph 3.28 of CP12/2, 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. In particularly urgent cases, we recognise that it may be reasonable for a sponsor to conduct more limited conflicts checks than would otherwise be the case (for example, they may wish to rely on conflicts checks carried out by virtue of other

pre-existing relationships they have with the issuer (for example, as a corporate broker or financial adviser)) and, if necessary, provide a negative assurance. However, the FSA would expect that further appropriate conflicts checks are performed as soon as practicable.

The Principle for Sponsors of identifying and managing conflicts (client or regulatory) is an ongoing one. Accordingly, sponsors may need to ensure that they refresh or update their conflicts checks, as may be appropriate, as the sponsor service progresses and have in place arrangements that allow for the identification of conflicts of interest throughout a sponsor service, particularly as the nature and extent of the service may alter over time. However, and as stated above, we recognise that the nature and extent of the steps that may be considered reasonable to identify and manage conflicts of interest is a matter of professional judgement. We also recognise that such judgement will be a relevant factor in the design of sponsor systems and controls that are expected to operate in the ordinary course of executing sponsor services and not just in urgent or unusual situations. While the principle of conflicts identification and management is therefore an ongoing one, we recognise that appropriate conflicts checks at relevant points during a transaction, accompanied by effective arrangements for the training of staff and the prompt escalation and handling of potential conflicts not identified by routine checks, may be considered reasonable in this context. Please also see response to Q25 on this.

LR 8.6.16AR – Requirement to retain records

Q22: Do you support the proposal to amend the Listing Rules (LR 8.6.16) so that sponsors are required to retain accessible records which are sufficient to demonstrate the basis on which sponsor services have been provided?

3.39 We received a high level of support for this proposal with only two out of the 20 respondents to this question not supporting the proposal. They were concerned that our proposals would lead to sponsors having to create extensive 'paper trails' and that this could lead to an increased litigation risk.

3.40 Three respondents who supported the over-arching principle of our proposal, raised concerns with the drafting of LR 8.6.16AR(2) and (3), considering it too wide in scope. One supportive respondent wondered if a concept of materiality could be introduced so that the obligation to keep records would vary according to the importance of the underlying work-stream (and would therefore not attach to trivial steps a sponsor takes in providing sponsor services). Another respondent requested guidance to explain what would be deemed to be 'sufficient' to be capable of demonstrating the sponsor has complied with LR 8.

Our response

It is important to note (as we did in paragraph 3.32 of CP12/2) that our proposals in this area are in response to our findings from our reviews of sponsor transactions where we have found examples of sponsors finding it difficult or being unable to identify adequate records or retrieve records in a timely manner in relation to the sponsor services they provide. In addition we have found some sponsors have retained insufficient documentation to demonstrate the basis on which important decisions have been taken or the basis on which they have given us declarations, assurances or opinions.

Our proposals are more detailed than the existing guidance at LR 8.6.12G(5), but are intended to focus on key sponsor workstreams (whilst existing LR 8.6.12G refers to 'all matters relating to the provision of sponsor services' which could be considered rather wide). Proposed LR 8.6.16AR sets out the requirement to create and retain records and provides examples of certain circumstances in which we expect sufficient records to be kept. LR 8.6.16BG explains, amongst other things, that records should include material communications. Since LR 8.6.16BG refers to material communications we disagree with the comments that our proposals would lead to excessive records being kept.

In response to comments received, and as outlined above, we have provided new guidance at LR 8.6.16CG to help sponsors assess whether they meet LR 8.6.16AR. LR 8.6.16CG states that records should enable a person with a general knowledge of the sponsor regime, but no specific knowledge of the actual sponsor service undertaken, to understand and verify the basis on which material judgements have been made throughout the provision of the sponsor service. By including this guidance, our intention is to ensure that a sponsor's records will be capable of demonstrating that it has complied with LR 8 throughout the sponsor service. This would include complying with the Principles for Sponsors such as the principle of due care and skill, as well as the systems and controls requirements such as, for instance, as regards resourcing and staffing. At an operational level, we would therefore expect records about the provision of sponsor services, to include evidence of the planning, execution and review of the work carried out by the sponsor to the required standard.

In addition to providing new guidance at LR 8.6.16CG we have made some minor drafting changes to LR 8.16.6AR as follows:

- by amending LR 8.6.16 AR(1) so that it refers to each 'declaration' rather than 'confirmation', as confirmations are covered in (2);
- by adding 'by a sponsor' to LR 8.6.16AR(2) so that it is clear we mean opinions, assurances or confirmations given by a sponsor; and
- by correctly referring to a 'company with or applying for a premium listing'.

Sponsor notifications

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?

3.41 This proposal received a high level of support with only three of the 21 respondents not agreeing entirely and raising the following concerns:

- LR 8.7.8 R(11) is too onerous as a sponsor firm's financial position can change frequently;
- the forward looking nature of LR 8.7.8R(11) puts an obligation on the sponsor to monitor the financial and trading position of all companies within a sponsor's group and therefore it is too burdensome;
- proposed LR 8.7.8R(11) is already sufficiently covered by LR 8.7.8R(1) (a); and
- the concept of LR 8.7.8R(1) (a) is too generic and more guidance would be helpful.

3.42 Of the respondents who supported the proposals, five raised concerns that LR 8.7.8R 1(b) is very wide and would benefit from some examples. In addition some drafting points were raised as follows:

- 'reasonable' in LR 8.7.8R(1) (a) should be deleted as it is superfluous;
- in LR 8.7.8R (10) the words 'intended to be' are not clear or helpful;
- 'could' in LR 8.7.8R(1) (b) and LR 8.7.8R(10) is too low a threshold and wording such as 'would likely to' would be more appropriate;
- in LR 8.7.8R(11) 'expected to be' is unclear; and
- in LR 8.7.8R(11) 'trading position' should be deleted as it does not add anything and would only be relevant if a company's financial position is also affected.

Our response

We received a good level of support for our proposals in this area and apart from the drafting changes explained below we have proceeded as we proposed.

We anticipate 'market confidence' notifications could be made in rare circumstances where, for example, a sponsor firm or its staff could be associated with events that would affect market confidence in that firm or the sponsor regime more generally. For example, if a firm's own internal review processes identify significant concerns relating to the integrity of key staff, or the firm more generally, it would be appropriate to notify such findings to the FSA as

they could present a potential threat to market confidence in sponsors were the concerns subsequently to be the subject of an investigation, regulatory intervention or public criticism. It is important to note that we would expect the notifications outlined in LR 8.7.8R to prompt a series of discussions with the FSA as the facts are assessed. A cancellation request, as set out in LR 8.7.21G, may follow this process if it was agreed it would be appropriate in the circumstances.

We have changed the wording of LR 8.7.8R(1) (b) by replacing the phrase 'could adversely affect market confidence' with 'would be likely to adversely affect market confidence' as we agree with the comment that 'could' is too low a threshold.

We have proceeded with our proposals to require notifications regarding reorganisations and expected changes in a sponsor firm's financial position as we believe these would provide us with key information about a sponsor's ability to provide sponsor services. We have removed the reference to 'trading position' from LR 8.7.6R(11) as on reflection we agree that these words do not add to the policy objective. However we have retained the phrases 'intended to be' and 'expected to be' in LR 8.7.8R(10) and (11) respectively, as we feel it is important to retain the pre-emptive nature of the notification. We would expect sponsors to notify us of an expected or intended consequence even if they believe that they continue to satisfy the ongoing criteria for approval as sponsor (note that LR 8.7.8AR requires a sponsor to include in its notification a statement to that effect and to set out the basis for that opinion). We have added the phrase 'would be likely to ' in LR 8.7.8R(11) so that it reads '....change in the financial position of the *sponsor* or any of its *group companies* that would be likely to adversely affect the *sponsor's* ability to perform the *sponsor services* ...' as we feel this is a better articulation of our policy intention.

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

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?

3.43 All of the 17 respondents to this question supported the proposal. However, three did raise some minor concerns.

3.44 Two suggested that LR 8.7.21AG was 'too prescriptive' and that wording should be added so that the requirement to submit a sponsor cancellation request is required unless agreed by the FSA. This may occur, for example, where there is a failing in systems and controls (so that the sponsor no longer complies with the 'appropriate systems and controls' limb of the sponsor approval criteria in LR 8.6.5R(3)) but the sponsor has taken appropriate action and we are satisfied that the situation is rectified.

Our response

As we explained in paragraph 3.41 of CP12/2, it may be that, in some instances, the UKLA will be able to work with a sponsor to identify ways it which it can rectify identified failings so that a cancellation request would not be necessary. We would expect that a cancellation request would only be submitted where, following a notification made under LR 8.7.8R, there are no ongoing discussions with the FSA which could lead to the conclusion that the sponsor remains eligible. We have made this clear in LR 8.7.21AG(1).

In addition we have re-phrased the introduction to LR 8.7.21AG so that it now reads as, 'Examples of when .....' as we feel this is a better articulation of our policy intention.

Please also see our response to Q23.

LR 8.7.12 – Conflicts declarations

Q25 *Do you support the proposal to amend the Listing Rules (LR 8.7 and LR 8.3.13G) so that sponsors are no longer required to submit Conflicts Declarations?*

3.45 This proposal received a good level of support. Of the 19 respondents to this question, only four disagreed with the proposal, explaining that a conflicts declaration was a useful support to the sponsor's obligation to identify and manage conflicts.

Our response

We intend to proceed as originally proposed so that sponsors are not required to submit conflicts declarations. Our approach reinforces the overarching Principle for Sponsors regarding identifying and managing conflicts, which exists throughout the provision of a sponsor service, and which requires sponsors to take reasonable steps to identify and manage conflicts of interest on an ongoing basis. The submission of a declaration at a specific point in time undermines the fact that the Principle is, in essence, a continuing obligation and may have led to sponsors focusing on the timing of the declaration, rather than focusing on the continuing obligation. Should a sponsor find it useful to retain a conflicts declaration for its own internal purposes then it is free to do so, but this should not detract from the ongoing nature of the obligation.

In keeping with our policy regarding the removal of the requirement for a conflicts declaration, we have also deleted LR 13.2.6R for consistency.

LR 8.6.17R – Regular reviews

Q26: Do you support the proposal to amend the Listing Rules (LR 8.6.17R and LR 8.7.8R(9)) so that sponsors are no longer required to carry out regular reviews?

3.46 This proposal received a high level of support with only three of the 19 respondents to this question objecting to the proposal. Two respondents were of the view that a regular review is useful to ensure the sponsor's work is kept at a high standard. One respondent suggested our new proposal in LR 8.7.8R(9) is not required as, if there was a material deficiency in the sponsor's systems and controls, the sponsor would cease to satisfy the LR 8.6.5R(2) limb of the sponsor approval criteria (requirement to have appropriate systems and controls in place) and would therefore have an obligation under LR 8.7.8R(1) (a) to notify this to us.

Our response

We have proceeded as proposed.

We note that some sponsors wish to retain a regular review process for their own internal purposes; of course, such sponsors are free to do so.

In response to the comment in relation to LR 8.7.8R(9) (notification where the sponsor identifies or otherwise becomes aware of any material deficiency in the sponsor's systems and controls) we accept that there is some overlap between this provision and LR 8.7.8R(1) (a). However, we have proceeded with this new provision as it makes it clear that a material deficiency in a sponsor's systems and controls is a notifiable event in its own right despite the fact that a sponsor may have taken immediate remedial steps to rectify the issue and therefore does not consider that it falls within LR 8.7.8(1)(a).

Where a sponsor makes a notification under LR 8.7.8R it can, if relevant, rely on LR 8.7.8A to include a statement in the notification of how it believes it continues to meet the approval criteria.

Responsibilities of issuers

Q27: Do you support the proposal to amend the Listing Rules (LR 8.5.6R) to introduce a specific obligation on premium listed companies and applicants to cooperate with their sponsor to enable the sponsor to discharge its obligations to the FSA?

3.47 This proposal received a strong level of support with only two of the 22 respondents to this question, representing the interests of listed issuers, disagreeing with the proposal. They suggested that the issuer's obligation should be limited to the provision of all information reasonably requested by the sponsor for the purposes of meeting its LR 8 obligations. One of these respondents also suggested that our proposal to require issuers to 'cooperate' with their sponsor may lead to a conflict between the sponsor and the issuer where, for instance, the sponsor requests the issuer to do something which the issuer objects to. It was felt that the Principle for Sponsors LR 8.3.1R(2) required a sponsor to 'guide' the issuer on its Listing Rules obligations and that imposing a duty on the issuer to 'co-operate' with the sponsor was not in keeping with the spirit of this Principle.

3.48 The other dissenting respondent queried if such an obligation on issuers would mean that the issuers would need a thorough understanding of a sponsor's obligations under the Listing Rules in order to comply and wondered how this would be achieved.

3.49 One supportive respondent believed there should be increased responsibilities and obligations on the issuer to assist the sponsor. In particular, they suggested an obligation on the issuer to ensure all information it provides to a sponsor is, to the best of its knowledge and belief, accurate and complete in all material aspects (a view shared by three other supporting respondents).

3.50 Two respondents who supported our proposal suggested that the FSA should write to issuers to highlight this new proposal and the other obligations on issuers or, alternatively, that issuers and applicants should confirm in writing to the FSA and to their sponsors their understanding of the proposed rule and provide an undertaking to cooperate to that effect.

Our response

Taking into account the comments we have received we appreciate that our proposal to require an issuer to cooperate with its sponsor could be interpreted as requiring issuers to comply with sponsors' requests or instructions even where the issuer objects. This was never our policy intention and we have accordingly considered the most appropriate way to express this. We have therefore amended LR 8.5.6R so that it requires the issuer to cooperate with its sponsor by providing 'all information reasonably requested by the sponsor for the purpose of carrying out the sponsor service'. In response to feedback which suggested that the appropriate place for ongoing obligations relating to issuers was LR 9, we have added this obligation as a new LR 9.2.21.

In making drafting changes to LR 8.5.6R, we have also taken into account our proposals in relation to regulatory conflicts (please see Q21). We believe that our proposed guidance at LR 8.3.8.G(2) and the existing LR 8.3.11R together provide a way of achieving our policy objective and deal with situations where the sponsor's duty to the UKLA is not aligned with the actions of the issuer

including, for instance, where an issuer refuses to comply with a sponsor's guidance; in such a case we would expect the sponsor to resign as it would be unable to manage the 'regulatory conflict'. Furthermore, where an issuer does object to or reject its sponsor's guidance or advice, that issuer would also need to carefully consider whether such a course of action would ultimately put the issuer at risk of non-compliance with its own obligations under the Listing Rules. In addition, we are aware that any formal commitment made by an issuer to a sponsor in relation to the issuer's obligations under the Listing Rules is something that is the subject of contractual agreements.

Rather than the FSA writing to issuers highlighting their obligations under the Listing Rules, we would expect issuers to have advisers to perform this function. In addition we would expect issuers to be aware of this new provision as we are proposing to include it within chapter 9 of the Listing Rules.

Miscellaneous

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

3.51 We did not receive any comments in relation to a), d), e), f), g), h), i) or j) and therefore intend to proceed as we proposed in CP12/2.

b) LR 8.3.5 AR

3.52 Three respondents raised concerns with our proposal to reword LR 8.3.5AR. Two respondents suggested that our proposal would mean that sponsors would be required to report any breach of the Listing Rules and Disclosure Rules and Transparency Rules however immaterial that breach might be and called for reinstating the materiality threshold. One respondent questioned why 'is failing' is included in the drafting as to be failing to comply with a rule it must have already failed to comply.

Our response

We have proceeded with the proposed rewording to LR 8.3.5AR. We believe that materiality is something that the UKLA should assess as it may have other information about an issuer which could impact on that materiality assessment.

Our proposed rewording to LR 8.3.5AR is intended to capture pre-emptive situations; for example, a sponsor could be aware of a potential breach which would take place once a transaction crystallises.

c) LR 8.4.1 (4) R

3.53 One respondent suggested that the word 'and' after 'is required' should be deleted.

Our response

We have made this drafting change.

k) LR 8.7.7R

3.54 One respondent suggested that our proposal did not adequately capture the need for sponsors to explain the basis on which the sponsor meets the criteria of LR 8.6.5R.

Our response

We have not made any changes regarding this comment. We believe our proposals in relation to the sponsor annual notification set out in our recent CP12/11 will address this point.

l) deletion of conflicts declarations

3.55 One respondent did not support the deletion to references of conflicts declarations.

Our response

Please see our response to Q25.

m) review and updating references to 'listed companies' and 'issuers'

3.56 One respondent noted that there where the new words inserted include the term 'a listed company' when what is meant is 'a company with a premium listing'.

Our response

We have made drafting changes throughout LR 8 to correct this inconsistency.

4

Transactions

Introduction

4.1 Overall we received a good level of support for our proposals in this section and have only made a few minor drafting changes in light of the feedback we have received.

4.2 The main area in which respondents raised concerns was in relation to our proposals regarding supplementary circulars and the requirement to send such circulars to shareholders 7 days prior to the shareholder meeting. These are discussed in detail below (questions 32 and 37).

4.3 A few respondents questioned the status of the existing Listing Rules Technical Notes[1] and the potential for the issue of further guidance. In July 2012[2] the UKLA set out their proposals (for consultation) for a new UKLA Knowledge Base which is intended to be a single repository of the technical guidance available from the UKLA for the listing rules and other Part 6 rules. In doing so, the UKLA has undertaken a comprehensive exercise of reviewing and revising existing Listing Rules Technical Notes. Information that was either outdated or superseded (for example included in CP12/2[3]) has been updated or withdrawn. The consultation closed on 24 August and the UKLA expect to publish the results during the autumn.

4.4 Respondents also raised some interesting points which were outside the scope of CP12/2. We will consider these points for future consultations.

LR 5 Suspending cancelling and restoring listing: All securities

4.5 In paragraph 4.3 of CP12/2 we proposed new guidance at LR 5.2.10AG to explain that in order to take advantage of LR 5.2.10R, it was 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).

1 UKLA Technical Note: Listing Rules, www.fsa.gov.uk/pages/doing/ukla/ukla_publications/index.shtml
2 Primary Market Bulletin Issue No 2, www.fsa.gov.uk/pages/doing/ukla/ukla_publications/index.shtml
3 CP12/2, Amendments to the Listing Rules, www.fsa.gov.uk/library/policy/cp/2012/12-02.shtml

4.6 One comment we received in relation to this point was that our proposal did not address situations where the offer is declared unconditional at an acceptance level of 50.1% but acceptances continue to be made and subsequently reach the 75% level. The offer would not then be declared unconditional at 75% (as it would have already been declared unconditional at 50.1%) but the presumption was that the 20 day notice period would commence when the 75% level is reached.

Our response

We agree that the 20 day notice period should only start once the offeror has announced that it has acquired or agreed to acquire 75%. We have made some minor amendments to LR 5.2.10AG to reflect this.

LR 10 Significant transactions: premium listing

Revenue 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?

4.7 We received a good level of support for our proposal with only four out of 21 respondents to this question raising some minor concerns. One respondent was concerned that there may be unintended consequences for large companies who regularly deal across their subsidiaries without much benefit for shareholders. Other respondents requested that should 'revenue nature' be deleted, further clarity be given regarding transactions that would be considered to be in the ordinary course of business.

Our response

By removing 'revenue nature' we are recognising that what would constitute 'ordinary course' may be wider than just the revenue line and it not necessarily determined by the accounting treatment. We do not see this as a change of policy direction in this area, but rather as a codification of how the test is applied in practice.

Listed companies trading regularly across their subsidiaries would be subject to LR 10 **unless** the subsidiaries are wholly owned (LR 10.1.3R(5)) or the trade is considered to be in the ordinary course of business.

We do not believe it would be appropriate to provide additional guidance as to what type of transactions would be considered to be in the ordinary course of business. This would depend on various factors and would need to be assessed on a case by case basis. We will still continue to consider the size and incidence of similar transactions.

We have proceeded as proposed.

Class tests

4.8 In paragraphs 4.9 to 4.12 of CP12/2 we explained how we proposed to update the class tests (as set out in Annex 1 of LR 10) to reflect our current practice as set out in the Listing Rules Technical Note.

4.9 One respondent questioned our approach to the profits test, where in paragraph 4.10 we explained that this 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 (where there is no acquisition or loss of control). The respondent suggested it was not obvious why shareholders would be less concerned at a value commitment of 25% by reference to the listed company in connection with an interest in an entity that is not controlled compared to one that is.

Our response

It is important to recognise that there are in total four class tests that must be considered when an issuer is considering a chapter 10 transaction and the profits test is just one of them. If any of these tests result in 25% or more then, unless the test produces an anomalous result, the listed company will be required to produce a class 1 circular and seek shareholder approval for the transaction.

We have proceeded as proposed.

Class 3 transactions

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?

4.10 This proposal received a very high level of support with only two out of 23 respondents to this question disagreeing with the proposal. One respondent stated that LR 10.3 should be retained as it highlights to the issuer the need to announce and avoids any differences of opinion between the sponsor and the issuer over what constitutes price sensitive

information; and the other suggested that class 3 transactions should be aggregated and disclosed in aggregate over a three-year period rolling period annually in the annual report.

4.11 One respondent who supported the proposal suggested that where shares have been issued to fund an acquisition then a notification should be made to explain the purpose of the share issue.

Our response

As stated in CP12/2 paragraph 4.13, market participants have indicated to us that LR 10.3 provides 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. Since issuers should already be aware of their obligations under DTR2.2 we see no merit in retaining LR 10.3 purely to highlight to issuers the need to announce.

The aggregation and disclosure of class 3 transactions in the annual financial report is something that we have not consulted on in CP12/2 and therefore we are not proposing to make any changes in this regard. We will observe market developments to ascertain whether such an intervention is required in future.

We have proceeded as proposed.

Break fee arrangements

Q31: Do you agree that the proposed guidance on operation of our proposed new definition of break fee arrangements (LR 10.2.6 and LR 10.2.7) provides sufficient direction?

4.12 This proposal received the support of all 16 respondents to this question. However, three respondents did raise some minor concerns. One respondent requested further clarity as to the specific difference between 'no shop' and 'go shop' provisions and requested further clarification of the differences between LR 10.2.6BG(1) and LR 10.2.6BG(2).

4.13 Two respondents were concerned that providing examples would allow break fee arrangements to be structured in such a way as to be exempt from the new requirements.

Our response

Very often 'no shop' and 'go shop' provisions have similar characteristics and we have redrafted LR 10.2.6BG(1) to make this clear.

LR 10.2.6BG(1) gives examples where there are payments to a party where the seller finds an alternative purchaser, or the transaction fails, whereas LR 10.2.6BG(2) provides for the payment of compensation where there are breaches of obligations in arrangements which have a substantive independent commercial rationale. We believe this is sufficiently clear and have made no changes.

As stated in paragraph 4.19 of CP12/2, our approach to break fees is to apply a substance over form approach. The non – exhaustive list of examples included in LR 10.2.6BG is intended to illustrate how the rule should operate in practice and to reinforce that the test of whether a particular arrangement is a break fee arrangement should be applied irrespective of the strict legal form of a particular arrangement.

Apart from the revision made to LR 10.2.6BG(1) noted above, we have proceeded as proposed.

Supplementary circulars

Q32: Do you support the proposal to amend the Listing Rules (LR 10.5.2, LR 10.5.4 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?

4.14 This proposal received a high level of support with only four of the 20 respondents to this question objecting. These respondents raised concerns, including there being no requirement for the new matter or change to be one that would materially affect the decision shareholders are being asked to vote on. Others suggested that our proposals were not the most efficient way of dealing with such situations as they would result in significant disruption to timetables. Others suggested that our rules in this area were not required as Listing Principles 3 and 4 in Listing Rule 7 would cater for such scenarios, and that directors already have a duty to provide shareholders with sufficient information to enable them to make informed decisions.

Our response

We have introduced a limb at LR 10.5.4R(3) to explain that a listed company must have regard to LR 13.3.1R(3) (information necessary to allow security holders to make a properly informed decision) when considering the materiality of any new change or new matter.

The objective of our proposals in this area is to ensure that shareholders are fully informed when voting. We are codifying an existing practice which arises in only a very limited number of transactions, where it is important that a supplementary circular is sent to shareholders with enough time for them to review. We believe that 7 days is the right amount of time, as a longer period of say 14 days could potentially have a greater detrimental impact on transaction timetables.

We feel that it is appropriate the Listing Rules should be more specific than the Companies Act 2006 in the important area of voting. In addition, the Companies Act 2006 does not apply to non-UK incorporated companies. Finally, we feel that it is important to have a specific Listing Rule which addresses this point, rather than relying on Listing Principles 3 and 4 in Listing Rule 7.

Apart from the proposal to include LR 10.5.4R(3), as noted above, we have proceeded as proposed.

LR 11 Related party transactions: premium listing

Transactions in the ordinary course of business

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

4.15 Of the 18 respondents to this question only two respondents had some minor concerns and we have addressed these in Q29.

Our response

We have proceeded as proposed and have deleted 'revenue nature' from LR 11.1.5R.

Aggregation of transactions in any 12 month period

4.16 We proposed to amend LR 11.1.11R to make it clear that smaller related party transactions caught by LR 11.1.10R and small related party transactions under LR 11 Annex 1.1R(1), should be included within the 12 month aggregation as required by LR11.1.11R.

4.17 One respondent suggested that our policy in this area required further clarification as our drafting did not specifically refer to the other exemptions in LR 11 Annex 1.1R(1).

Our response

LR 11.1.11 seeks to catch within the aggregation smaller related party transactions (already caught by LR 11.1.10R) and small related party transactions caught by LR 11 Annex 1.1 R(1). The other exemptions in LR 11 Annex 1.1 R are not caught.

We believe the proposed drafting of LR 11.1.11R was sufficiently clear and have proceeded as proposed.

Definition of associate

4.18 In our consultation paper we proposed to amend the definition of an 'associate' to include partnerships.

4.19 One respondent questioned our proposal specifically in relation to how 'voting rights' would translate into a partnership context. In particular, the respondent suggested that a limited partnership may have few matters on which a limited partner has a vote, but equally the general partner would control the running of the partnership without having any voting rights as such.

Our response

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. Our proposal in CP12/2 amended the definition of associate to include partnerships in which a related party holds a significant interest. We recognise that for some partnerships the arrangements can be complicated, which is why we would expect issuers to apply a substance over form approach for example where an entity controls a partnership without the existence of formal voting rights.

We have proceeded as proposed.

Exemption of Directors' indemnities and similar arrangements from LR 10

Q34: Do you support our proposals in relation to directors' indemnities and similar arrangements (LR 10 and LR 11)?

4.20 This proposal received the support of most respondents. However, six of the 17 respondents to this question disagreed, stating that directors' loans, even if part of an indemnity agreement, should still be treated as related party transactions.

4.21 We received very little support on extending the exemptions in LR 10.2.4R.

Our response

We have proceeded with LR 11 amendments as proposed. Due to the fact that loans under section 206 of the Companies Act 2006 operate in a similar way to section 204 and section 205 loans already exempted from LR 11, we have proceeded with our proposal to include section 206 loans within LR 11 Annex 1R 5(1)(c).

However, due to the comments we received in relation to similar LR 10 exemptions, we are not proceeding with our proposed amendment to LR 10.2.5G now.

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

Purchase of own equity shares

Q35: Do you agree with the proposed amendments to the Listing Rules (LR 12.2, LR 12.4 and LR 13.7) in relation to the purchase of own equity shares?

4.22 This proposal received a good level of support with only three of the 17 respondents to this question objecting to it. One respondent had concerns that our proposals could allow companies to consolidate control. Two stated that such transactions needed to be treated as related party transactions, with the major shareholder excluded from the vote. One respondent who supported the proposal questioned the applicability of 'potential impact' and 'concentration' disclosures as required by proposed LR 13.7.1R(1)(g).

Our response

As explained in paragraph 4.33 of CP12/2, we proposed to correct an unintended prohibition. Our amendments will allow a listed company to purchase 15% or more of its own equity shares other than by way of a tender offer, provided that the full terms are specifically approved by shareholders.

We do not believe all share buybacks should be automatically treated as related party transactions. We believe that the existing related party regime is sufficiently robust to catch share buybacks where the **purpose** and **effect** is to benefit a related party (LR 11.1.5R(3)). Where a vote is expressly required by LR 11, the listed company must ensure the related party does not vote.

4.23 A principal reason for our Listing Rules in relation to share buybacks is to ensure that management and substantial shareholders cannot implement a share buyback to concentrate control of a company among certain existing shareholders. The new rule LR 13.7.1 R(1)(g) will require the listed company to explain the potential impact of the share buyback including whether control may be concentrated following the proposed transaction. We would expect this explanation to include details of the shareholdings of substantial shareholders in the listed company before and after the proposed transaction, including shareholdings of a shareholder who may become a substantial shareholder as a result of the proposed transaction. We have introduced guidance at LR 13.7.1AG to make this clear, along with clarification that this extra disclosure is only required where the new LR 12.4.2AR applies.

Treasury shares

Q36: Do you agree with the 0.5% threshold proposal (LR 12.6.4R) 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)?

4.24 All respondents to this question agreed with our proposal, three of whom raised some minor points including; whether we were looking for an aggregated position; whether there should be any limit at all; whether the limit was too low and whether a quarterly return could be published in place of the threshold.

Our response

We do not intend to capture the aggregated position. As we have not consulted on other limits and we have had a good level of support for the proposed 0.5% limit, we have proceeded as proposed.

LR 13 Contents of circulars: premium listing

Incorporation by reference

4.25 Our proposals in this area recognised that the approach under the Listing Regime was different to that under the Prospectus Rules, where information about another company can be incorporated by reference into a company's prospectus provided it meets the requirements of PR 2.4. We proposed therefore to reflect our existing approach that only information that has previously been circulated to a company's shareholders, or information that the

company itself has previously filed with the FSA under a regulatory requirement, can be incorporated by reference into a circular of that company. We see this limitation to information that shareholders have previously been exposed to as an important investor protection point and proposed to make this clear in LR 13.1.3R.

4.26 One respondent suggested that our approach was not helpful as there were cases where a listed company may want to refer to an approved prospectus of another company.

Our response

Due to the reasons stated above, we have not changed our approach.

Posting of circulars

Q37: Do you support the proposal to amend the Listing Rules (LR 13.1 and LR 13.2) 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?

4.27 This proposal received a good level of support. However, six of the 18 respondents who replied to this question queried the seven day time period stating it was too short and should mirror the 14 day period required for an EGM or that it was too long and should be shortened to two or three days. In addition, respondents questioned the need for LR 13.2.10R as they felt that the proposed LR 13.1.9R was sufficient.

Our response

We have retained LR 13.2.10R as we believe it is important for circulars to be sent to shareholders as soon as they are approved as we have experienced cases where issuers have not done so. So we have not made any changes to the proposed LR 13.2.10R.

Based on our experience, we expect there will be very few transactions where a supplementary circular is required under LR 10.5.4 R. Nevertheless we believe that where supplementary circulars are triggered, shareholders should have sufficient time to consider the material new matter or change. We have redrafted LR 13.1.9R to make it clear that our proposals relate specifically to supplementary circulars. We believe seven days is enough time to allow shareholders to consider the information in the supplementary circular without having a detrimental impact on the transaction and so have not made any changes to the time period.

Responsibility statements

Q38: Do you support the proposal to amend the Listing Rules (LR 13.4.1R(4)) so that both the issuer and its directors will be referred to as taking responsibility for the contents of a class 1 circular?

4.28 All respondents who replied to this question were in support of the proposal.

Our response

We have proceeded as proposed.

Related party circulars

Q39: Do you support the proposal to remove the requirement (LR 13.6.1R(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%?

4.29 This proposal received a good level of support with only 2 out of 15 respondents to this question not fully supporting it, and stating that they preferred more disclosures around related party transactions rather than less. One supporting respondent suggested that the types of transactions we referred to in CP12/2 (e.g. amendments to investment managers agreements) should be specifically exempted from LR 10 as well, in order to ensure there is no continuing obligation to comply with class 1 provisions in respect of such matters.

Our response

We have proceeded as proposed and have delete LR 13.6.1R(7).

As we have already explained in CP12/2 paragraphs 4.46 and 4.47, we find the only transactions that are caught by LR 11 (and therefore are subject to the disclosure requirements in LR 13.6.1R(7)) which would not already be caught under LR 10 are transactions such as placings which are related party transactions or amendments which are made to investment management agreements. In practice, class 1 disclosure obligations are not relevant to such transactions (i.e. LR 13.6.1R(7) disclosures are not applicable to those types of situations). Our amendment is in effect removing a disclosure requirement from a related party circular that we find in practice is not required.

With respect to the suggestion to specifically exempt such transactions from LR 10, given the existing rule LR 10.1.3R(4) and our belief that such transactions are well understood by market practitioners, we have not added any further guidance but we will review market developments to ascertain whether any future intervention is warranted.

Risk factors

4.30 In CP12/2 we explained that 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 proposed to include a new provision within LR 13 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.

4.31 One respondent suggested that as the directors are responsible for the document it should be left to their discretion to decide which factors are material to a particular transaction. They explained for issuers registered by the US Securities and Exchange Commission or listed on another stock exchange they may be required to include risk factors in accordance with the rules of another relevant jurisdiction.

Our response

We have proceeded as proposed.

It is important for shareholders that the risks disclosed in a class 1 circular are those that are material to the vote and that these risk factors are not obscured by other risks that are disclosed for reasons that are not relevant to the purpose for which the document is produced.

Documents on display

4.32 In paragraph 4.49 of CP12/2 we explained that 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 proposed to expressly include the SPA within the requirement for documents to be put on display under LR 13 Annex 1 R.

4.33 One respondent suggested that Annex 1R to L13 already required an accurate summary of the transaction in sufficient detail to enable shareholders to form an informal view on how to vote on a transaction. They suggested that shareholders do not derive any additional benefit from having the SPA on display as their experience shows the majority who inspect

SPAs are either other law firms who are seeking to expand their precedent base or lawyers acting for competitors of one of the other parties. If the proposal is taken forward they believe the issuer should have the right to request a waiver or redact any commercially sensitive information contained within the agreement that the issuer is not otherwise required to include in a class 1 circular.

Our response

We have proceeded as proposed as we believe that this potentially provides useful information. The placing of the SPA on display is current practice and our experience is that redactions are seldom requested and we would not generally consider a request to omit the document from the display items entirely.

LR 15: Closed – Ended Investment Funds: premium listing

Transactions with related parties

4.34 We proposed in paragraphs 4.50 and 4.51 of CP12/2 to clarify in LR 15.5.4R and LR 15.5.5R that the related party also includes any member of the investment manager's group. We received no comments in respect of this proposal; however, we have noted an error in the drafting of our proposed wording in LR 15.5.4R and LR 15.5.5R. The word 'group' has been italicised which means that it is to be read as a defined term. This was not our intention as the definition for a group would not work in the context of an investment manager.

Our response

We have corrected this error by removing the italics from 'group' within the proposed wording in LR 15.5.4R and LR 15.5.5R.

5 Financial information

Introduction

5.1 In general, all of our proposals relating to financial information were well supported. However, to make our intentions clearer we have made some drafting changes to accommodate some of the comments we received.

Application of Chapter 6

Q40: Do you support the proposal to amend the Listing Rules (LR 6.1.1R and LR 6.1.1A) 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?

5.2 This proposal was supported by all of the 16 respondents who replied to this question.

Our response

We have proceeded as proposed.

Age of financial information

Q41: Do you support the proposal to amend the Listing Rules (LR 6.1.3R(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?

5.3 This proposal attracted the most adverse comments in Chapter 6, with 7 out of 18 respondents not in favour. Although it was noted by a number of respondents that it was unlikely to occur frequently, the main concern, expressed by six respondents was as stated in the CP, that this could cause problems for reverse takeovers and takeovers requiring competition clearance.

Our response

From our research, we would concur that it is reverse takeovers using a scheme of arrangement which potentially present a problem. However, it is the existing requirement to have a balance sheet not more than six months old at the date of the prospectus which results in a tight timeframe rather than the new requirement that the balance sheet date must be no more than nine months earlier than the admission date.

We have therefore proceeded as proposed, but we will be monitoring the situation closely and where the transaction is very large and complex, we would encourage early consultation with the FSA.

Independence of reporter

Q42: *Do you agree with the proposal to amend the Listing Rules (LR 6.1.3R(2)) to remove the reference to auditors and focus on the independence of the person providing the opinion?*

5.4 All of the 18 respondents to this question agreed with this proposal, although some made drafting suggestions to make it clearer.

Our response

We have amended LR 6.1.3R(2)(b) and inserted the words: 'or approved' after 'issued', to allow for the circumstance where a national accountancy or auditing body endorses the standards issued by another body.

Modifications to opinions

Q43: *Do you agree with the proposal to amend the Listing Rules (LR 6.1.3AG) 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?*

5.5 All 16 respondents supported this proposal. However, two respondents noted that an 'emphasis of matter' is no longer a 'modification' and pointed out that the Listing Rule definition of 'modified auditor's report' was incorrect as it used out of date terminology.

Our response

In response to the comments received, we have replaced the Listing Rule definition of 'modified auditor's report' with a defined term of 'modified report' and amended the definition used so that it no longer uses the terminology of 'qualified' reports and so that, for the purposes of the Listing Rules, it encompasses reports which contain a 'modification' or an 'emphasis of matter paragraph'. We have also ensured that this new defined term is used throughout the Listing Rules where a modified auditor's report is referred to.

As a result of this change in terminology, it has also been necessary to make a number of consequential changes to the Listing Rules where we refer only to modifications, so that we refer also to emphasis of matter paragraphs (LR 9.7A.1R, LR 13.4.2R, LR 13.5.25R and LR 13.5.26R).

Otherwise we have proceeded as proposed.

Sufficiency

Q44: *Do you support our proposals in the related rules and guidance on the sufficiency of the historical financial information (LR 6.1)?*

5.6 This proposal received strong support. All but one of the respondents agreed in principle with this proposal, although four respondents were concerned that historical financial information should not be seen as indicator of future prospects and that the second sentence of existing LR 6.1.6G which qualified its use as an indicator, had been deleted. Three respondents felt the characteristic of having a consistent revenue record etc. (LR 6.1.3EG(4)) was very onerous and felt that LR 6.1.3EG(5) and LR 6.1.4R(2)could prove problematic for acquisitive companies.

Our response

While we accept that it is unreasonable to require the financial information to be an accurate guide to an issuer's future prospects *per se*, we believe that a new applicant should be able to demonstrate a track record that enables an investor to fully assess the business that is to be listed. As such, where an issuer has made major acquisitions or has changed its business in the period before admission, then it may not be able to demonstrate eligibility in this regard.

Given the feedback received we have redrafted LR 6.1.3BR(2) to move the reference to future prospects to the guidance in LR 6.1.3EG. LR 6.1.3BR(2) now requires that the financial information allows potential investors to make an informed assessment of the business to be listed and then LR 6.1.3EG provides clarity on the type of assessment that investors may undertake together with indications of conditions that may suggest that the track record would be incapable of allowing the type of assessment that LR 6.1.3BR(2) requires.

Mineral and scientific research companies

Q45: *Do you agree with the proposed clarification of our approach in the Listing Rules (LR 6.1.8R and LR 6.1.11R) 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?*

5.7 This proposal received a very high level of support with only one of the 16 respondents to this question objecting to the proposal.

Our response

We have proceeded as proposed.

Q46: *Do you agree with the proposed clarification in the Listing Rules (LR 6.1.12R) that a scientific research company must have proved its ability to attract funds from sophisticated investors prior to the marketing at the listing date?*

5.8 This proposal received strong support with only one of the 13 respondents to this question not agreeing to with the proposal.

Our response

We have proceeded as proposed.

Modification of accounts and track record requirements

Q47: Do you agree with the proposed consequential amendments to the guidance (LR 6.1.13G and LR 6.1.14G) 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?

5.9 All 14 respondents agreed with the proposal.

Our response

We have proceeded as proposed.

Shares in public hands

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?

5.10 This proposal received a high level of support with only three of the 17 respondents to this question not agreeing with it. Respondents who did not agree believed that the current drafting would not achieve the policy intention, as there may be an 'in-house view' on corporate actions, mergers and acquisitions etc within fund management organisations.

Our response

We stated in CP12/2 that we approach LR 6.1.19R from the perspective of ensuring there is adequate liquidity in the secondary market. The purpose of LR 6.1.20AG was therefore to provide guidance on applying LR 6.1.19R and our proposal focused on whether investment decisions of different fund mangers in a group are made independently. Our proposal was not concerned with wider governance issues.

However, as we are considering the rationale behind LR 6.1.19R (shares in public hands) as part of our new consultation in Chapter 7 of this Consultation Paper, we believe it is appropriate to defer inserting the new guidance in LR 6.1.20AG so this proposal can be considered as part of the new consultation.

Q49: Do you agree with the proposed new guidance in the Listing Rules (LR 6.1.20BG) 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?

5.11 All 15 respondents to this question agreed with this proposal, with one respondent suggesting a minor drafting change.

Our response

We acknowledge the support given to our proposal, but for the same reasons as stated above, we propose to defer inserting the new guidance in LR 6.1.20BG, so that it can also be considered as part of the new consultation on LR 6.1.19R (shares in public hands) included in our consultation on Enhancing the effectiveness of the Listing Regime.

Settlement

Q50: Do you agree with the proposal to amend the Listing Rules (LR 6.1.23R) 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?

5.12 This proposal received a good level of support with only four of the 16 respondents to this question not supporting the proposal to amend or delete LR 6.1.23R. These four respondents wanted the rule to be retained and appropriate guidance covering the points made in the paragraph 5.21 in CP12/2 to be included.

Our response

In the light of the comments received, we have amended LR 6.1.23R as proposed and inserted new guidance in LR 6.1.24G, rather than delete the requirement.

LR 13 – Contents of circulars: premium listing

Class 1 circulars

Mineral reserves

> ***Q51:*** *Do you agree with the proposed amendments (LR 13.4.7G) to the requirements for class 1 acquisitions of mineral assets?*

5.13 This proposal received a high level of support with only two of the 14 respondents to this question not supporting it. These two respondents wanted to retain an expert's report in all circumstances.

Our response

We have proceeded with our amendments to LR 13.4.7G. However, as mentioned in CP12/2, we expect to allow an expert's report to be replaced by LR 13.4.7G information in very limited circumstances (generally only where both the issuer and target are premium listed).

Unconsolidated targets

> ***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?*

5.14 All respondents agreed with the proposal, although four made drafting suggestions to improve the clarity. Two respondents wanted the differences between the accounting policies of the issuer and unconsolidated target to be explained.

5.15 Our response: We have made some drafting changes to our proposals as suggested, but we do not see the need for LR 13.5 to require an explanation of the differences between the accounting policies of the issuer and unconsolidated target, as investors will receive the notes to the accounts. However, we do propose to monitor the situation.

Valuation reports

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?*

5.16 This proposal was supported by the majority of those responding to this question. There were however four respondents who wanted the UKLA to have some discretion. One respondent suggested the alternative of a report from the directors justifying why they recommend the transaction.

Our response

In the light of the comments received, we intend to insert guidance at LR 13.5.3DG, which allows the FSA some discretion (in a similar way to the existing LR 13.5.2G), where it considers that the valuation required by LR 13.5.3CR would not provide useful information for shareholders.

We have otherwise proceeded as proposed.

Form of accounting information

Q54: *Do you find helpful the proposal to clarify in the Listing Rules (LR 13.5.4R(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?*

5.17 All but one respondent was in favour of this proposed amendment, although a number suggested various drafting changes. Two respondents wanted the differences between the accounting policies of the issuer and unconsolidated target explained.

Our response

We have made a number of drafting changes to reflect the comments received and add more clarity to the proposed rules. We have also changed the heading from 'Form of accounting information' to 'Accounting policies' to reflect the content of the rule more accurately.

As noted in our response to question 52 above, we do not see the need for LR 13.5 to require an explanation of the differences between the accounting policies of the issuer and unconsolidated target, as investors will anyway receive the notes to the accounts.

Synergy benefits

Q55: *Do you support the proposal to amend the Listing Rules (LR 13.5.9AR) so that listed issuers are required to make specific disclosures in respect of synergy benefits?*

5.18 This proposal received a good level of support with only five of the 18 respondents to this question not agreeing with it. Of those not in agreement, two respondents did not believe the proposed change would add anything meaningful and felt guidance rather than a rule would be better.

Our response

We believe that our proposal represents useful information for investors and that LR 13.5.9AR should be a rule rather than guidance. So we have proceeded as proposed. But please remember that, in the first instance, an issuer will only have to comply with LR 13.5.9AR, if it chooses to include details of synergies in the class 1 circular.

Information on targets

Q56: *Do you agree with the proposal to amend the Listing Rules (LR 13.5.17) 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?*

5.19 This proposal received a significant level of support with only four of the 15 respondents to this question disagreeing with it. Three respondents pointed out that the amount of information required for class 1 transactions (ie 75% of the enlarged target) was more than for reverse takeovers (75% of enlarged group). Several respondents felt that LR 13.5.17AR (2) (relating to the treatment of reverse takeovers), was in any case adequately covered in chapter 6. Other respondents wanted the meaning of the last sentence clarified.

Our response

Our proposal follows existing practice where we have encountered such situations and we have proceed as proposed with the exception of a minor amendment to clarify the reporting period for the target financial information.

However, given the concerns raised regarding the amount of financial information class 1 transactions being greater than that for reverse takeovers we have decided not to go ahead with this part of the change.

Under LR 10.6.1R, all reverse takeovers must comply with class 1 requirements, which include shareholder approval and a circular and thus the financial information required to be included in the circular is the same irrespective of the classification of the transaction.

We recognise that for reverse takeovers this leads to different requirements for financial information in class 1 circulars and prospectuses. However we would highlight that this simply reflects the different purposes that the financial information serves. The prospectus financial information is required to demonstrate the eligibility of the enlarged group, whereas the circular must contain the information necessary for shareholders to vote on an acquisition.

Accountants' opinions on financial information tables

Q57: *Do you support the proposed amendments to the Listing Rules (LR 13.5.21R) 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?*

5.20 We received a significant level of support for this proposal. However, five out of the 18 respondents to this question did not agree with the proposal. One respondent believed that it was unnecessary to require in LR 13.5.21 a statement of the accounting policies used, as they would anyway be given in the historical information. Another respondent felt that it would be helpful to confirm the consistency of the accounting policies. A number of drafting suggestions were made.

Our response

With the exception of drafting amendments to make LR 13.5.21R clearer, we are proceeding as proposed.

Acquisitions of publicly traded companies

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?*

5.21 This proposal received a high level of support with only three of the 16 respondents to this question disagreeing with the proposal. Many respondents commented on questions 58 and 59 together and therefore their comments have largely been recorded in question 59.

Our response

See our response to question 59.

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?*

5.22 Four respondents felt that it was outside the expertise of a sponsor to opine on this matter and that instead the FSA should publish a list of suitable exchanges. Other respondents pointed out that the current drafting suggested that the setting of auditing and accounting standards was within the remit of investment exchanges.

Our response

We have commented on how we expect sponsors to fulfil their duties in the chapter of this Feedback relating to sponsors noting in particular the ability of a sponsor to take into account the views of other experts in forming its opinion and we firmly believe that it should be the sponsor's responsibility to make the assessment of the appropriateness of the exchange, as required by the new LR 13.5.27BR.

Please note that, as explained in paragraphs 5.45 and 5.46 of CP12/2, this is a significant concession from the requirements for companies that are not publicly traded, who have to restate the target's financial information into the issuer's accounting polices and provide a true and fair opinion on that information. This reflects the fact that the target will be subject to the reporting regime of the

investment exchange upon which they are traded and the information will therefore be sufficiently robust and reliable. We have, in the past, considered maintaining a list of acceptable markets, but discarded this concept as unworkable in practice, as also stated in our response to question 5 of this Feedback.

We have amended LR 13.5.27AG to clarify that we are interested in the accounting and other standards which are *applicable* as a result of admission to an investment exchange, as opposed to those standards being within the remit of the exchanges.

Q60: *Do you support the proposal to amend the Listing Rules (LR 13.5.27) to allow certain modified opinions in financial information tables and require a positive assertion that the accounting policies are consistent?*

5.23 This proposal received a high level of support with only two of the 17 respondents to this question objecting to it. These two respondents explained that, as already noted in the responses to question 43, there is a distinction between an 'emphasis of matter' and a 'modification'.

Our response

As stated in our response to question 43, we have included a new definition of 'modified report' for the purposes of the Listing Rules that has replaced the previous definition of 'modified auditor's report' and we have amended the carve-out in LR 6.1.3AG to clarify that the FSA may allow a report with an 'emphasis of matter' paragraph in certain circumstances.

Half-yearly and quarterly financial information

Q61: *Do you support the proposal to amend the Listing Rules (LR 13.5.27) 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?*

5.24 Only one of the 15 respondents to this question disagreed with the proposal. A number of the respondents made drafting suggestions to improve the clarity.

Our response

We have made some drafting amendments to the rules to take account of comments received.

Class 1 disposals

Financial information

Q62: Do you support the proposal to amend the Listing Rules (LR 13.5.30) 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?

5.25 All but one of the 13 respondents agreed with this proposal. One respondent pointed out that technically the consolidation schedules, although being subject to audit procedures, would not have had an audit opinion expressed upon them.

Our response

We have amended LR 13.5.30BR(1)(a) and (b) accordingly to take account of the point raised.

Q63: Do you agree with the proposal to amend the Listing Rules (LR 13.5.30CR) 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.

5.26 This proposal received a good level of support with only three of the 13 respondents to this question objecting. Two respondents were concerned about the extra cost and suggested only requiring the two bases for the latest year. Another respondent felt that it was inappropriate where either new accounting policies had not been applied retrospectively or a prior year adjustment had been made.

Our response

It is our experience that material accounting policies change very infrequently and we have therefore not amended the proposed LR 13.5.30CR, particularly as this rule will only apply where the change is material on a group basis.

5.27 However, we have amended LR 13.5.30CR to except the situation where the change does not require a restatement of the comparatives. We have not amended the rule where a prior year adjustment has been made as we believe this is highly unlikely to occur, but we would encourage consultation with us if this situation does arise.

Allocation of central costs to disposal entities

Q64: Do you agree with the proposal to amend the Listing Rules (LR 13.5.30DG) 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?

5.28 This proposal received a significant level of support. However, four of the 13 respondents to this question objected to the proposal. Respondents who disagreed with the proposal felt it was too restrictive, preferring to have this point considered on a case by case basis and requesting further guidance. Several respondents questioned the purpose of allowing any allocation within the financial information and in particular whether this proposal signalled a change to the desired purpose of the information.

Our response

We believe that disposal financial information should assist shareholders in judging the impact that the disposed entity had on the issuer's historical financial information rather than provide a 'pro forma' view of the costs and revenues that will be stripped out, or a profit and loss account and balance sheet on a notional standalone basis.

Our concern was not that there was a systemic problem with the current rules (as we believe that they are well understood and have worked well) but rather to encourage more information to be disclosed to help shareholders make their decision on the rare occasion where little would otherwise be disclosed.

However, we have amended LR 13.5.30DG to make it less restrictive and we propose to monitor the explanations required by LR 13.5.30BR(3)(a) carefully to ensure our objective is being met.

Profit forecasts

Q65: *Do you agree with the proposal to amend the Listing Rules (LR 13.5) 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?*

5.29 All but one of the 15 respondents supported this proposal, although one respondent noted that a cross reference in LR 9.2.18R was out of date.

Our response

We have updated the cross reference in LR 9.2.18R(2) but have otherwise proceeded as proposed.

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?*

5.30 This proposal received a high level of support with only three out of the 15 respondents to this questions objecting to it. However, two respondents thought it was seldom likely to occur in practise.

Our response

We have proceeded as proposed.

6

Externally managed companies

Introduction

6.1 In CP12/2 we highlighted concerns over a new corporate structure adopted by a small number of issuers during recent years. We called companies with the structure 'externally managed companies' (EMC) on the basis that they have an exclusively non-executive board and outsource significant management functions to an offshore advisory firm. We suggested the structure, if widely adopted, would place the real management of these companies beyond certain key controls within the wider listing regime and degrade the ability of shareholders to hold the management of their company to account. As a result we proposed two sets of measures to address these concerns.

6.2 We received comments from 25 respondents on the proposals in CP12/2 on externally managed companies. Respondents represented a good cross-section of the market and were overall very supportive.

Proposal 1

6.3 Proposal 1 referred to the changes we proposed to the Prospectus Rules (PR) and the Disclosure and Transparency Rules (DTR). These were firstly that we should amend the Prospectus Rules to make the principals of the advisory firm responsible for any prospectus published by the company and secondly to clarify our view on how the DTR provisions on share dealings in the listed company's shares by 'persons discharging managerial responsibility' (PDMR) should be understood. These changes will impact both premium and standard listings.

6.4 In CP12/2 we asked:

> ***Q67:*** *Do you support the proposals to amend the Prospectus rules (PR5.5.3) 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?*

6.5 Overall the response to proposal 1 was positive, with only three of the 22 respondents to Q67 clearly opposing our proposal. One other, a trade body, stated it did not object and another, while stating it was sympathetic to our concerns, thought the specific proposals at odds with the treatment of externally-managed investment trusts in our rules. The rest were supportive. There was some technical feedback, principally focused around the interaction of the new rules and the asset managers of investment trusts. One respondent, for example, asked if thought had been given to how the amended guidance on PDMRs might impact the management company in an investment trust structure. We consider this issue below in the last paragraph of 'Our Response' below.

6.6 Of the three respondents who disagreed with proposal 1, two respondents in particular were strident in defence of the structure and against our proposals. Another saw 'little real gain' in the proposals as they believed that the FSA already has existing tools such as LR 6.1.4(2) available to it to enable it to consider whether an EMC is suitable for premium listing, and thought there is a risk that these proposals would unintentionally catch entities that were not the target of these proposals. It was also pointed out that the listed companies affected by both proposals had voluntarily adopted a number of corporate governance practices to ensure the highest level of shareholder accountability.

Our response

This proposal received the clear support of those stakeholders participating in this part of the consultation and these were a good cross-section of our stakeholders generally. We are proceeding substantially as proposed.

We have made two minor changes to the proposed rules. Firstly, for consistency we have included our new guidance on the PDMR definition in DTR 3.1.2AG in the Listing Rules, as the Listing Rules also make use of the PDMR concept. So we have inserted identical guidance into the Listing Rules as LR 9.2.8G.

Secondly, on reflection and – in response to concerns about the impact of these proposals on investment trust managers – we agree with those stakeholders who questioned the clarity of the drafting of our proposed rule on prospectus

responsibility (PR 5.5.3A) and in particular the meaning of the term 'commercial company'. We have instead made use of the PD term 'collective investment undertaking' and re-written PR 5.5.3AR so that it states clearly that it does not apply to such entities (as opposed to stating it does apply to 'commercial companies', which was how it was expressed in the consultation text).

On the question of LR 6.1.4(2) being an existing tool enabling us to consider whether an EMC is suitable for premium listing, LR 6.1.4(2) is a rule designed to consider the substance of a business – not its structure of governance. We take the view that applying LR 6.1.4R in this context would considerably stretch the intended purpose of the rule; potentially leaving the new guidance on LR 6.1.4(2) open to challenge.

On the question of prospectus responsibility, and in particular whether our approach is at odds with how we treat investment trust managers, we were clear in CP2/12 that these proposals were not aimed at investment trust managers and we think the amendment to the drafting of PR 5.5.3AR described above makes this clearer. The reason for the differentiation is that the classic investment trust structure (in which an asset management house is contractually appointed by an independent non-executive board to manage the portfolio) is well understood and supported by stakeholders who see it as well-adapted for the needs of that particular type of company. We see no basis for an intervention aimed at altering that arrangement. As such, we agree with the respondent who observed that the 'framework already established for investment companies and investment trusts is appropriate for the purpose of those entities but should not be extended to other corporate entities' and we believe this view is well supported by stakeholders.

On the question of the PDMR definition used in the DTR, it should be noted that this aspect of the proposal is relatively limited in scope. It does not alter the definition of PDMR, which is statutory (section 96B of FSMA). We merely state our view that the definition, which refers to senior executives 'of such an issuer', could potentially catch a wider range of persons than just those with an employment contract. We see nothing particularly special about an employment contract and if, for example a person discharges management responsibilities pursuant to a different form of contractual undertaking (or even no contract at all) then we see no reason why they should still not be a PDMR. The important point is that they must also meet the other statutory tests of having both regular access to inside information and the power to make managerial decisions. Any discussion of whether a person is a PDMR under FSMA – in relation to an investment trust or any other company within the scope of the DTR – should turn on whether these tests are in fact met and should not be a discussion of the type of contract between the person and the company.

Proposal 2

6.7 In the second proposal, we outlined our intention to insert a new rule and guidance in LR 6 to state that companies featuring this structure cannot be premium listed in future. Accordingly, we explained that this proposal will affect 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.

6.8 In CP12/2 we asked:

> ***Q68:*** *Do you support the proposals to amend the Listing Rules (LR 6.1) so that commercial companies featuring this structure do not qualify for the premium listing accreditation?*

6.9 The responses to proposal 2 were very slightly less supportive than the responses to proposal 1. Overall, we would still characterise the responses as overwhelmingly in favour. Two respondents characterised their positions as not objecting to proposal 2, although each appeared to be understanding of the reasons behind it. Only four respondents opposed proposal 2 outright. These were the same three who opposed proposal 1 (for the same reasons), plus one other respondent, an investment bank, who argued that the package of measures in proposal 1 should be sufficient.

6.10 As with proposal 1 there was also feedback focused on the interaction of these new rules with the managers of investment trusts, again the concern being that these new rules should not adversely impact investment trusts. And there were also concerns expressed, particularly by investors, that if our implementation of proposal 2 should seek as much as possible to mitigate the cost to shareholders in existing affected companies. Finally three respondents supported the proposal provided companies which make an acquisition and internalise their management should be able to seek a premium listing.

Our response

Again this proposal received widespread support from a good cross-section of the market and we are proceeding with proposal 2.

We have, however, taken note of the views of those respondents who argued that we should seek to mitigate the cost of restructuring for those issuers who do use an external management structure, who are already premium listed, and who would be subject to these proposals. We have therefore provided a relatively generous transitional period of 15 months aimed at giving companies affected by these proposals the opportunity to give notice on external management contracts they have in place and put new arrangements in place.

We have done this via a transitional provision (LR TR9), under which companies listed on the date the rule change comes into force need not comply with the LR 9.2.20R until after the expiry of the transitional period on 31 December 2013. So 1 January 2014 will be the first day that the new LR 9.2.20R applies to these companies. As the new LR 6.1.26R will come into force on 1 October 2012, no new applicants with an 'externally managed' structure can be admitted to premium listing from that date. The transitional period, together with an early adoption of the provision which deals with new applicants, is compatible with our stated aim in CP12/2 of addressing concerns that the EMC structure might become more widely adopted.

We have also taken note of some of the technical feedback we received and in particular we have made several changes aimed at ensuring that investment companies are not adversely impacted. In particular, we have corrected two errors brought to our attention by respondents: we did not add the new continuing obligations (LR 9.2.20R) to the lists of obligations that investment entities subject to LR 15 and LR 16 are exempted from. We have corrected this with an amendment to LR 16.4.1R and the insertion of LR 15.4.26R.

Finally, it is worth addressing a point made by several stakeholders who were supportive of the proposal providing that special purpose acquisition companies (and they specifically referred to this group of companies) which internalise their management could be permitted to retain their listing. We have seen several SPACs formed initially with an external management structure which have internalised their management as a part of the restructuring that accompanies the acquisition of the target business. The new rules are compatible with this particular model: as with now, the SPAC would initially be listed in the standard listing segment (it does not initially own an independent business and so is ineligible for premium listing). Under the new rules, the principals of the advisory company would be responsible for the initial prospectus in addition to the company and its directors. The SPAC would then seek an acquisition target and, as is the case now, once it has found one the acquisition would be a reverse takeover under the Listing Rules, requiring readmission. If at that point it internalises its management as part of the restructuring, the SPAC is capable under the Listing Rules of being listed in the premium listing segment of the Official List on readmission. If it does not, it can be readmitted to the standard listing segment of the Official List.

Annex 1

List of non-confidential respondents

Association of British Insurers

Association for Financial Markets in Europe (AFME)

Association of Investment Companies

Arden Partners

BDO

BT Pension Scheme Management Limited

Chartered Financial Analyst Society of the UK

Law Society of England and Wales and City of London Law Society

Deloitte

Ernst and Young

Euroclear

FTSE

GC 100 Group

Grant Thornton

Hermes Equity Ownership Services

Institute of Chartered Accountants in England and Wales

Investment Management Association

Investor Relations Society

KPMG

Legal & General Investment Management

London Stock Exchange

Manifest Information Service

Numis Securities

Oriel Securities

Prism Cosec

PricewaterhouseCoopers

The Quoted Companies Alliance

Rothschild

Share Plan Lawyers Group

Simmons and Simmons

UBS

Universities' Superannuation Scheme, Environment Agency Active Pension Fund, Local Authority Pension Fund Forum, NEST, RPMI Railpen Investments and Royal London Asset Management (co-signatories)

Wittington Investments Ltd

Appendix 1

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 1 October 2012.

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
27 September 2012

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

…

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~~ the *issuer* 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 R 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 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 Examples of where the *FSA* will consider that a *reverse takeover* is in contemplation include situations where:

(1) the *issuer* has approached the *target's* board;

(2) the *issuer* has entered into an exclusivity period with a *target*; or

(3) the *issuer* has been given access to begin due diligence work (whether or not on a limited basis).

5.6.8 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.

5.6.9 G *LR* 5.6.10G to *LR* 5.6.18R set out circumstances in which the *FSA* will generally be satisfied that a suspension is not required.

Target admitted to a regulated market

5.6.10 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.

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

Target subject to the disclosure regime of another market

5.6.12 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*.

5.6.13 R Where an *issuer* has a *premium listing*, a written confirmation provided for the purpose of *LR* 5.6.12G(1) must be given by the *issuer's sponsor*.

5.6.14 R An announcement made for the purpose of *LR* 5.6.12G(2) must be published by means of an *RIS*.

Target not subject to a public disclosure regime

5.6.15 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* 5.6.12G, 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*.

5.6.16 R An announcement made for the purpose of *LR* 5.6.15G must be published by means of an *RIS*.

5.6.17 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* 5.6.15G(3) and (4).

5.6.18 R Where the *FSA* has agreed that a suspension is not necessary as a result of an announcement made for the purpose of *LR* 5.6.15G 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

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

5.6.20 G *LR* 5.6.23G to *LR* 5.6.29G set out circumstances in which the *FSA* will generally be satisfied that a cancellation is not required.

5.6.21 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.

5.6.22 G Notwithstanding *LR* 5.6.21R, 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

5.6.23 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* 5.6.21R; and

(e) any other matter that the *FSA* may reasonably require.

5.6.24 R An announcement or circular published for the purpose of *LR* 5.6.23G must be published by means of an *RIS*.

5.6.25 R An eligibility letter prepared for the purposes of *LR* 5.6.23G must be provided to the *FSA* not less than 20 *business days* prior to the announcement of the transaction referred to in *LR* 5.6.24R.

5.6.26 R Where an *issuer* has a *premium listing*, the eligibility letter provided for the purposes of *LR* 5.6.23G must be provided by a *sponsor*.

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

5.6.27 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.

5.6.28 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*).

5.6.29 G Where an issuer is applying *LR* 5.4A in order to avoid a cancellation as contemplated by *LR* 5.6.27G, 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 [deleted]

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

holding company	(as defined in section 1159(1) of the Companies Act 2006 (Meaning of "subsidiary" etc) (in relation to another *body corporate* ("S")) a *body corporate* which:	
	(a)	holds a majority of the voting rights in S; or
	(b)	is a member of S and has the right to appoint or remove a majority of its board of directors; or
	(c)	is a member of S and controls alone, under an agreement with other shareholders and members, a majority of the voting rights in S.
reverse takeover	a transaction classified as a *reverse takeover* under *LR* ~~10~~ 5.6.	
target	the subject of a *class 1 transaction* or *reverse takeover*.	

Transitional Provisions

…

TR 10 Transitional Provision in relation to new sponsor services

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	*LR* 5.6.6R	R	(1) *LR* 5.6.6R does not apply to an *issuer* with a *premium listing*. (2) An *issuer* with a *premium listing* must contact the *FSA* as early as possible: (a) before announcing a *reverse takeover* which has been agreed or is in contemplation, to discuss whether a suspension of *listing* is appropriate; or (b) where details of a *reverse takeover* have leaked, to request a suspension.	From 1 October 2012 up to and including 30 December 2012	1 October 2012
2.	*LR* 5.6.13R, *LR* 5.6.17R, *LR* 5.6.26R	R	An *issuer* with a *premium listing* is not required to comply with *LR* 5.6.13R, *LR* 5.6.17R or *LR* 5.6.26R from 1 October 2012 to 30 December 2012.	From 1 October 2012 up to and including 30 December 2012	1 October 2012

3.	*LR* 13.5.27BR	R	(1) *LR* 13.5.27BR does not apply. (2) Where a *listed company* proposes to rely on *LR* 13.5.27R(1)(b), it must submit to the *FSA* an assessment of the appropriateness of the standards applicable to an investment exchange or *multilateral trading facility* against the factors set out in *LR* 13.5.27AG (1) to (7) and any other factors 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*.	From 1 October 2012 up to and including 30 December 2012	1 October 2012

Appendix 2

Handbook text: Sponsors

LISTING RULES (SPONSORS) (AMENDMENT NO 3) 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) to the Listing Rules sourcebook of the Handbook.

Commencement

B. This instrument comes into force on 31 December 2012.

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 3) Instrument 2012.

By order of the Board
27 September 2012

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* when requested 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* to *premium listing* ~~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~~ or the *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* 5.6.12G(1); or

(11) makes a disclosure announcement in connection with a *reverse takeover* under *LR* 5.6.15G that contains a declaration described in *LR* 5.6.15G(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* 5.6.23G(2); or

(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~~ the *disclosure rules* and the *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~~ the *disclosure rules* and the *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* with or applying for a *premium listing* of its *equity shares* ~~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 a *company* with or applying for a *premium listing* of its *equity shares*; and

(2) ~~referred to in *LR* 8.2.1R, *LR* 8.2.2R or *LR* 8.2.3R,~~ guide the ~~*listed company* or *applicant*~~ *company* with or applying for a *premium listing* of its *equity shares* in understanding and meeting its responsibilities under the *listing rules*, ~~and~~ the *disclosure rules* and the *transparency rules*.

8.3.1A R A *sponsor* must, for so long as it provides a *sponsor service*:

(1) take such reasonable steps as are sufficient 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) as soon as possible provide to the *FSA* any information of which it becomes aware that materially affects the accuracy or completeness of information it has previously provided.

8.3.1B G Where a *sponsor* provides information to the *FSA* which is or is based on information it has received from a third party, in assessing whether a *sponsor* has complied with its obligations in *LR* 8.3.1AR(1) the *FSA* will have regard, amongst other things, to whether a *sponsor* has appropriately used its own knowledge, judgment and expertise to review and challenge the information provided by the third party.

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*~~ *company* with or applying for a *premium listing* of its *equity shares*, or its advisers.

8.3.2A G A *sponsor* remains responsible for complying with *LR* 8.3 even where a *sponsor* relies on the *company* with or applying for a *premium listing* of its *equity shares* or a third party when providing an assurance or confirmation to the *FSA*.

…

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, or a *company* with or applying for a *premium listing* of its *equity shares* 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.

8.3.8 G ~~Conflicts to be identified include~~ In identifying conflicts of interest, *sponsors* should also take into account circumstances that could:

(1) create a perception in the market that a *sponsor* may not be able to perform its functions properly; and

(2) compromise the ability of a *sponsor* to fulfil its obligations to the *FSA* in relation to the provision of a *sponsor service*.

…

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 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* to *premium listing* if an *applicant* does not have *equity shares* already ~~*listed*~~ admitted to *premium listing* 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 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* 5.6.15G must:

(1) submit to the *FSA* under *LR* 5.6.17R 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* 5.6.15G(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* 5.6.15G 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.]

…

Cooperation with sponsors

8.5.6 R In relation to the provision of a *sponsor service*, a *company* with or applying for a *premium listing* of its *equity shares* must cooperate with its *sponsor* by providing the *sponsor* with 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 declaration given;

(2) where any opinion, assurance or confirmation is provided by a *sponsor* 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 *company* with or applying for a *premium listing* 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 relate to the provision of *sponsor services*, including any advice or guidance given to a *company* with or applying for a *premium listing* in relation to their responsibilities under the *listing rules*, the *disclosure rules* and the *transparency rules*.

8.6.16C G In considering whether a *sponsor* has satisfied the requirements regarding sufficiency of records in *LR* 8.6.16AR, the *FSA* will consider whether the records would enable a person with general knowledge of the sponsor regime but no specific knowledge of the actual *sponsor service* undertaken to understand and

verify the basis upon which material judgments have been made throughout the provision of the *sponsor service*.

~~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 ~~8~~7am and 6pm.

…

Annual notifications

8.7.7 R A *sponsor* must provide to the *FSA* on or after the first *business day* of January in each year but no later than the last *business day* of January in each year:

…

(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, would be likely to 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 position of the *sponsor* or any of its *group companies* that would be likely to 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.~~

~~(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 Examples of when a *sponsor* should submit a cancellation request pursuant to *LR* 8.7.22R include, but are not limited to:

(1) situations where the *sponsor* ceases to satisfy the ongoing criteria for approval as a *sponsor* in accordance with *LR* 8.6.6R and, following a notification made under *LR* 8.7.8R, there are no ongoing discussions with the *FSA* which could lead to the conclusion that the sponsor remains eligible; or

(2) where 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

…

…

9.2.13A R In relation to the provision of a *sponsor service*, a *company* with a *premium listing* of its *equity shares* must cooperate with its *sponsor* by providing the *sponsor* with all information reasonably requested by the *sponsor* for the purpose of carrying out the *sponsor service* in accordance with *LR* 8.

…

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*.

…

13.2.6 R ~~The *sponsor's* Conflicts Declaration in final form must be submitted at least 10~~

~~clear *business days* before the date on which it is intended to publish the *circular*.~~ [deleted]

…

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

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 1 October 2012.

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
27 September 2012

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 announced that it has acquired or agreed to acquire *shares* representing 75% of the voting rights.

…

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*).

...

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' and 'go shop' type 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.

(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.

…

…

Aggregating transactions

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*, 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 holders of its *listed equity shares* 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.

(3) The *listed company* must have regard to *LR* 13.3.1R(3) when considering the materiality of any change or new matter under *LR* 10.5.4R(2).

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 holders of *listed equity shares* 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 1~~G~~ 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:

(a) profits after deducting all charges except taxation; and

(b) 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 Purchases 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* ~~by a *listed company*~~ 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 equity shares

13.1.9 R A supplementary *circular* must be sent to holders of *listed equity shares* no later than 7 days prior to the date of a meeting at which a vote which is expressly required under the *listing rules* will be taken.

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* 13.8, or only relates to a proposed change of name, or~~, in any 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.

…

Sending approved circulars

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]

…

…

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) where *LR* 12.4.2AR applies, 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.

…

Purchase of own equity shares

…

13.7.1A G In considering whether an explanation given in a *circular* satisfies the requirement in *LR* 13.7.1R(1)(g), the *FSA* would expect the following information to be included in the explanation:

(1) the shareholdings of *substantial shareholders* in the *listed company* before and after the proposed transaction; and

(2) the shareholdings of a holder of *equity shares* who may become a *substantial shareholder* in the *listed company* as a result of the proposed transaction.

…

13 Annex 1R Class 1 circulars

…

…

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

…

(2) …; ~~and~~

(3) …;

(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; and

(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) the following provisions of *LR* 6 (Additional requirements for premium listing (commercial company)~~;~~ :

…

(c) *LR* 6.1.16R to *LR* ~~6.1.24G~~ 6.1.25R; 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 that *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), …. …
body corporate	(in accordance with section 417(1) of the *Act* (Definitions)) any body corporate, including a body corporate constituted under the law of a country or territory outside the *United Kingdom*.
~~*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.~~

limited liability partnership	(a) a *body corporate* incorporated under the Limited Liability Partnerships Act 2000; (b) a *body corporate* incorporated under legislation having the equivalent effect to the Limited Liability Partnerships Act 2000.

Appendix 4

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:

(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);
(c) section 138 (General rule-making power); and
(d) 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 1 October 2012.

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
27 September 2012

Annex A

Amendments to the Glossary of definitions

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

~~*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 (ESMA/2011/81).
financial information table	(in *LR*) financial information presented in tabular form that covers the reporting period set out in *LR* 13.5.13R in relation to the entities set out in *LR* 13.5.14R, and to the extent relevant ~~*LR* 13.5.15R and *LR* 13.5.16R~~ *LR* 13.5.17AR.
mineral expert's report	(in *LR*) a report prepared in accordance with the ~~*CESR*~~ *ESMA recommendations*.
modified ~~auditor's~~ report	(in *LR*) an accountant's or auditor's report: (a) in which the ~~auditor's~~ opinion is ~~qualified~~ modified; or (b) which ~~sets out~~: ~~(i) a problem relating to the business as a going concern; or~~ ~~(ii) a significant uncertainty, the resolution of which is dependent upon future events.~~ contains an emphasis-of-matter paragraph.

Annex B

Amendments to the 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~~ a *new 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* unless *LR* 5.6.21R applies;

(c) ~~are~~ includes the consolidated accounts for the *applicant* and all its *subsidiary undertakings*;

(d) ~~have~~ has 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~~ is not subject to a *modified report*, except as set out in *LR* 6.1.3AG or *LR* 5.6.21R.

(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) and *LR* 6.1.3DR(3) 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) and *LR* 6.1.3DR(3) that ~~they comply~~ it complies with guidelines on independence issued or approved by ~~their~~ its national accountancy ~~and~~ or auditing bodies.

6.1.3A G The *FSA* may accept that *LR* 6.1.3R(1)(e) and *LR* 6.1.3DR(3) have been satisfied where a *modified report* is present only as a result of:

(1) the presence of an emphasis-of-matter paragraph which arises 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 includes an emphasis-of-matter paragraph with regard to going concern and *LR* 6.1.16R is complied with.

6.1.3B R The historical 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 the business for which *admission* is sought.

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) is not subject to a *modified report*, except as set out in *LR* 6.1.3AG ; and

(4) in aggregate with its 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 financial information throughout the period required by *LR* 6.1.3R(1)(a) and to assist prospective investors to make a reasonable assessment of what the future prospects of the *new applicant's* business might be. Investors are then able to consider the *new applicant'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. The *FSA* may consider that a *new applicant* does not have representative historical financial information and that its *equity shares* are not eligible for a *premium listing* if a significant part or all of the *new applicant's* business has one or more of the following characteristics:

(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 part 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* 6.1.3R(1)(a) does not apply to the application~~ it must have published or filed historical financial information 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 historical financial information 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*.

…

Scientific research based companies

6.1.11 R If a *scientific research based company* applies for the *admission* of its *equity shares* to a *premium listing* 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 historical financial information 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 historical financial information under (1).

6.1.12 R An *applicant* for the *admission* of *equity shares* to a *premium listing* 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~~ *LR* 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 a *premium listing* is sought. [**Note:** article 44 *CARD*]

6.1.14 G Before modifying or dispensing with ~~*LR* 6.1.4R~~ *LR* 6.1.3BR, the *FSA* must also be satisfied that there is an overriding reason for the *applicant* seeking a *premium 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*).

…

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.

…

6.1.24A G *LR* 6.1.23R is intended to ensure that that there is nothing inherent within the constitution of a *company* which prevents electronic settlement of its *equity shares*. The *FSA* recognises that for some companies there may be external factors which affect the eligibility of an *equity share* for electronic settlement.

…

9.2.18 R (1) …

(2) The first time a *listed company* publishes financial information as required by ~~*LR* 9.7 to *LR* 9.9~~ *DTR* 4.1 after the publication of the unaudited financial information, *profit forecast* or *profit estimate*, it must:

…

…

9.7A.1 R If a *listed company* prepares a preliminary statement of annual results:

…

(4) the statement must give details of the nature of any likely modification or emphasis-of-matter paragraph that may be contained in the ~~auditors~~ auditors' report required to be included with the annual financial report; and

…

…

13.4 Class 1 circulars

…

13.4.2 R If a *class 1 circular* contains a ~~modified accountant's report~~ *modified report*, as described in *LR* 13.5.25R, the *class 1 circular* must set out:

(1) whether the modification or emphasis-of-matter paragraph is significant to shareholders;

(2) if the modification or emphasis-of-matter paragraph is significant to shareholders, the reason for its significance; and

(3) a statement from the *directors* explaining why they are able to recommend the proposal set out in the *class 1 circular* notwithstanding the ~~modified accountant's report~~ *modified report*.

…

Acquisition or disposal of mineral resources

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).

Acquisition of a scientific research based company or related assets

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 which are the 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 was or 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* 13.4.2R and *LR* 13.5.25R 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*.

13.5.3D G The *FSA* may dispense with the requirement for an independent valuation under *LR* 13.5.3CR if it considers that this would not provide useful information for shareholders, in which case the *class 1 circular* must include such information as the *FSA* specifies.

~~Form of accounting information~~ Accounting policies

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~~ when financial information is 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, provided the *issuer's* last published annual consolidated accounts have been presented on a restated basis consistent with those to be used in its next accounts 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

13.5.12A R *LR* 13.5.13R to *LR* 13.5.30R apply only in relation to a *class 1 acquisition*.

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*.~~

~~(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]

13.5.17A 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 75% of the enlarged *target* for the period from the commencement of the relevant three year reporting period set out in *LR* 13.5.13R(1) up to the date of the acquisition by the *listed company* or the last balance sheet date presented by it under *LR* 13.5.13R(1), whichever of the two 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* the *FSA* will take into account factors such as the assets, profitability and market capitalisation of the business.

…

~~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; and~~

~~(b) the audited consolidated income statements for the last three years;~~

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

~~(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.~~

~~(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 be accompanied by an accountant's opinion unless *LR* 15.5.27R, *LR* 13.5.28R or *LR* 13.5.29G applies.~~ Unless *LR* 13.5.3AR, *LR* 13.5.3BR or *LR* 13.5.27R applies, a *financial information table* must disclose how the accounting policies used conform with *LR* 13.5.4R and be accompanied by an accountant's opinion as set out in *LR* 13.5.22R.

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~~; and~~ .

~~(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.~~

…

13.5.25 R If ~~an accountant's report, which contains~~ the accountant's opinion required by *LR* 13.5.21 R~~,~~ is modified or contains an emphasis-of-matter paragraph, details of all material matters must be set out in the *class 1 circular*, including:

(1) all the reasons for the modification or emphasis-of-matter paragraph; and

(2) a quantification of the effects, if both relevant and practicable.

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 report*, details of the material matters giving rise to the modification or emphasis-of-matter paragraph must be set out in the *class 1 circular*.

~~Accountant's opinion: acquisitions~~ 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 either listed on an ~~*overseas investment exchange*~~ that is not a *regulated market* or admitted to ~~trading 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 report*, except where a dispensation has been granted under *LR* 13.5.27CR.

(2) Where *LR* 13.5.27R(1) or *LR* 13.5.3BR(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.~~

13.5.27A G The *FSA* will make its assessment of whether the accounting and other standards applicable to an investment exchange or *multilateral trading facility* as a result of *securities* being admitted to trading 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 applying to the *target* by virtue of its admission to that market:

(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 standards applicable to an 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 a *modified report* on the *target's* financial information has been produced. In such circumstances 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 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*, except:

(1) ~~reproduced in the *class 1 circular*; and~~ where *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~~ where *LR* 13.5.3BR applies, the financial information should be presented in accordance with *LR* 13.5.3BR(1)(b) and *LR* 13.5.3BR(1)(d).

Class 1 disposals

13.5.30A R *LR* 13.5.30BR to *LR* 13.5.30DG apply only in relation to a *class 1 disposal*.

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 annual consolidated balance sheet;

(b) the 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 unless the change did not require a restatement of the comparative. Therefore the *financial information table* should have four columns (or more where changes have occurred in more than one year).

13.5.30D G The *FSA* may modify *LR* 13.5.30BR(1)(b) and (c) where it is not possible for the *listed company* to provide a meaningful allocation of its costs in the *target's* audited consolidated income statements. The *class 1 circular* should contain a statement to this effect where this modification has been granted. The *FSA* would not normally expect to grant such modifications except in respect of non-operating costs such as finance costs and tax.

…

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 any of 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 financial information including the period of the forecast which has yet to be published at the date of the *class 1 circular*;

the *listed company* must ~~include that *profit forecast* or *profit estimate* in the *class 1 circular* or include an explanation of why the *profit forecast* or *profit estimate* is no longer valid~~ either:

(a) include that *profit forecast* or *profit estimate* in the *class 1 circular* and comply with *LR* 13.5.32R; or

(b) 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).

13.5.33A 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).~~

~~(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 (ESMA/2011/81).	
financial information table	financial information presented in tabular form that covers the reporting period set out in *LR* 13.5.13R in relation to the entities set out in *LR* 13.5.14R, and to the extent relevant ~~*LR* 13.5.15R and *LR* 13.5.16R~~ *LR* 13.5.17AR.	
mineral expert's report	a report prepared in accordance with the ~~*CESR*~~ *ESMA recommendations*.	
modified ~~auditor's~~ report	an accountant's or auditor's report:	
	(a)	in which the ~~auditor's~~ opinion is ~~qualified~~ modified; or
	(b)	which ~~sets out:~~ ~~(i) a problem relating to the business as a going concern; or~~ ~~(ii) a significant uncertainty, the resolution of which is dependent upon future events.~~ contains an emphasis-of-matter paragraph.

Annex C

Amendments to Prospectus Rules sourcebook (PR)

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

~~CESR~~ 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 ~~*CESR*~~ *ESMA recommendations*.

…

Property valuation reports

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

…

…

Appendix 1

~~*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 (ESMA/2011/81).

Appendix 5

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);
(c) section 89A (Transparency Rules); and
(d) 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 1 October 2012.

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
27 September 2012

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, unless otherwise stated.

Externally managed companies

6.1.26 R A *company* applying for the *admission* of *equity shares* to *premium listing* 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 a *person* outside the *issuer's group*, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a *person* outside the *issuer's group*.

6.1.27 G In considering whether a *company* applying for the *admission* of *equity shares* to *premium listing* has satisfied *LR* 6.1.26R, the *FSA* will consider, among other things, whether the board of the *issuer* consists solely of *non-executive directors* and whether 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*.

…

9.2.8A 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*.

…

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 a *person* outside the *issuer's group*, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a *person* outside the *issuer's group*.

…

Externally managed companies

15.4.26 R A *closed-ended investment fund* is not required to comply with *LR* 9.2.20R.

…

16.4.1 R An *open-ended investment company* must comply with:

(1) *LR* 9 (Continuing obligations) except *LR* 9.2.6BR, *LR 9*.2.15R, *LR* 9.2.20R and *LR* 9.3.11R;

(2) *LR* 15.5.1R;

(3) *LR* 15.6.1R; and

(4) the condition set out in *LR* 16.1.1R(1) or (2).

…

Appendix 1 Relevant definitions

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

external management company	has the meaning in *PR* 5.5.3AR (i.e., in relation to an *issuer* that is a *company* which is not a collective investment undertaking, 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).

…

Transitional Provisions

…

TR 9 Transitional Provision for a company that has a premium listing of equity shares but does not comply with LR 9.2.20R

(1)	(2) Material to which the transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	*LR* 9.2.20R	R	(1) This *rule* applies to a *company* that has a *premium listing* of *equity*	From 1 October 2012 up to and including 31 December 2013	1 October 2012

			shares but does not comply with *LR* 9.2.20R on 1 October 2012. (2) *LR* 9.2.20R is not applicable to a *company* to which this *rule* applies.		

Annex C

Amendments to the Prospectus Rules sourcebook (PR)

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

Equity shares

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 *company* which is not a collective investment undertaking, 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.

…

Appendix 1 Relevant definitions

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

body corporate	(in accordance with section 417(1) of the *Act* (Definitions)) any body corporate, including a body corporate constituted under the law of a country or territory outside the *United Kingdom*.	
limited liability partnership	(a)	a *body corporate* incorporated under the Limited Liability Partnerships Act 2000;
	(b)	a *body corporate* incorporated under legislation having the equivalent effect to the Limited Liability Partnerships Act 2000.
officer	(in relation to a *body corporate*) (as defined in section 400(5) of the *Act* (Offences by bodies corporate etc)) a director, member of the committee of management, *chief executive*, *manager*, secretary, or other similar officer of the body, or a *person* purporting to act in that capacity or a *controller* of the body.	
partnership	(in accordance with section 417(1) of the *Act* (Definitions)) any partnership, including a partnership constituted under the law of a country or territory outside the *United Kingdom*, but not including a *limited liability partnership*.	
person	(in accordance with the Interpretation Act 1978) any person, including a body of persons corporate or unincorporate (that is, a natural person, a legal person and, for example, a *partnership*).	

Annex D

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

In this Annex, underlining indicates new text.

Notification of transactions by persons discharging managerial responsibilities

…

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*.

Section II

Consultation

7

Enhancing the effectiveness of the Listing Regime

Introduction

7.1 In the introduction to CP12/2 we explained that our overall and continuing purpose in regularly reviewing the Listing Rules is to ensure that they reflect properly changes in market practice 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.

7.2 For this purpose we set out proposals for consultation on a range of technical issues, on which feedback and our final policy positions are presented in the Feedback section of this publication. These included proposals in relation to externally managed structures, where we took the view that their management arrangements and provisions for accountability to shareholders were not consistent with the high standards that we attach to the premium listing benchmark. In relation to these, we said *'We, and the market, believe that these super-equivalent standards*[4]*, 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.'*

7.3 Consistent with this broader view, CP12/2 initiated a high-level discussion of the wider issues around the quality of the premium listing regime, the free float, minority shareholder protection (especially in situations where there is a controlling shareholder) and governance. This discussion originated in part from a debate between various market participants, and

4 Those Listing Rules applying to the premium segment that impose requirements that exceed those required under the applicable European Directives – see www.fsa.gov.uk/pages/Doing/UKLA/regime/index.shtml

with us, prompted by the perceived operation of the free-float requirement in a number of specific high-profile cases, and concerns held particularly by the investment community. Some stakeholders had argued that the free-float requirements should be used for specific governance purposes and in particular for the protection of minority shareholders.

7.4 Discussion of this specific issue with investor stakeholders touched on a set of related market operational concerns, to which we have been giving active consideration for some time. In particular we had been discussing the pressures on the ability of London to continue attracting new issues given the requirements of the existing free-float requirements. So it has been timely that we have been able to lead a debate on this set of issues taken together, and including the full range of stakeholder views, as an opportunity to assess the premium listing regime as a whole and whether it remains correctly positioned or needs to be strengthened so the UKLA can meet its current statutory objectives. This is especially in relation to investor protection on the one hand and maintaining competitiveness on the other.

7.5 These issues remain relevant within the framework of the proposed FCA objectives as they will become directly applicable to the UKLA. It will have the strategic objective to ensure that the relevant markets function well which, for the purpose of the UKLA, means the financial markets. In discharging this objective the UKLA, on the one hand, will have to secure appropriate degree of protection for consumers, in this context meaning persons who have invested, or may invest, in financial instruments. On the other hand, in discharging its general functions, the UKLA must have regard to the regulatory principles, which include that of proportionality, in that '*a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction*'.[5]

7.6 CP12/2, therefore, provided some initial discussion of the relevant issues, set out in high-level terms some illustrative examples where consideration could be given to providing additional protections for investors and sought views on what, if any, changes to the Listing Rules might be necessary to provide such additional protection.

7.7 Of the 45 formal responses to CP12/2, 26 included views on our first question relating to the quality of the premium listing regime. These reflected the views of a wide range of participants from both the buy and sell sides, together with legal, accounting and other advisory stakeholders. We also engaged extensively during the consultation period with a wide number and range of market participants, many of whom also responded to the consultation. We have also discussed our thinking and proposals as they have developed with the Financial Reporting Council (FRC) and FTSE.

7.8 We are very grateful to everyone who took the time to formally respond to the request for comment in CP12/2, as well as to those market participants who very positively and constructively engaged in informal dialogue with us during the consultation period. These

5 S3B(1)((b) FSMA, Proposed Legislation: Financial Services Bill 2011

responses gave us an invaluable insight into the fundamental concerns underlying stakeholders' views and also allowed us to understand the nature of the problem as perceived by the market. Indeed, we take from the very positive response received via the written and oral feedback for having initiated the debate, confirmation of the strong desire amongst market participants for action to be taken to mitigate these concerns (notwithstanding recent changes made by FTSE to their indexation criteria).

7.9 The responses and informal discussions have highlighted the fact that there remains a significant degree of polarity regarding the issues of free float, minority shareholder protection and the IPO market in general. So we have sought to identify carefully the nature and scale of the underlying problems and concerns in order to propose specific measures to address them that are effective and at the same time proportionate.

7.10 Our overall analysis of the issues suggests that the underlying concerns are not systemic, although we recognise that they may represent the beginning of a longer-term pattern. We have also concluded that the pattern is one of misaligned behaviour, for which there is no one single remedy. Our proposals should therefore be seen both as individual measures which are designed to correct in a proportionate way specific points of this misaligned behaviour, but which we also intend to be taken together as a restatement of what we see as the high standards of governance required of premium listed issuers.

7.11 We believe that the great majority of issuers already fully subscribe to these standards both in theory and practice and that by restating them in this way we will facilitate their further adoption by all those issuers wanting to raise capital in London on the basis of its clear and high quality standards. We believe that this will be in the long-term interests of London in maintaining its pre-eminent attractiveness to both issuers and investors.

Regulatory landscape

7.12 It has been evident from the wider debate that there are many different views about the role that the UKLA has as the regulator of the UK's primary markets and about the Listing Regime in general. It is also evident that these views are not always accurate and can confuse the roles of various players within London's listed equity market. Therefore, we believe that it is important to clarify the regulatory landscape and how the different players and regulatory regimes interact with the UKLA's regime and its statutory basis. In addition to the UKLA and the Listing Regime, there are four fundamental areas within the regulatory framework which are central to the current debate, and which are all, in different ways, linked to the role of the listing regime as described below. These are:

- Index providers (such as FTSE);
- the FRC and the UK Corporate Governance Code ('the Code');
- the wider statutory framework; and
- investors.

7.13 We set out below our view of these regulatory areas, as our proposals for changes to the Listing Rules have been formulated on the basis of our 'first principle' view of each of these areas.

(a) Role of the UKLA and the nature of the Listing Regime

7.14 The UKLA is the FSA acting in its capacity as competent authority under Part VI of FSMA. In that capacity the UKLA monitors and enforces compliance with the Listing Rules, Prospectus Rules and Disclosure and Transparency Rules. Amongst other things, the Listing Rules govern the eligibility requirements for admission of securities to the different Listing Categories within the Official List along with the continuing obligations that attach by virtue of such admission.

7.15 A security which is 'listed' means that it has been admitted by the UKLA to the Official List and that the issuer of that security meets the eligibility and continuing obligations of the listing category to which it belongs – it is very important to stress that the UKLA does not make any assessment of suitability in deciding whether to admit a security to the Official List. Thus, beyond an assessment that a company and its securities meet a set of objective threshold conditions, the UKLA is not making a judgement or pronouncement on the relative risk that an investment in that security exposes one to nor warranting the quality of the company. The UKLA does not, subject to its overarching power to refuse admission based on potential investor detriment, make a subjective qualitative judgement with respect to the company's suitability for listing, nor is the current Listing Regime built around a requirement for a company to prove suitability.

7.16 Nevertheless, the gateway to the listing segments and particularly the premium segment is guarded very carefully and it is here that much unseen effort occurs in ensuring that a robust case for eligibility is made. The nature of the regime is such that decisions at this stage cannot easily be undone and several of the key entry requirements do not have continuing effect.

7.17 A listing is not conferred by any other means, whether by virtue of being admitted to trading on a regulated market (such as the LSE's Main Market) within the scope of the principal Directives, or an exchange-regulated market (such as AIM). Nor is listing conferred by virtue of the inclusion of a security in an index. It was to ensure clarity on this that we introduced in 2010 the Premium and Standard Listing Categories, replacing the old primary and secondary listings. These Listing Categories clearly set out the rights and obligations (including in relation to behaviour and governance) attaching to the issuer and its securities, so that investors have the clarity that they need to make properly informed decisions and the confidence that issuers in whose securities they have invested will observe their obligations.

7.18 This highlights two important aspects of the Listing Regime. First, for issuers it is a self-standing regime as it sets out the behavioural and governance obligations that they must meet in order to gain access to capital via investors who are seeking high-quality investments. Second, for investors, it is a regime based primarily on the provision of

sufficient information to allow investors to make properly informed, active, decisions whether to buy or sell the securities of those issuers. In balancing effectively the interests of issuers and investors the UKLA is able to meet its current objectives, particularly in facilitating access to listed markets for a broad range of enterprises and providing an appropriate degree of protection for investors. As discussed above this need to balance our statutory requirements will remain relevant when the new FCA objectives come into force. Under the provisions of the proposed Financial Services Bill, in considering what degree of protection for consumers may be appropriate, the UKLA must have regard to '*the general principle that consumers should take responsibility for their decisions*'.[6]

(b) Index providers

7.19 The role of indexation has been raised with us both by buy and sell-side stakeholders, and in particular the extent to which the requirements of the Listing Regime and the (FTSE) indices should be aligned and reflect the needs of so-called 'passive' investors. The answer to this question could have fundamental implications for the nature of the Listing Regime.

7.20 We fully appreciate the importance attached by many issuers and advisers to the role of indexation. Indeed, for many of these stakeholders the attractiveness of the London IPO market stems primarily from indexation. But this view is not universally held on the sell-side, and for equally significant numbers the ability to gain access to the FTSE indices is not a primary consideration in seeking a premium listing.

7.21 For the buy-side, indexation and its link to the Listing Regime has been seen as integral to the governance debate, particularly in relation to non-UK issuers. This reflects the perception that some investors are 'forced' into buying the securities of these issuers by virtue of these issuers' inclusion in the FTSE indices and the terms of the mandates under which the investments are managed, for example in relation to index-tracking.

7.22 As we explained in CP12/2, it is important to be clear that the criteria for inclusion in the FTSE indices are not within the regulatory perimeter. FTSE is a private company that is one of a number of index-providers. Such providers set their own rules, for which they alone are responsible. For the main FTSE indices, one of the criteria is that the issuer should have a premium listing.

7.23 While we recognise the link thus created between the FTSE indices and the Listing Rules, it does not alter our underlying view of the Listing Rules as being a self-standing set of requirements placed on issuers. So, consistent with this view, we see the ability of premium listed issuers to seek indexation as being an expected consequence, rather than the primary purpose, of seeking that premium listing. We do not see the case for full alignment between the Listing Regime requirements and the eligibility criteria for inclusion in the FTSE indices, which would be necessary if indexation were to be seen as the primary purpose of a premium listing.

6 S1C(2)(d) FSMA, Proposed Legislation: Financial Services Bill 2011

7.24 By the same token, because we see the Listing Regime as one based on the principle of disclosure to facilitate active choice by investors, we do not consider that its requirements should be based on the needs of investors who have chosen to base their investment decisions on the passive tracking of any particular index.

7.25 Were the possibility of such active decisions to be removed, then a far more fundamental reappraisal of our approach would be required, with many, if not all, decisions regarding disclosure also pertaining to suitability. It is not evident to us that there has been a wholesale failure that would require such a fundamental shift in the current regulatory framework from a disclosure based regime to a regime that is based on subjective qualitative assessment of companies seeking a listing in London.

7.26 A number of stakeholders have raised with us the possibility that they might explore with FTSE the establishment of different indices with more stringent entry criteria. This would of course be entirely for FTSE to decide. Our understanding, based on our own discussions with the FTSE, is that they would be willing to consider the provision of new indices if there is sufficient demand.

(c) The FRC and the Code

7.27 The third key area underlying the current debate is the relationship between the Listing Regime and the establishment and operation of effective corporate governance requirements for listed issuers.

7.28 As we note in our introduction, we see the super-equivalent elements of the Listing Rules as providing a clear benchmark for high standards of corporate governance for premium listed issuers – and indeed taken as a whole the super-equivalent provisions of the Listing Rules are essentially aimed at setting standards and obligations of governance and behaviour for premium listed issuers. Of course, this is part of a broader architecture, of which the Listing Rules are not the only element. Specifically, it is the role of the FRC to set the precise content of the UK Corporate Governance Code. The Listing Rules then require premium listed companies to state how they have applied the Main Principles set out in Section 1 of the Code along with whether they have complied with these Principles and, if not, provide an explanation for non-compliance. It is then the role of shareholders to make an independent judgement whether they are content with the Board's explanation and furthermore assess the effect, if any, of such non-compliance for their appetite to invest in the company.

7.29 This approach provides flexibility on the one hand in avoiding a 'one size fits all' model of the overall corporate governance architecture and on the other leaves, correctly in our view, the shareholders with the responsibility to assess the relative merits of issuers' compliance with the Code and to make active investment decisions, including whether to seek to influence the governance of the issuer, on the basis of that assessment.

7.30 In common with the FRC, we believe that overall this is the right approach. But we also recognise that an effective framework for ensuring the high standards of behaviour required within the premium segment of the Listing Rules needs to accommodate situations where disparate shareholders are less able to exert influence on an issuer's governance or strategy. This is particularly so where the low number of shares held in public hands means that a single dominant shareholder can exert effective control over operational, governance or strategic decisions. Recently, we have observed a relative increase in the number of companies seeking a premium listing where there is a concentrated rather than disparate shareholder base, which may therefore give rise to the sorts of concerns that have been articulated to us. We therefore believe that in situations where there is a controlling shareholder there is a case for incorporating into the Listing Rules requirements for premium listed issuers that are at present subject only to the comply or explain provisions of the Code.

7.31 It is also worth noting this example of where a passive, index-based investment strategy precludes an investor deciding not to invest in a company on the basis of its disclosed corporate governance arrangements and that this would be the case irrespective of the level of shares in public hands.

(d) The statutory framework

7.32 In considering the interaction of the Listing Regime with the statutory framework one must essentially consider three levels:

- the local company law framework attaching to the listed company as a result of its country of incorporation;
- the provisions of English law applicable to the Listing Regime and financial services in general (principally FSMA); and
- European law and regulation.

7.33 The first, local company law, tends to provide the most variation given the international character of the Official List. For UK companies this will mainly arise from the Companies Act but this will not be the case for the many listed non-domestic issuers (including holding companies).

7.34 While we have previously amended the Listing Rules as a result of consultation to include one aspect of what has traditionally been the domain of company law, namely pre-emption rights, there are many other areas that are important within the context of the regime, but remain within the applicable domestic statutory framework. An example of this is the concept of fiduciary duty which applies to the directors by virtue of the Companies Act. This is a duty owed to the company whereby a director has to discharge his or her duties in a way that is beneficial to the company rather than the shareholder that nominated that director. Where a company is incorporated in a jurisdiction which does not operate such a

regime, the lack of such additional protection takes on added importance where a company has a controlling shareholder.

7.35 It is FSMA that provides the statutory basis for listing and the various rulebooks prepared, monitored and enforced by the UKLA. As noted earlier FSMA is to be amended shortly to provide inter alia for the creation of the FCA and the PRA. One effect of this will be to change the overall statutory objectives that the FCA will be subject to in discharging its listing obligations. It is also worth highlighting that much of FSMA (at least for listing regime purposes) regarding prospectus disclosure, listing, transparency and market abuse now stem from European provisions.

7.36 Many stakeholders have noted the increasing importance of the suite of European Directives and Regulations in this area. Of the UKLA's rulebooks, only the Listing Rules are not made up almost entirely of rules stemming directly or indirectly from Europe. ESMA, as successor to CESR, has increased powers inter alia to direct interpretation of applicable European provisions and places limits on the discretion available to the national competent authorities.

(e) Investors

7.37 It flows from the nature of the Listing Regime that shareholders themselves, whether individual or institutional, play a very important role in holding the companies in which they invest, and their directors, to account. An important function of the Listing Rules is to ensure that shareholders have the right tools to exercise this influence. In this context we note the comments made in the recent Kay Review on the role of asset managers, the discussion of good practice for asset managers and the recommendation that an investors' forum should be set up to facilitate collective engagement by investors in UK companies.

7.38 This is further supported by the UK Stewardship Code, which is addressed primarily to firms who manage assets on behalf of institutional shareholders and aims to enhance the quality of engagement between institutional investors and companies to help improve the efficient exercise of governance responsibilities.[7] The Stewardship Code's principles make it clear that institutional investors bear stewardship responsibilities and recommend that they should regularly monitor their investee companies to determine when to enter into an active dialogue with their boards.

7.39 Given that the Listing Regime is based on the principle of disclosure to facilitate active choice by investors, the effectiveness of the tools that arise from the various parts of the regulatory framework with the aim of protecting shareholders will be reduced if investors choose to not take on such stewardship responsibilities. This is further reinforced by the new regulatory framework which will be applicable to the FCA which, as noted earlier, includes the presence of the regulatory principle that consumers should take responsibility for their decisions.[8]

7 www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Stewardship-Code.aspx
8 S3B(1)(c) FSMA, Proposed Legislation: Financial Services Bill 2011

Free float

7.40 As discussed above, the central issue underlying the current debate has been the investor argument that the free-float requirement is set at too low a level (25%) and that this has allowed controlling shareholders to over-ride the interests of minority shareholders. Therefore, in addition to clarifying the layout of the regulatory landscape, we feel it is important that we set out our view of the free float as a measure of corporate governance.

7.41 The current debate reflects concerns held by buy and sell side in relation to the two aspects of the free-float requirements in the Listing Rules – that is, their role on the one hand in ensuring liquidity by regulating the amount of shares in public hands but also the consequences on the other hand of that public ownership (or lack of it) in terms of governance and the ability of shareholders to influence effectively the strategy and corporate decision making of an issuer.

7.42 We are keenly aware both of the potential role that the amount of shares in public hands plays in giving shareholders sufficient power to counterbalance a dominant shareholder, where one is present, and that the genesis of this debate lay in concerns in this area. In fact, the free float requirements within the Listing Rules are derived directly from European law[9] and are explicitly drawn in relation to liquidity, to ensure the formation of a proper secondary market, rather than governance although we recognise that, given the super-equivalent nature of the premium segment, we could present proposals to focus the requirements on corporate governance instead.

7.43 However, the free float would be a blunt tool even if used explicitly to seek to ensure effective corporate governance in a company, and in effect would need to be set as high as 70% (i.e. in effect reflecting that '30% of the voting rights of a company is treated by the Code as the level at which effective control is obtained'[10]) to affect the governance of a listed company in the way that some respondents desired. In any event, proposals requiring an increased level of free float on an ongoing basis would affect a large number of companies with a premium listing where there has been no suggestion that a problem exists.

7.44 In addition, and on the other side of the debate, we are already aware of increasing concerns held by the sell side in relation to the impact of the current free-float requirements on the interest of issuers to bring IPOs to London now. A number of stakeholders with whom we have engaged in the course of our consultation have highlighted in clear terms the competitive pressures that London is facing from other major global primary markets and in particular emphasising that the level of free float required under the rules is a critical factor in determining London's attractiveness for IPOs. We are required as one of the UKLA's objectives 'to *seek to maintain the… competitiveness of UK markets for listed securities*'. This objective continues to be relevant after implementation of amendments to FSMA as in discharging the strategic objective to ensure that the financial markets function well the FCA (acting through UKLA) must, alongside other regulatory principles, have regard to the principle of proportionality. As explained above, this means that a burden or restriction must be proportionate to the benefits, considered in general terms.

9 Consolidated Admissions and Reporting Directive (2001/34/EC)
10 www.thetakeoverpanel.org.uk/the-code/download-code

7.45 Given these factors, we would need to consider very carefully whether raising the free-float requirement above the current level would be seriously detrimental to the vitality of the London market. We must also consider whether we would be able to provide the desired level of corporate governance protection for investors without imposing a disproportionate burden on all premium listed issuers.

Our proposed approach

7.46 Responses to our request for comment in CP12/2, and our subsequent discussions with market participants, have confirmed that there is a broad consensus on the nature and current scale of the underlying concerns, but that views on what was seen as the originating central question, and therefore the single most discussed potential tool for mitigating the concerns – that of free float/control – remain very polarised.

7.47 On the first issue, buy side participants typically expressed the view that there has been an apparent corporate governance failure in situations where there is a controlling shareholder, which has been facilitated by a low level of shares held by independent shareholders. However, most stakeholders across the spectrum agreed that there have been only a relatively small number of governance failures which do not add up to a systemic failure. Yet, reflecting the high profile of some of these instances, this has clearly resulted in a perception of a more widespread and deep-rooted problem.

7.48 Buy and sell side views on the correct approach, if any, to be taken to mitigate these concerns diverged sharply over the key issue of free float and control. Almost all buy side respondents argued that it is imperative to turn the free float into an acknowledged tool for ensuring effective corporate governance, rather than just basing it on liquidity considerations. These respondents argued on this basis that the Listing Rules should include a requirement for a free float of 50%, or even more, for the premium segment.

7.49 In contrast almost all sell-side respondents urged us to be mindful of damaging London's attractiveness to issuers and the risk of upsetting what is a delicate balance between that attractiveness to issuers and appropriate investor protection through a disproportionate response. These stakeholders were strongly opposed to consideration of any proposals that would risk turning securing minority shareholder protection into delivering minority shareholder control, given the effect they believed this would have on demand for listing in London. These stakeholders expressed concern over the present state of the IPO market even with the current free-float requirements.

7.50 Given the current objectives that we have to meet as the UKLA and the future objectives of the FCA which will apply directly to the UKLA, as well as our view of the free-float issue as set out above, we do not believe that it would be justifiable to make significant changes to the existing free-float requirements for premium issuers.

7.51 That said, while we share the general acknowledgement that there has not been a systemic failure of corporate governance behaviour, we do accept a case for taking action now, on a pre-emptive basis, to ensure that the integrity of the Listing Regime and an appropriate degree of investor protection is maintained. This is the same basis as underlying our approach to making rule changes to address the issue of externally managed companies. We note that the concerns of institutional investors have not diminished following recent amendments to FTSE's own free-float requirements in relation to the UK Index Series entry criteria. As we note above, our experience is that the type of companies that have been causing concern in the area of free float and corporate governance, i.e. companies with an overseas asset base controlled by a majority shareholder, would appear to represent a sizeable proportion of the companies coming to conduct an IPO in London, and we have no reason to believe that this trend will be reversed in the near future.

7.52 Consistent with our view of the scale of the underlying market failure, we believe that the vast majority of companies, including those from overseas jurisdictions, are committed to the standards prescribed by premium listing. Where there is a failure to behave in a way that is properly aligned with the high standards of a premium listing, we believe that it arises largely from a lack of understanding about what good corporate governance behaviour looks like in practice, and that this could be articulated more effectively through the Listing Rules in a way that will encourage a behavioural approach which is better aligned with the super-equivalent requirements of the Listing Regime.

7.53 For this reason we do not believe that there is any one single measure which will of itself be sufficient to bring about an effective understanding of what this good behaviour looks like. On the basis of our discussions with market participants, which have been validated overall by formal responses, we are therefore proposing a package of measures which are individually designed to correct specific points of this misaligned behaviour but which we also intend to be taken together as a restatement of what we see as the high standards of governance required of premium listed issuers. As with free float, these measures have been formulated on the basis of our view, set out above, of the other two underlying issues in the debate. That is, they reflect a regime that is based around:

- active investor choice and not driven by the desire for indexation;
- the avoidance of blunt tools such as free float that could only be effective at the cost of damaging London's attractiveness to issuers; and
- providing shareholders with the tools to exercise effective influence over companies' boards.

7.54 At the same time, we recognise that there is space for increasing flexibility in the standard listing segment. So while proposing measures to augment the rules applying to the premium segment, we propose taking this opportunity to seek stakeholders' views on relaxing our approach to enabling companies with smaller free floats to test the market by listing on the standard segment.

Our proposals

7.55 Our proposals therefore reflect our view of these issues and centre around four key elements which we believe are central to ensuring better aligned behaviour, both as eligibility requirements and where appropriate on a continuing basis:

- ***Optimising the entry criteria to the premium segment so as to maintain the strength of the premium listing standard***: this involves clarifying the requirements for an independent, controlled business, reinstating the concept of a controlling shareholder and requiring a majority of independent directors on the board where one is present along with stating that certain voting arrangements are incompatible with a premium listing;
- ***Ensuring that the eligibility requirements continue to apply as meaningful continuing obligations***: in addition to the introduction of all of the above as continuing obligations, the proposals include extending the notification requirement where a premium listed issuer is not in compliance with its continuing obligations, the regulation of the relationship between a premium listed company and a controlling shareholder on an ongoing basis including the introduction of a new dual voting requirement for the election of independent directors, mandating the content of a relationship agreement and a requirement that it is adhered to on an ongoing basis along with procedures for the approval of material changes to it by independent shareholders;
- ***Clarifying the operation of the free-float provisions***: noting that the provision is designed to speak primarily to liquidity and so proposing that shares that do not provide any liquidity as they are subject to a lock up should be excluded, detailing the circumstances where the UKLA would consider modifying the 25% free-float requirement, indicating that any modification beneath 20% would be unlikely other than in exceptional circumstances; and
- ***Providing shareholders with better quality information***: requiring the annual report disclosures that are imposed by the Listing Rules to be clearly identifiable, necessitating fuller and more comparable disclosures for smaller related party transactions, introducing statements regarding the operation of the relationship agreement on an annual basis, and articulating the disclosure required under the UK Corporate Governance Code with respect to directors' skills and knowledge and its interaction with the Premium listing regime and applicable company law with a focus on fiduciary duties.

7.56 In addition, we have taken this opportunity to **review the Listing Principles** as well as the scope of their application. Currently, the Listing Principles only apply to companies that have a premium listing of equity shares with the result that certain expectations that we would expect to apply across all listed companies have been perceived as pertaining only to premium listed issuers. While we are conscious of the desire that the standard segment should accord as closely as possible to the standards imposed by the various European Directives, we are proposing that two of the existing six Listing Principles should be applicable to all listed companies.

7.57 We have also proposed some amendments that we believe are appropriate and added some new principles to the Premium Listing Principles to ensure that they better reflect the high standards applicable within the premium segment.

Independent business

Introduction

7.58 Currently, LR 6.1.4 R (2) and (3) set out requirements for a new applicant to the premium segment to demonstrate that it controls most of its assets and that it will be carrying on an independent business as its main activity. We are proposing to delete this rule and to set out the two requirements as separate rules accompanied by guidance describing the factors that we would take into account in considering whether the new applicant is capable of meeting these requirements. These are discussed in more detail below.

Independent business and controlling shareholders

7.59 As part of the major review of the Listing Rules in 2004 we amended the eligibility provisions to remove the express requirement for an issuer to be independent of a controlling shareholder. At the time we stated that we believed that the relationship with the controlling shareholder should be a matter for disclosure and the judgement of investors rather than serve as an absolute prohibition. However, given the factors discussed earlier and on the basis of the written and oral feedback to CP12/2 we believe that the majority of our stakeholders support the reinstatement of provisions relating to controlling shareholders.

7.60 Therefore, we are proposing to reinstate the express provision that a premium listed issuer must be capable of acting independently of a controlling shareholder and its associates. This will involve adding a definition of controlling shareholder and associate thereof and we have proposed such definitions that are based primarily on the old definitions. We have also added the ability for those acting in concert to be aggregated as is currently the case for LR 6.1.19R(4)(e) as we believe that this degree of flexibility is appropriate given the potential for arrangements to be deliberately structured to evade these requirements.

7.61 Acting in concert may result from either formal or informal agreements or arrangements for concerted action and it is likely that this part of the definition will need careful consideration at the eligibility stage. However, we are mindful of the importance of a dovetailing continuing obligation to allow decisions to be revised where circumstances indicate that this is appropriate. Our decision making at the eligibility stage will necessarily draw heavily on the sponsor given that its close relationship with the issuer and the presence of a controlling shareholder would be within the scope of the declaration under LR 8.4.2R(1).

7.62 We have set the threshold at which a controlling shareholder is deemed to exist at 30% as per the prior rules and we believe that this is an appropriate level for the further protections to be required.

7.63 We have also proposed the addition of a definition of associate that simply draws on the existing definition of associate as it applies to related parties.

Q1: Do you agree with our definitions of a controlling shareholder and an associate of a controlling shareholder? Do you believe that there are other criteria where an entity or a person ought to be deemed controlling shareholder that have not been captured by the proposed definition and if so what are they?

Relationship agreements

7.64 At the same time we are proposing to reinstate the express requirement for a relationship agreement to be in place to govern the relationship between the company and its controlling shareholder. In practice, notwithstanding the deletion of the earlier requirement as mentioned above, new applicants have continued to enter into relationship agreements with their controlling shareholder and we have been the recipient of views from a broad range of stakeholders that the relationship agreement is a valuable tool in regulating the relationship between a controlling shareholder and the new applicant, provided it is adhered to by the parties on a continuous basis. We propose to reinstate this requirement and reinforce it by mandating certain content requirements that must be addressed in the agreement and by adding provisions that make it relevant on a continuous basis.

7.65 The new provisions proposed in LR 6.1.4ER(1) require the new applicant to enter into a relationship agreement, where it has a controlling shareholder, and that this agreement must comply with content requirements as set out in new LR 6.1.4FR.

Q2: Do you support our proposal in LR 6.1.4ER(1) to require new applicants where a controlling shareholder is present to enter into a relationship agreement?

7.66 The key aspect of the requirement for the relationship agreement is to ensure that the new applicant is capable of carrying on its business independently of the controlling shareholder. The new LR 6.1.4FR proposes the minimum content requirements that must be covered by the relationship agreement. These cover provisions that we would normally expect to be addressed in a relationship agreement to ensure that control is not abused and include the following:

- transactions and relationships with a controlling shareholder are conducted at arm's length and on normal commercial terms;
- a controlling shareholder must abstain from doing anything that would have the effect of preventing a new applicant from complying with its obligations under the Listing Rules;
- a controlling shareholder must not influence the day to day running of the new applicant at an operational level or hold or acquire a material shareholding in one or more significant subsidiaries;
- the relationship agreement must remain in effect for so long as the shares are listed on the Official List and the listed company has a controlling shareholder; and
- an amendment to the relationship agreement may only be made in accordance with provisions set out in LR 9.

Q3: Do you support our proposal in LR 6.1.4FR to require that a relationship agreement must cover certain provisions as described above? Do you think that there are any other provisions that should be considered and if so what are they?

Application on a continuing basis

7.67 In drafting the proposed amendments we have considered at length the most appropriate regulation of the arrangements as we are aware of concerns that a situation where compliance with a relationship agreement by a company and its controlling shareholder is a matter for those parties only may be sub-optimal. We also believe that it is important that the requirement for a relationship agreement to be in place where a company has a controlling shareholder has to apply to a listed company on a continuous basis.

7.68 Therefore, we have proposed LR 9.2.2AR that requires a listed company to comply with LR 6.1.4ER at all times along with LR 9.2.2GR that requires that a listed company must comply with a relationship agreement, if applicable, at all times. We believe that this is an important addition to the suite of measures around the requirement for a relationship agreement that provides appropriate protection on an ongoing basis and gives the FSA enforcement powers where a company has breached its obligations. We believe that this will help to keep the relationship agreement 'live' and relevant.

Q4: Do you agree with our proposal in LR 9.2.2AR(1) that where a company has a controlling shareholder it must have in place a relationship agreement at all times?

Q5: Do you support our proposal to subject a listed company to a continuing obligation to comply with a relationship agreement at all times (LR 9.2.2GR)?

7.69 Given the importance of stipulating minimum content requirements for the relationship agreement, we propose to extend these requirements as proposed in LR 6.1.4FR as a continuing obligation via an amendment to LR 9.2.2AR (LR 9.2.2AR(1)).

> **Q6:** Do you support our proposal that a listed company must at all times comply with the content requirements for a relationship agreement as set out in LR 6.1.4FR, where applicable (LR 9.2.2AR(1))?

Amendments to the relationship agreement

7.70 The last provision in new LR 6.1.4FR as described above subjects all material amendments to the relationship agreement to a shareholder vote that excludes a controlling shareholder. We believe that it is appropriate to treat such transactions akin to related party transactions given the perception that influence may have been exerted in negotiating the change. This requirement will allow independent shareholders to have a say in how the relationship between the listed company and a controlling shareholder is managed and how it develops going forward. We propose to include the requirement to seek independent shareholder approval for material changes to the relationship agreement as a continuing obligation in LR 9.2.2CR.

> **Q7:** Do you support our proposal to subject material changes to the relationship agreement to an independent shareholder vote (LR 9.2.2CR)?

7.71 We had considered whether all changes to relationship agreements should be subject to independent shareholder approval but believe that this would be unduly onerous for listed companies and have thus proposed that only material changes should be so approved. LR 9.2.2DG clarifies that in determining what constitutes a material change, the listed company should have regard to the cumulative effect of all changes since the shareholders last had the opportunity to vote on the relationship agreement or, if they have never voted, since admission to trading.

> **Q8:** Do you support our guidance on the factors that the listed company should have regard to in determining whether a change to the relationship agreement is material (LR 9.2.2DG)?

7.72 We are proposing further amendments to LR 9.8.4R by requiring a copy of the current relationship agreement or a link to where this report may be found to be included in the annual report (LR 9.8.4R(15)). We believe that this transparency provides a valuable check and balance to the correct operation of the above rule.

Q9: Do you support our proposal to require a listed company to disclose the current relationship agreement in the annual report (LR 9.8.4R(15))?

Independent shareholders

7.73 In drafting this rule we have been required to define independent shareholders and have proposed a definition that simply includes all shareholders other than controlling shareholders and their associates.

Q10: Do you agree with our definition of an independent shareholder?

Annual report disclosure

7.74 As a final proposal in this area, we believe that it is important that both the listed company and its shareholders retain their focus on the relationship agreement so that it continues to be relevant to the operation of the company. We are of the view that this is best achieved by the introduction of a requirement for additional disclosure in the annual financial report. An amendment to LR 9.8.4R proposes, where applicable, that the directors state that the listed company has complied with the relationship agreement throughout the financial year. Where the listed company has not complied with the relationship agreement, the directors would have to include a description of the provisions of the relationship agreement that the company has not complied with that enables shareholders to evaluate the impact of the non-compliance on the company along with a confirmation that the UKLA has been informed. These amendments are reflected in the proposed LR 9.8.4R(14).

Q11: Do you agree with our proposals to amend LR 9.8.4R to include an obligation to make a statement on the compliance of the listed company with the relationship agreement (LR 9.8.4R(14)) as described above?

Independence in other circumstances

7.75 At the time that the controlling shareholder provisions were removed, we retained the requirement that an issuer should be operating an independent business as this has been seen as being wider than simply operating independently of a controlling shareholder. We believe that it is important for a premium listed company to be operating an independent business that is meaningful in its own right and does not simply exist as an adjunct to a wider enterprise. Therefore we have proposed that this principle should be retained and therefore we are proposing to make clear that independence applies in a wider sense than

simply where a controlling shareholder is present. So we have also proposed guidance in LR 6.1.4DG to describe situations where we believe that an applicant is not able to carry on an independent business. We believe the key characteristics that we should take into account in considering whether an applicant is independent arise from the extent to which all or substantially all of the applicant's business exhibits one or more of the following:

- most of the revenue generated by the new applicant's business is attributable to business conducted with a controlling shareholder;
- lack of strategic control over commercialisation of the product and/or the ability to earn revenue by the new applicant;
- a new applicant cannot demonstrate that it has or has had access to independent financing; and
- a new applicant has granted or may be required to grant security over its business in connection with the funding of a controlling shareholder.

Q12: Do you agree that the proposed guidance (LR 6.1.4DG) contains the key factors indicating that the new applicant may not carry on an independent business? Do you think that there are any other factors that should be considered and if so what are they?

7.76 At present the requirement to carry on an independent business continues beyond the point of entry as a continuing obligation and we have proposed an amendment to LR 9.2.2AR to ensure that this continues to be the case.

Control of business

Eligibility requirement

7.77 The proposed rule LR 6.1.4AR requires the new applicant to demonstrate that it controls the majority of its business, rather than assets, as was the drafting used in the current LR 6.1.4R(2). This would reflect a holistic view of the nature of the issuer's business rather than necessitating a focus on the valuation of assets at the last balance sheet date as this has been our experience of the operation of the current rule. We have also ensured that it dovetails appropriately with our externally managed company provisions.

Q13: Do you agree with the proposal to amend the requirement for control of assets to control of business (LR 6.1.4AR)?

Purpose of control and situations where it may not exist

7.78 Along with the new rule we have proposed new guidance to aid its interpretation at LR 6.1.4BG. The new guidance describes both the purpose of the rule and the factors that we would consider as evidencing that the new applicant does not control its business. While the large majority of new applicants do not present any concerns in this area, in a similar manner to the independence provisions we have had to (and will continue to) exercise judgement in this area, weighing up the circumstances peculiar to the issuer and we believe that the proposed guidance provides useful clarity for stakeholders.

7.79 The proposed LR 6.1.4BG (1) details the purpose of the control of business requirement and follows our approach to date as set out in PS7/08, where we stated that to show control, Premium listed companies should be able to keep the market informed of price sensitive information on a timely and on an ongoing basis, ensure that the shareholders of the listed company should be able to avail themselves of the protections offered by Chapters 10 and 11 and be in a position to drive forward the agenda of the company. We believe that these factors should apply to at least the majority of the applicant's business in order for the premium listing to be meaningful. The proposed LR 6.1.4BG (2) then details situations where we believe that the new applicant does not have an unfettered ability to drive forward its strategy and so does not control its business. Thus we have proposed that we would not consider control to be demonstrated where a company is able to exercise only negative control or the ability to veto significant decisions affecting the management of the business by other parties. Additionally, we have included a situation where a new applicant has precarious control of the business that relies on contractual arrangements that may be altered without the agreement of the new applicant, or has in place contractual arrangements the effect of which is a temporary or permanent loss of control of the new applicant's business.

7.80 We have also added guidance to demonstrate how the control provision will be determined and have referenced this broadly to the class tests. We propose that this allows us to determine the most appropriate metric to base the test in conjunction with the issuer's sponsor.

Q14: Do you agree that the proposed guidance (LR 6.1.4BG) regarding control of business? Do you think that there are any other indicators that should be considered and if so what are they?

7.81 We believe that the requirement for a new applicant to control its business should continue beyond the point of entry as a continuing obligation in the same way that a continuing obligation to control the listed company's assets applies currently through LR 9.2.2AR. Therefore we have proposed a consequent amendment to LR 9.2.2AR in this regard.

Application where changes of control occur

7.82 The current drafting of LR 6.1.4R (2) applies the requirement to control the majority of the issuer's assets to the entire period of the track record. This has proved problematic as it has been inconsistent with the application of the 75% test as articulated in LR 6.1.3BR as those parts of the entity that have been acquired during the three year track record could not possibly have been controlled before acquisition.

7.83 We agree that the acquisition of entities within the track record should not be a bar to eligibility for premium listing but we are concerned where entities that have formed part of the issuer's track record and upon which an issuer is relying to establish its eligibility have been owned but not controlled during the period and control only passes on or shortly before admission. The reason for our concern is primarily that the financial information presented thereon will generally reflect the lack of control.

7.84 Therefore we are proposed to add guidance at LR 6.1.3EG (7) to reflect our view that issuers in this situation may be ineligible for a premium listing even where it meets the requirements set out in LR 6.1.3BR.

Q15: Do you agree with our proposal to supplement guidance in LR 6.1.3EG(7) as set out above?

Q16: Do you agree that control of business should be demonstrated at admission and on continuous basis rather than for the entire period covered by the historical financial information? If not, then please outline your thoughts on the way in which control of business should be demonstrated.

Independence of directors

The Corporate Governance Code

7.85 The Listing Rules currently require a company to disclose in its annual financial report how it has applied the Main Principles of the Code along with a statement of whether it has complied with the relevant provisions and provide an explanation for any non compliance. As noted above, we believe that where a controlling shareholder is present divergence from certain aspects of the Code are not appropriate.

7.86 Given the importance of the independent members of the Board in such situations, we are proposing to introduce a new requirement in LR 6.1.4ER (2) governing the make up of the Board where a new applicant for a premium listing has a controlling shareholder. The requirement, while not exactly mirroring the Code's requirement, proposes to give the new

applicant the option of either having a board that has a majority of independent directors or an independent Chairman and independent directors together making up at least half the board. In applying the requirement we can see no logical reason to differentiate between UK and overseas companies.

7.87 We believe that this proposal is an important part of a proportionate response to the concerns of our stakeholders but in proposing this change we are mindful of the support that many stakeholders have for the comply or explain principle and have therefore present two options as follows:

7.88 Option 1 – depart from the comply or explain principle in this area and require that, where the company has a controlling shareholder, the board comprise a majority of independent directors or an independent Chairman and independent directors making up at least half the board (LR 6.1.4ER(2))

7.89 Option 2 – retain the existing approach to the Corporate Governance Code and allow flexibility for Board composition in all circumstances.

Q17: Do you agree with Option 1 or Option 2 above?

Defining independence

7.90 In proposing a rule that refers to the concept of an independent director we have considered whether the Listing Rules should include rules defining independence here. We have encountered very little suggestion that this part of the Code is not working well and therefore do not believe that it would appropriate to do so. As such we propose to continue the current practice whereby issuers themselves determine independence of directors by reference to the Code. Therefore, the proposed definition of independent directors cross refers to the Code and does not set out a separate definition. Similarly, while we are aware that the Code does not see the Chairman as independent post appointment, we propose that a Chairman that was judged as being independent on first appointment would continue to be so for the purposes of our new provisions.

Q18: Do you agree with our proposed definitions of independent director and independent chairman?

Application on a continuing basis

7.91 We believe that this protection should continue to apply as a continuing obligation if it is to have any meaningful effect. Therefore, we have proposed LR 9.2.2AR(1) to extend the eligibility requirement as proposed in LR 6.1.4ER(2) as a continuing obligation.

Q19: Do you support our proposal to extend the requirement for board composition as set out in LR 6.1.4ER(2) as a continuing obligation (LR 9.2.2AR(1))?

Period of time to rectify non compliance

7.92 We recognise that there may be circumstances where a listed company may find that it has ceased to comply with its continuing obligations to have majority of independent directors on the board due to, for example, a resignation of an independent director. With this in mind we are proposing LR 9.2.2BR to allow a reasonable period of time from the time that the company has notified the FSA to rectify the non compliance. We feel that 6 months should give the company sufficient time to find a new independent director to bring itself into compliance with its obligations under LR 9.2.

Q20: Do you agree with our proposal in LR 9.2.2BR to allow for a period not exceeding 6 months from the time of notification to the FSA to rectify the non compliance with a requirements in respect of composition of the board as set out in LR 6.1.4ER(2)?

Election of independent directors

7.93 Currently, a director may be elected or dismissed by approval of the majority of all shareholders voting. In a company with a controlling shareholder, independent shareholders may not hold enough shares to influence the outcome of the vote. Given the importance of independent directors in representing inter alia the interests of the independent shareholders we believe that it is appropriate to give independent shareholders more say in their election. Equally, we are keen to ensure that the protection of independent shareholders does not become control by independent shareholders. As such we have been considering a way in which the voice of independent shareholders could be heard without it becoming dominant.

7.94 Several stakeholders suggested that independent directors should be elected only by independent shareholders but we believe that this goes beyond independent shareholder protection as described above. We believe that our objective is best achieved by a dual voting structure whereby independent directors of premium listed companies with controlling shareholders must be approved both by the shareholders as a whole and the independent shareholders.

7.95 In drafting our proposal we are indebted to the FRC for making the suggestion that in the event that the results of these two votes conflict, a further vote takes place not less than 90 days later on a simple majority basis.

7.96 We believe that this arrangement provides the appropriate degree of influence for independent shareholders and avoids the potential for surprise non re-election of independent directors without carrying the risk that boards can be hijacked by special interest groups. It further ensures that all directors continue to represent the full constituency of shareholders and avoids a distortion of ownership and voting rights. The cooling off period of 90 days provides an important unblocking mechanism whereby shareholders have an opportunity to engage in a discussion that has a chance of producing a solution acceptable to both parties.

7.97 We have reflected this proposal as one that is required to be in place upon admission in LR 6.1.4ER(3) and has continuing effect via LR 9.2.2ER and LR 9.2.2FR.

Q21: Do you support our proposal for election of independent directors by two rounds of voting as described above (LR 6.1.4ER(3), LR 9.2.2ER and LR 9.2.2FR)?

Application of these proposals to mineral and scientific research based companies

Introduction

7.98 The eligibility conditions for the premium listing (commercial company) category set out in LR 6 contain specialist rules which modify the admission conditions for two categories of companies, mineral companies and scientific research based companies, as follows:

- LR 6.1.9R excludes mineral companies from the current requirements in LR 6.1.4R for an applicant to show it controls its assets and has an independent business supported by a three year revenue earning record. LR 6.1.10R then establishes an alternative set of admission criteria for mineral companies – broadly, that if it does not have controlling interests in its mineral projects, it has a reasonable spread of direct interests giving certain rights.
- LR 6.1.12R addresses scientific research based companies and again exempts this group of applicants from the need to meet the requirements of LR 6.1.4R, that is to show a three year track record and that it controls its assets and has an independent business, provided they meet additional criteria relating to their size, the reason for listing, and their existing investor base.

7.99 These rules have existed for some time as concessions designed to facilitate the admission to premium listing of these types of company, having regard to the fact that these companies often do not have revenue earning records and, in the case of mineral companies, may have unconventional corporate structures.

7.100 The proposals in this document and in CP12/2 replace the current LR 6.1.4R with three carefully differentiated and elaborated concepts: the requirement that the company control its business as reflected in proposed LR 6.1.4AR, which is explained above; the new rules around independence as reflected in proposed LR 6.1.4CR – LR 6.1.4FR explained below; and the revised requirements on historical financial information. So it has been necessary to consider how each of these revised or new concepts should apply to the two groups of companies which currently enjoy concessions and we explain how we propose to apply them below.

Mineral companies

7.101 For mineral companies, we believe that the requirement to control the majority of the business as set out in LR 6.1.4AR and its equivalent continuing obligation as set out in LR 9.2.2AR should not apply. This is the case with the existing provision requiring control of assets and we think this should continue because co-venturing investment structures through which mineral companies partner with one another to develop mineral projects are common and well established and accepted in these sectors. Investors are well accustomed to these arrangements.

7.102 However, we do think the new and revised independence requirements including the new rules on controlling shareholders should apply to mineral companies. These provisions address the influence of a company's investors rather than how it deploys its capital and in this regard we see no reason why mineral companies are different. In our experience, following the earlier deletion of this requirement, new applicant mineral companies have continued to demonstrate independence and have put in place relationship agreements but we wish to close the potential loophole that exists here. There is therefore no exemption from these independence rules proposed for mineral companies.

7.103 We are proposing to amend LR 6.1.9R so as to subject mineral companies to the requirements to carry on an independent business as well as the requirement to have in place a relationship agreement, majority independent board and procedures for election of independent directors as described in LR 9 where the new applicant mineral company has a controlling shareholder.

> **Q22:** Do you support our proposal to amend LR 6.1.9R to subject mineral companies to the requirement to demonstrate the ability to carry on an independent business together with additional requirements where a controlling shareholder is present? If you do not support this proposal, please outline your reasons for doing so.

7.104 Given our aim to ensure that requirements imposed on a company at eligibility stage have continuing effect and relevance, we are proposing to amend LR 9.2.2AR so that a mineral

company is subject to the requirement to carry on an independent business as set out in LR 6.1.4CR, and where there is a controlling shareholder, to the additional requirements to have an independent board and dual voting procedure as set out in LR 6.1.4ER and LR 6.1.4FR at all times.

Q23: Do you support our proposal to subject a mineral company to a continuing obligation to comply with LR 6.1.4CR, and if applicable, LR 6.1.4ER and LR 6.1.4FR at all times (LR 9.2.2AR(2))?

Scientific research based companies

7.105 For scientific research based companies, we believe that both the revised control of business rules and the proposed independence rules should apply. This is because, as with mineral companies and the independence rules, we see no reason why scientific research based companies are different from other companies with regard to the areas these provisions will focus on. Where they are different is that they will have a very limited track record.

7.106 As a result we propose that scientific research based companies should be exempted from the newly revised LR 6.1.3BR provision (on historical financial information), but that control of business requirement as set out in LR 6.1.4AR and the requirement to carry on an independent business (LR 6.1.4CR) as well as additional requirements where the company has a controlling shareholder (LR 6.1.4ER and LR 6.1.4FR) apply to such companies along with equivalent continuing obligations as they apply to commercial companies (LR 9.2.2AR(1)).

Q24: Do you support our proposal to amend LR 6.1.12R to subject scientific research based companies to the control of business requirement, the requirement to demonstrate the ability to carry on an independent business together with additional requirements where a controlling shareholder is present as discussed above?

Q25: Do you support our proposal to extent the continuing obligation in LR 9.2.2AR(1) to scientific research based companies in the same way as it currently applies to commercial companies? If you do not support these two proposals, please outline your reasons for doing so.

Shares in public hands (or 'free float')

Shares subject to a lock up period

7.107 As discussed above, the free-float requirement in LR 6.1.19R is currently based on liquidity considerations and we do not believe that it is appropriate for us to make major changes to this provision. However, if the requirements are to be based on liquidity, shares that do not provide any liquidity should logically be excluded. Therefore, we are proposing that shares subject to a lengthy lock up period should be excluded from the calculation of shares in public hands. Hence, we propose to add LR 6.1.19R (4)(f) to exclude shares subject to a lock up period of longer than 30 calendar days from the calculation of shares held in public hands.

Q26: Do you support our proposal to exclude shares subject to a lock up period from the calculation of shares in public hands (LR 6.1.19(4)(f))? Do you think that 30 calendar days is the right time period to dictate exclusion? Do you think that there are any other instances where shares should be excluded from a free float calculation and if so what are they?

Ability to modify the free-float requirement in the premium segment

7.108 Currently, guidance in LR 6.1.20G provides the FSA with the ability to modify the 25% requirement for shares in public hands as set out in LR 6.1.19R where we are satisfied that a large number of shares of the same class and the extent of their distribution to the public mean that a properly functioning secondary market will be ensured. We propose to provide clarity on the operation of the regime in this area by amending LR 6.1.20G to make the basis for our decision making in this area more transparent and understandable to all market participants and stakeholders by explicitly setting out the criteria that we apply in reaching a determination that the requirement for a 25% free float may be modified.

7.109 The proposed criteria include companies where (1) the number of public shareholders exceeds 100 holders, and (2) the expected market value of the shares in public hands at admission is in excess of £250 million. However, while we have sought to address concerns over governance by interventions other than an amendment to the free-float requirements, we are mindful of the lack of influence accorded by very low proportions of shares in public hands. Therefore, we are also proposing to add guidance that even where these two criteria are met, other than in exceptional circumstances, we are unlikely to agree to a request where the number of shares in public hands will be below 20%.

Q27: Do you support our proposal to amend LR 6.1.20G to set out criteria based on which the FSA may modify the requirement for a 25% free float as described above?

Ability to modify the free-float requirement in the standard segment

7.110 As discussed above we believe that there is a strong argument that the free-float requirement for companies wishing to be admitted to the standard segment should be based entirely on liquidity.

7.111 Historically, we have been mindful of the absolute percentage of shares when applying the guidance in LR 14.2.3G and LR 18.2.9G and have been reticent to admit securities with very low free floats in absolute percentage terms. We propose to change our interpretation of this guidance to base our decision entirely on the criteria within the guidance and thereby allow very small percentages provided that sufficient liquidity will be present. We believe this is consistent with our current objective regarding international competitiveness and will be welcomed by many stakeholders. Those stakeholders that have been most vocal about the requirements for shares in public hands do not generally invest in standard listed shares. Although no rule change is being presented, we believe that it is appropriate to seek the views of our stakeholders on this issue.

Q28: Do you support our approach to companies wishing to list on the standard segment as described above?

7.112 In assessing the liquidity of the shares of new applicants to the standard segment in theory we will need to consider the potential for there to be sufficient willing buyers and sellers. While share classes that have previously been admitted elsewhere will potentially be able to demonstrate a track record of liquidity based on historical share turnover, this will necessarily be opaque for much primary market issuance. To that end we propose to have regard to the number, nature and diversity of holders post admission in making our assessment.

Q29: Do you agree with the proposed criteria for assessing potential liquidity outlined above? Are there any other criteria to which we should have regard in considering the potential liquidity of shares within the standard segment?

Holdings of individual fund managers

7.113 In CP12/2, we put forward in question 48 a proposal for new guidance at LR 6.1.20AG to reflect our existing approach that holdings of individual fund managers in an organisation should be treated separately, provided investment decisions with regard to the acquisition of shares are made independently. 14 out of 17 respondents agreed with this proposal. Respondents who did not agree believed that the current drafting would not achieve the policy intention, as there may be an 'in-house view' on corporate actions, mergers and acquisitions etc within fund management organisations.

7.114 As noted above, we believe that the free-float provisions should continue to be based primarily on liquidity considerations and therefore the possibility of alignment of investment decisions should not affect their treatment as part of the free float.

7.115 Given the subject matter of this amendment we believe that it should be included afresh within this consultation so that it can be considered as part of the full suite of proposals for free float and governance.

Q30: 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?

Financial instruments with a long economic exposure to shares

7.116 Further to the above, in question 49 of CP12/2 we also proposed to include new guidance in the Listing Rules (LR 6.1.20BG) 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, 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, alone or when aggregated with other shares held by the CD provider, exceed 5% of the shares of the relevant class All 15 respondents to this question agreed with this proposal, with one respondent suggesting a minor drafting change. We acknowledge the support given to our proposal, but for the same reasons as stated above, we propose to consult afresh so that it can be considered alongside our other proposals relating to free float.

Q31: Do you agree with the proposed new guidance in the Listing Rules (LR 6.1.20BG) explaining that we consider that financial instruments that give a long 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?

Continuing obligations

7.117 In formulating our proposals we have been conscious to ensure that the various requirements applying at eligibility should also logically be applied on a continuing basis and have proposed rules above in several areas to ensure that this is the case. In addition to the proposals above we are also proposing certain other amendments to the continuing obligations as follows.

Voting by premium listed shares

7.118 We have previously encountered proposals for various share structures that would have resulted in admission to the premium segment of companies where matters subject to a shareholder vote imposed by virtue of the premium listing could have been decided by holders of unlisted share classes. We are strongly opposed to such interpretation of the Listing Rules and believe that the rights arising from the premium listing attach to shares subject to such listing rather than other securities, which will not be subject to the various protections and disclosure requirements that arise as a consequence of the premium listing.

7.119 We believe that such share structures should not be eligible for premium listing (subject to certain exceptions, which are discussed below) because they undermine the high standard that we and the market attach to the premium listing brand. Such share structures are more appropriate for listing on the standard segment. Therefore, we have proposed LR 9.2.22R requiring that all shareholder votes that are required to be undertaken by a premium listed company by virtue of its premium listing should be decided by holders of its shares that are themselves premium listed. We believe that the absence of such a rule presents an opportunity for circumventing the protections that the super-equivalent rules provide. We have also proposed LR 6.1.25R as a further eligibility requirement to ensure that new applicants are able to comply with this rule immediately upon admission.

7.120 We have not sought to address this rule to all votes undertaken by premium listed issuers as we believe that this would be disproportionate and therefore our proposal may not directly affect the election of directors. However, our proposals for a dual voting procedure would limit independent director election to independent shareholders of premium listed shares.

Q32: Do you support our proposal in LR 6.1.25R and LR 9.2.22R to require that where a shareholder vote must be taken under the provisions of LR 5.2, LR 5.4A, LR 9.2.2CR, LR 9.4, LR 9.5, LR 10, LR 11, LR 12 or LR 15, such votes must be decided by a resolution of the holders of premium listed shares as discussed above?

Guidance on LR 9.2.22R

7.121 We are proposing to clarify through proposed LR 9.2.23G that we would consider modifying LR 9.2.22R in exceptional circumstances, and have given three examples where we wish to continue to accommodate what we believe is seen as normal practice within the regime. These examples accommodate the operation of special share arrangements designed to protect national interest, DLC voting structures where the holders of shares of both holding companies vote as one and preference shares that have been enfranchised as a result of a default on an obligation by a listed company.

Q33: Do you support the FSA having the power to modify the requirement imposed in LR 9.2.22R in exceptional circumstances (LR 9.2.23G)? Are there any other exceptions that should be specifically catered for within this guidance?

Duty to notify the FSA of non-compliance

7.122 Currently only non-compliance with the free-float requirement as set out in LR 6.1.19 R needs to be notified to the FSA under LR 9.2.16R. We believe that the integrity of the premium segment should be reinforced by a requirement that any non compliance with continuing obligations that apply to a listed company by virtue of LR 9.2 should be notified to the FSA without delay as the issuers themselves will be best placed to provide an early indication of non compliance. It is clear from the feedback that we received that issuers that are not in compliance with the high standards applicable within the premium segment can have a detrimental effect on all of the issuers within that segment and thus we believe that it is appropriate to require such self policing. Therefore, we are prosing to delete LR 9.2.16R and introduce LR 9.2.24R to this effect.

Q34: Do you support our proposal to delete LR 9.2.16R and replace it with a requirement in LR 9.2.24R for a listed company to notify any non compliance with continuing obligations as set out in LR 9.2 to the FSA without delay?

Cancellation or transfer of listing category

7.123 Where a premium listed company is not complying with the free-float requirements in LR 6.1.19R, the current LR 9.2.17G directs it to consider applying for a cancellation of its listing under LR 5.2.2G(2). Along with the proposal described above, we are proposing to delete LR 9.2.17G and replace it with LR 9.2.25G guiding a listed company that finds that it is not complying with any of the obligations as set out in LR 9.2 to consider applying for a cancellation of its listing under LR 5.2.2G(2) or a transfer of its listing category under LR 5.4A.16G. We believe that it is important that issuers that are no longer complying with the high standards required in the premium segment should be positioned in a more appropriate listing category and that the listing should be cancelled where such issuers are unable to comply even with the broader listing obligations.

Q35: Do you support our proposal to delete LR 9.2.17G and replace it with guidance in LR 9.2.25G to consider LR 5.2.2G(2) and LR 5.4A.16G in relation to its compliance with the continuing obligations as set out in LR 9.2?

Disclosure in the annual report

7.124 We have received feedback to the effect that the disclosures made pursuant to the Listing Rules applicable to the annual report can be presented piecemeal and in a confusing manner for shareholders. We believe that the annual report disclosures are a valuable part of the suite of obligations that apply within the premium segment and that that it is important that they are clear and identifiable. So we are proposing to amend LR 9.8.4R to specify that all disclosure items that have to be included in the annual report and accounts under the Listing Rules must be presented in a single clearly identifiable section. We believe that this amendment will aid greater transparency around a listed company's compliance with the Listing Rules and make the Listing Rules disclosure more visible to shareholders.

Q36: Do you support our proposal to amend LR 9.8.4R to require a listed company to disclose all matters that need to be disclosed under LR 9.8.4R in the annual report and accounts in a single identifiable section?

Disclosure of smaller related party transactions in annual report

7.125 Under LR 9.8.4R(3), a listed company must disclose in annual report and accounts details of smaller related party transactions as required by LR 11.1.10R(2)(c). We have received feedback that this disclosure can be confusing, omit certain key details and lacks comparability as it is limited to the financial year for which the annual report and accounts have been prepared by the company.

7.126 We believe that the LR 11.1.10 provisions provide an important protection where related party transactions occur and the disclosure requirements aid shareholders in the role of properly holding listed companies and their directors to account. Therefore we are proposing to require the inclusion of comparative information for the previous two financial years along with further guidance on the items that require disclosure.

7.127 The current drafting of LR 11.1.10R(2)(c) leaves much of the detail of the disclosure of such related party transactions largely to the listed company's discretion. It is clear from the feedback that the amount of information disclosed under this requirement is variable. Hence, we are proposing to amend LR 11.1.10R(2)(c) to further clarify the minimum requirements for disclosure that are to be included in the annual report. Under the proposal, the listed company would be required to disclose the identity of the related party, the value of the consideration for, and a brief description of, the transaction or arrangement. Importantly, the listed company would be required to disclose the percentage results of the applicable class tests at the time the transaction was entered into, excluding any that were agreed as being anomalous.

7.128 This means that the annual report and accounts would contain detailed disclosure of smaller related party transactions that the company has entered into during the previous

three years. We believe this amendment would make the dealings of a listed company with related parties more transparent and would enable shareholders to form a view where there is a concentration of a large amount of similar transactions with a single related party over an extended period of time.

Q37: Do you support our proposal to amend LR 9.8.4R(3) to extend the period of time over which disclosure of smaller related party transactions as required by LR 11.1.10R(2)(c) should be included in the annual report and accounts to include comparative information for the previous two financial years?

Q38: Do you support our proposal to amend LR 11.1.10R(2)(c) to set out minimum disclosure requirements that need to be set out in the listed company's next published annual accounts as described above? Do you think that there are other factors relating to the smaller related party transaction that should be subject to disclosure requirements in the company's next published annual accounts and if so what are they?

Warrants or options to subscribe

7.129 LR 6.1.22R limits the total of all issued warrants or options to subscribe for equity shares to 20% of the issued equity share capital at the time of issue of the warrants or options. This requirement stems from a desire to prevent admission of companies with large overhangs in their share capital that may affect the ability to properly price the shares, but does not apply as a continuing obligation with the result that such an overhang could be put in place at any point post admission. As part of our effort to ensure that eligibility requirements that need to be met by a new applicant continue to apply to the company after admission, we are proposing LR 9.2.21R by requiring a listed company with a premium listing to comply with LR 6.1.22R at all times.

7.130 However, we are mindful that stakeholders may take the view that markets are able to value securities adequately despite the presence of such overhangs and therefore we are proposing an alternative that involves deletion of the requirements regarding warrants or options entirely.

Q39: Do you believe that we should introduce a continuing obligation that a listed company must comply with LR 6.1.22R at all times (LR 9.2.21R) or alternatively that we should delete the existing eligibility requirement?

The Listing Principles

Introduction

7.131 As part of our proposals we believe that there are further principles encapsulating the high standards applicable within the premium segment that require articulating through the Listing Principles.

7.132 At the same time we have taken this opportunity to review the Listing Principles as well as the scope for their application. Currently, the Listing Principles only apply to companies that have a premium listing of equity shares with the result that certain expectations that one would expect to apply across all listed companies have been perceived as pertaining only to premium listed issuers.

7.133 The principles themselves are fairly broad in scope. For example, Principle 6 requires a company to deal with the FSA in an open and cooperative manner. However, in making any changes we are conscious of the desire that the standard segment should accord as closely as possible to the standards imposed by the various applicable European Directives without gold plating via further super-equivalent requirements. Thus in several areas the protections will remain those that stem from the statutory framework rather than the enhanced premium listing regime.

7.134 We believe that the purpose of the Listing Principles as clarified in LR 7.1.2G and LR 7.1.3G is equally applicable to standard listed issuers. We are proposing to amend Chapter 7 to ensure clarity on this subject.

Application

7.135 Currently, the Listing Principles apply only to premium listed issuers. We are proposing to amend LR 7.1.1R to clarify that Listing Principles apply to all listed companies, but that the Premium Listing Principles apply only to premium listed issuers. We have then divided the existing Listing Principles between the two new categories of Listing Principle with certain amendments that we believe are appropriate and added two new Principles to the Premium Listing Principles. Our proposals for which Principles will be applicable to standard listed issuers and which Principles will be applicable to premium listed issuers only are discussed below.

Q40: Do you agree with our proposal to amend LR 7.1.1R to make Listing Principles applicable to standard listed issuers?

The Listing Principles – application to the standard segment

7.136 We are proposing to make the following amendments to LR 7.2.1R by making 2 of the 6 existing Listing Principles applicable to all listed companies.

Principle 2 – systems and controls

7.137 Principle 2 requires a listed company to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations. We would expect any listed issuer to be in compliance with this principle already in order to comply with its Directive minimum obligations or have requested suspension of the listing of its securities.

Principle 6 – open and co-operative

7.138 Principle 6 requires a listed company to deal with the FSA in an open and cooperative manner. As stated above we believe that it is not unreasonable for all listed issuers to deal with us in such a manner.

Q41: Do you support our proposal to amend LR 7.2.1R as described above? If not please provide an explanation for objection to each principle.

Guidance on the Listing Principles

7.139 As a result of amendments proposed above, we need to make consequential amendments to the current guidance on the Principles. We are proposing to amend LR 7.2.2G and LR 7.2.3G to reflect the fact that these principles apply equally to Premium and Standard listed companies.

Q42: Do you support our proposal to amend the guidance in LR 7.2.2G and 7.2.3G to enable the application of the guidance to the relevant Principles?

The Premium Listing Principles

7.140 Proposed LR 7.2.1AR sets out six Premium Listing Principles to help articulate the requirements applicable in the premium segment as follows.

Premium Listing Principle 1 – directors' competency

7.141 Premium Listing Principle 1 retains the obligation imposed on a premium listed company by current Principle 1 to take reasonable steps to enable its directors to understand their responsibilities and obligations as directors.

Continuing obligation arising from Premium Listing Principle 1

7.142 As part of our effort to ensure that the obligations imposed on a listed company by various Listing Rules continue to have ongoing relevance we are proposing to amend LR 9.8.6R(5) by requiring a listed company to disclose in the annual report further details of the steps that it has taken to ensure that it has addressed Principle B4 of the Code. This principle requires premium listed companies to consider the skills and knowledge of their directors and we have proposed that the disclosure regarding the application of this Principle should make specific reference to the obligations stemming from the premium listing regime and, given its importance as discussed earlier, the applicable legal framework relating to fiduciary duties or the local equivalent thereof.

7.143 We have proposed that this should form part of the listed company's disclosure regarding the Principles of the Code and added guidance in LR 9.8.6BG to state that it should reference Premium Listing Principle 1. This would give shareholders the ability to form a view as to whether the company is doing enough to ensure that the directors are up to date with the applicable regulations and the UKLA the ability to enforce against any apparent lack of compliance with this Premium Listing Principle. We believe this is consistent with our view expressed above that the regime exists in part to provide information with which to empower shareholders.

Q43: Do you support our proposal to amend LR 9.8.6R(5) by including a specific disclosure obligation on the application of Principle B4 of the Code along with the accompanying guidance in LR 9.8.6BG?

Premium Listing Principle 2 – integrity

7.144 Premium Listing Principle 2 restates current Principle 3 in that it requires a listed company to act with integrity towards holders and potential holders of its listed shares. We are not proposing any amendments to the substance of the current Principle 3 and do not believe that, based on our rationale above, it should be included as a general Listing principle.

Premium Listing Principle 3 – voting power of a premium listed share

7.145 Our proposed Premium Listing Principle 3 requires the voting power of each share within a premium listed class to be equal. This principle is designed to further reinforce our strong belief that classes of shares with varied voting power ought to be listed on the standard segment as admission of such share structures to the premium segment would devalue and undermine the perception of high quality that currently attaches to the premium listing brand. This view received strong support from various stakeholders across the buy and the sell sides during our informal discussions following the publication of CP12/2.

Q44: Do you support the requirement that each premium listed share in a class must have equal voting power (Premium Listing Principle 3)? If you do not support this principle, please outline your view on how the listing regime can operate effectively if shares within the same class have various voting power.

Principle 4 – aggregate voting rights of the shares in each class

7.146 There are many examples of issuers with more than one line of shares admitted to the premium segment, in particular within the close ended fund segment. We have no wish to prevent issuers having this flexibility where a legitimate commercial rationale exists for the presence of the multiple classes.

7.147 However, we are aware that the risk exists that share structures involving multiple classes can be created with the express intention of the retention of control by one or a small group of individuals via the use of enhanced voting power for a particular class. It is not impossible for these classes to be created in such a way that all are eligible for premium listing. We believe that such arrangements undermine the equitable principles upon which the Premium segment exists.

7.148 As such we are proposing a Premium Listing Principle that does not allow the voting rights of multiple classes to be disproportionate to the equity that they represent. We have also proposed some guidance to assist stakeholders in the interpretation of this provision that makes clear that we would be concerned by a structure that presents multiple classes that differ only in their voting power and appear to have been deliberately structured to maintain control within a small group of shareholders.

Q45: Do you support the requirement that, where a company has more than one class of equity shares admitted to premium listing, the aggregate voting rights of the shares in each class should be broadly proportionate to the relative interests of those classes in the equity of the company (Premium Listing Principle 4)?

Guidance on Premium Listing Principle 4

7.149 Proposed LR 7.2.4G provides guidance as to the factors that the FSA will have regard to in assessing whether the voting rights attaching to different classes of premium listed shares are proportionate. The list of factors is non exhaustive and includes looking at the extent to which the rights of the classes differ other than their voting rights, the extent of dispersion and relative liquidity of the two classes, the commercial rationale for the difference in the rights attaching to the shares.

Q46: Do you support our proposal for guidance on Principle 4 (LR 7.2.4G) as to the factors the FSA will have regard to in assessing whether the voting rights are proportionate? Are there any other factors that the FSA should have regard to in applying this principle and if so what are they?

Premium Listing Principle 5 – equality of treatment

7.150 Premium Listing Principle 5 restates current Principle 5 in that it requires a listed company to ensure equal treatment for all holders of premium listed shares who are in the same position. For standard listed issuers the principle applies more narrowly to disclosures via DT R6.1.3R.

Premium Listing Premium Principle 6 – communication with security holders

7.151 Principle 6 restates current Principle 4 which requires a listed company to communicate information to holders and potential holders of its listed shares in such a way as to avoid the creation or continuation of a false market in such listed securities.

Other amendments considered

7.152 A number of other suggestions were made to us by market participants that we have not taken forward and we believe that it is important for us to explain out rationale in doing so. The other proposals were as follows:

- introducing a 'probation period' of 6 months or more on the standard segment prior to the company's move up to the premium segment;
- the UKLA adopting a role of a quality committee to make a subjective assessment of the suitability of a new applicant to the list;
- having a board in place for at least six months before conducting an IPO;
- preventing 'fast-tracking' into a particular index;
- limiting voting on class 1 and reverse takeovers under LR 10 to independent shareholders; and
- increasing the sponsor's role to provide assurances on, for example, operation of relationship agreements.

7.153 We have considered these suggestions carefully but have decided not to take them further forward. In particular:

a) As we have explained above, we do not believe that it is the role of the UKLA to make judgements about the suitability of issuers. For this reason also we do not

believe that introducing a 'probation' period, which would ultimately lead to such a suitability judgement, is appropriate, and in any event it would not necessarily guarantee future adherence to the more rigorous standards required by premium.

b) The suggestion that a subjective quality assessment should be undertaken by the FSA serves to remove certainty and transparency from the process and would discourage issuers from undertaking the expensive and time consuming IPO process.

c) In relation to requiring a board to be in place for a period prior to IPO we believe that this would place impractical constraints on the IPO process, both for issuers and board members.

d) We believe that concerns over 'fast tracking' are related to the suggestions made in relation to the probationary period. But in any event, this is an issue that is for the index providers rather than the UKLA to consider.

e) It is our view that limiting voting on all significant transactions under LR 10 as well as LR 11 would effectively serve as a measure to hand control to minority shareholders rather than protect them.

f) Given the nature of the confirmations required from sponsors already and the rules proposed to apply to issuers, we do not see the need to impose a further requirement on the sponsor in this area. Furthermore, we believe that the imposition of further responsibilities here would serve to discourage firms from undertaking sponsor services and therefore risks reducing the choice that issuers currently have.

Conclusion

7.154 We believe that these proposals are necessary at this time and present a proportionate response to the issues encountered and are consistent with our statutory objectives. We have articulated the potential tension between our objectives and those of our stakeholders but believe that these proposals will both augment the investor protections afforded by the regime and increase the attractiveness of our regime to companies considering an IPO in London. The proposals themselves should not present any problems for the vast majority of issuers that already comply fully but will serve to highlight those that are not applying the highest standards and put off those that are not willing to do so.

8

Proposed amendments relating to the implementation of the Alternative Investment Fund Managers Directive (AIFMD)

Introduction

8.1 In January 2012 the FSA published 'DP12/01[11] Implementation of the Alternative Investment Fund Managers Directive' (AIFMD). The paper covered all aspects of the implementation of the AIFMD and contained within chapter 9 proposals to change the investment entities Listing Rules, given the changes to the wider regulatory landscape in which fund managers will operate.[12]

8.2 An AIFMD CP will be published in due course by the FSA, which will put forward proposals to amend the rules in the light of feed back received from DP12/1 ('the DP'). However, we felt that it would be more appropriate to include proposals in relation to the Listing Rules in this consultation paper.

8.3 We recognise that the audience of this CP may be wider than the audience targeted by the DP. Accordingly, readers of this CP who did not have the opportunity to respond to the DP

11 DP12/1 www.fsa.gov.uk/library/policy/dp/2012/12-01.shtml
12 DP12/1 Chapter, Part 1 'Listed funds'

and have points to make in relation to questions 55 to 57 (see below) can do so by responding to this CP.

8.4 In the DP we asked three questions, which related specifically to the Listing Rules:

> ***Q55:*** *Do you agree there are potential conflicts of interest between the role of the board in the context of the UK corporate model and the role of the AIFM? If so, which conflicts do you foresee?*
>
> ***Q56:*** *Do you agree we should develop proposals to ensure that a premium listed fund must itself hold the AIFM permission envisaged under the Directive?*
>
> ***Q57:*** *Should the regime, as far as possible, treat off-shore and other non-EU AIFs the same as EU AIFs?*

Background

8.5 The AIFMD imposes a number of obligations on the entity that it identifies as the 'alternative investment fund manager' (AIFM). In the DP we argued that some of these obligations are akin to matters that currently sit with the board of an investment trust. We reflected that the requirement for an investment entity to have a board independent of its investment manager is a key shareholder protection incorporated in the premium listing regime (together with the requirements to publish an investment policy and the obligation to spread risk).

8.6 In light of the requirements that the AIFMD now imposes on the AIFM, we wanted to ensure compatibility with AIFMD, but also that boards continue to act as an important counterbalance to the investment manager. In particular we were concerned that conflicts may arise where responsibilities overlap, or that boards may feel less obliged to intervene where the AIFMD imposes responsibilities on the AIFM.

8.7 We suggested that one possible means of managing such a potential conflict could be to prescribe that to be eligible for a premium listing, a fund would itself hold the AIFM permission. It was envisaged that funds would continue to delegate a range of tasks, including portfolio management.

Feedback to the DP

8.8 Overall the feedback we received in relation to the DP, did not support our proposal. A number of respondents agreed that there will be an overlap of responsibilities between the

role of the board and the obligations placed on the AIFM. However, respondents also highlighted that conflicts already exist where a listed investment entity employs, for example, a MIFID authorised portfolio manager. It was asserted that boards already find mechanisms to deal with such conflicts, for example by making provisions in the investment management agreement.

8.9 Respondents also voiced concern that as the European landscape is continually evolving and uncertainties remain, for example in relation to delegation provisions, it would not be possible to assess the practical implications of prescriptive Listing Rule changes adequately.

8.10 Arguments were also made concerning costs that could arise from such a prescriptive model, as funds may have to duplicate compliance infrastructure, or may be unable to find willing board members.

Our response

8.11 We wish to maintain, as far as possible, the current model in the industry, which we believe is valued by the market, where strong boards offer a challenge to key service providers such as the manager when required, taking into account the interest of shareholders. We accept that this can be achieved in a number of ways and, in particular, we are persuaded by arguments made regarding cost and lack of flexibility that could arise if we had proceeded with our original proposals.

8.12 In place of a prescriptive solution, we believe it is necessary and appropriate to articulate clearly in the Listing Rules our expectations of the board of a premium listed investment entity. This will then allow each board to find an issuer-specific solution to managing any conflict arising from the AIFMD or other provisions.

Our proposals

8.13 We are therefore proposing a new eligibility requirement at LR 15.2.19R which states that the board must be in a position to effectively monitor and manage the performance of its key service providers, including any investment manager of the applicant. In addition we are proposing to make this a continuing obligation on the listed issuer and have proposed LR 15.4.7AR.

8.14 We will expect boards to ensure appropriate contracts are in place upon listing and to ensure they are in a position to take action if the contractual obligations are breached or the contractual arrangements are no longer in the best interest of shareholders.

Q47: Do you agree with our proposed approach to articulate in the Listing Rules our expectations of the board of a premium listed investment entity rather than use a more prescriptive solution?

Q48: Do the proposed rules capture adequately the role of the Board?

Annex 2

Cost benefit analysis

1. Section 155 of FSMA requires us to publish a cost-benefit analysis of the implications of the proposed amendments. The requirement, under section 155 of FSMA, does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.

Enhancing the effectiveness of the Listing Regime

2. In Chapter 6 we have explained in detail the conclusions that we have come in respect of the wider issues and concerns that have been expressed around the quality of the listing regime, especially in situations where there is a controlling shareholder. These issues include free float, the implications of indexation and the effectiveness of the current comply or explain requirements. Our overall view is that the underlying concerns are not a systemic weakness but may represent the beginning of a long-term pattern of misaligned behaviour, which if allowed to become more prevalent would risk undermining the integrity and effectiveness of the Listing Regime. We believe that the Listing Regime as a whole and the premium segment in particular 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 the attractiveness of the market to investors.

Regulatory failure:

3. Information/regulatory failure: investors rely on the premium regime to ensure that they can invest with confidence and that their interests will be properly observed. Under the presence of a controlling shareholder the current premium rules may not ensure compliance with high quality governance requirements. Investors may therefore not have effective tools to influence company behaviour and, as a consequence, it could be difficult for them to know whether their interests will be observed. They may then demand greater return to mitigate the possible risk.

4. Wider market failure: Issuers whose behaviour does not subscribe to the high standards required by the premium segment, or is perceived not to do so, undermine the benchmark

of the regime as a whole. This risks reducing the attractiveness of the market for investors and thus raising the cost of capital for all issuers.

Our proposals

5. To mitigate these regulatory and market failures we are proposing a package of measures that is designed to correct specific points of misaligned behaviour but which is intended, taken as a whole, to be a clear restatement of what we see as the high standards of governance required of premium listed issuers.

6. The majority of our proposals are not expected to lead to any significant increase in costs for issuers: (a) where we are effectively relaxing rules, e.g. allowing issuers with low free float to go to standard (b) where we are restating the current position e.g. in relation to independence and control of business (c) where we are formally applying requirements that we expect all issuers to be complying with now anyway, e.g. applying Listing Principles 1 and 2 to all issuers.

7. There a two sets of proposed rule changes that would be likely to result in more significant costs. These are (a) the requirement to have a majority of independent directors where there is a controlling shareholder and (b) the new requirement in relation to voting arrangements for premium issuers.

Majority of independent directors

Costs

8. We are proposing to introduce a new requirement that where a new applicant for a premium listing has a controlling shareholder it should have a board either with a majority of independent directors or with at least half of the board made up a with an independent Chairman and independent directors. We also propose to apply this requirement as a continuing obligation. For existing premium issuers we will introduce a transitional period to allow sufficient time for companies to bring themselves into compliance with this new requirement, which could be achieved either by active re-composition of the Board or through natural Board turnover. Where circumstances change for any reason such that an issuer ceases to comply with the requirement we propose to allow a period of 6 months to rectify this non-compliance. Where this is achieved through recruitment, we estimate that the direct costs likely to be incurred in searching for and recruiting new Board level appointments would be in the region of 25%-30% of annual salary. (Median annual fees for non-executive directors for FTSE 250 companies are in the range of £42,750 -£47,950[13]).

9. Some issuers that are currently premium listed may choose to be standard listed rather than changing the composition of their board. As a result of choosing a standard listing these

13 www.ey.com/Publication/vwLUAssets/In_focus_2012_Directors_remuneration_survey/$FILE/In_Focus_summary.pdf

companies may also lose their eligibility to be part of market indices (e.g. the FTSE 100). In these cases the cost of capital may also increase. It is difficult to estimate the magnitude of such effects. But it is not clear whether any such effects are permanent.[14] In addition we estimate that a premium listed company would incur costs of around £20,000 in relation to gaining shareholder approval for the transfer to standard listing (assuming consent was gained at an annual general meeting).

10. According to the 2011 Grant Thornton Governance Review[15] 19% of FTSE 350 companies did not comply with the Code provisions relating to the sufficiency of independent Board members. But not all of these would necessarily have a controlling shareholder. Assuming that half of these would have a controlling shareholder and that the smaller the company the more likely it is that it will have a controlling shareholder (and thus a board which is less likely to be independent) we estimate that of the total number of premium issuers on the Official list (969) about 20% might be affected by the requirement, i.e. about 190.

Voting by premium listed shares

11. We are also proposing to introduce new rules in relation to make some changes to the scope and content of the Listing Principles. In particular we are proposing changes to the Listing Principles, and new rules in other parts of the Listing Rules, in relation to voting powers and rights for premium listed shares. These Principles are intended to ensure (a) that all shareholder votes that are required to be undertaken by a premium listed company by virtue of its premium listing should be decided by holders of its shares that are themselves premium listed, (b) that the voting power of each share within a premium listed class is equal and (c) requires the aggregate voting rights of multiple share classes to be proportionate to the equity that they represent.

12. Where an issuer's voting arrangements are unable to comply with these requirements, the affected shares or share structures would no longer be, those securities would not be eligible for a premium listing. This is fully consistent with the policy changes that we implemented in 2010 to clarify that the Premium Listing Segment is only available to equity shares that meet the super-equivalent Listing Rules.

Costs

13. There are only a small number (of the order of 10) of issuers that have shares classes or structures that would not meet these requirements. If such securities were excluded from the premium segment, and thus from the indices, this could have a negative impact on the share price as a result of shift in demand. But it is not clear whether this impact is permanent.[16]

14 see discussion in PS 10/02 (www.fsa.gov.uk/library/policy/policy/2010/10_02.shtml para 2.22 ff)
15 www.grant-thornton.co.uk/pdf/corporate_governance.pdf
16 Again, see discussion in PS 10/02 (www.fsa.gov.uk/library/policy/policy/2010/10_02.shtml para 2.22 ff)

Benefits

14. Benefits associated with both these sets of proposals will arise from the mitigation of the identified market and regulatory failures.

15. First, investor protection will be enhanced as governance requirements will be increased especially in situations where the interests of minority shareholders may not be properly observed by the boards of premium listed companies.

16. Second, the risk that the benchmark of high quality for the premium listed standard is diluted will be mitigated and the negative effects on the overall cost of capital will be avoided.

17. Third, information asymmetries will be avoided and investors and the market will be able to price issuers and their securities more accurately on the basis of more complete information and confidence. This will result in more efficient allocation of capital across the market.

Implementation of AIFMD

18. The proposed changes to the Listing Rules in relation to the implementation of AIFMD do not change the substance of the existing rules. They clarify an existing approach in light of new regulation.

Annex 3

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 upon 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 do not consider that our proposals will have a significant effect on this duty.

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 requiring premium companies to have a majority of independent directors where there is a shareholder controller, and in respect of premium issuers' voting arrangements, still allow companies 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. We do not consider that our proposals will have a significant effect on this duty.

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 4

List of questions

Independent business

Independent business and controlling shareholders

Q1: Do you agree with our definitions of a controlling shareholder and an associate of a controlling shareholder? Do you believe that there are other criteria where an entity or a person ought to be deemed controlling shareholder that have not been captured by the proposed definition and if so what are they?

Relationship agreements

Q2: Do you support our proposal in LR 6.1.4ER(1) to require new applicants where a controlling shareholder is present to enter into a relationship agreement?

Q3: Do you support our proposal in LR 6.1.4FR to require that a relationship agreement must cover certain provisions as described above? Do you think that there are any other provisions that should be considered and if so what are they?

Application on a continuing basis

Q4: Do you agree with our proposal in LR 9.2.2AR(1) that where a company has a controlling shareholder it must have in place a relationship agreement at all times?

Q5: Do you support our proposal to subject a listed company to a continuing obligation to comply with a relationship agreement at all times (LR 9.2.2GR)?

Q6: Do you support our proposal that a listed company must at all times comply with the content requirements for a relationship agreement as set out in LR 6.1.4FR, where applicable (LR 9.2.2AR(1))?

Amendments to the relationship agreement

Q7: Do you support our proposal to subject material changes to the relationship agreement to an independent shareholder vote (LR 9.2.2CR)?

Q8: Do you support our guidance on the factors that the listed company should have regard to in determining whether a change to the relationship agreement is material (LR 9.2.2DG)?

Q9: Do you support our proposal to require a listed company to disclose the current relationship agreement in the annual report (LR 9.8.4R(15))?

Independent shareholders

Q10: Do you agree with our definition of an independent shareholder?

Annual report disclosure

Q11: Do you agree with our proposals to amend LR 9.8.4R to include an obligation to make a statement on the compliance of the listed company with the relationship agreement (LR 9.8.4R(14)) as described above?

Independence in other circumstances

Q12: Do you agree that the proposed guidance (LR 6.1.4DG) contains the key factors indicating that the new applicant may not carry on an independent business? Do you think that there are any other factors that should be considered and if so what are they?

Control of business

Eligibility requirement

Q13: Do you agree with the proposal to amend the requirement for control of assets to control of business (LR 6.1.4AR)?

Purpose of control and situations where it may not exist

Q14: Do you agree that the proposed guidance (LR 6.1.4BG) regarding control of business? Do you think that there are any other indicators that should be considered and if so what are they?

Application where changes of control occur

Q15: Do you agree with our proposal to supplement guidance in LR 6.1.3EG(7) as set out above?

Q16: Do you agree that control of business should be demonstrated at admission and on continuous basis rather than for the entire period covered by the historical financial information? If not, then please outline your thoughts on the way in which control of business should be demonstrated.

Independence of directors

The Corporate Governance Code

Q17: Do you agree with Option 1 or Option 2 above?

Defining independence

Q18: Do you agree with our proposed definitions of independent director and independent chairman?

Application on a continuing basis

Q19: Do you support our proposal to extend the requirement for board composition as set out in LR 6.1.4ER(2) as a continuing obligation (LR 9.2.2AR(1))?

Period of time to rectify non compliance

Q20: Do you agree with our proposal in LR 9.2.2BR to allow for a period not exceeding 6 months from the time of notification to the FSA to rectify the non compliance with a requirements in respect of composition of the board as set out in LR 6.1.4ER(2)?

Election of independent directors

Q21: Do you support our proposal for election of independent directors by two rounds of voting as described above (LR 6.1.4ER(3), LR 9.2.2ER and LR 9.2.2FR)?

Mineral companies

Q22: Do you support our proposal to amend LR 6.1.9R to subject mineral companies to the requirement to demonstrate the ability to carry on an independent business together with

additional requirements where a controlling shareholder is present? If you do not support this proposal, please outline your reasons for doing so.

Q23: Do you support our proposal to subject a mineral company to a continuing obligation to comply with LR 6.1.4CR, and if applicable, LR 6.1.4ER and LR 6.1.4FR at all times (LR 9.2.2AR(2))?

Scientific research based companies

Q24: Do you support our proposal to amend LR 6.1.12R to subject scientific research based companies to the control of business requirement, the requirement to demonstrate the ability to carry on an independent business together with additional requirements where a controlling shareholder is present as discussed above?

Q25: Do you support our proposal to extent the continuing obligation in LR 9.2.2AR(1) to scientific research based companies in the same way as it currently applies to commercial companies? If you do not support these two proposals, please outline your reasons for doing so.

Shares in public hands (or 'free float')

Shares subject to a lock up period

Q26: Do you support our proposal to exclude shares subject to a lock up period from the calculation of shares in public hands (LR 6.1.19(4)(f))? Do you think that 30 calendar days is the right time period to dictate exclusion? Do you think that there are any other instances where shares should be excluded from a free-float calculation and if so what are they?

Ability to modify the free-float requirement in the premium segment

Q27: Do you support our proposal to amend LR 6.1.20G to set out criteria based on which the FSA may modify the requirement for a 25% free float as described above?

Ability to modify the free-float requirement in the standard segment

Q28: Do you support our approach to companies wishing to list on the standard segment as described above?

Q29: Do you agree with the proposed criteria for assessing potential liquidity outlined above? Are there any other criteria to which we should have regard in considering the potential liquidity of shares within the standard segment?

Holdings of individual fund managers

Q30: 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?

Financial instruments with a long economic exposure to shares

Q31: Do you agree with the proposed new guidance in the Listing Rules (LR 6.1.20BG) explaining that we consider that financial instruments that give a long 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?

Continuing obligations

Voting by premium listed shares

Q32: Do you support our proposal in LR 6.1.25R and LR 9.2.22R to require that where a shareholder vote must be taken under the provisions of LR 5.2, LR 5.4A, LR 9.2.2CR, LR 9.4, LR 9.5, LR 10, LR 11, LR 12 or LR 15, such votes must be decided by a resolution of the holders of premium listed shares as discussed above?

Guidance on LR 9.2.22R

Q33: Do you support the FSA having the power to modify the requirement imposed in LR 9.2.22R in exceptional circumstances (LR 9.2.23G)? Are there any other exceptions that should be specifically catered for within this guidance?

Duty to notify the FSA of non-compliance

Q34: Do you support our proposal to delete LR 9.2.16R and replace it with a requirement in LR 9.2.24R for a listed company to notify any non compliance with continuing obligations as set out in LR 9.2 to the FSA without delay?

Cancellation or transfer of listing category

Q35: Do you support our proposal to delete LR 9.2.17G and replace it with guidance in LR 9.2.25G to consider LR 5.2.2G(2) and LR 5.4A.16G in relation to its compliance with the continuing obligations as set out in LR 9.2?

Disclosure in the annual report

Q36: Do you support our proposal to amend LR 9.8.4R to require a listed company to disclose all matters that need to be disclosed under LR 9.8.4R in the annual report and accounts in a single identifiable section?

Disclosure of smaller related party transactions in annual report

Q37: Do you support our proposal to amend LR 9.8.4R(3) to extend the period of time over which disclosure of smaller related party transactions as required by LR 11.1.10R(2)(c) should be included in the annual report and accounts to include comparative information for the previous 2 financial years?

Q38: Do you support our proposal to amend LR 11.1.10R(2)(c) to set out minimum disclosure requirements that need to be set out in the listed company's next published annual accounts as described above? Do you think that there are other factors relating to the smaller related party transaction that should be subject to disclosure requirements in the company's next published annual accounts and if so what are they?

Warrants or options to subscribe

Q39: Do you believe that we should introduce a continuing obligation that a listed company must comply with LR 6.1.22R at all times (LR 9.2.21R) or alternatively that we should delete the existing eligibility requirement?

The Listing Principles

Application

Q40: Do you agree with our proposal to amend LR 7.1.1R to make Listing Principles applicable to standard listed issuers?

Principle 6 – open and co-operative

Q41: Do you support our proposal to amend LR 7.2.1R as described above? If not please provide an explanation for objection to each principle.

Guidance on the Listing Principles

Q42: Do you support our proposal to amend the guidance in LR 7.2.2G and 7.2.3G to enable the application of the guidance to the relevant Principles?

Continuing obligation arising from Premium Listing Principle 1

Q43: Do you support our proposal to amend LR 9.8.6R(5) by including a specific disclosure obligation on the application of Principle B4 of the Code along with the accompanying guidance in LR 9.8.6BG?

Premium Listing Principle 3 – voting power of a premium listed share

Q44: Do you support the requirement that each premium listed share in a class must have equal voting power (Premium Listing Principle 3)? If you do not support this principle, please outline your view on how the listing regime can operate effectively if shares within the same class have various voting power.

Principle 4 – aggregate voting rights of the shares in each class

Q45: Do you support the requirement that, where a company has more than one class of equity shares admitted to premium listing, the aggregate voting rights of the shares in each class should be broadly proportionate to the relative interests of those classes in the equity of the company (Premium Listing Principle 4)?

Guidance on Premium Listing Principle 4

Q46: Do you support our proposal for guidance on Principle 4 (LR 7.2.4G) as to the factors the FSA will have regard to in assessing whether the voting rights are proportionate? Are there any other factors that the FSA should have regard to in applying this principle and if so what are they?

Implementation of AIFMD

Q47: Do you agree with our proposed approach to articulate in the Listing Rules our expectations of the board of a premium listed investment entity rather than use a more prescriptive solution?

Q48: Do the proposed rules capture adequately the role of the Board?

Appendix 6

Draft Handbook text: Enhancing the effectiveness of the Listing Regime

Appendix 6

LISTING RULES SOURCEBOOK (ENHANCING THE EFFECTIVENESS OF THE LISTING REGIME) INSTRUMENT 2013

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) to 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 (Enhancing the Effectiveness of the Listing Regime) Instrument 2013.

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 definitions in the appropriate alphabetical position. The text is not underlined.

controlling shareholder

A *person* ("A") who holds:

(a) 30% or more of the *shares* in a *new applicant* or *listed company* ("B") or in a *parent undertaking* of B ("P"); or

(b) 30% or more of the *voting power* in B or P; or

(c) *shares* or *voting power* in B or P as a result of which A is able to exercise significant influence over the management of B.

For the purposes of calculations relating to this definition, the holding of *shares* or *voting power* by a *person* ("A1") includes any *shares* or *voting power* held by another ("A2") if A1 and A2 are acting in concert.

independent chairman

a chairman of the board of *directors* of a *new applicant* or *issuer* who, on first appointment, was determined by the company to be independent under the *UK Corporate Governance Code*.

independent director

a *director* whom a *new applicant* or *issuer* has determined to be independent under the *UK Corporate Governance Code*.

independent shareholder

any shareholder of *premium listed shares* in a *listed company* that is not a *controlling shareholder* or *associate* of a *controlling shareholder* of the *listed company*.

Amend the following as shown.

associate

(1) (in *LR*) (in relation to a *director*, *substantial shareholder*, <u>*controlling shareholder*</u>, or *person exercising significant influence*, who is an individual):

…

(2) (in *LR*) (in relation to a *substantial shareholder*, <u>*controlling shareholder*</u>, or *person exercising significant influence*, which is a company):

…

mineral expert's report	(in *LR*) a competent person's report prepared in accordance with paragraph 133 of the *ESMA recommendations*.
voting power	(in *SUP* 11 (Controllers and close links), ~~and~~ *SUP* 16 (Reporting requirements) and *LR* (in accordance with section 422 of the Act):
	…

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.

6.1 Application

Historical financial information

...

6.1.3B R The historical 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 the business for which *admission* is sought.

…

6.1.3E G The purpose of *LR* 6.1.3BR is to ensure that the *issuer* has representative financial information throughout the period required by *LR* 6.1.3R(1)(a) and to assist prospective investors to make a reasonable assessment of what the future prospects of the *new applicant's* business might be. Investors are then able to consider the *new applicant'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. The *FSA* may consider that a *new applicant* does not have representative historical financial information and that its *equity shares* are not eligible for a *premium listing* if a significant part or all of the *new applicant's* business has one or more of the following characteristics:

…

(6) it has significant levels of research and developments expenditure or significant levels of capital expenditure;

(7) non-controlled interests have represented the majority of the *new applicant's* business for a significant part of the period covered by the historical financial information.

Control of ~~assets and independence~~ business

6.1.4 R ~~A *new applicant* for the *admission* of *equity shares* to a *premium listing* must demonstrate that:~~

~~(1) [deleted]~~

~~(2) it controls the majority of its assets and has done so for at least the period referred to in *LR* 6.1.3R(1)(a); and~~

~~(3) it will be carrying on an independent business as its main activity.~~ [deleted]

6.1.4A R A *new applicant* for the *admission* of *equity shares* to a *premium listing* must control the majority of its business.

6.1.4B G (1) The purpose of *LR* 6.1.4AR is to ensure that:

(a) a *new applicant* can keep the market informed of price sensitive information on a timely basis;

(b) shareholders of the *new applicant* are able to avail themselves of the protections provided by *LR* 10 and *LR* 11; and

(c) the *new applicant* has an unfettered ability to implement its business strategy.

(2) Factors that may indicate that a *new applicant* does not have an unfettered ability to implement its business strategy and so does not control its business as required by *LR* 6.1.4AR include situations where the *new applicant*:

(a) is able to exercise only negative control or only has veto rights over significant decisions affecting the management of the business made by third parties; or

(b) has precarious control of the business that relies for example on contractual arrangements that may be altered without its agreement; or

(c) has in place contractual arrangements which result, or could result, in a temporary or permanent loss of control of its business.

(3) A *new applicant* that satisfies *LR* 6.1.26R (Externally managed companies) may nevertheless fail to satisfy *LR* 6.1.4AR.

(4) In assessing whether majority control exists for the purposes of *LR* 6.1.4AR, the *FSA* will have regard to the proportion of the *new applicant's group* that is not controlled and in assessing that proportion will take into account factors such as the relative values of the assets and businesses, and the relative contributions to profits and market capitalisation, of the non-controlled businesses as compared to the group as a whole.

Independence

6.1.4C R A *new applicant* for the *admission* of *equity shares* to a *premium listing* must demonstrate that it will be carrying on an independent business as its main activity.

6.1.4D G Notwithstanding any relationship agreement entered into in compliance with *LR* 6.1.4ER, factors that may indicate that a *new applicant* does not satisfy *LR* 6.1.4CR include situations where:

(1) a majority of the revenue generated by the *new applicant's* business is attributable to business conducted with a *controlling shareholder* (or any *associate* thereof) of the *new applicant*; or

(2) the *new applicant* does not have strategic control over commercialisation of its product and/or its ability to earn revenue; or

(3) the *new applicant* cannot demonstrate that it has access to financing other than from a *controlling shareholder* or *associate* thereof; or

(4) a *new applicant* has granted or may be required to grant security over its business in connection with the funding of a *controlling shareholder* or a member of a *controlling shareholder's group*.

6.1.4E R Where a *new applicant* for the *admission* of *equity shares* to a *premium listing* will have a *controlling shareholder* upon admission, it must have the following:

(1) a relationship agreement with any *controlling shareholder* that complies with *LR* 6.1.4FR;

(2) a board or equivalent body that has either (a) a majority of *independent directors* or (b) an *independent chairman* and *independent directors* who together make up a majority of the board or equivalent body; and

(3) a constitution that allows the election of *independent directors* to be conducted in accordance with the election provisions set out in *LR* 9.2.2ER.

6.1.4F R The relationship agreement referred to in *LR* 6.1.4ER (1) must be in writing and legally binding on the parties and ensure that:

(1) transactions and relationships with the *controlling shareholder* (and/or any of its *associates)* are conducted at arm's length and on normal commercial terms;

(2) no *controlling shareholder* or *associate* thereof takes any action that would have the effect of preventing the *new applicant* from complying with its obligations under the *Listing Rules*;

(3) no *controlling shareholder* or *associate* thereof influences the day-to-day running of the *new applicant* at an operational level or holds

or acquires a material shareholding in one or more significant subsidiaries;

(4) it remains in effect for so long as the *shares* are *listed* on the *Official List* and the *listed company* has a *controlling shareholder*; and

(5) it cannot be amended except in accordance with *LR* 9.2.2CR.

…

Mineral companies

…

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

…

Scientific research based companies

…

6.1.12 R An *applicant* for the *admission* of *equity shares* to a *premium listing* of a *scientific research based company* does not need to satisfy *LR* 6.1.3BR ~~or *LR* 6.1.4R~~ but must:

…

Shares in public hands

6.1.19 R (1) If an application is made for the *admission* of a *class* of *shares*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.

(2) For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not *EEA States*, if the *shares* are listed in the state or states.

(3) For the purposes of paragraph (1), a sufficient number of *shares* will be taken to have been distributed to the public when 25% of the *shares* for which application for *admission* has been made are in public hands.

(4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are held, directly or indirectly by:

…

(e) 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; or

(f) a *person* that is subject to a lock-up period of longer than 30 calendar days.

…

6.1.20 G *LR* 6.1.19R is intended to ensure that *equity shares* with a *premium listing* have adequate liquidity. The *FSA* may modify *LR* 6.1.19R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public. For that purpose, the *FSA* may take into account *shares* of the same *class* that are held (even though they are not listed) in states that are not *EEA States*. A modification may be granted where the number of public shareholders exceeds 100 and the expected market value of the shares in public hands at admission exceeds £250 million. Other than in exceptional circumstances, the *FSA* will not entertain requests where the percentage of *shares* in public hands for which application for *admission* has been made is lower than 20%.

[**Note:** article 48 *CARD*]

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.

…

Voting on matters relevant to premium listing

6.1.28 R A *new applicant* must satisfy the *FSA* that its constitution will allow it to comply with *LR* 9.2.22R.

…

7.1 Application and purpose

Application

7.1.1 R (1) The Listing Principles in *LR* 7.2.1R apply to every *listed company* ~~with a *premium listing* of *equity shares*~~ in respect of all its obligations arising from the *listing rules* and the *disclosure rules* and *transparency rules*.

(2) In addition to the Listing Principles referred to in (1), the Premium Listing Principles in *LR* 7.2.1AR apply to every *listed company* with a *premium listing* of *equity shares* in respect of all its obligations arising from the *listing rules* and the *disclosure rules* and *transparency rules*.

…

7.2 The Listing and Premium Listing Principles

7.2.1 R The Listing Principles are as follows:

Principle 1	~~A *listed company* must take reasonable steps to enable its *directors* to understand their responsibilities and obligations as *directors*.~~ [deleted]
Principle 2	A *listed company* must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.
Principle 3	~~A *listed company* must act with integrity towards the holders and potential holders of its *listed equity shares*.~~ [deleted]
Principle 4	~~A *listed company* must communicate information to holders and potential holders of its *listed equity shares* in such a way as to avoid the creation of a false market in such *listed equity shares*.~~ [deleted]
Principle 5	~~A *listed company* must ensure that it treats all holders of the same *class* of its *listed equity shares* that are in the same position equally in respect of the rights attaching to such *listed equity shares*.~~ [deleted]
Principle 6	A *listed company* must deal with the *FSA* in an open and co-operative manner.

7.2.1A R The Premium Listing Principles are as follows:

Premium Principle 1	A *listed company* must take reasonable steps to enable its *directors* to understand their responsibilities and obligations as *directors*.
Premium Principle 2	A *listed company* must act with integrity towards the holders and potential holders of its *premium listed shares*.

Premium Principle 3	All *equity shares* in a class that has been admitted to *premium listing* must carry an equal number of votes on any shareholder vote.
Premium Principle 4	Where an *issuer* has more than one class of *equity shares admitted* to *premium listing*, the aggregate voting rights of the *shares* in each class should be broadly proportionate to the relative interests of those classes in the equity of the *issuer*.
Premium Principle 5	A *listed company* must ensure that it treats all holders of the same class of its *listed equity shares* that are in the same position equally in respect of the rights attaching to those *listed equity shares*.
Premium Principle 6	A *listed company* must communicate information to holders and potential holders of its *listed equity shares* in such a way as to avoid the creation of a false market in those *listed equity shares*.

Guidance on ~~Principle 2~~ the Listing and Premium Listing Principles

7.2.2 G Listing Principle 2 is intended to ensure that *listed companies* have adequate procedures, systems and controls to enable them to comply with their obligations under the *listing rules* and *disclosure rules* and *transparency rules*. In particular, the *FSA* considers that *listed companies* should place particular emphasis on ensuring that they have adequate procedures, systems and controls in relation to, where applicable:

(1) identifying whether any obligations arise under *LR* 10 (Significant transactions) and LR *11* (Related party transactions); and

(2) the timely and accurate disclosure of information to the market.

7.2.3 G Timely and accurate disclosure of information to the market is a key obligation of *listed companies*. For the purposes of Listing Principle 2, a *listed company* ~~with a *premium listing*~~ should have adequate systems and controls to be able to:

(1) ensure that it can properly identify information which requires disclosure under the *listing rules* or *disclosure rules* and *transparency rules* in a timely manner; and

(2) ensure that any information identified under (1) is properly considered by the *directors* and that such a consideration encompasses whether the information should be disclosed.

7.2.4 G In assessing whether the voting rights attaching to different classes of *premium listed shares* are proportionate for the purposes of Premium Principle 4, the *FSA* will have regard to the following non-exhaustive list of factors:

(1) the extent to which the rights of the classes differ other than their voting rights, for example with regard to dividend rights or entitlement to any surplus capital on winding up;

(2) the extent of dispersion and relative liquidity of the two classes; and/or

(3) the commercial rationale for the difference in the rights.

9.2 Requirements with continuing application

…

Control of assets and independent business

9.2.2A R (1) A *listed company* that has *equity shares listed* must comply with *LR* ~~6.1.4R(2) and (3)~~ 6.1.4AR, *LR* 6.1.4CR and, if applicable, *LR* 6.1.4ER and *LR* 6.1.4FR, at all times. This rule does not apply to a *mineral company*, ~~a *scientific research based company*~~, a *closed-ended investment fund* or an *open-ended investment company*.

(2) A *listed company* that is a *mineral company* must comply with *LR* 6.1.4CR, and if applicable, *LR* 6.1.4ER and *LR* 6.1.4FR, at all times.

9.2.2B R A *listed company* that has *equity shares listed* will be allowed a period of not more than 6 months to rectify any breach of *LR* 6.1.4ER(2).

9.2.2C R A *listed company* that has *equity shares listed* must obtain the prior approval of its *independent shareholders* for any material change to the relationship agreement entered into pursuant to *LR* 6.1.4ER(1) or *LR* 9.2.2AR.

9.2.2D G In considering what constitutes a material change to the relationship agreement, the *listed company* should have regard to the cumulative effect of all the changes since its *independent shareholders* last had the opportunity to vote on the relationship agreement or, if they have never voted, since the *admission to listing*.

9.2.2E R Where an issuer has a *controlling shareholder*, the election of any *independent director* must be approved by separate resolutions of:

(1) the shareholders of the *listed company*; and

(2) the *independent shareholders* of the *listed company*.

9.2.2F R If either of the resolutions required under *LR* 9.2.2ER is defeated, the *listed company* may propose a further resolution to elect the proposed *independent director*. Any such further resolution:

(1) must not be voted on within a period of 90 days from the date of the

original vote;

(2) may be passed by a vote of the shareholders of the *listed company* voting as a single class.

9.2.2G R A *listed company* that has *equity shares listed* must comply with the terms of any relationship agreement entered into pursuant to *LR* 6.1.4ER(1) or *LR* 9.2.2AR at all times.

…

Shares in public hands

…

9.2.16 R ~~A *listed company* that no longer complies with *LR* 6.1.19R must notify the *FSA* as soon as possible of its non-compliance.~~ [deleted]

9.2.17 G ~~A *listed company* should consider *LR* 5.2.2G(2) in relation to its compliance with *LR* 6.1.19R.~~ [deleted]

…

Warrants or options to subscribe

9.2.21 R A *listed company* that has *equity shares listed* must comply with *LR* 6.1.22 R at all times.

Voting on matters relevant to premium listing

9.2.22 R Where the provisions of *LR* 5.2, *LR* 5.4A, *LR* 9.2.2CR, *LR* 9.4, *LR* 9.5, *LR* 10, *LR* 11, *LR* 12 or *LR* 15 require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the *issuer's shares* that have been admitted to *premium listing*.

9.2.23 G The *FSA* may modify the operation of *LR* 9.2.22R in exceptional circumstances, for example to accommodate the operation of:

(1) special share arrangements designed to protect the national interest;

(2) dual listed company voting arrangements; and

(3) voting rights attaching to *preference shares* or similar *securities* that are in arrears.

Notification of breach

9.2.24 R A *listed company* that has *equity shares listed* must notify the *FSA* without delay if it no longer complies with any continuing obligation set out in *LR* 9.2.

9.2.25 G Where a *listed company* is unable to comply with continuing obligations set out in *LR* 9.2 it should consider seeking a cancellation of *listing* or a change

in the listing category of its *shares* and should note *LR* 5.2.2G(2) and *LR* 5.4A.16G.

…

9.8 Annual financial report

…

Information to be included in annual report and accounts

9.8.4 R In addition to the requirements set out in *DTR* 4.1 a *listed company* must include in a single identifiable section of its annual financial report, where applicable, the following:

…

(3) details of any small related party transaction as required by *LR* 11.1.10R(2)(c) together with comparative information for the previous 2 financial years;

…

(12) details of any arrangement under which a shareholder has waived or agreed to waive any dividends; ~~and~~

(13) where a shareholder has agreed to waive future dividends, details of such waiver together with those relating to dividends which are payable during the period under review;

(14) a statement made by the *directors*:

(a) that the *listed company* has complied with the relationship agreement entered into pursuant to *LR* 6.1.4ER(1) or *LR* 9.2.2AR throughout the accounting period; or

(b) where the *listed company* has not complied with the relationship agreement, a statement that the *FSA* has been notified of that non-compliance in accordance with *LR* 9.2.24R and a description of the provisions of the relationship agreement that the *listed company* has not complied with that enables shareholders to evaluate the impact of the non-compliance on the *listed company*; and

(15) a copy of any current relationship agreement entered into pursuant to *LR* 6.1.4ER(1) or *LR* 9.2.2AR or details of where a copy of that agreement may be obtained free of charge.

…

Additional information

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

…

(5) a statement of how the *listed company* has applied the Main Principles set out in the *UK Corporate Governance Code*, in a manner that would enable shareholders to evaluate how the principles have been applied and, in relation to Main Principle B4, setting out specifically how the chairman has ensured that the *directors* have a sufficient understanding of the regulatory requirements applicable to the *listed company* as a result of its *premium listing* and of the legal requirements regarding fiduciary duties that are applicable in its country of incorporation;

…

…

9.8.6B G When making the statement concerning Main Principle B4 of the *UK Corporate Governance Code* required by *LR* 9.8.6R(5), the *listed company* should have regard to Premium Principle 1 set out in *LR* 7.2.1AR.

…

11.1 Related party transactions

…

Modified requirements for smaller related party transactions

11.1.10 R (1) This *rule* applies to a *related party transaction* if each of the *percentage ratios* is less than 5%, but one or more of the *percentage ratios* exceeds 0.25%.

(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):

…

(c) undertake in writing to the *FSA* to include details of the transaction or arrangement in the *listed company's* next published annual accounts, including, if relevant, the identity of the related party, the value of the consideration for the transaction or arrangement, a brief description of the transaction or arrangement, the percentage ratios resulting from the applicable *class tests* at the time the transaction or arrangement was entered into and all other relevant circumstances.

…

14.2 Requirements for listing

…

Shares in public hands

14.2.2 R …

(4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are held, directly or indirectly by:

(a) …; or

(b) …: or

(c) …; or

(d) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or

(e) any *person* or *persons* in the same *group* or *persons* acting in concert who have an interest of 5% or more of the *shares* of the relevant class; or

(f) a *person* who is subject to a lock-up period of longer than 30 days.

…

15.2 Requirements for listing

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

…

(2) the following provisions of *LR* 6 (Additional requirements for premium listing (commercial company)~~.~~:

…

(c) *LR* 6.1.16R to 6.1.25R and *LR* 6.1.28R; and

…

…

15.4 Continuing obligations

…

Control of business

15.4.27 R A *closed-ended investment fund* is not required to comply with *LR* 9.2.2AR to *LR* 9.2.2GR.

…

16.4 Requirements with continuing application

16.4.1 R An *open-ended investment company* must comply with:

(1) *LR* 9 (Continuing obligations) except *LR* 9.2.2AR to *LR* 9.2.2GR, *LR* 9.2.6BR, *LR* 9.2.15R, *LR* 9.2.20R, *LR* 9.2.22R, *LR* 9.2.23R and *LR* 9.3.11R;

…

Appendix 1 Relevant definitions

associate	(1) in relation to a *director*, *substantial shareholder*, *controlling shareholder*, or *person exercising significant influence*, who is an individual: (2) in relation to a *substantial shareholder*, *controlling shareholder*, or *person exercising significant influence*, which is a company:
controlling shareholder	a *person* ("A") who holds: (1) 30% or more of the *shares* in a *new applicant* or *listed company* ("B") or in a *parent undertaking* of B ("P"); (2) 30% or more of the *voting power* in B or P; or (3) *shares* or *voting power* in B or P as a result of which A is able to exercise significant influence over the management of B. For the purposes of calculations relating to this definition, the holding of *shares* or *voting power* by a *person* ("A1") includes any *shares* or *voting power* held by another ("A2") if A1 and A2 are acting in concert.
independent chairman	a chairman of the board of *directors* of a *new applicant* or *issuer* who, on first appointment by the company, was determined to be independent under the *UK Corporate Governance Code*.
independent director	a *director* whom a *new applicant* or *issuer* has determined to be independent under the *UK Corporate Governance Code*.
independent shareholder	any shareholder of *premium listed shares* of a *listed company* that is not a *controlling shareholder* or *associate* of a *controlling shareholder* of the *company*.
mineral expert's report	a competent person's report prepared in accordance with paragraph 133 of the *ESMA recommendations*.
voting power	(in accordance with section 422 of the Act): (a) includes, in relation to a *person* ("H"): (i) voting power held by a third party with whom H has concluded an agreement,

which obliges H and the third party to adopt, by concerted exercise of the voting power they hold, a lasting common policy towards the management of the *undertaking* in question;

(ii) voting power held by a third party under an agreement concluded with H providing for the temporary transfer for consideration of the voting power in question;

(iii) voting power attaching to *shares* which are lodged as collateral with H, provided that H controls the voting power and declares an intention to exercise it;

(iv) voting power attaching to *shares* in which H has a life interest;

(v) voting power which is held, or may be exercised within the meaning of subparagraphs (i) to (iv), by a subsidiary *undertaking* of H;

(vi) voting power attaching to *shares* deposited with H which H has discretion to exercise in the absence of specific instructions from the shareholders;

(vii) voting power held in the name of a third party on behalf of H;

(viii) voting power which H may exercise as a proxy where H has discretion about the exercise of the voting power in the absence of specific instructions from the shareholders; and

(b) in relation to an *undertaking* which does not have general meetings at which matters are decided by the exercise of voting rights, the right under the constitution of the *undertaking* to direct the overall policy of the *undertaking* or alter the terms of its constitution.

Appendix 7

Draft Handbook text: Implementation of AIFMD

LISTING RULES (ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE) INSTRUMENT 2013

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000:

(1) section 73A (Part 6 Rules);
(2) section 75 (Applications for listing);
(3) section 96 (Obligations of issuers of listed securities);
(4) section 101 (Part 6 rules: general provisions); and
(5) schedule 7 (the Authority as Competent Authority for Part VI).

Commencement

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

Amendments to the Handbook

C. The Listing Rules sourcebook (LR) is amended in accordance with the Annex to this instrument.

Citation

D. This instrument may be cited as the Listing Rules (Alternative Investment Fund Managers Directive) Instrument 2013.

By order of the Board
[*date*]

Annex

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text.

15.2.19	R	The board must be in a position to effectively monitor and manage the performance of its key service providers, including any *investment manager* of the *applicant*.

…

Independence and effective management

15.4.7	R	*LR* 15.2.11R to *LR* 15.2.13AR apply at all times to a *closed-ended investment fund*.
15.4.7A	R	The board must at all times effectively monitor and manage the performance of its key service providers, including any *investment manager* appointed by the *issuer*.

Appendix 8

Designation of Handbook Provisions

1. FSA Handbook provisions will be 'designated' to create a FCA Handbook and a PRA Handbook on the date that the regulators exercise their legal powers to do so. Please visit our website[1] for further details about this process.

2. We plan to designate the Handbook Provisions which we are proposing to create and/or amend within this Consultation Paper as follows. These designations are draft and are subject to change prior to the new regulators exercising their legal powers.

Handbook Provision	Designation
LR 6.1.3E G	FCA
LR 6.1.4A R	FCA
LR 6.1.4B G	FCA
LR 6.1.4C R	FCA
LR 6.1.4D G	FCA
LR 6.1.4E R	FCA
LR 6.1.4F R	FCA
LR 6.1.9 R	FCA
LR 6.1.12 R	FCA
LR 6.1.19 R	FCA
LR 6.1.20 G	FCA
LR 6.1.20A G	FCA
LR 6.1.20B G	FCA
LR 6.1.25 R	FCA
LR 7.1.1 R	FCA
LR 7.2.1	FCA
LR 7.2.1A R	FCA
LR 7.2.2G	FCA
LR 7.2.3G	FCA
LR 7.2.4G	FCA
LR 9.2.2A R	FCA
LR 9.2.2B R	FCA

1 One-minute guide http//media.fsahandbook.info/latestNews/One-minute%20guide.pdf

LR 9.2.2C R	FCA
LR 9.2.2D R	FCA
LR9.2.2E R	FCA
LR 9.2.2F R	FCA
LR 9.2.2G R	FCA
LR 9.2.2H R	FCA
LR 9.2.21R	FCA
LR 9.2.22R	FCA
LR 9.2.23G	FCA
LR 9.2.24R	FCA
LR 9.2.25G	FCA
LR 9.8.4 R	FCA
LR 9.8.6 R	FCA
LR 9.8.6B G	FCA
LR 11.1.10R	FCA
LR 14.2.2 R	FCA
LR 15.2.19 R	FCA
LR 15.4.7A R	FCA

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