

Financial Services Authority

# UKLA Guidance Manual

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# UK Listing Authority Guidance Manual

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The following provisions will comprise the UK Listing Authority's guidance manual. The *listing rules* and the *UKLA* guidance manual will ultimately form part of Block 5 of the *FSA's Handbook of Rules and Guidance*. However, they are not currently part of the *FSA's Handbook of Rules and Guidance*.

Defined terms are shown in *italics* and a glossary of such terms appears at the end of the *UKLA* guidance manual. The *UKLA* guidance manual (excluding the Appendices) is to be interpreted in accordance with the glossary of definitions.

References to the "*Act*" in the *UKLA* guidance manual are to the text of the Financial Services and Markets Act 2000.

The *guidance* is made under section 157 of the *Act*.

# CHAPTER 1

## 1. INTRODUCTION TO THE UKLA GUIDANCE MANUAL

### 1.1 Application of this Chapter

1.1.1 The *UKLA* guidance manual applies to:

- (1) *issuers*;
- (2) *sponsors*;
- (3) *directors* and former *directors*; and
- (4) other persons (whether or not they are subject to the *listing rules*).

### 1.2 Purpose of this Chapter

1.2.1 The purpose of the *UKLA* guidance manual is to give *guidance* on the matters set out in paragraph 1.5 of this Chapter 1.

### 1.3 The framework for competent authority functions

1.3.1 The *Act* provides a separate statutory framework within which the *FSA* must operate when it acts in its capacity as *competent authority* for *listing* (i.e. the *UKLA*).

1.3.2 Part VI of the *Act* (Official Listing) deals with *listing* and the functions of the *competent authority*. Schedule 7 to the *Act* modifies the application of the *Act* in relation to the exercise of functions as competent authority under Part VI of the *Act*.

1.3.3 When the *FSA* exercises its general functions in a capacity other than as *competent authority*, it must have regard to the matters and objectives set out in section 2 of the *Act* (the Authority's general duties). These objectives and matters are disapplied in relation to the *UKLA* in the exercise of its general functions by schedule 7 to the *Act* but see paragraph 1.3.6 below.

1.3.4 The *FSA* (in a capacity other than as *competent authority*) may seek to exercise powers available under the *Act* (but outside of Part VI of the *Act*) in respect of *issuers*, *directors*, former *directors* or *sponsors*. Other *FSA* manuals (these being the Enforcement manual ("ENF"), the Supervision manual ("SUP"), the Authorisation manual ("AUTH") and the Decisions manual ("DEC")) (together the "regulatory processes manuals") give *guidance* on these powers and relevant procedures.

1.3.5 Section 73(2) of the *Act* (The competent authority) provides that the *UKLA*'s general functions are:

- (1) its function of making rules under Part VI of the *Act*;

- (2) its functions in relation to the giving of general *guidance* in relation to Part VI of the *Act*; and
- (3) its function of determining the general policy and principles by reference to which it performs particular functions under Part VI of the *Act*.

1.3.6 When exercising its general functions the *UKLA* must have regard to the following in accordance with section 73(1) of the *Act*:

- (1) the need to use its resources in the most efficient and economic way;
- (2) 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 that burden or restriction;
- (3) the desirability of facilitating innovation in respect of *listed securities*;
- (4) the international character of capital markets and the desirability of maintaining the competitive position of the *United Kingdom*;
- (5) the need to minimise the adverse effects on competition of anything done in the discharge of those functions; and
- (6) the desirability of facilitating competition in relation to *listed securities*.

1.3.7 The *UKLA* also has objectives agreed with HM Treasury each year. These objectives are publicly available and are on the HM Treasury web-site and the *UKLA* web-site. The regulatory objectives of the *FSA* in its capacity as the *UKLA* are:

to formulate and enforce *listing rules* that:

- (1) Provide an appropriate level of protection for investors in *listed securities*;
- (2) Facilitate access to *listed* markets for a broad range of enterprises;
- (3) Seek to maintain the integrity and competitiveness of UK markets for listed securities.

In pursuing these objectives the *UKLA* will at all times have regard to the general duty set out in section 73(1) FSMA.

- 1.3.8 The UKLA and HM Treasury also agree operational objectives each year that are more task specific. These objectives are also publicly available.
- 1.3.9 When carrying out its general functions, the *UKLA* will have regard to the factors set out in paragraph 1.3.6 above and the objectives described in paragraph 1.3.7. The *UKLA* will also consider the following aims:
- (1) to provide *issuers* with ready access to the *listed* market for their *securities* while protecting investors;
  - (2) to promote investor confidence in standards of disclosure, in the conduct of *issuers'* affairs and in the market as a whole by the *listing rules*, and in particular the continuing obligations regime;
  - (3) to ensure that *listed securities* should be brought to the market in a way that is appropriate to their nature and number and which will facilitate an open and efficient market for trading in those *listed securities*;
  - (4) to ensure that an *issuer* makes full and timely disclosure about itself and its *listed securities*, at the time of *listing* and subsequently;
  - (5) to ensure that holders of *listed equity securities* should be given adequate opportunity to consider in advance and vote upon major changes in the *company's* business operations and matters of importance concerning the *company's* management and constitution.
- 1.3.10 The *UKLA* has responsibility for the following specific functions under the *Act*:
- (1) *application for listing*;
  - (2) *cancellation and suspension of listing*;
  - (3) approval of *listing particulars*, *prospectuses* and other such documents;
  - (4) the approval of *sponsors* and regulation of *sponsors* in relation to the application of the *listing rules*;
  - (5) investigation of breaches of the *listing rules* and certain offences under the *Act*;
  - (6) the imposition of financial penalties on *issuers*, *directors* and former *directors* and the issue of public statements censuring an *issuer*, *director*, former *director* or *sponsor* for breaches of the *listing rules*;

- (7) making rules under Part VI of the *Act*; and
- (8) giving general *guidance* in relation to Part VI of the *Act*.

1.3.11 *Listing rules* reflect:

- (1) mandatory provisions of the *Directives*; and
- (2) provisions included by the *UKLA* in accordance with its powers under Part VI of the *Act*.

1.3.12 Where the *Act*, the *Directives* and the *listing rules* allow, the *UKLA* will aim to apply the *listing rules* flexibly in order to ensure an appropriate level of regulation. The *UKLA* will issue general *guidance* whenever it is appropriate to explain the application of the *listing rules* in particular circumstances.

1.3.13 When the *UKLA* considers *applications for listing*, it will seek to satisfy itself that all the relevant conditions for *listing* (including any special condition imposed by the *UKLA* which it considers appropriate) have been met by an *issuer* and examines and, if appropriate, approves *listing particulars* and other documents prescribed for pre-publication review and approval in the *listing rules* on a case-by-case basis.

1.3.14 The *UKLA* will approve documents only if, in its opinion, they satisfy all relevant requirements of the *listing rules*. In forming that opinion, the *UKLA* will not necessarily accept, at face value, all information provided to it (whether in the text of the document or otherwise by the *issuer* or its advisers). It reserves the right to ask questions about such information and to seek additional disclosure in appropriate cases. The *UKLA* does not itself investigate or verify the accuracy or completeness of the information set out in such documents nor does it check the sources of, or verify, the information.

1.3.15 The *UKLA* attaches great importance to the role and responsibilities of a *sponsor* and, where relevant, to the opinions and reports of the *issuer's* other professional advisers in satisfying itself that all relevant requirements of the *listing rules* have been complied with.

1.3.16 Through the continuing obligations set out in the *listing rules* the *UKLA* is concerned to promote full and accurate disclosure by *issuers* to the market of all relevant information on a timely basis. The *UKLA* requires an *issuer* to take reasonable care to ensure that information which it discloses to the market is complete and not false, deceptive or misleading. The *UKLA* may seek additional disclosure from an *issuer* in appropriate cases (or make such additional disclosure itself).



## **1.4 The UKLA guidance manual**

- 1.4.1 *Issuers, directors, former directors and sponsors* (as well as any other persons whether or not they are subject to the *listing rules*) can refer to the *UKLA* guidance manual for *guidance* relating to the *FSA* acting in its capacity as *competent authority* (i.e. the *UKLA*).
- 1.4.2 The *UKLA* guidance manual does not provide guidance in relation to functions that the *FSA* carries out when it is not acting as *competent authority*. The regulatory processes manuals do not provide *guidance* in relation to the *FSA* acting as *competent authority*.
- 1.4.3 However, the *UKLA* guidance manual does include references to the regulatory processes manuals to highlight certain powers available to the *FSA* (when acting in a capacity other than as *competent authority*). The *FSA* may seek to exercise these powers in relation to *issuers, directors, former directors or sponsors* (as well as other persons, whether or not they are subject to the *listing rules*). For example:
- (1) part VII of the *Act* gives the *FSA* powers in relation to *market abuse* (see Chapter 14 of the *FSA's* Enforcement manual and the *FSA's* Code of Market Conduct) which may be exercised by the *FSA* in circumstances where there may have been a breach of the *listing rules*; and
  - (2) part XXV of the *Act* gives the *FSA* certain powers in relation to injunctions and restitution orders (see Chapters 6 and 9 of the *FSA's* Enforcement manual) which may be exercised by the *FSA* in relation to an actual or potential breach of the *listing rules*.
- 1.4.4 For the relevant matters to which the *UKLA* must have regard when exercising its functions see paragraph 1.3.6 above.

## **1.5 The structure of the UKLA guidance manual**

- 1.5.1 Chapter 2 (“Applications for Listing”) outlines the *UKLA's* procedures in relation to *applications for listing* including when and how *listing particulars, prospectuses* and other such documents should be submitted to the *UKLA* for approval.
- 1.5.2 Chapter 3 (“Approval of Non-Routine Circulars”) describes the *UKLA's* procedures on the approval of *non-routine circulars* including when and how documents should be submitted to the *UKLA* for approval.
- 1.5.3 Chapter 4 (“Sponsors”) sets out the *UKLA's* procedures in relation to *sponsors* including who can, and how to, apply to be a *sponsor* and describes the continuing requirements that apply to *sponsors*.
- 1.5.4 Chapter 5 (“Interpretation of Listing Rules and Requests for Individual Guidance”) outlines the *UKLA's* procedures on interpretation of the *listing*

*rules* and individual *guidance*. It also sets out the procedures where a person wishes to challenge the *UKLA's* interpretation of the *listing rules*.

- 1.5.5 Chapter 6 (“Dispensation or Modification (“Variation”) of the Application of the Listing Rules, the Act or the POS Regs”) sets out the *UKLA's* approach to *variations* of the *listing rules*, the *Act* or the *POS Regs* including how an application for a *variation* should be made.
- 1.5.6 Chapter 7 (“Information Gathering and Investigation Powers”) outlines the *UKLA's* information gathering and investigation powers under the *listing rules* and the *Act*, and its approach to the use of these powers.
- 1.5.7 Chapter 8 (“Discipline of Issuers, Directors, Former Directors and Sponsors for Breaches of the Listing Rules”) outlines the *UKLA's* approach to private warnings and the criteria the *UKLA* will use when it decides whether to take disciplinary action against *issuers*, *directors*, former *directors* and *sponsors*. It also describes the *UKLA's* power to impose public censures on *issuers*, *directors*, former *directors* and *sponsors* and to impose financial penalties on *issuers*, *directors* and former *directors* (and in this regard contains a list of some of the factors that the *UKLA* may take into account when it decides the level of a financial penalty).
- 1.5.8 Chapter 9 (“Suspension and Cancellation of the Listing of Securities”) sets out the *UKLA's* procedures on the exercise of its powers to *suspend* and *cancel listing* including the circumstances in which the *UKLA* would normally *suspend* or *cancel listing*.
- 1.5.9 Chapter 10 (“Statutory Notice Decision-Making: The RDC and Executive Procedures”) describes the *UKLA's* decision-making process in cases involving the *RDC* and information about the *RDC*. It also contains details of how the *UKLA* will make decisions by its executive procedures.
- 1.5.10 Chapter 11 (“Interaction with the Market Abuse Regime”) outlines the *UKLA's* approach to circumstances where a breach of the *listing rules* may also come within the scope of the *market abuse* regime. It also sets out those *listing rules* that have been given safe harbour status under the Code of Market Conduct.
- 1.5.11 Chapter 12 (“Fees”) outlines the *UKLA's* approach to the charging of fees under the *listing rules*.

## **1.6 Using the UKLA guidance manual**

- 1.6.1 Since the *UKLA's* powers are derived from the *Act*, the guidance manual contains references to the *Act*. In some instances, the guidance manual quotes the *Act* directly (this is indicated in the text by quotation marks) although, where possible, it uses glossary definitions in place of the actual wording of the *Act*. In other cases, where reproducing the entire statutory provision would require a lengthy quotation, or considerable further

explanation, the relevant provision of the *Act* has been summarised. Users of this guidance manual should therefore refer to the *Act* as well as to this guidance manual where necessary. In the event of any discrepancy between this guidance manual and the *Act*, the provisions of the *Act* prevail. It remains an *issuer's*, *director's*, former *director's* or *sponsor's* responsibility to ensure that his actions comply with the *Act* at all times, and to seek professional advice where necessary.

- 1.6.2 For ease of reference, Annex 1 to this Chapter contains a table of the *UKLA's* main powers and where they are considered in the *UKLA* guidance manual.

## **1.7 What other guidance is available from the UKLA?**

- 1.7.1 It will not always be clear to an *issuer* or *sponsor* whether or not its action or proposed action (or inaction or proposed inaction) will be in accordance with the *listing rules*. The *UKLA* has established the *UKLA* Helpdesk to provide assistance in such cases.
- 1.7.2 The *UKLA* Helpdesk can provide assistance by responding to oral and written enquiries from *issuers*, *directors*, former *directors* or *sponsors* (or, where appropriate agents on their behalf) about any matter relating to the *listing rules* by providing individual oral *guidance* which concerns particular circumstances.
- 1.7.3 In addition to the *UKLA* guidance manual, the *UKLA* has published, or will publish as the need arises, general *guidance* in relation to a number of areas where *issuers*, *directors* or *sponsors* may experience difficulty in interpreting the *listing rules*. It is expected that the *UKLA's* practice of issuing Guidance Notes in relation to specific issues will continue. Where appropriate this general *guidance* will ultimately become part of the *UKLA* guidance manual.
- 1.7.4 In addition, other documents amounting to general *guidance* will be issued as Appendices to the *UKLA* guidance manual. Appendix 1 sets out the *FSA* mediation scheme. Appendix 2 sets out the *UKLA's guidance* on the dissemination of price sensitive information ("The PSI Guide"). Appendix 3 sets out the Continuing Obligations Guide. Appendix 4 sets out the Guidance Notes that have been issued by the *UKLA*.
- 1.7.5 All published current *guidance* is available on the *website* at [www.fsa.gov.uk/ukla](http://www.fsa.gov.uk/ukla) and, where available in hard copy, through the *FSA's* Publications Enquiries department on 020 7676 3298.
- 1.7.6 The *UKLA* will review its *guidance* from time to time and may amend or withdraw published or written *guidance* in the light of amendments to the *listing rules*, legislative changes, changing circumstances (including developing market practices) or case law.

- 1.7.7 *Guidance* given by the *UKLA* is generally designed to throw light on a particular aspect of regulatory requirements, not to be an exhaustive statement of an *issuer's*, *sponsor's* or *director's* obligations. If a person acts in accordance with *guidance* in the circumstances contemplated by that *guidance*, then the *UKLA* will proceed on the footing that the person has complied with the aspects of the rule or other requirement to which the *guidance* relates. See Chapter 5, and in particular paragraphs 5.5 and 5.6, for further information regarding *guidance* given by the *UKLA*.
- 1.7.8 It should be borne in mind, however that other bodies have prosecuting powers under the *Act* and will not be bound by *guidance* issued by the *UKLA* and *guidance* given by the *UKLA* cannot be definitive and will not bind a court of law. Ultimately, it will remain each *issuer's* and *sponsor's* responsibility to ensure that, at all times, their activities comply with the *listing rules* and to take all necessary steps to satisfy themselves of this including, where necessary, by seeking their own professional advice.

**Annex 1**  
**Table of powers referred to in the *UKLA* guidance manual**

This table gives the main location in the *UKLA* guidance manual where *guidance* appears on the powers referred to in the *Act* listed below. In many instances the powers will be referred to in other locations.

<b>Subject</b>	<b>Section of the <i>Act</i></b>	<b><i>UKLA</i> guidance manual Chapter</b>
Power to grant <i>applications for listing</i>	76	2
Power to <i>cancel listing</i>	77	9
Power to <i>suspend listing</i>	77	9
Power to regulate <i>sponsors</i> – general	88	4
Power to issue a public censure of <i>sponsor</i>	89	4
Power to issue a public censure of <i>issuers</i> , <i>directors</i> , and former <i>directors</i>	91	8
Power to impose financial penalties on <i>issuers</i> , <i>directors</i> , and former <i>directors</i>	91	8
Power to appoint an <i>investigator</i>	97	7
Power to charge fees	99	12

## CHAPTER 2

### 2. APPLICATIONS FOR LISTING

#### 2.1 Application of this Chapter

2.1.1 This Chapter applies to an *issuer*, any of whose *securities*:

- (1) have been admitted to the *official list*; or
- (2) are the subject of an *application for listing*; or
- (3) are proposed to be the subject of an *application for listing*.

2.1.2 For the avoidance of doubt, in this guidance manual any reference to *listing particulars* is defined, unless the context otherwise requires, to include reference to a *prospectus*.

#### 2.2 Purpose of this Chapter

2.2.1 The purpose of this Chapter is to give *guidance* to *issuers* who propose to make an *application for listing*. In particular, this Chapter gives *guidance* on:

- (1) *applications for listing*;
- (2) the procedures for making *applications for listing*; and
- (3) when and how the *UKLA* will determine *applications for listing*.

#### 2.3 Introduction

2.3.1 An *issuer* wanting to make an *application for listing* must apply to the *UKLA*. If the *UKLA* grants the *application for listing* the *securities* to which the application relates shall be admitted to the *official list*.

2.3.2 Annex 1 to this Chapter illustrates, by way of a flow chart, the *UKLA*'s procedures relating to *applications for listing*.

#### 2.4 The official list

2.4.1 Under section 74(1) of the *Act* the *official list* must be maintained by the *UKLA*.

2.4.2 The *official list* is a list of the *securities* that have, together with their *issuers*, complied with the requirements of the *listing rules* (so far as they apply) and any other requirements imposed by the *UKLA*. *Issuers* whose *securities* have been admitted to the *official list* must, in order to remain

on the *official list*, comply with the continuing obligations set out in the *listing rules*.

## **2.5 Securities capable of admission to the official list**

2.5.1 Under section 74 of the *Act* (The official list) the *UKLA* may admit to the *official list* such *securities* as it considers appropriate.

2.5.2 HM Treasury may, however, specify by order *securities* that may not be admitted to the *official list*. No such order has yet been made.

## **2.6 Procedures for making an application for listing**

2.6.1 Admission to the *official list* may be granted only in such a manner as may be required under the *listing rules* and may be considered by the *UKLA* only if made by, or with the consent of, the *issuer* of the *securities* concerned.

2.6.2 Under section 75(3) of the *Act* no *application for listing* may be considered by the *UKLA* in respect of *securities* which are issued by a body of a prescribed kind, for example private *companies*, (see Regulation 3 of The Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001).

## **2.7 Grant of an application for listing**

2.7.1 Under section 75(4) of the *Act* the *UKLA* may not grant an *application for listing* unless it is satisfied that:

- (1) the requirements of the *listing rules* (so far as they apply to the application); and
- (2) any other requirements imposed by the *UKLA* in relation to the application,

are complied with.

## **2.8 Specific reasons for refusal of an application for listing**

2.8.1 In addition to the power not to grant an *application for listing* described in paragraph 2.7 above, the *Act* provides that an *application for listing*:

- (1) may be refused if, for a reason relating to the *issuer*, the *UKLA* considers that granting it would be detrimental to the interests of investors; or
- (2) (in relation to *securities* which are already officially listed on a stock exchange in another *member state*) may be refused if the *issuer* has failed to comply with any obligations to which it is subject as a result of that listing.

2.8.2 In order to satisfy the *UKLA* that an *issuer* seeking a *secondary listing* is not within paragraph 2.8.1(2) the *issuer* must submit to the *UKLA* a letter confirming that it is in compliance with the requirements of:

- (1) any *overseas* stock exchange on which it has its *securities* listed; and
- (2) any *competent authority* or equivalent regulatory body which regulates it.

2.8.3 *Listing rule* 17.19, which is reflected in paragraph 2.8.2 above, applies to all *overseas companies* with or seeking a *secondary listing* by the *UKLA*, not only those which have their *securities* officially listed on a stock exchange in another *member state*.

## **2.9 Applications for listing**

2.9.1 The *application for listing* shall be made by an *issuer* by the submission of an application in the form set out in schedule 3A or 3B, as appropriate, to the *listing rules*. Chapter 7 of the *listing rules* sets out the requirements in respect of *admission to listing*.

2.9.2 The *application for listing* must be accompanied by the relevant fee (see Chapter 12) such other documentation or other things as may be specified in the *listing rules*, or the *UKLA* may otherwise require. The items accompanying the *application for listing* should be in final form.

## **2.10 Role of the UKLA staff in applications for listing**

2.10.1 The *UKLA* will assign member(s) of its staff at an appropriate level of seniority to act on the *UKLA's* behalf in relation to an *application for listing*, in particular:

- (1) before an *application for listing* has been made, to:
  - (a) approve *listing particulars* or other such documents;
  - (b) check that all supporting documents relevant to the proposed *application for listing* have been provided in accordance with the *listing rules*;
  - (c) liaise with the *issuer* (or any agent acting on its behalf); and
  - (d) be the person to whom correspondence between the *issuer* (or agent acting on its behalf) and the *UKLA* should be addressed.
- (2) after an *application for listing* has been made to:



- (a) check that all supporting documents relevant to the *application for listing* have been provided in accordance with the *listing rules*; and
  - (b) liaise with the *issuer* (or any agent acting on its behalf).
- 2.10.2 The names of the relevant member(s) of *UKLA* staff will normally be notified to the *issuer* (or agent acting on its behalf) as soon as practicable after receipt of any documents submitted in support of, or pursuant to, the proposed or actual *application for listing*.
- 2.11 Approval of documents to support an application for listing**
- 2.11.1 *Issuers* (or agents acting on their behalf) are encouraged to establish early contact with *UKLA* to discuss the contents of documents supporting an *application for listing*. This will allow the *UKLA* time to review and, if applicable, comment on the contents of such documents.
- 2.11.2 It is important to note that under the *listing rules* there are circumstances when it is not necessary for an *issuer* to produce *listing particulars* or other such document prior to an *application for listing* being made.
- 2.12 Submission for approval of listing particulars and other such documents to support an application for listing**
- 2.12.1 Where *listing particulars* or other such documents are required under the *listing rules*, the *securities* to which they relate may not be admitted to the *official list* unless:
  - (1) in the case of *listing particulars*, such document has been submitted to, and approved by, the *UKLA* and published; and
  - (2) in other cases, such document as may be specified in the *listing rules* has been submitted to, and approved by, the *UKLA* and published.
- 2.12.2 In order to obtain approval by the *UKLA* such documents should first be submitted to the *UKLA*:
  - (1) in light of the timescales laid down in paragraph 2.13.1;
  - (2) in a substantially complete form;
  - (3) accompanied by the contact details of the *issuer* (or agents acting on its behalf) and, if relevant, any proposed date of publication of the document;
  - (4) in hard copy form in triplicate or in an agreed electronic format;

- (5) annotated in the margin to indicate where the applicable paragraphs of the *listing rules* have been complied with;
- (6) accompanied by all the relevant *checklists*, duly completed, and referenced to the draft document then being submitted;
- (7) if applicable to the transaction to which they relate, accompanied by a declaration by the *sponsor* to the *issuer* in the form set out in *Schedule 1A* of the *listing rules*, duly completed; and
- (8) accompanied by such other information or documents as the *listing rules* or the *UKLA* may otherwise require.

2.12.3 Further drafts of documents which have previously been submitted to the *UKLA* under paragraph 2.12.2 above should be submitted to the *UKLA*:

- (1) marked to show any changes made to them since the last draft that was reviewed by the *UKLA*;
- (2) marked to show any changes (in such a way as to differentiate from other changes) made to the documents as a consequence of the *UKLA*'s comment and review;
- (3) in hard copy form in triplicate or in an agreed electronic format;
- (4) annotated in the margin to indicate where the applicable paragraphs of the *listing rules* have been complied with;
- (5) accompanied by all the relevant *checklists* duly completed, and referenced to the draft document then being submitted (save that updated page referencing is only required where there has been a change in the text in the document that is annotated for compliance with a *listing rules*); and
- (6) accompanied by such other documents and at such times as may be required by the *listing rules*, or otherwise by the *UKLA*.

2.12.4 *Issuers* (and agents acting on their behalf) should be aware that fax copies of documents will not be acceptable without the express permission of the relevant member(s) of *UKLA* staff.

2.12.5 In considering the proposed *application for listing*, the *UKLA* may:

- (1) carry out any enquiries which it considers appropriate, for example, discussion with other regulators or exchanges;
- (2) request the *issuer*, or any specified representative of the *issuer*, to answer questions and explain any matter the *UKLA* considers relevant to the *application for listing*;

- (3) take into account any information which it considers appropriate in relation to the *application for listing*;
- (4) request any information provided by the applicant to be verified in such manner as the *UKLA* may specify.

## **2.13 How long will the approval of listing particulars or other such documents take?**

2.13.1 The *UKLA* will endeavour (unless otherwise requested by the *issuer*) to complete the approval of documents:

- (1) in relation to an *application for listing* of *securities* of a kind which are already *listed*, not more than 10 *clear business days* following the date of receipt of all the documentation specified under paragraph 2.12.2 above; or
- (2) in relation to an *application for listing* of *securities* of a kind which are not already *listed* or when there are complex issues involved, not more than 20 *clear business days* following the date of receipt of all the documentation specified under paragraph 2.12.2 above.

2.13.2 Within these time limits, however, the length of the approval process will vary according to the complexity of the *application for listing* and supporting documents.

2.13.3 *Issuers* should be aware that the length of the time taken to approve any document may be increased if the *issuer* (or agent acting on its behalf):

- (1) does not provide all the information and documents which the *UKLA* has requested or are required under the *listing rules* in connection with the *application for listing* in a timely manner; or
- (2) raises a significant new issue or includes significant new information in the *listing particulars* or other such document after it has been submitted in accordance with paragraph 2.12.2 above.

2.13.4 The *issuer* (or, if appropriate, any agent acting on its behalf) will be notified following the approval of any documents that are submitted by it or on its behalf for approval by the *UKLA*.

## **2.14 How should listing particulars or other such documents be submitted to the UKLA for final approval?**

2.14.1 Documents should be submitted:

- (1) in printed form (but the *UKLA* may permit manuscript information relating to the number of *securities* and the price, and

any figures derived from them, when these items are not settled until a late stage);

- (2) in final form (as will be sent to investors);
- (3) on a *business day* between the hours of 9.00am and 5.30pm (unless specific alternative arrangements are made and agreed in advance with the *UKLA*); and
- (4) accompanied by, in final form and at the *issuer's* own expense, all the relevant documents, letters, declarations, statements, reports or other things (including the relevant fee (see Chapter 12)) which are required under the *listing rules* in relation to the *application for listing* or which may otherwise be required by the *UKLA*.

## **2.15 Additional information/conditions in relation to the application for listing**

- 2.15.1 At any time before the *application for listing* is granted, the *UKLA* may give notice to the *issuer* to require it to provide additional information or documents. The circumstances of each *application for listing* will dictate what additional information or conditions, if any, are appropriate.
- 2.15.2 When the *UKLA* proposes to require additional information or additional conditions the relevant member(s) of *UKLA* staff will inform the *issuer* (or any agent acting on its behalf) of such additional information or conditions.

## **2.16 Mutual recognition**

- 2.16.1 The *UKLA* will recognise as *listing particulars* a document issued by an *overseas company* and approved by the *competent authority* of a *member state* provided that the requirements set out in Chapter 17 of the *listing rules* are complied with.

## **2.17 Guidance in respect of the interpretation of listing rules in relation to an application for listing**

- 2.17.1 *Guidance* on the procedures and decisions in relation to interpretation of *listing rules* is set out in Chapter 5.

## **2.18 Variation of any requirements under the listing rules in relation to an application for listing**

- 2.18.1 *Guidance* on the procedures in relation to *variations* is set out in Chapter 6 and decisions in respect of these *variations* in Chapter 5 .

## **2.19 Disclosure in, and responsibility for, listing particulars or other such documents**

2.19.1 In addition to any information required by either the *listing rules* or the *UKLA* as a condition of admission of the *securities* to the *official list*, *issuers* should be aware of the general duty of disclosure in *listing particulars* under section 80 of the *Act* (General duty of disclosure in listing particulars).

2.19.2 The persons responsible for *listing particulars* for the purposes of Part VI of the *Act* are to be determined in accordance with Regulation 6 of The Financial Services and Markets Act 2000 (Official Listing of Securities) Regulations 2001.

2.19.3 Also, the *listing rules* provide that an *issuer* must include a statement in the *listing particulars* or other such document in the form set out in the *listing rules* indicating who has accepted responsibility for information set out in the *listing particulars* or other such document.

## **2.20 Requirement to produce a supplementary document**

2.20.1 If at any time after the approval of *listing particulars* or other such document, but before the commencement of dealings in the *securities* to which they relate, the *issuer* becomes aware that:

- (1) there has been a significant change affecting any matter contained in those particulars; or
- (2) a significant new matter has arisen, the inclusion of information in respect of which would have been required if it had arisen when the *listing particulars* or other such document were prepared,

the *issuer* must submit to the *UKLA* (in accordance with the procedures set out in paragraph 2.12) *supplementary listing particulars* or other such document in accordance with the *listing rules*, for approval by the *UKLA*.

2.20.2 The approval of *supplementary listing particulars* or other such document will not normally take more than 10 *clear business days* and, once approved by the *UKLA*, must be published by the *issuer* in accordance with the *listing rules*.

## **2.21 Application for admission to trading on an RIE**

2.21.1 Under *listing rule* 3.14A, it is a condition for *admission to listing* that *securities* must be *admitted to trading* on an *RIE's* market for *listed securities*.

2.21.2 In order for *securities* to be *admitted to official listing on a stock exchange* their *issuers* should make an application to an *RIE* (in the manner

specified by the *RIE*) for such *securities* to be *admitted to trading*. This application is in addition to the *application for listing*.

## **2.22 Delays in processing applications for listing**

2.22.1 *Issuers* should be aware that after the form set out in schedule 3A or 3B has been submitted (and, therefore, the *application for listing* has been made) there may be a delay in processing the *application for listing* if the information and/or documentation submitted to the *UKLA* in connection with the *application for listing* is inaccurate or incomplete.

## **2.23 How long will a determination of an application for listing take?**

2.23.1 Wherever possible the *UKLA* will, so far as permitted by the *listing rules*, determine an *application for listing* in accordance with the timescales of the *issuer*.

2.23.2 The *Act* provides that the *UKLA* must notify the *issuer* making the *application for listing* of its decision on an *application for listing*:

- (1) within 6 months, beginning with the date on which the *application for listing* is received; or
- (2) if within that period the *UKLA* has required the *issuer* making the *application for listing* to provide further information in connection with the application, within 6 months beginning with the date on which that information is provided.

2.23.3 If the *UKLA* fails to comply with the requirements in paragraph 2.23.2, it is to be taken to have decided to refuse such *application for listing*.

## **2.24 Withdrawal of applications for listing**

2.24.1 An *issuer* may withdraw its *application for listing* at any time before the *application for listing* is granted, or refused, by giving notice to the relevant member(s) of *UKLA* staff.

## **2.25 Decision making in relation to an application for listing**

2.25.1 Decisions on whether to grant an *application for listing* are taken by either the *RDC* (in the case of a proposal to refuse an *application for listing* (see Chapter 10)) or by internal staff procedures within the *UKLA* by the *UKLA*'s staff at an appropriate level of seniority (in the case of a grant of an *application for listing*).

## **2.26 Notification of the determination of the application for listing**

2.26.1 When the *UKLA* grants an *application for listing*, it will inform the *issuer* by notice in writing containing confirmation of:

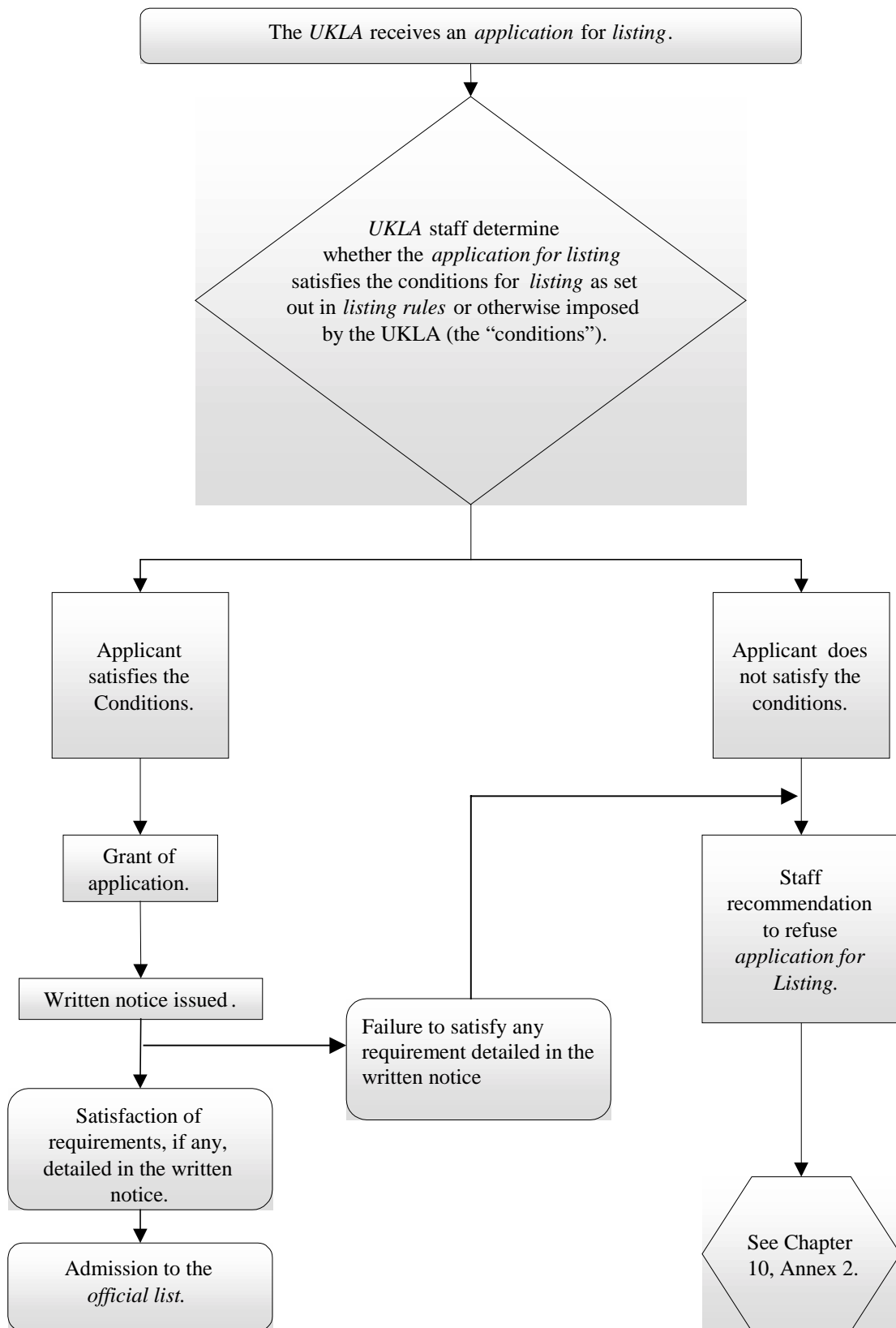
- (1) the number of *securities* in relation to which the *application for listing* has been granted;
- (2) (subject to paragraph 2.26.1(3) below) the date at which the *listing* of such *securities* is expected to become effective; and
- (3) details of any requirements (such as the *securities* being allotted or an announcement being made) which must be fulfilled prior to *admission* becoming effective.

2.26.2 Notice in writing will be sent to the *issuer* as soon as practicable after the *application for listing* has been granted and shall constitute evidence that the *application for listing* has been granted. The *UKLA* and the relevant *RIE* (s) will also issue a joint dealing notice via an *RIS* on the morning that the *listing* becomes effective to announce the *listing* of the *securities*. The *official list* on the *web-site* will also be updated to reflect the *listing* of the *securities*.

2.26.3 See Annex 2 to this Chapter for a specimen notice in writing confirming the grant of an *application for listing*.

2.26.4 When the *UKLA* proposes to recommend that the *RDC* refuse an *application for listing*, it will recommend to the *RDC* that a *statutory notice* be issued. For further details of this process see Chapter 10.

**Annex 1**  
**Summary of procedures on an *application for listing***





**Annex 2**  
**Specimen notice in writing confirming the**  
**grant of an application for listing**

**[Issuer] plc**

I confirm that your application for the following securities to be admitted to the UK Listing Authority's Official List has been granted.

- [number]
- [kind of security] [fully paid]
- [Sedol No]
- [ISIN No]

The securities will be admitted to the Official List at • [date] subject to your fulfilling the requirements outlined below:

- [details of any requirements which must be fulfilled prior to admission to listing]

Admission will become effective as soon as a notice has been issued jointly by the Financial Services Authority and [the London Stock Exchange] as outlined in paragraph 7.1 of the FSA *listing rules* [and paragraph 2.1 of the London Stock Exchange Admission and Disclosure Standards].

[A list of the additional information required prior to admission to the Official List becoming effective. Please lodge the documents with the UK Listing Authority on or before the date set out. So that we can process the documents as quickly as possible, it would be helpful if you could identify each document with the reference set out in the attached schedule.]

Any queries relating to the invoice should be addressed to • .

If you have other queries or require further information, please contact • on the number shown below.

[Schedule of additional information required]

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## CHAPTER 3

### 3. APPROVAL OF NON-ROUTINE CIRCULARS

#### 3.1 Application of this Chapter

- 3.1.1 This Chapter applies to an *issuer* who proposes to circulate or make publicly available any *circular* which, under the *listing rules*, must be formally approved by the *UKLA*.

#### 3.2 Purpose of this Chapter

- 3.2.1 The purpose of this Chapter is to give *guidance* to *issuers* and their advisers on the procedures for submission and approval by the *UKLA* of a *non-routine circular*.

#### 3.3 Introduction

- 3.3.1 The *listing rules* provide that certain *circulars* do not require formal approval by the *UKLA* before they are circulated or made publicly available (see *listing rule* 14.5). However, all other *circulars* (“*non-routine circulars*”) must be formally approved by the *UKLA*, in final form, before they are circulated or made publicly available.

#### 3.4 Role of the UKLA staff in the formal approval of non-routine circulars

- 3.4.1 The *UKLA* will assign member(s) of its staff at an appropriate level of seniority to act on the *UKLA*’s behalf in relation to the approval of *non-routine circulars*, in particular to:
- (1) approve the *non-routine circular*;
  - (2) check that all supporting documents relevant to the approval of the *non-routine circular* have been provided in accordance with the *listing rules*;
  - (3) liaise with the *issuer* (or any agent acting on its behalf); and
  - (4) be the person to whom all letters and correspondence between the *issuer* (or agent acting on its behalf) and the *UKLA* should be addressed.
- 3.4.2 The names of the relevant member(s) of *UKLA* staff will normally be notified to the *issuer* (or agent acting on its behalf) as soon as practicable after receipt of the *non-routine circular* in accordance with paragraph 3.5 below.

### **3.5 Formal approval of non-routine circulars**

3.5.1 *Issuers* (or agents acting on their behalf) are encouraged to establish early contact with *UKLA* to discuss (if they are in any doubt) the contents of a *non-routine circular*.

3.5.2 In order to obtain formal approval from the *UKLA*, a *non-routine circular* should first be submitted to the *UKLA*:

- (1) at least 10 *clear business days* prior to its intended publication (save where the *UKLA* otherwise agrees);
- (2) in a substantially complete form;
- (3) accompanied by the contact details of the *issuer* (or agent acting on its behalf) and, if relevant, any proposed date of publication of the document;
- (4) in hard copy form in triplicate or in an agreed electronic format;
- (5) annotated in the margin to indicate where the applicable paragraphs of the *listing rules* have been complied with;
- (6) accompanied by all the relevant *checklists*, duly completed, and referenced to the draft document then being submitted;
- (7) if applicable to the transaction to which the *non-routine circular* relates, accompanied by a declaration by the *sponsor* to the *issuer* in the form set out in *Schedule 1A* to the *listing rules*, duly completed; and
- (8) accompanied by the letters and documents referred to in *listing rule 14.3(b)*.

3.5.3 Further drafts of a *non-routine circular* which has previously been submitted to the *UKLA* under paragraph 3.5.2 above should be submitted to the *UKLA*:

- (1) marked to show any changes made since the last draft that was reviewed by the *UKLA*;
- (2) marked to show any changes (in such a way as to differentiate from other changes) made to the documents as a consequence of the *UKLA's* comment and review;
- (3) in hard copy form in triplicate or in an agreed electronic format;
- (4) annotated in the margin to indicate where the applicable paragraphs of the *listing rules* have been complied with;

- (5) accompanied by all the relevant *checklists* duly completed, and referenced to the draft document then being submitted (save that updated page referencing is only required where there has been a change in the text in the document that is annotated for compliance with a *listing rule*); and
- (6) accompanied by such other documents and at such times as may be required by the *listing rules*, or otherwise by the *UKLA*.

3.5.4 *Issuers* (and agents acting on their behalf) should be aware that fax copies of documents will not be acceptable without the express permission of the relevant member(s) of *UKLA* staff.

### **3.6 How long will the formal approval of a non-routine circular take?**

3.6.1 The *UKLA* shall endeavour (unless otherwise requested by the *issuer*) to complete the approval of a *non-routine circular* not more than 10 *clear business days* following the date of receipt of all the documentation specified under paragraph 3.5.2 above.

3.6.2 *Issuers* should be aware that the length of the time taken to approve a *non-routine circular* may be increased if the *issuer* (or agent acting on its behalf):

- (1) does not provide all the information and documents which the *UKLA* has requested or are required under the *listing rules* in a timely manner; or
- (2) raises a significant new issue or includes significant new information in the *non-routine circular* after it has been submitted in accordance with paragraph 3.5.2 above.

3.6.3 The *issuer* (or, if appropriate, any agent acting on its behalf) will be notified following the formal approval of a *non-routine circular* submitted for approval.

### **3.7 How should a non-routine circular be submitted to the UKLA for formal approval?**

3.7.1 A *non-routine circular* should be submitted to the *UKLA* for formal approval:

- (1) in final printed form (as will be sent to shareholders);
- (2) on a *business day* between 9.00am and 5.30pm (unless specific alternative arrangements are made and agreed in advance with the *UKLA*); and

- (3) accompanied by, in final form and at the *issuer's* own expense, all the relevant documents, letters, declarations, statements, reports or other things (including the relevant fee (see Chapter 12)) which are required under the *listing rules* or which may otherwise be required by the *UKLA*.

### **3.8 Additional information**

3.8.1 At any time before the *non-routine circular* is formally approved, the *UKLA* may give notice to the *issuer* to require it to provide additional information or documents. The circumstances of each case will dictate what additional information, if any, is appropriate.

3.8.2 When the *UKLA* proposes to require additional information the relevant member(s) of *UKLA* staff will inform the *issuer* (or any agent acting on its behalf) of such additional information.

### **3.9 Guidance in respect of the interpretation of listing rules in relation to a non-routine circular**

3.9.1 *Guidance* on the procedures in relation to interpretation of *listing rules* applicable to *non-routine circulars* and related decisions is set out in Chapter 5.

### **3.10 Variation of any requirements under the listing rules in relation to a non-routine circular**

3.10.1 *Guidance* on the procedures in relation to *variations* is set out in Chapter 6 and decisions in respect of these *variations* in Chapter 5.

## CHAPTER 4

### 4. SPONSORS

#### 4.1 Application of this Chapter

4.1.1 This Chapter applies to *sponsors*.

#### 4.2 Purpose of this Chapter

4.2.1 This Chapter describes the *UKLA's* approach to the approval, and cancellation of approval, of *sponsors*. It also describes the *UKLA's* policy in relation to ongoing compliance with the *listing rules* by *sponsors*, provides *guidance* on certain *listing rules* that affect *sponsors* and sets out how the *UKLA* monitors *sponsors*.

#### 4.3 Who can be a sponsor?

4.3.1 Section 88(3)(d) of the *Act* provides that the *listing rules* may specify the circumstances in which a person is qualified for being approved as a *sponsor*. *Listing rule 2.4* sets out the criteria that have to be satisfied by a person wishing to apply for approval by the *UKLA* as a *sponsor*. In particular a *sponsor* must:

- (1) be an *authorised person*; and
- (2) have at least four *eligible employees* at all times.

4.3.2 *Sponsors* will normally be corporate brokers or investment banks but may also be other professional advisers.

#### 4.4 When is a sponsor required?

4.4.1 *Listing rules 2.6* and *2.7* set out the circumstances when an *issuer* must have appointed or must appoint a *sponsor*. Any such *sponsor* must be independent of the relevant *issuer* pursuant to *listing rule 2.11* (see also paragraphs 4.15 and 4.16 below).

4.4.2 Although there is no *listing rule* requirement that an *issuer* retains a *sponsor* at all times, the *UKLA* recommends this as best practice. This is because a *sponsor* should be able to give an *issuer* advice on a continuing basis regarding the application and interpretation of the *listing rules* and in particular, the continuing obligations set out in the *listing rules*.

#### 4.5 Application to become approved as a sponsor

4.5.1 A person wanting to make an application to become approved as a *sponsor* should apply to the Sponsor Regulation Team, The UK Listing

Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS using the relevant application forms:

- (1) the SA1 form: this is the application form to be completed by the person that wishes to apply for approval by the *UKLA* as a *sponsor*; and
- (2) the SA2 form: this is the application form a *sponsor* or person applying to be approved as such should use when applying for a member of its staff to be registered as an *eligible employee* by the *UKLA*. It requires details of the relevant member of staff's role and the nature of the advice given in relation to any significant transaction to be relied upon.

- 4.5.2 The SA1 and SA2 forms should be accompanied by such documentation or other things (including the relevant fees (see Chapter 12)) as the *UKLA* may request. In particular the SA2 form should normally be accompanied by copies of the relevant documents that provide evidence of the significant transactions that are being relied upon. Where a member of staff intends to rely on a significant transaction undertaken by a previous employer, the *UKLA* will normally expect to be provided with a copy of the relevant transaction document that provides evidence of the previous employer's involvement. The *sponsor* would normally also be expected provide a letter from the previous employer's compliance officer confirming the role of the employee in such transaction.
- 4.5.3 A person must have a minimum of four *eligible employees* at any one time in order to satisfy the criteria for approval as a *sponsor* as set out in Chapter 2 of the *listing rules*. The SA2 form is therefore a necessary part of a person's application for approval as a *sponsor*.
- 4.5.4 A *sponsor* can also use an SA2 form when it wishes to nominate further individuals as *eligible employees* for example, employees who join a *sponsor* following its approval as a *sponsor*.
- 4.5.5 A person wanting to make an application to become approved as a *sponsor* should nominate someone to act as the primary contact with the *UKLA* concerning the application.
- 4.5.6 *UKLA* staff will review each application for approval as a *sponsor*. Each applicant will be given a contact name of the individual at the *UKLA* who is dealing with the application.
- 4.5.7 When considering whether a person applying for approval as a *sponsor* is competent to provide services as a *sponsor* the *UKLA* will consider whether that person is able to demonstrate a broad range of experience in providing advice on the *listing rules*. A *sponsor* demonstrates its experience to the *UKLA* through the experience of its *eligible employees*. A person applying for approval as a *sponsor* should aim to ensure that its *eligible employees* do not rely on the same significant transactions to

demonstrate experience in advising on the *listing rules*. The diversity of experience of *eligible employees* is particularly important when the applicant is applying with a minimum of four *eligible employees*.

#### **4.6 Who is an eligible employee?**

4.6.1 An *eligible employee* is a *director*, partner or employee who has given advice in connection with at least three significant transactions in the previous 36 months, at least one of which must have been in the previous 12 months. This is an ongoing requirement.

4.6.2 This means that at any given time all *eligible employees* must have provided advice on at least one significant transaction within the previous 12 months.

4.6.3 If an *eligible employee* fails to provide advice in connection with at least one significant transaction within the previous 12 months such employee ceases to be an *eligible employee* (but see paragraph 4.13.2 below). The date an employee ceases to be an *eligible employee* is the expiry of 12 months from the date when they provided advice on a significant transaction. A *sponsor* must notify the *UKLA* in such circumstances (see paragraph 4.27 below).

4.6.4 The *UKLA* will generally consider advice in connection with a significant transaction to mean advice in relation to the application and interpretation of the *listing rules* or the *AIM* rules.

4.6.5 The *UKLA* will generally accept that the following transactions are significant transactions:

- (1) an initial public offer;
- (2) a Class 1 transaction;
- (3) a related party transaction involving the preparation of a shareholder *circular*;
- (4) any other issue of *securities* involving the preparation of *listing particulars*;
- (5) the preparation of *listing particulars* or a *prospectus* for submission to, and approval by, the *UKLA* or another competent authority in an EU member state; and
- (6) acting in the capacity of *nominated adviser* when admitting a *company* to trading on *AIM*.

For the avoidance of doubt, transactions involving the production of an exempt listing document are not considered significant transactions.



4.6.6 An *eligible employee* should be a senior member of a *sponsor's* staff.

#### **4.7 Processing applications for approval as a sponsor**

4.7.1 The *UKLA* will usually notify a person of its decision on an application for approval as a *sponsor*:

- (1) within one month beginning with the date on which the application is received; or
- (2) if within that period the *UKLA* has required the person to provide further information in connection with the application, within one month beginning with the date on which that information is provided.

4.7.2 Applicants should be aware that processing an application will take longer if the information and/or documentation submitted to the *UKLA*, at any stage of the approval process, is found to be inaccurate or incomplete.

#### **4.8 Consideration of application for approval as a sponsor**

4.8.1 When considering an application for approval as a *sponsor* the *UKLA* may:

- (1) carry out any enquiries and request any further information which it considers appropriate including consulting other regulators;
- (2) request that the applicant, or its specified representative, attend meetings at the *UKLA* to answer questions and explain any matter the *UKLA* considers relevant to the application;
- (3) take into account any information which it considers appropriate in relation to the application; and
- (4) request that any information provided by the applicant is verified in such manner as the *UKLA* may specify.

#### **4.9 Decisions in relation to applications for approval as a sponsor**

4.9.1 Decisions on whether to grant an application for approval as a *sponsor* are taken by either the *RDC* (in the case of a proposal to refuse an application for approval as a *sponsor* (see Chapter 10)) or by internal staff procedures within the *UKLA* by the *UKLA's* staff at an appropriate level of seniority (in the case of a grant of an application for approval as a *sponsor*).

#### **4.10 Grant of application for approval as a sponsor**

4.10.1 If the *UKLA* grants a person's application to become a *sponsor* they will be admitted to the *list of sponsors* maintained by the *UKLA*.

- 4.10.2 Annex 1 to this Chapter illustrates, by way of a flow chart, the *UKLA*'s procedure governing applications to become approved as a *sponsor*.

#### **4.11 Notification of grant of approval as a sponsor**

- 4.11.1 When the *UKLA* grants an application for approval as a *sponsor*, it will inform the *sponsor* by notice in writing containing confirmation of the date that the approval as a *sponsor* became, or is proposed to become, effective.
- 4.11.2 Notice in writing will be sent to the *sponsor* as soon as practicable after the application for approval as a *sponsor* has been granted.

#### **4.12 Supervision of staff**

- 4.12.1 A *sponsor* must ensure that all staff who have not been registered as *eligible employees* and who are involved in *sponsor* activities are supervised and managed by *eligible employees*.
- 4.12.2 A *sponsor* must have appropriate controls and procedures to ensure that staff involved in *sponsor* activities do not act beyond their proper authority.
- 4.12.3 A *sponsor* should nominate someone to act as a primary contact with the *UKLA* at all times.

#### **4.13 Sufficiency of staff**

- 4.13.1 Arrangements must be in place for a sufficient number of *eligible employees* to be available in order to advise on the application and interpretation of the *listing rules* to ensure that the *sponsor* can provide *sponsor services* properly at all times.
- 4.13.2 If the departure of one or more *eligible employees* results in a *sponsor* no longer having at least four *eligible employees*, that *sponsor* will immediately cease to meet the criteria for approval as a *sponsor* and the *UKLA* will (subject to the notice regime (see Chapter 10) take steps to remove the *sponsor* from the *list of sponsors*).

#### **4.14 Independence – general**

- 4.14.1 Under *listing rule* 2.11 a *sponsor* must not provide *sponsor services* to an *issuer* from which it is not independent. This means that a *sponsor* must be independent whenever it provides *sponsor services* to an *issuer* i.e. not only when it has been appointed by an *issuer* in relation to a specific transaction.
- 4.14.2 If a *sponsor* is not independent of an *issuer* to whom it provides *sponsor services* it will be in breach of the *listing rules* and will be subject to the disciplinary procedures set out in Chapter 8.

- 4.14.3 When the *UKLA* is not satisfied that a *sponsor* is independent, it will not accept documents produced by that sponsor in support of an *application for listing* or a request for approval of any document required under the *listing rules*.
- 4.14.4 The *UKLA*, when assessing independence, will expect a *sponsor* to consider a broad range of factors that might impact on its ability to act independently of an *issuer* for which it provides *sponsor services*. These factors are considered below, but *sponsors* should note that this manual is *guidance* only and is not exhaustive. In cases of doubt *sponsors* are encouraged to consult the *UKLA* at an early stage.
- 4.14.5 A *sponsor* may not be regarded as independent of an *issuer* by the *UKLA* (subject to paragraph 4.14.6 below) if it or another *company* in the *sponsor's group*, is interested in 3 per cent or more of the share, debt or loan capital of an *issuer* or any other *company* in an *issuer's group*.
- 4.14.6 The *UKLA* may agree that a *sponsor* or another *company* in the *sponsor's group* is independent even if it is interested in 3 per cent or more of the share, debt or loan capital of an *issuer* or any other *company* in an *issuer's group*, provided that it is demonstrated to the *UKLA's* satisfaction that no conflict of interest will arise and that there are no other matters that may affect the *sponsor's* independence. For example, the *UKLA* may be satisfied that no conflict of interest arises where some or all of the *sponsor's* interest results from a holding in a business area that is separated by a "Chinese wall" from the business area of the *sponsor* providing *sponsor services* to the relevant *issuer*.
- 4.14.7 Other matters that the *UKLA* considers may affect a *sponsor's* independence include:
- (1) business relationships with an *issuer* that could give the *sponsor* or another *company* in the *sponsor's group* a material interest in the success of a transaction (subject to paragraph 4.14.8 below); and
  - (2) financial interests in an *issuer* including fee arrangements, loans to the *issuer* and security over the assets of the *issuer* by the *sponsor* or another *company* in the *sponsor's group* that could give the *sponsor* or another *company* in the *sponsor's group* a material interest in the success of a transaction.
- 4.14.8 A normal business relationship between the *issuer* and the *sponsor* or another part of the *sponsor's group* such as that of banker, reporting accountant or auditor will not usually affect the independence of a *sponsor* provided that there is an adequate segregation of roles. Confirmation from the *sponsor's* compliance department that there are "Chinese walls" between the business areas of the *sponsor* involved in providing *sponsor services* to the *issuer* and the other business areas of the *sponsor* will be

sufficient for the *UKLA* to agree that there is adequate segregation of roles. However, relationships that would give the *sponsor's group* a material interest in the success of a transaction, may result in the *sponsor* not being independent.

4.14.9 Paragraph 4.14.5 does not apply to investment entities where the *sponsor's* interest arises by virtue of the holdings of its discretionary clients.

4.14.10 A *sponsor* or *sponsor employee* will be taken by the *UKLA* to be interested in a class of share, debt or loan capital of a *company* if such person (or someone connected with them within the meaning of the section 203 of the *Companies Act 1985*) has an interest in accordance with the provisions of section 208 of the *Companies Act 1985*.

#### **4.15 Independence issues relating to payment of sponsor fees**

4.15.1 The *UKLA* has no objection in principle to a *sponsor* accepting shares, warrants or options in the *company* it is advising as payment of its fees. This is clearly envisaged by *listing rule 3.29*. However, when a *sponsor* is considering accepting payment in shares, options or warrants the matters set out in the following paragraphs 4.15.2 to 4.15.4 should be noted.

4.15.2 *Listing rule 3.29* requires disclosure in the *circular, listing particulars* or other document of all material terms of the issue when the payment of the fees of the *sponsor* or any other adviser are made other than in cash. For the purposes of *listing rule 3.29*, the presence or absence of any "lock in" arrangements will be considered a material term and, consequently, the details of any such arrangements or a negative statement where there are no such arrangements should be made in the *circular, listing particulars* or other document.

4.15.3 The question of independence is one for the *sponsor* to determine according to the circumstances of the particular case. The key issues to consider with regard to this matter are whether the fee arrangements are material to the *sponsor* or another *company* in the *sponsor's group* or whether the resulting relationship with the *issuer* would give the *sponsor* or the *sponsor's group* a material interest in the relevant transaction. When considering whether the transaction or holding of the shares, options or warrants are material to the *sponsor* or *sponsor's group*, the size of the holding, the value of the securities and all other factors should be considered.

4.15.4 In all cases where the payment of a *sponsor's* fees for services to an *issuer* are made other than in cash the *UKLA* should be consulted at an early stage.

#### **4.16 Independence – Schedule 1A**

- 4.16.1 When a *sponsor* has been appointed by an *issuer* in relation to a transaction in accordance with the *listing rules* such *sponsor* must submit a confirmation of independence (*Schedule 1A*) with the first draft of the relevant transaction documentation (see *listing rule* 2.9 (b)). It must be updated for any changes at any stage prior to admission of the relevant *securities*. Alternatively, a written confirmation of “no material change” to the *Schedule 1A* must be given to the *UKLA* on the day of approval of the relevant *circular*, *listing particulars* or other document.
- 4.16.2 *Schedule 1A* requires disclosure about two areas: the *sponsor’s* interests in an *issuer* and the *sponsor employees’* interests in an *issuer*.
- 4.16.3 The *UKLA* recognises that many *sponsors* may be involved in business activities other than *sponsor* activities. The confirmation of independence given in *Schedule 1A* may therefore be given to the *UKLA* by one area of a *sponsor* or by a *sponsor* that is part of a larger organisation. In such circumstances the relevant *sponsor* must confirm to the *UKLA* that there are effective “Chinese walls” and established arrangements in place to prevent the flow of information between the two or more business areas. The *Schedule 1A* confirmation of independence may then be made only by reference to the information within the sphere of knowledge of the directors, partners or employees who are involved in the *sponsor* activities of the *sponsor*. The *sponsor’s group* compliance department must countersign the *Schedule 1A* and must also include information deemed to be within the public domain.
- 4.16.4 A *sponsor* should consider whether any *sponsor employee*, who has a material interest in an *issuer*, and who is directly involved in providing *sponsor services* to such *issuer* should be permitted to take part in the activities of the *sponsor* in relation to such *issuer*. Whether a *sponsor employee* has a material interest in an *issuer* should be decided (usually by the *sponsor*) by reference to the relevant *sponsor employee’s* overall shareholdings/wealth. However, the *sponsor* should also consider whether the holdings affect the independence of the *sponsor* itself in relation to the transaction. If *Schedule 1A* reveals that a *sponsor employee* is interested in an *issuer* or another *company* in the *issuer’s group* and the *sponsor* has indicated the *sponsor employee* can work on the relevant transaction, then the interests must be disclosed in aggregate in the relevant transaction document. In exceptional circumstances the *UKLA* may, if it considers the *sponsor employee’s* interest in an *issuer* to be material, require a *sponsor employee* to take no part in the provision of *sponsor services* by the *sponsor* to the *issuer*.
- 4.16.5 Directorships, consultancies or other agreements for the provision of services between a *sponsor employee* and an *issuer* or a member of its group prevent the *sponsor employee* from taking part in the *sponsor’s* activities in relation to such *issuer*. In addition, *sponsors* should consider whether such relationships affect their independence for example if the relevant *sponsor employee* is in a senior board position within the relevant

*sponsor* or if there are a large number of such relationships between *sponsor employees* and the relevant *issuer*.

4.16.6 The *UKLA* may require any information included on the *Schedule 1A* to be included in the relevant transaction document. In particular, if the *UKLA* agrees that a *sponsor* is independent of an *issuer* even though it has an interest in a class of share, debt or loan capital of the *issuer* or any other *company* in the *issuer's* group (see paragraph 4.15 above) the *UKLA* may require disclosure of the *sponsor's* interests in the relevant *circular*, *listing particulars* or other document.

4.16.7 If the *UKLA* does not notify the *sponsor*, within 5 *business days* of receipt of the *Schedule 1A*, of any concerns it has in relation to any matters disclosed in *Schedule 1A*, a *sponsor* is entitled to assume that the *UKLA* has no such concerns. For the avoidance of doubt, the 5 *business days* will start again if new matters are disclosed subsequently in a revised *Schedule 1A*.

#### **4.17 Fees**

4.17.1 Fees are payable on application for approval as a *sponsor* and for continued inclusion on the *list of sponsors* (see Chapter 12).

#### **4.18 List of sponsors**

4.18.1 The *list of sponsors* will be published on the *website*.

#### **4.19 Cancellation of approval as a sponsor**

4.19.1 Subject to the *statutory notice* regime the *UKLA* may cancel a *sponsor's* approval. The *UKLA* will do this only if it considers that the *sponsor* no longer meets the criteria for approval as a *sponsor* set out in Chapter 2 of the *listing rules*.

4.19.2 The power to cancel approval as a *sponsor* is one of a variety of regulatory tools that the *UKLA* may employ to help it achieve its regulatory functions. The *UKLA's* effective use of this power will help ensure high standards of regulatory conduct by preventing a *sponsor*, who does not meet the criteria for approval as a *sponsor*, from continuing to perform *sponsor services*.

#### **4.20 Procedure for cancellation of approval as a sponsor**

4.20.1 Decisions on whether to cancel a *sponsor's* approval are taken by the *RDC* following the procedures set out in Chapter 10.

4.20.2 Sections 393 and 394 of the *Act* confer additional procedural rights relating to third parties and to disclosure of *UKLA* material. These rights apply in *warning notice* and *decision notice* cases concerning cancellation of approval as a *sponsor*. They do not apply to *warning notice* and

*decision notice* cases concerning application for approval as a *sponsor*. The procedures in relation to third party rights are set out in Chapter 10.

#### **4.21 Policy on cancellation of approval as a sponsor**

4.21.1 The *UKLA* will cancel a *sponsor's* approval if it considers that the *sponsor* no longer meets the criteria necessary for approval as a *sponsor* under the *listing rules*.

4.21.2 The *UKLA* recognises that its decision to cancel a *sponsor's* approval may have a substantial impact on the *sponsor* concerned. When it considers whether to cancel *sponsor's* approval it will take account of all relevant factors, including, but not limited to, the matters set out below:

- (1) any matter which it could take into account if it were considering an application for approval as a *sponsor* made under section 88(3)(d) of the *Act*; and
- (2) the compliance record of the *sponsor*.

#### **4.22 The effect of a decision to cancel approval as a sponsor**

4.22.1 Unless the decision has been referred to the *Tribunal*, the *RDC's* decision to cancel the approval of a *sponsor* will come into effect on the date specified in the *decision notice* and confirmed in the *final notice*. Where the decision has been referred to the *Tribunal*, the *UKLA* may not take (under section 133(9)) of the *Act*) the action specified in the *decision notice* until that reference, and any appeal against the *Tribunal's* decision, has been finally disposed of (see Chapter 10).

#### **4.23 The UKLA's approach to the monitoring of sponsors**

4.23.1 The *UKLA's* approach to the monitoring of *sponsors* is based on the extent to which the *UKLA* believes they may impact upon the factors set out in paragraph 1.3.5 to 1.3.7 above. This encompasses the impact of such risks were they to crystallise and the probability of their doing so.

4.23.2 The purpose of taking a risk-based approach is to enhance the efficiency and effectiveness of the process of monitoring. In particular this approach permits a matching of the intensity of the *UKLA's* monitoring effort with the degree of risk posed by a *sponsor*.

#### **4.24 The UKLA's monitoring tools**

4.24.1 The *UKLA* uses a variety of tools to monitor whether a *sponsor*, once approved as such, remains in compliance with the *listing rules* applicable to it. Any information or documents requested by the *UKLA* will be used to determine whether a sponsor is and remains in compliance with the *listing rules* applicable to it.

4.24.2 These tools include:

- (1) desk based reviews of transactions;
- (2) reviews of referrals;
- (3) liaison with other agencies or regulators (including the *FSA* acting under any of its statutory powers);
- (4) meetings with management and other representatives from a *sponsor*;
- (5) on-site visits (see paragraph 4.24.3);
- (6) reviews of notifications (including the *sponsor's* annual confirmation that it remains eligible to be a *sponsor* in accordance with *listing rule 2.4* and in particular that it has four *eligible employees* that continue to be eligible in accordance with paragraph 4.6); and
- (7) reviews of past services provided, and documentation produced, in relation to any services provided pursuant to the *listing rules* by a *sponsor*.

4.24.3 Representatives of the *UKLA* may, after notification and with the consent of the *sponsor*, make monitoring visits to *sponsors* on a periodic and ad hoc basis.

4.24.4 The *UKLA* may also seek information by electronic communication, telephone or in writing. Any information or document provided following such a request is provided on a voluntary basis.

4.24.5 The *UKLA* will give reasonable notice to a *sponsor* of any requests for meetings or provision of access to its books and records. Any information or document provided following such a request is provided on a voluntary basis.

## **4.25 Investigation of sponsors**

4.25.1 The *UKLA* may appoint an *investigator* when it considers there are circumstances suggesting a breach of the *listing rules* by a *sponsor* (see Chapter 7).

## **4.26 Discipline of sponsors**

4.26.1 Where the *UKLA* determines that a *sponsor* has breached the *listing rules* it may decide to seek a disciplinary sanction against the *sponsor* in accordance with the *guidance* set out in Chapter 8. Disciplinary sanctions are one of the regulatory tools available to the *UKLA*. They are not the only tool, and it may be possible to address many instances of non-



compliance without resorting to disciplinary action. However, the effective and proportionate use of the *UKLA's* powers to enforce the requirements of the *listing rules*, and discipline those who breach the *listing rules*, will play an important role in supporting the *UKLA's* fulfilment of its regulatory functions. Further information in relation to the discipline of *sponsors* for breaches of the *listing rules* is set out in Chapter 8.

#### **4.27 Notifications**

- 4.27.1 When a *sponsor* is required under the *listing rules* to notify the *UKLA* of any matter it may do so in the first instance by telephone, e-mail or facsimile. Notifications in accordance with *listing rules* 2.28 should always be confirmed in writing.
- 4.27.2 Notifications should be addressed to the Sponsor Regulation Team, The UK Listing Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS.
- 4.27.3 Failure to make full and timely notification to the *UKLA* may result in disciplinary action being sought against the *sponsor* (see Chapter 8).

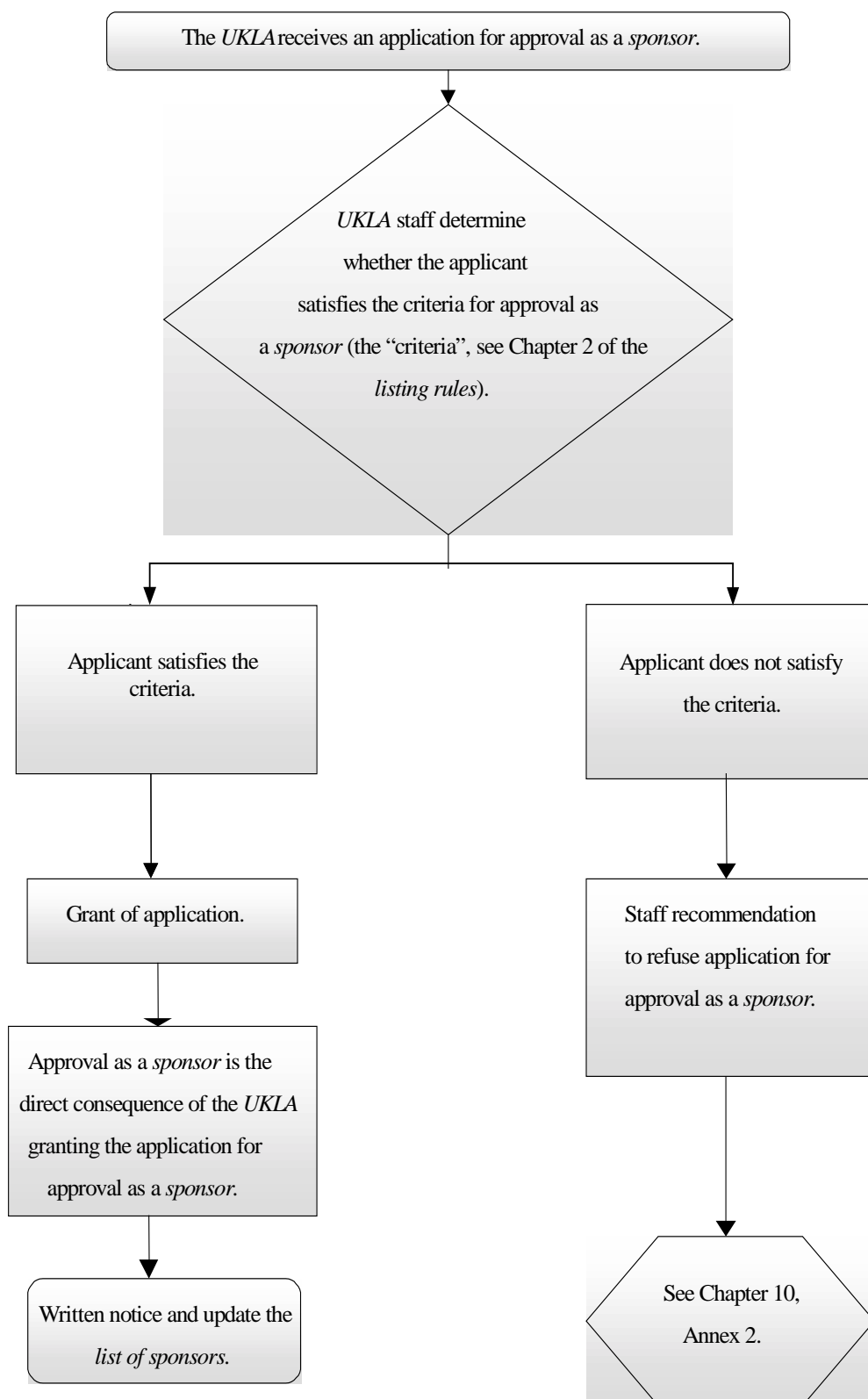
#### **4.28 Information requested on behalf of other regulators**

- 4.28.1 The *UKLA* may ask *sponsors* to provide it with information at the request of or on behalf of other regulators to enable them properly to discharge their functions. Those regulators may include *overseas* regulators and the *Takeover Panel*. The *UKLA* may also, without notifying a *sponsor*, pass information to those regulators. The *UKLA's* disclosure of information to other regulators will be subject to the restrictions on the disclosure of confidential information contained in section 348 of the *Act* (Restrictions on disclosure of confidential information by the FSA etc.) and regulations made under section 349 of the *Act* (Exceptions from section 348).
- 4.28.2 The *UKLA* expects *sponsors* to co-operate with it in providing information to other regulators.

#### **4.29 Other relevant sponsor guidance**

- 4.29.1 For *guidance* on individual *guidance*, *variations*, information gathering and investigation powers, discipline, decision making, interaction with the market abuse regime and fees see Chapters 5, 6, 7, 8, 10, 11 and 12.

**Annex 1**  
**Summary of procedures on an application for approval as a sponsor**



## CHAPTER 5

### 5. INTERPRETATION OF LISTING RULES AND REQUESTS FOR INDIVIDUAL GUIDANCE

#### 5.1 Application of this Chapter

- 5.1.1 This Chapter applies to every *issuer*, *director*, former *director* and *sponsor* as well as to any other interested party (irrespective of whether or not they are subject to the *listing rules*).

#### 5.2 Purpose of this Chapter

- 5.2.1 This Chapter gives *guidance* on the UKLA's procedures regarding interpretation of *listing rules* (including *listing rules* modified or subject to a *variation*). It sets out the UKLA's approach to giving *guidance* to individuals who request such *guidance*. It also includes the procedures put in place to deal with disputes as to the correct interpretation of the *listing rules*.

#### 5.3 Individual guidance

- 5.3.1 It will not always be clear to an *issuer*, *director*, former *director* or *sponsor* whether or not its action or proposed action (or inaction or proposed inaction) will be in accordance with the *listing rules*. The UKLA has established the UKLA Helpdesk to provide assistance in such cases.
- 5.3.2 The UKLA Helpdesk can provide assistance by responding to oral and written enquiries from *issuers*, *directors*, former *directors*, *sponsors* (or, where appropriate, agents on their behalf) or any other person about any matter relating to the *listing rules*.
- 5.3.3 In order for the UKLA to be able to give the most accurate and reliable *guidance*, the person requesting *guidance* should supply all material information that would be needed to give an answer to the particular query. Where not all material information is provided the UKLA will not be bound by any *guidance* given, and the person seeking *guidance* should not rely upon any *guidance* given. The UKLA may seek to obtain the facts that it considers to be material to the circumstances in relation to which *guidance* is being sought. The UKLA will then be properly informed in order to make a judgement about the nature of appropriate *guidance*.

#### 5.4 “No name” cases

- 5.4.1 Where a person requests *guidance* regarding how a particular *listing rule* should be interpreted, but is unwilling or unable to say to whom the advice relates, the UKLA will not be bound by any *guidance* that it gives in response to the request.

- 5.4.2 In such circumstances the *UKLA* will still endeavour to give appropriate *guidance*. But, the person requesting *guidance* will not be able to rely upon it.

## **5.5 Written or oral requests**

- 5.5.1 The *UKLA* will give *guidance* in response to oral requests. However, where the circumstances underlying the request are complex or the *UKLA* considers it preferable, the *UKLA* may seek a written statement of the facts and the nature of the request for *guidance*. Where such a written statement has been requested by the *UKLA*, the *UKLA* will not be bound by any *guidance* given in response to the oral request for *guidance*.

- 5.5.2 Where the request has been made in writing, the *UKLA* may give its *guidance* in writing. However, the *guidance* will most often be given orally rather than in writing.

## **5.6 What reliance can be placed on UKLA responses to request for guidance?**

- 5.6.1 The *UKLA* will consider itself bound by *guidance* that it has given, where the person making the request for *guidance* has provided all material information. Material information will usually include, but is not limited to:

- (a) the *listing rule* in relation to which *guidance* is sought;
- (b) the name of the person to whom the *listing rule* in relation to which *guidance* is being sought applies, or will apply;
- (c) the nature of the transaction, if any, that has been carried out, or is contemplated; and
- (d) a description of the factual circumstances underlying the request and the reasons for the request, in writing where this has been requested.

- 5.6.2 Where the *UKLA* gives *guidance* in response to a request containing all material information, the person requesting the *guidance* is entitled to rely upon it, whether the *guidance* was given in writing or orally.

- 5.6.3 All telephone conversations with the *UKLA* are recorded. A brief written record of what was discussed and any *guidance* given will generally be made by *UKLA* staff. Both this written record and the tape recording of the telephone conversation act as a protection, both for the person requesting *guidance* and to the *UKLA*. Where there is a dispute about what facts were presented or what *guidance* was given, the written or telephonic record will assist the process of resolving any misunderstandings that have arisen.

- 5.6.4 When a written request for *guidance* setting out the relevant facts has been sought by the *UKLA*, this will be the basis on which *guidance* is given rather than any prior oral requests. If there is any change to the circumstances set out in the written request before the *guidance* has been given, this should be made clear immediately by the person making the request for *guidance* (in writing if so requested).

## **5.7 Disputes as to the correct interpretation or application of listing rules**

- 5.7.1 From time to time, the *UKLA*'s interpretation of a *listing rules* or how it should be applied is not accepted. The majority of disputes between an *issuer*, *director*, former *director* or *sponsor* and the *UKLA* are settled between the *UKLA* staff member dealing with the *issuer*, *director*, former *director* or *sponsor* and that *issuer*, *director*, former *director* or *sponsor*.
- 5.7.2 Where an *issuer*, *director*, former *director* or *sponsor* does not accept the view of the *UKLA*, they can seek to have the initial view of the *UKLA* reviewed. This review may take the form of a meeting of senior staff within the *UKLA* (referred to as a "Morning Meeting"). At such a meeting, the request for *guidance* and the application of the *listing rules* in the particular circumstances involved will be discussed.
- 5.7.3 The decision of this meeting will be communicated to the *issuer*, *director*, former *director* or *sponsor*. A decision as to the interpretation or application of a *listing rule* by such a meeting should be taken to be the *UKLA*'s considered view on the matter.

## **5.8 Review process**

- 5.8.1 If an *issuer*, *director*, former *director* or *sponsor* still does not accept the view of the *UKLA*, they can refer this decision to the Listing Authority Review Committee. This committee has powers delegated by the *FSA* Board to consider such referrals. A managing director of the *FSA* sits as chair to this committee. The other members will normally include the Director of Listing, the General Counsel of the *FSA* and two people drawn from a pool of practitioners with suitable listing experience. The *issuer*, *director*, former *director* or *sponsor* will be able to make representations to this committee, either orally or in writing. The Listing Authority Review Committee will re-examine the circumstances of the case. Any decision of this committee should be regarded as final and will be determinative of the *UKLA*'s opinion as to the interpretation or application of the *listing rule* in question.
- 5.8.2 A review by the Listing Authority Review Committee of a decision of the *UKLA* may also be undertaken at the request of a third party directly affected by that decision.

## CHAPTER 6

### 6. DISPENSATION OR MODIFICATION (“VARIATIONS”) OF THE APPLICATION OF THE LISTING RULES, THE ACT OR THE POS REGS

#### 6.1 Application of this Chapter

6.1.1 This Chapter relates to each *issuer* and *sponsor* (or, where appropriate, an agent acting on behalf of an *issuer* or *sponsor*) that applies for, consents to or has otherwise been granted a *variation* of the *listing rules*.

6.1.2 This Chapter also relates, so far as applicable, to:

- (1) a person who (under the *listing rules* made pursuant to section 87 of the *Act* (Approval of prospectus where no application for listing)) submits a prospectus for approval by the *UKLA* where no *application for listing* is made in respect of the *securities* to which the prospectus relates; or
- (2) a person who applies to the *UKLA* for authorisation, under Regulation 11(3) of the *POS Regs*, of the omission from a *POS Regs prospectus* or *supplementary POS Regs prospectus* of information whose inclusion would otherwise be required by the *POS Regs*.

6.1.3 The *guidance* in this Chapter is without prejudice to any specific *guidance* given in the form of a guidance note and annexed to this guidance manual.

#### 6.2 Purpose of this Chapter

6.2.1 Under section 82 of the *Act* (Exemptions from disclosure), the *UKLA* may authorise the omission from *listing particulars* of information which would otherwise be required by section 80 of the *Act* (General duty of disclosure in listing particulars) or section 81 of the *Act* (Supplementary listing particulars) on specific grounds.

6.2.2 Under *listing rule* 5.18 the *UKLA* may authorise the omission of information which is applicable and required to be included in *listing particulars*, by the *listing rules*, on specific grounds.

6.2.3 Under *listing rule* 9.8 (reflecting Article 68 of the *Consolidated Admissions and Reporting Directive*) if an *issuer* considers that disclosure to the public of information required by *listing rules* 9.1 and 9.2 to be notified to an *RIS* might prejudice the *issuer's* legitimate interests, the *UKLA* may grant a dispensation from the relevant requirement.

6.2.4 Under section 101 of the *Act* (Listing Rules: general provisions), the *UKLA* may, subject to being authorised so to do in the *listing rules*,

dispense with or modify the application of the *listing rules* in particular cases and by reference to any circumstances.

6.2.5 Under *listing rule* 1.11 the UKLA may (subject to the terms of the *Directives* and the *Act*) dispense with or modify the application of the *listing rules* (either unconditionally or subject to conditions) in such cases and by reference to such circumstances as it considers appropriate.

6.2.6 Under Regulation 11(3) of the *POS Regs*, the UKLA may, on specific grounds, authorise the omission of information from a *POS Regs prospectus*, or *supplementary POS Regs prospectus*, whose inclusion would otherwise be required by the *POS Regs*.

### **6.3 Applying for a variation**

6.3.1 Annex 1 to this Chapter contains details of the *variation* requests that the UKLA:

- (1) always expects to be applied for in writing; and
- (2) normally expects to be applied for in writing.

6.3.2 *Variation* applicants may apply for any *variation* in writing. The items listed in Annex 1 are only those which the UKLA always or normally expects to be made in writing.

6.3.3 A written *variation* request must:

- (1) contain a clear explanation, based on a thorough researching of the facts, of why the *variation* applicant requests a *variation*. This must include details of any special requirements, for example the date by which the *variation* is required, and all relevant information that the *variation* applicant reasonably believes should be brought to the UKLA's attention;
- (2) contain any statement that is specifically required by the *listing rules* to be included in a particular *variation* request; and
- (3) attach a copy of any document that is relevant to the *variation* request.

6.3.4 A statement of the kind referred to in paragraph 6.3.3(2) would include, for example, a statement required under *listing rule* 5.22(d) to the effect that the contract is a material contract not in the ordinary course of business.

6.3.5 The UKLA will acknowledge promptly that it has received the *variation* request and will normally give an estimated date for its determination of the *variation* request ('the determination'). Before giving such

determination, the *UKLA* may request any further information it may need in order to consider the merits of the *variation* request.

6.3.6 The time taken for the determination will depend on the complexity of the issue on which the *variation* applicant is seeking the *variation*, and will normally be quicker where the *variation* applicant has provided, at the outset, an adequate description of the reasons and circumstances that have given rise to the request.

6.3.7 *Variation* applicants are encouraged to make early contact with the *UKLA* as soon as they become aware that a *variation* request is being or will be made. In particular:

- (1) if the *variation* is in relation to the omission, dispensation or modification of a requirement to include information in any document that under the *listing rules* is required to be approved by the *UKLA* before it is published, the written *variation* request must normally be received not less than 10 *clear business days* before the proposed publication of the document;
- (2) if the *variation* is in relation to the omission of all or part of a material contract from display, the written request must normally be received not less than 10 *clear business days* before the proposed time when such contract is to be put on display; and
- (3) if the *variation* is in relation to any continuing obligation of the *listing rules* the written request must normally be received not less than 5 *clear business days* before the *variation* applicant wishes the *variation* to become effective.
- (4) an application in relation to the omission from a *POS Regs prospectus* or *supplementary POS Regs prospectus* under Regulation 11(3) of the *POS Regs*, must normally be received not less than 10 *clear business days* before the proposed publication date of the *POS Regs prospectus* or *supplementary POS Regs prospectus*.

6.3.8 When deciding whether to grant a *variation*, the *UKLA* will take account of the circumstances and reasons outlined in the *variation* request and any further information supplied. In some cases, the *UKLA* will not vary a *listing rule* completely but rather direct that there should be certain modifications to a *listing rule*, for example that it will apply except in a particular set of circumstances. In addition, the *UKLA* may impose conditions on a *variation*, for example an expiry date. A *variation* will apply from the date indicated by the *UKLA* and will not normally apply retrospectively.

6.3.9 Where the *UKLA* decides not to grant a *variation*, it will explain the reasons for the rejection of the *variation* request.



- 6.3.10 At any time in the *variation* application process, a *variation* applicant may withdraw its request. The *UKLA* will expect the *variation* applicant to explain the reasons for the withdrawal.

#### **6.4 To whom should the variation request be made?**

- 6.4.1 The written *variation* request, containing all the information required under paragraph 6.3 and, if applicable, 6.10 should be addressed to a member of *UKLA* staff who has been involved with any matter to which the request relates or, in the absence of such a person, marked for the attention of the Director of Listing.

- 6.4.2 A *variation* request that is not in writing should in the first instance be made to a member of *UKLA* staff who has been involved with any matter to which the request relates or, in the absence of such a person, to the *UKLA* helpdesk on 020 7943 0333. The *UKLA* may require an oral request to be substituted or supplemented by a written request.

#### **6.5 Decisions relating to variations**

- 6.5.1 The procedures relating to the *UKLA* decision on whether or not to grant a *variation* will be such as to ensure that a member of the *UKLA* staff at an appropriate level of seniority takes the decision.

- 6.5.2 Where the *variation* applicant does not accept the initial view of the *UKLA*, the *variation* applicant can seek to have the view considered further by the *UKLA* and the Listing Authority Review Committee (see paragraphs 5.7 and 5.8).

#### **6.6 Communication of variation decisions**

- 6.6.1 When a decision in relation to a *variation* request has been made by the *UKLA* the *variation* applicant shall be promptly informed of the decision, although this communication need not be in writing.

#### **6.7 Amending and revoking variations**

- 6.7.1 Once the *UKLA* has granted a *variation*, it may amend it with the *variation* applicant's consent (such consent normally requiring a letter or signed memorandum from a person with appropriate authority to give the consent to the amendment), or at the *variation* applicant's request. If the *variation* applicant wishes to amend a *variation* it should follow the procedures set out in paragraph 6.3 and, if applicable paragraph 6.10, giving reasons for the request.

- 6.7.2 The *UKLA* will monitor closely all *variations* it grants and will vary or revoke any that it considers is no longer relevant or appropriate. The *UKLA* will normally give notice of its intention to revoke a *variation* and give the *variation* applicant concerned an opportunity to make representations to the *UKLA*. However, the *UKLA* may vary or revoke a

*variation* (and take other action, such as disciplinary action, if considered appropriate) by giving the *variation* applicant notice, which takes effect immediately, if it considers this necessary or expedient. In the event of such an immediate change to or revocation of a *variation*, the *variation* applicant may subsequently make representations to the UKLA.

## **6.8 Reliance on variations**

6.8.1 If the UKLA grants a *variation*, then the relevant *listing rule* will not apply to the *variation* applicant or, if relevant, will be modified in its application to the *variation* applicant, in respect of the specified circumstances to which the *variation* relates, save that:

- (1) if a *variation* directs that a *listing rule* is to apply to a *variation* applicant with such modifications as may be specified, then a breach of the *listing rule* as modified could lead to disciplinary action being taken by the UKLA; and
- (2) if a *variation* is granted subject to a condition and that condition is not met, a breach of the *listing rule* may lead to disciplinary action being taken by the UKLA.

## **6.9 Notification of altered circumstances relating to variations**

6.9.1 *Variation* applicants who have applied for or have been granted a *variation* are reminded of their obligations under *listing rule* 1.12 to notify the UKLA immediately they become aware of any matter which is material to the relevance or appropriateness of the *variation*.

## **6.10 Procedures for applying for variations in specific circumstances**

6.10.1 The UKLA may, under *listing rule* 5.18, authorise the omission of information which is applicable and required to be included within *listing particulars* by the *listing rules*, on one or more of the following grounds:

- (1) the information is of minor importance only and is not such as will influence assessment of the assets and liabilities, financial position, profits and losses and prospects of the *issuer*;
- (2) disclosure would be contrary to the public interest; or
- (3) disclosure would be seriously detrimental to the *issuer* and omission is not likely to mislead investors with regard to the facts and circumstances, knowledge of which is essential for the informed assessment of the *securities* in question.

6.10.2 In the case of an *overseas company* the UKLA, when considering whether to authorise the omission of information required by Chapter 5 of the *listing rules* to be included in *listing particulars*, but which is not required

by the *Consolidated Admissions and Reporting Directive*, will in addition to those factors listed in paragraph 6.10.1 have regard to:

- (1) whether the *overseas company* is listed on a regulated regularly operating recognised open market and conducts its business and makes disclosure according to internationally accepted standards; and
- (2) the nature and extent of the regulation to which the *overseas company* is subject in its country of incorporation.

6.10.3 Under section 82 of the *Act* (Exemptions from disclosure) the *UKLA* may also authorise the omission from *listing particulars* of information which would otherwise be required by section 80 of the *Act* (General duty of disclosure in listing particulars) or section 81 of the *Act* (Supplementary listing particulars) on one or more of the following grounds:

- (1) that its disclosure would be contrary to the public interest;
- (2) that its disclosure would be seriously detrimental to the *issuer* (save that this shall not extend to information which a person considering acquiring *securities* of the kind in question would be likely to need in order not to be misled about the facts which it is essential for him to know in order to make an informed assessment); or
- (3) in the case of *securities* of a kind specified in the *listing rules*, that its disclosure is unnecessary for persons of the kind who may be expected normally to buy or deal in *securities* of that kind.

6.10.4 As described in paragraph 6.10.3(3) in relation to certain issues of specialist securities (see *listing rules* 23.2A and 24.0) the *UKLA* has exercised its power under section 82(1)(c) of the *Act* (Exemptions from disclosure).

6.10.5 The *UKLA* may, under Regulation 11(3) of the *POS Regs*, authorise the omission of information from a *POS Regs prospectus*, or *supplementary POS Regs prospectus*, whose inclusion would otherwise be required by the *POS Regs*, if:

- (1) the information is of minor importance only, and is not likely to influence assessment of the issuer's assets and liabilities, financial position, profits and losses and prospects; or
- (2) disclosure of that information would be seriously detrimental to the issuer and its omission would not be likely to mislead investors with regard to the facts and circumstances necessary for an informed assessment of the securities.

6.10.6 In addition to the requirements set out in paragraph 6.3 a written *variation* request:

- (1) under *listing rule* 5.18 (pursuant to which the *UKLA* may authorise the omission of information from *listing particulars* which is applicable and required by *listing rules*), must also include a clear statement (together with a clear explanation) of why one or more of the grounds stated in paragraph 6.10.1 applies such as to enable the *UKLA* to decide whether the criteria set out in that paragraph have been satisfied;
- (2) under section 82 of the *Act* (pursuant to which the *UKLA* may authorise the omission of information from *listing particulars* inclusion of which would otherwise be required under sections 80 or 81 of the *Act*), must also include a clear statement (together with a clear explanation) of why one or more of the grounds stated in paragraph 6.10.3 applies such as to enable the *UKLA* to decide whether the criteria set out in that section have been satisfied;
- (3) under *listing rule* 5.22 (pursuant to which the *UKLA* may allow all or part of a material contract to be withheld from public inspection), must also include:
  - (a) a statement as to why in the opinion of the *issuer* one or more of the grounds in paragraph 6.10.1 applies;
  - (b) enclose a copy of the contract in question or, if the contract is not reduced to writing, a memorandum giving full particulars of its terms, clearly identifying (on the face of the contract) those parts of the contract to which the *variation* request relates; and
  - (c) include a confirmation by the *issuer* that the contract is a material contract not in the ordinary course of business;
- (4) under *listing rule* 8.9 (pursuant to which the *UKLA* may allow the publication of *listing particulars* and, where relevant, the insertion of a formal notice in a national newspaper to be delayed in certain circumstances), must be made by a person specified in *listing rule* 8.9;
- (5) under *listing rules* 12.58 and 17.63 (pursuant to which the *UKLA* may authorise the omission of certain information from a half yearly report), must also include a clear statement (together with a clear explanation) of why one or more of the grounds stated in paragraphs 6.10.1(2) or (3) applies such as to enable the *UKLA* to decide whether the criteria set out in that paragraph have been satisfied; and

- (6) in respect of *variations* relating to the omission, dispensation or modification of information which is applicable and required by the *listing rules* to be included in a *circular*, must also, in the first instance, contain a clear statement (together with a clear explanation) of why one or more of the grounds stated in paragraph 6.10.1 applies such as to enable the *UKLA* to decide whether the criteria set out in that paragraph have been satisfied.

# Annex 1<sup>1</sup>

Variations that the UKLA always expects to be requested in writing			Variations that the UKLA normally expects to be requested in writing	
<i>Listing rule</i>			<i>Listing rule</i>	
3.6A	6.L.8(d)	17.54	3.3.(b)	21.9(a)
3.11	6.N.1	17.63		
3.13			4.19(c)	22.30(b)
3.15	8.9	18.19		22.30(e)
3.17			10.6	22.32
3.19	9.8	19.17	10.17(d)	
3.20(e)			10.48	23.11(q)
3.34	12.40	20.1(a)		23.30
	12.42(c)		12.3(a)(i)	23.51(q)
4.26	12.42(e)	21.20(j)	12.19	23.70
4.30(b)	12.47(b)			
	12.48	23.11(j)(b)	13.12	24.5
5.2	12.55	23.11(x)		24.8
5.17	12.58	23.22(a)	17.68(f)	
5.18	12.59	23.22(h)	17.77	26.3(b)
5.20		23.32		
5.22	17.3	23.58	19.11	
	17.7	23.73	19.17	
6.E.11(d)	17.16	23.82		
6.G.1	17.29			
<i>Act</i>				
82				
<i>POS Regs</i>				
Regulation 11(3)				

<sup>1</sup> See paragraph 6.3.2 for scope of this Annex

## CHAPTER 7

### 7. INFORMATION GATHERING AND INVESTIGATION POWERS

#### 7.1 Application of this Chapter

- 7.1.1 This Chapter applies to *issuers, sponsors, directors*, and former *directors* who may be the subject of the *UKLA's* investigations or who may be required to provide information to the *UKLA*.

#### 7.2 Purpose of this Chapter

- 7.2.1 The purpose of this Chapter is to explain the *UKLA's* procedures and policy on how it will use its powers to gather information and investigate in support of its monitoring and enforcement functions.

#### 7.3 Introduction

- 7.3.1 This Chapter is divided into two parts. The first part of the Chapter contained in paragraph 7.4 relates to the *UKLA's* powers to gather information under *listing rule* 1.3, and the procedures and policy adopted by the *UKLA* in relation to the use of such powers.

- 7.3.2 The second part of the Chapter contained in paragraphs 7.5 to 7.15 relates to the provisions of the *Act*, as well as the policy and procedures adopted by the *UKLA*, and by an *investigator* appointed by the *UKLA*. It outlines:

- (1) the *UKLA's* powers to appoint an *investigator*;
- (2) the powers of an *investigator* appointed by the *UKLA*;
- (3) the *UKLA's* policy on the use of powers, under the *Act*, by its appointed *investigators* in each of the following circumstances:
  - (a) to obtain information from *issuers, directors, former directors, sponsors* and others;
  - (b) to conduct investigations of *issuers, directors, former directors, sponsors*; and
  - (c) to conduct investigations into suspected breaches of sections 83 (Registration of listing particulars), 85 (Publication of prospectus) and 98 (Advertisements etc. in connection with listing applications) of the *Act*;
- (4) the *UKLA's* powers to control and direct investigations;

- (5) the provisions of the *Act* and the *UKLA's* procedures and policy on:
  - (a) notification to *issuers, directors, former directors* and *sponsors* under investigation;
  - (b) *protected items* and the admissibility of statements made to an *investigator*;
  - (c) publicity;
  - (d) use of voluntary interviews rather than compulsory ones; and
  - (e) interview procedures;
- (6) the *UKLA's* powers to enforce requirements on persons to co-operate with its information gathering and investigative powers; and
- (7) the *UKLA's* powers to disclose information it gathers.

#### **7.4 The UKLA's general powers to gather information pursuant to the listing rules**

7.4.1 The *UKLA's* general powers to gather information pursuant to the *listing rules* are contained in *listing rule 1.3*.

7.4.2 Under *listing rule 1.3*, *issuers* must provide to the *UKLA* without delay:

- (a) all the information and explanations that the *UKLA* may reasonably require for the purpose of deciding whether to grant listing;
- (b) all the information that the *UKLA* considers appropriate in order to protect investors or ensure the smooth operation of the market; and
- (c) any other information or explanations that the *UKLA* may reasonably require for the purpose of verifying whether *listing rules* are being and have been complied with.

7.4.3 The information gathering powers set out in paragraph 7.4.2 above may be used in a broad range of circumstances, including but not limited to:

- (1) ascertaining whether an *issuer* is in continuous compliance with the *listing rule* requirement to publish, without delay, information that is not public knowledge and which may lead to substantial movement in the price of its *securities* (for example checking whether press stories contain accurate information);



- (2) ascertaining whether an *issuer* will be able to comply with the *listing rule* requirement to publish information relating to its *securities* within designated deadlines (for example financial reports); and
- (3) ascertaining whether an *issuer* has complied with the *listing rule* requirement to publish prescribed information (for example the content of financial reports in relation to *directors'* share dealings).

7.4.4 In gathering information under *listing rule* 1.3, the *UKLA* will contact the *issuer's* agents or the *issuer* directly, usually by telephone in the first instance. The majority of calls to and from the *UKLA* will be recorded for regulatory purposes. If this is a concern to any caller, they should establish whether this is the case at the start of the relevant call. In some circumstances, the *UKLA* may also require the *issuer* or its advisers to provide information in writing.

7.4.5 The *UKLA* will not usually make public the fact that it is (or is not) exercising its information gathering powers in relation to an *issuer* or *sponsor*.

## **7.5 The UKLA's powers to appoint an investigator**

7.5.1 Section 97 of the *Act* (Appointment by competent authority of persons to carry out investigation) relates to the appointment of an *investigator* to conduct investigations into *issuers*, *directors*, former *directors* and *sponsors*. The *UKLA* may appoint one or more competent persons to conduct an investigation on its behalf if it appears to the *UKLA* that there are circumstances suggesting that:

- (1) there may have been a breach of the *listing rules* or that a person who was at the material time a *director* of an *issuer* has been knowingly concerned in a breach of the *listing rules* by that *issuer*; or
- (2) there may have been a breach of sections 83, 95 or 98 of the *Act*.

7.5.2 The *UKLA's* policy on how it will use this power in support of its enforcement functions is set out in paragraph 7.7.

## **7.6 Powers of an investigator appointed by the UKLA**

7.6.1 An *investigator* may require the person who is the subject of the investigation or any person connected with the person under investigation:

- (1) to attend before the *investigator* at a specified time and place to answer questions; or

- (2) otherwise to provide such information as the *investigator* may require.
- 7.6.2 The *investigator* may also require any person to produce at a specified time and place any specified documents or documents of a specified description.
- 7.6.3 The *investigator* may impose these requirements only so far as he reasonably considers the question, provision of information or production of the documents, to be relevant to the purposes of the investigation.
- 7.6.4 For these purposes, a person is connected with the person under investigation ('A') if he is or has at any relevant time been:
  - (1) a member of A's group as defined in section 421 of the *Act* (Group); or
  - (2) a controller of A as defined in section 422 of the *Act* (Controller); or
  - (3) a *partnership* of which A is a member; or
  - (4) in relation to A, a person mentioned in Parts I or II of Schedule 15 to the *Act*.
- 7.6.5 An *investigator* has the power to require a person to produce a document, but if it appears that the document is in the possession of another person, the *investigator* may exercise that power in relation to that other person.
- 7.6.6 The person to whom the document is produced may take copies or extracts from the document, or require the person producing the document ('B') or any relevant person to provide an explanation of it. Under section 175(7) of the *Act* a relevant person means a person who:
  - (1) has been, or is, or is proposed to be a director or controller of B as defined in section 422 of the *Act*;
  - (2) has been or is an auditor of B;
  - (3) has been or is an actuary, accountant or lawyer appointed or instructed by B; or
  - (4) has been or is an employee of B.
- 7.6.7 If a person who is required to produce a document fails to do so, the *investigator* may require him to state, to the best of his knowledge and belief, where the document is.

**7.7 The UKLA's policy on appointing an investigator and exercising its investigation powers**

7.7.1 As set out in paragraph 7.5.1, the *UKLA* may appoint an *investigator* to carry out investigations. The *UKLA* will usually appoint a member of *FSA* staff as an *investigator*, as allowed by section 170(5) of the *Act*.

7.7.2 The *UKLA*'s primary aim will be to confirm whether the *listing rules* or relevant provisions of the *Act* (sections 83, 85 or 98) have been complied with and, if they have not, to determine the nature and extent of any breach.

7.7.3 The *UKLA* may be alerted to possible breaches by complaints from the public or investors, by referrals from prosecuting authorities or through its information gathering activities. It will assess on a case by case basis whether to carry out a formal investigation, after considering all the available information. Factors it will take into account are:

- (1) the elements of the suspected breach;
- (2) whether the *UKLA* considers that the persons concerned are willing to co-operate with it;
- (3) whether obligations of confidentiality inhibit individuals from providing information without the *UKLA*'s having recourse to its formal powers;
- (4) evidence and information needed to substantiate any suspected breach;
- (5) availability and accessibility of related information or evidence; and
- (6) any other factors, including those listed in paragraph 8.8 (so far as the *UKLA* considers them to be applicable).

7.7.4 The *FSA* (whether as *competent authority* or otherwise) will not always be the only investigating, enforcement or prosecuting authority with an interest in matters listed in section 97 of the *Act*. From time to time, other organisations including the Serious Fraud Office, the Department of Trade and Industry, the Police and the prosecuting authorities (both in the UK and overseas) may have an interest in such cases.

7.7.5 The *FSA* has agreed guidelines that will establish a framework for liaison and co-operation in cases where one or more of these authorities has an interest in prosecuting any aspect of a matter that the *UKLA* is considering for investigation or is investigating. These guidelines are set out in Annex 1G of Chapter 2 of the Enforcement Manual.

## **7.8 The UKLA's policy on direction and control of investigations**

7.8.1 The *UKLA* sees its investigation powers as essentially fact-finding powers. Consequently, it will ensure that its *investigators* use them primarily to obtain the information it needs in order to decide what further action, if any, may be appropriate in a particular case.

7.8.2 In practice, an *investigator* appointed under section 97 of the *Act* (Appointment by the competent authority of persons to carry out investigations) may not always deem it necessary to exercise their statutory powers. However, where they do so, they will at all times make this clear to those persons to whom their enquiries are addressed, and will inform those persons of the statutory requirements (see paragraph 7.9) and the possible penalties for failure to comply with these requirements (see also paragraph 7.13.4 on compulsory interviews and paragraph 7.14 on enforcement of requirements).

7.8.3 The *UKLA* has the power to direct an *investigator* so that it can control:

- (1) the scope of the investigation;
- (2) the period during which the investigation is to be conducted;
- (3) the conduct of the investigation; and
- (4) the reporting of the investigation.

7.8.4 Such a direction may, in particular:

- (1) confine the investigation to particular matters;
- (2) extend the investigation to additional matters;
- (3) require the *investigator* to discontinue the investigation or to take only specified steps; and
- (4) require the *investigator* to make an interim report or reports.

## **7.9 The UKLA's obligations, procedures and policy on notification to the person under investigation**

7.9.1 Section 170(2) of the *Act* requires the *UKLA* to give the person who is the subject of the investigation written notice that it has appointed an *investigator*.

7.9.2 Such a notice must:

- (1) specify the provisions under which, and as a result of which, it appointed the *investigator*; and

(2) state the reason for the *investigator's* appointment.

7.9.3 If there is a change in the scope or conduct of the investigation and, in the *UKLA's* opinion, the person subject to investigation is likely to be significantly prejudiced if not aware of this, that person must be given written notice of that change (see section 170(9) of the *Act*). It is impossible to give a definitive list of the circumstances in which a person is likely to be significantly prejudiced by not being made aware of the change in scope or conduct of an investigation. However, this may include situations where there may be unnecessary costs from dealing with an aspect of an investigation which the *UKLA* no longer intends to pursue or where a person may inadvertently incriminate himself by not knowing of the change in scope.

7.9.4 The *investigator* may be solely concerned with the *issuer* at the outset of the investigation rather than investigating a particular *director*, former *director* or *sponsor* at that stage. However, the *investigator* will always provide an indication of the nature and subject matter of the *UKLA's* investigation to those who are required to provide information to assist with the investigation.

7.9.5 However, if it becomes clear who the persons under investigation are, the *investigator* will normally notify them when it proceeds to exercise its statutory powers to require information from them.

## **7.10 Protected items, banking confidentiality and admissibility of statements**

7.10.1 This section sets out additional provisions that apply to investigations generally.

### Protected items

7.10.2 Section 413 of the *Act* (Protected Items) relates to *protected items*.

(1) Under section 413(1), a person may not be required under the *Act* to produce, disclose or permit inspection of *protected items*.

(2) *Protected items* are:

- (a) communications between a professional legal adviser and his client or any person representing his client which falls within section 413(3);
- (b) communications between a professional legal adviser, his client or any person representing his client and any other person that falls within section 413(3) (as a result of paragraph (b) of that subsection);
- (c) items which:

- (i) are enclosed with, or referred to in, such communications;
  - (ii) fall within section 413(3); and
  - (iii) are in the possession of a person entitled to be in possession of them.
- (3) A communication falls within section 413(3) if it is made:
  - (a) in connection with the giving of legal advice to the client; or
  - (b) in connection with, or in contemplation of, legal proceedings and for the purposes of those proceedings.
- (4) However, under section 413(4) a communication or item is not a *protected item* if it is held with the intention of furthering a criminal purpose.
- (5) Note that under section 175(4) of the *Act*, the *investigator* may require a lawyer to furnish the name and address of his client.

#### Banking confidentiality

7.10.3 Under section 175(5) and section 284(8) of the *Act*, except in certain circumstances, no person may be required under Part XI or section 284 of the *Act* to give information or produce a document in respect of which he owes an obligation of confidence by carrying on banking business. Those circumstances include, under section 175(5), circumstances where:

- (1) the person to whom the obligation is owed is the person under investigation, or a related *company*;
- (2) the person to whom the duty is owed consents to its disclosure; or
- (3) the requirement to disclose has been specifically authorised by the UKLA.

#### Admissibility of statements

7.10.4 Section 174 of the *Act* (Admissibility of statements made to investigators) governs the admissibility of statements made by a person in compliance with information requirements described in paragraph 7.6 above, to an *investigator* appointed under section 97 of the *Act*.

- (1) Under section 174(1) a statement made to an *investigator* by a person in compliance with an information requirement is, in

general, admissible in evidence in any proceedings, so long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question.

- (2) However, under section 174(2), such a statement is not generally admissible in criminal proceedings in which the person who made the statement is charged with an offence; or in proceedings in relation to action against a person under section 123 of the *Act* (penalties for *market abuse*). Nevertheless this does not apply to the offences listed in section 174(3), such as making false statements or providing false or misleading evidence to a *UKLA investigator*. Where section 174(2) applies:

- (a) no evidence relating to the statement may be adduced, and
- (b) no questions relating to it may be asked,

by the prosecution or the *UKLA*, unless evidence relating to that statement is adduced, or a question relating to it is asked, by that person or on his behalf in the proceedings.

- 7.10.5 Statements made by a person to an *investigator* other than in compliance with an information requirement (such as statements made voluntarily) are not covered by section 174 and can be used as evidence in any proceedings subject to any requirements governing the admissibility of evidence in the circumstances in question.

## **7.11 Publicity during investigations**

- 7.11.1 The *UKLA* will not normally make public the fact that it is or is not investigating a particular matter, or the outcome of any investigation.

- 7.11.2 Paragraphs 7.11.3 to 7.11.6 deal with exceptional circumstances in which the *UKLA* may make a public announcement that it is or is not investigating a particular matter.

- 7.11.3 Where the matter in question has occurred in the context of a *takeover bid*, and the following circumstances apply, the *UKLA* may make a public announcement that is not and does not propose to investigate the matter. Those circumstances are where:

- (1) the *UKLA* has not appointed, and does not propose to appoint, an *investigator*; and
- (2) it considers (following discussion with the *Takeover Panel*) that such an announcement is appropriate in the interests of preventing or eliminating public uncertainty, speculation or rumour.

7.11.4 Where it is investigating any matter, in exceptional circumstances, the *UKLA* will make a public announcement that it is doing so if it considers such an announcement is desirable to:

- (1) maintain public confidence in the market; or
- (2) maintain smooth operation of the market; or
- (3) protect investors; or
- (4) prevent widespread malpractice; or
- (5) help the investigation itself.

In deciding whether to make an announcement, the *UKLA* will consider the potential prejudice that it believes may be caused to any persons who are, or who are likely to be, a subject of the investigation.

7.11.5 This may be the case where the matters under investigation have become the subject of such public concern, speculation or rumour that it is desirable for the *UKLA* to make public the fact of its investigation in order to allay concern, or contain speculation or rumour. Where the matter in question relates to a *takeover bid*, the *UKLA* will discuss any announcement beforehand with the *Takeover Panel*. Any announcement will be subject to the restriction on disclosure of confidential information contained in section 348 of the *Act* (Restrictions on disclosure of confidential information by Authority etc.).

7.11.6 The *UKLA* will not normally publish details of the information found or conclusions reached during its investigations. In many cases statutory restrictions on the disclosure of information obtained by the *UKLA* in the course of exercising its functions are likely to prevent such publication (see section 348 of the *Act*). In exceptional circumstances, and where it is not prevented from doing so, the *UKLA* may publish such details. Circumstances in which it may do so include those where the fact that the *UKLA* is investigating has been made public, by the *UKLA* or otherwise, and the *UKLA* subsequently concludes that although there were circumstances suggesting an event specified in paragraph 7.5.1 above, this was found not to be the case. This is particularly so if the *issuer*, *sponsor*, *director*, or former *director* under investigation wishes the *UKLA* to clarify the matter.

## **7.12 Publicity following an investigation**

7.12.1 Section 391 of the *Act* deals with publication of regulatory action resulting in *final notices* and effective *supervisory notices*.

- (1) Under section 391(4) the *UKLA* must publish such information about the matter to which the *final notice* relates as it considers appropriate.



- (2) Similarly under section 391(5), where a *supervisory notice* takes effect the *UKLA* must publish such information about the matter to which the notice relates as it considers appropriate.
- (3) However, under section 391(6) the *UKLA* may not publish such information under section 391 if publication of it would, in its opinion, be unfair to the person with respect to whom the action was taken or prejudicial to the interest of consumers.

7.12.2 Where the *final notice* relates to behaviour in the context of a *takeover bid*, and the *UKLA* believes that such publicity may affect the timetable or outcome of the bid, the *UKLA* will consult the *Takeover Panel* and will give due weight to its views.

### **7.13 The UKLA's policy on the use of voluntary rather than compulsory interviews, and on interview procedures**

7.13.1 As mentioned in paragraph 7.8.2, the *UKLA* may not always use its statutory powers to require individuals to be interviewed. Where appropriate the *investigator* will seek initially to conduct interviews on a voluntary basis.

7.13.2 Prior to an interview, whether voluntary or compulsory, the *UKLA* will write to the person who will be interviewed, notifying him that the interview will be recorded and explaining to him the purpose of the recording.

#### Voluntary interviews

7.13.3 If the interviewee is the subject of the investigation, the *investigator* will make a record of the interview and the *UKLA* will give a copy of the record and transcript, if produced, to the interviewee. If the interviewee is not the subject of the investigation, the *UKLA* will give the interviewee a record of the interview and the transcript, if produced. The interviewee may be accompanied by a legal or other adviser, if he wishes.

#### Compulsory interviews

7.13.4 Where the *UKLA* does require a person to answer questions in interview, using its compulsory powers, it will:

- (1) allow that person (whether or not he is the subject of the investigation) to be accompanied by a legal or other adviser;
- (2) give the person an appropriate warning and an explanation of the limited use that can be made of his answers in criminal proceedings against him or in proceedings in which the *FSA* seeks a penalty for market abuse under Part VIII of the Act;

- (3) give the person a record of the interview.

7.13.5 *Guidance* on the admissibility of statements made to an *investigator* is set out at paragraph 7.10.4.

#### **7.14 The UKLA's powers to require persons to co-operate with information gathering and investigation**

7.14.1 The *UKLA* and its *investigators* may apply to a magistrate for a warrant to search for and seize documents or information. Under section 176 of the *Act* (Entry of premises under warrant) a justice of the peace or Sheriff may issue a warrant if he is satisfied that there are reasonable grounds for believing that:

- (1) a person has failed to comply with a requirement to provide information or produce documents, and that the required documents or information are on the premises specified in the warrant (see section 176(2)); or
- (2) the premises specified in the warrant are those of the person under investigation; and that there are documents or information on the premises which could be the object of an information requirement; and that the requirement would not be complied with, or the documents or information would be removed, tampered with or destroyed if such a requirement were made (see section 176(3)); or
- (3) an offence under section 85 or 98 of the *Act* has been (or is being) committed and there are documents or information relevant to that offence on the premises which could be the object of an information requirement; and that the requirement would not be complied with, or the documents or information would be removed, tampered with or destroyed if such a requirement were made (see section 176(4)).

7.14.2 The *UKLA* will consider using these powers to apply for a search warrant when it has concerns about whether information requirements will be complied with and that it believes that the grounds listed in paragraph 7.14.1 are made out.

7.14.3 A search warrant issued under section 176 of the *Act* (Entry of premises under warrant) will authorise a constable to:

- (1) enter the premises specified in the warrant;
- (2) search the premises and take possession of documents or information relevant to the warrant, or take any other steps which may appear to be necessary to preserve them or prevent interference with them;

- (3) take copies of, or extracts from, any such documents or information;
- (4) require any person on the premises to provide an explanation of any such document or information or to state where it may be found; and
- (5) use such force as may be reasonably required.

7.14.4 As a matter of policy, the *UKLA* will usually seek to ensure that the *UKLA's investigator* is named on the warrant and entitled to accompany the constable on the search.

#### Prosecutions

7.14.5 Section 177 of the *Act* (Offences) creates three criminal offences in relation to non-co-operation with an *investigator*.

7.14.6 Under section 177(3), (4) and (6) a person commits an offence if he:

- (1) knows or suspects that an investigation is being or is likely to be conducted, and:
  - (a) falsifies, conceals, destroys or otherwise disposes of a document which he knows, or suspects is, or would be, relevant to the investigation; or
  - (b) causes or permits the falsification, concealment, destruction or disposal of such a document;
  - (c) unless he shows that he had no intention of concealing facts disclosed by the documents from the *investigator* (see section 177(3)); or
- (2) in purported compliance with a requirement placed on him under Part XI of the *Act*, provides information which he knows to be false or misleading in a material particular, or recklessly provides information which is false or misleading in a material particular (see section 177(4)); or
- (3) intentionally obstructs the exercise of any rights conferred by a warrant (see section 177(6)).

#### Certification procedure

7.14.7 Section 177(1) provides that if a person other than the *investigator* fails to comply with a requirement imposed on him under Part XI of the *Act*, the person imposing the requirement may certify that fact in writing to the court. If the court is satisfied that that person has no reasonable excuse for failing to comply, it may deal with him as if he were in contempt. If the

person is a body corporate, the court may deal with any *director* or officer as if he were in contempt (section 177(2)).

## **7.15 The UKLA's powers to disclose information gathered in investigations**

- 7.15.1 In accordance with section 349 of the *Act* (Exceptions from section 348), the *UKLA* may also make referrals of information gathered under *listing rule* 1.3 and in investigations where circumstances indicate that such a referral is appropriate.

## CHAPTER 8

### 8. DISCIPLINE OF ISSUERS, DIRECTORS, FORMER DIRECTORS AND SPONSORS FOR BREACHES OF THE LISTING RULES

#### 8.1 Application of this Chapter

- 8.1.1 This Chapter applies to *issuers*, *directors*, former *directors* and, where expressly indicated, *sponsors*.

#### 8.2 Purpose of this Chapter

- 8.2.1 This Chapter describes the *UKLA*'s approach to the discipline of *issuers*, *directors*, former *directors* and *sponsors*. It describes:

- (1) the *UKLA*'s policy in relation to private warning letters in respect of *issuers*, *directors*, former *directors* and *sponsors*;
- (2) the criteria which the *UKLA* will use in determining whether to take formal disciplinary action;
- (3) the *UKLA*'s policy in relation to the imposition of financial penalties on *issuers*, *directors*, and former *directors*;
- (4) some of the factors which may be relevant to the *UKLA* when it determines whether to issue a statement censuring an *issuer*, *director*, former *director* or *sponsor*; and
- (5) circumstances where disciplinary action may also be taken by other authorities, or by the *FSA* under separate statutory powers.

#### 8.3 Introduction

- 8.3.1 The disciplinary measures available to the *UKLA* under Part VI of the *Act* are:

- (1) financial penalties of *issuers*, *directors*, and former *directors* (described in paragraphs 8.7 to 8.9); and
- (2) public censures of *issuers*, *directors*, former *directors* and *sponsors* (described in paragraphs 8.10 and 8.11).

Annex 1 to this Chapter contains a diagram describing how these disciplinary measures may apply to *issuers*, *directors*, former *directors* and *sponsors*.

- 8.3.2 Disciplinary sanctions are one of the regulatory tools available to the *UKLA*. They are not the only tool, and it may be possible to address instances of non-compliance without resorting to disciplinary action.

However, the effective and proportionate use of the *UKLA's* powers to enforce the requirements of the *listing rules*, and discipline those who breach the *listing rules*, will play an important role in supporting the *UKLA's* fulfilment of its regulatory functions.

8.3.3 The imposition of financial penalties on *issuers, directors*, and former *directors* and the issuance of statements censuring *issuers, directors*, former *directors* or *sponsors* help to promote high standards of conduct and ensure that regulatory standards are being upheld by deterring *issuers, directors* or *sponsors* from further breaching the *listing rules* and by demonstrating generally the benefits of compliant *behaviour*. An increased public awareness of regulatory standards may also contribute to the protection of investors.

8.3.4 The *UKLA* regards the decision to issue a statement censuring an *issuer, director*, former *director* or *sponsor* as a serious sanction. The *UKLA* is aware of the effect such a statement may have on the reputation or business of the *issuer, director*, former *director* or *sponsor*.

8.3.5 Other non-disciplinary measures are available to the *UKLA* where it considers it is necessary to take protective or remedial action. These include:

- (1) where the smooth operation of the market is, or may be, temporarily jeopardised or where protection of investors so requires, the *UKLA* may *suspend*, with effect from such time as it may determine, the *listing* of any *securities* at any time and in such circumstances as it thinks fit (whether or not at the request of the *issuer* or its *sponsor* on its behalf) (described in Chapter 9); and
- (2) when the *UKLA* is satisfied that there are special circumstances which preclude normal regular dealings in any *listed securities* it may *cancel* the *listing* of any *security* (described in Chapter 9).

8.3.6 Additional considerations apply in determining whether the *FSA* will take disciplinary action for cases of alleged *market abuse* (section 123 of the *Act*) (see Chapter 11). The *Act* also provides the *FSA* with criminal prosecution powers in relation to insider dealing and misleading statements and practices. These are described in Chapter 15 of the *FSA's* Enforcement manual (prosecution of criminal offences).

## **8.4 Private warnings**

8.4.1 In certain cases, despite having concerns regarding the *behaviour* of an *issuer, director*, former *director* or *sponsor* the *UKLA* may decide that it is not appropriate, having regard to all the circumstances of the case, to seek a formal disciplinary sanction against the *issuer, director*, former *director* or *sponsor*. For example, the breach may be only minor in nature or degree, or the *issuer, director*, former *director* or *sponsor* may have taken

immediate and full remedial action (although these types of factor by themselves will not determine the course of action taken by the *UKLA*). In these types of case, the *UKLA* may consider that a private warning would be helpful to alert the *issuer*, *director*, former *director* or *sponsor* that their conduct was such that the *UKLA* considered seeking a formal disciplinary sanction.

8.4.2 A private warning will state that:

- (1) the *UKLA* had cause for concern arising from the conduct of the *issuer*, *director*, former *director* or *sponsor* but that no determination has been made by the *UKLA*;
- (2) the *UKLA* does not presently intend to take formal disciplinary action, having regard to all the circumstances of the case known to it;
- (3) the *UKLA* draws the *issuer's*, *director's*, former *director's* or *sponsor's* attention to the need for them to comply with the *listing rules* in the future, and that the private warning will form part of their compliance history, and may be taken into account in the future by the *UKLA* in deciding whether to bring disciplinary action against the *issuer*, *director*, former *director* or *sponsor*; and
- (4) the *UKLA* requires the *issuer*, *director*, former *director* or *sponsor* to acknowledge receipt of the warning letter and invites the *issuer*, *director*, former *director* or *sponsor* to comment in writing on the private warning if they wish to do so.

8.4.3 Any response received from the *issuer*, *director*, former *director* or *sponsor* to the private warning, together with the warning itself, will form part of their compliance history, and may be taken into account in deciding whether the *UKLA* brings disciplinary action against the *issuer*, *director*, former *director* or *sponsor* in the future. However, where disciplinary action is commenced in those circumstances, private warnings will not be relied upon in determining whether a breach has taken place, or in determining the level of sanction, if any, to be imposed.

8.4.4 Where the *UKLA* is assessing the relevance of private warnings in determining whether to commence disciplinary action, the age of a private warning will be taken into consideration, but a longstanding private warning may still be relevant.

8.4.5 Private warnings may be considered cumulatively, although they relate to separate areas of a *issuer's*, *director's*, former *director's* or *sponsor's* compliance with the *listing rules*, where the concerns which gave rise to those warnings are considered to be indicative of an *issuer's*, *director's*, former *director's* or *sponsor's* approach to compliance with the *listing rules*.

- 8.4.6 It is open to the *UKLA* to indicate to an *issuer*, *director*, former *director* or *sponsor* that the *UKLA* has concerns about a particular aspect of their conduct in relation to its compliance with the *listing rules*, even where a breach may not necessarily have taken place. This may, for example, have arisen from a *sponsor* visit or monitoring market information. This will also form part of an *issuer's*, *director's*, former *director's* or *sponsor's* compliance history, together with any comment on the matter made to the *UKLA* by the *issuer*, *director*, former *director* or *sponsor*.

## **8.5 Criteria for determining whether to take disciplinary action**

- 8.5.1 In determining whether to take disciplinary action, the *UKLA* will consider the full circumstances of each case. The *UKLA* may take into account a number of factors in determining whether to take disciplinary action. The following list, together with those mentioned in relation to the imposition of sanctions and the level of financial penalties set out in paragraph 8.8, is not exhaustive; not all of these factors may be relevant in a particular case, and there may be other factors that are relevant:

- (1) whether the breach reveals serious or systemic weaknesses in the established procedures relating to all or part of an *issuer's* or *sponsor's* procedures for compliance with the *listing rules*;
- (2) whether it has brought the misconduct to the attention of the *UKLA*;
- (3) whether it has admitted the misconduct and provides full and immediate co-operation to the *UKLA*;
- (4) whether the *issuer*, *director*, former *director* or *sponsor* has previously given any undertakings to the *UKLA* to do or not to do a particular act or engage or not to engage in particular behaviour;
- (5) whether the *UKLA* has previously requested the *issuer*, *director*, former *director* or *sponsor* to take remedial action, and the extent to which such action has been taken;
- (6) whether the *UKLA* has given any *guidance* on the conduct in question and the extent to which the *issuer*, *director*, former *director* or *sponsor* has sought to follow the *guidance* (the *UKLA* will not take action against *issuers*, *directors*, former *directors* or *sponsors* for behaviour in line with current written *guidance* or binding oral *guidance* in the circumstances contemplated by the *guidance*);
- (7) where other regulatory authorities (including the *FSA* under other regulatory powers) propose to take action in respect of the same or similar breach which is under consideration by the *UKLA*, the



*UKLA* will consider whether their action would be adequate to address the *UKLA's* concerns, or whether it would be appropriate for the *UKLA* to take its own action.

## **8.6 Action against issuers, directors and former directors**

8.6.1 The primary responsibility for ensuring compliance with an *issuer's* regulatory obligations rests with the *issuer* itself. Normally therefore, any disciplinary action taken by the *UKLA* will in the first instance be against the *issuer* in relation to any possible breach of the *listing rules*.

8.6.2 However, where a *director* is or a former *director* was knowingly concerned in a breach of the *listing rules* by an *issuer*, the *UKLA* may take disciplinary action against that *director* or former *director*. In circumstances where the *UKLA* does not consider it appropriate to seek a disciplinary sanction against the *issuer* (notwithstanding a breach of the *listing rules* by the *issuer*), the *UKLA* may nonetheless seek a disciplinary sanction against any *director* or former *director* knowingly concerned in that breach.

## **8.7 Discipline of issuers, directors and former directors: financial penalties**

8.7.1 The *Act* enables the *UKLA*, if it considers that an *issuer* has contravened any provision of the *listing rules*, to impose a penalty of such amount as it considers appropriate (section 91(1)).

8.7.2 The *Act* provides further that if in such a case the *UKLA* considers that a person, who was at the material time a *director* of the *issuer*, was knowingly concerned in the contravention, it may impose on him a penalty of such amount as it considers appropriate (section 91(2)).

8.7.3 The *Act* provides further that the *UKLA* may publish a statement censuring an *issuer*, *director* or former *director* instead of imposing a penalty (section 91 (3)).

8.7.4 Section 93 of the *Act* (Statement of policy) requires the *UKLA* to prepare and publish a statement of its policy with respect to the imposition and amount of penalties under section 91. Paragraph 8.8 constitutes the *UKLA's* statement of policy under section 93. The *UKLA* may at any time alter or replace this statement of policy after consultation.

8.7.5 This statement of policy is consistent with the statement of policy in respect of the imposition and amount of financial penalties in accordance with sections 69 (Statement of policy) and 210 (Statements of policy) of the *Act* set out in Chapter 13 of the *FSA's* Enforcement Manual.

8.7.6 The *UKLA* is required to have regard to this statement of policy in exercising, or deciding whether to exercise, its power under section 91 of the *Act* (Penalties for breach of listing rules).

## **8.8 Factors relevant to the imposition of sanctions and the level of financial penalties**

8.8.1 The *UKLA* will consider all the relevant circumstances of a breach when it determines whether to impose a sanction. In respect of financial penalties, the *UKLA* does not propose to adopt a tariff of penalties for different kinds of breach. This is because there will be very few cases in which the circumstances are essentially the same and the *UKLA* considers that, in general, the use of a tariff for particular kinds of breach would inhibit the flexible and proportionate approach it intends to adopt in this area.

8.8.2 Section 93(2) of the *Act* requires that the *UKLA*'s policy in determining the amount of a penalty must have regard to:

- (a) "the seriousness of the breach in question in relation to the nature of the requirement contravened;
- (b) the extent to which that contravention was deliberate or reckless; and
- (c) whether the person on whom the penalty is to be imposed is an individual".

8.8.3 The *UKLA* will consider any of the following factors that may be relevant to the circumstances of a case when it determines the amount of a penalty to be imposed on an *issuer*, *director* or former *director*. The following list is not exhaustive; not all of these factors may be relevant in a particular case, and there may be other factors that are relevant:

### The seriousness of the misconduct

- (1) In relation to the statutory requirement to have regard to the seriousness of the breach, the *UKLA* recognises the need for a financial penalty to be proportionate to the nature and seriousness of the breach in question and that, by their nature, some breaches may be more serious than others. The following may be relevant:
  - (a) the duration and frequency of the breach;
  - (b) whether the breach revealed serious or systemic weaknesses in the person's procedures;
  - (c) the impact of the breach on the orderliness of capital markets, including whether public confidence in those markets has been damaged;
  - (d) the loss or risk of loss caused to investors or other market participants; and

- (e) the extent to which the breach departs from current market practice.

The extent to which the breach was deliberate or reckless

- (2) In determining whether a breach was deliberate, the *UKLA* may have regard to whether the *issuer's*, *director's* or former *director's behaviour* was intentional; that is, whether the *issuer*, *director* or former *director* intended or foresaw the consequences of their behaviour. The matters to which the *UKLA* may have regard in determining whether a breach was reckless include, but are not limited to, whether the *issuer*, *director* or former *director*:
  - (a) failed to comply with the *issuer's* procedures and/or *UKLA guidance*;
  - (b) took decisions beyond their field of competence; and
  - (c) gave consideration to the consequences of the *behaviour* that constitutes the breach.

If the *UKLA* decides that the conduct was deliberate or reckless, it is more likely to impose a higher penalty on an *issuer*, *director* or former *director* than would otherwise be the case.

Whether the person on whom the penalty is to be imposed is an individual

- (3) Individuals will not always have the resources of a body corporate and this will be taken into account when determining the amount of a penalty. This will be of particular relevance when assessing any verifiable evidence of serious financial hardship or financial difficulties if the individual were to pay the level of penalty decided on in respect of the particular breach.

The circumstances of the *issuer*, *director* or former *director* on whom the penalty is to be imposed

- (4) The *UKLA* will have regard to the size, financial resources and other circumstances of the *issuer*, *director* or former *director*, and may take into account verifiable evidence of serious financial hardship or financial difficulties if the *issuer*, *director* or former *director* were to pay the level of penalty associated with the particular breach. Size and resources may be relevant considerations for the following reasons:
  - (a) the degree of seriousness of a breach may be linked to the size of the *issuer*. For example, a systemic failure in a large *issuer* could damage or threaten to damage a much larger number of investors than would be the case with a small *issuer*. In considering seriousness, the

UKLA will have regard to the length of time over which the breach occurred;

- (b) the size and resources of an *issuer*, *director* or former *director* may also be relevant in relation to mitigation, in particular what steps the *issuer*, *director* or former *director* took after the breach had been identified. The UKLA will take into account what it is reasonable to expect from the *issuer*, *director* or former *director* in relation to its size and resources and factors such as what proportion of an *issuer's*, *director's* or former *director's* resources were used to resolve a problem; and
- (c) the purpose of a penalty is not to render an *issuer*, *director* or former *director* insolvent or threaten their solvency. Where this would be a material consideration, the UKLA will consider, having regard to all other factors, whether a lower penalty would be appropriate. This is most likely to be relevant to *issuers*, *directors* or former *directors* with less financial resource. However, if an *issuer*, *director* or former *director* reduces their net worth with the purpose of reducing its ability to pay a financial penalty, for example by transferring assets to group *companies* or third parties, the UKLA will take account of those transferred assets when determining the amount of a penalty.

The amount of profits accrued or loss avoided

- (5) The UKLA may have regard to the amount of profits accrued or loss avoided as a result of the breach. For example:
  - (a) the UKLA will propose a penalty which is consistent with the principle that an *issuer*, *director* or former *director* should not benefit from their breach; and
  - (b) the penalty should also act as an incentive to the *issuer*, *director* or former *director* (and others) to comply with regulatory standards.

Conduct before the breach

- (6) The UKLA may have regard to any professional advice that was sought by the *issuer*, *director* or former *director* before the breach occurred and whether the *issuer*, *director* or former *director* followed that professional advice.

Conduct following the breach

- (7) The *UKLA* may also take into account the conduct of the *issuer*, *director* or former *director* in bringing the breach to the *UKLA*'s attention, including:
- (a) whether the *issuer*, *director* or former *director* brought the breach to the attention of the *UKLA*;
  - (b) how quickly, effectively and completely the *issuer*, *director* or former *director* brought the breach to the *UKLA*'s attention;
  - (c) the degree of co-operation the *issuer*, *director* or former *director* showed during the investigation of the breach; and
  - (d) any remedial steps it has taken since the breach was identified, including: identifying whether investors suffered loss, compensating them, taking disciplinary action against staff involved (if appropriate) and ensuring that similar problems cannot arise in the future.

#### Disciplinary record and compliance history

- (8) The *UKLA* may take into account the previous disciplinary record and general compliance history of the *issuer*, *director* or former *director*, including whether the *UKLA* has taken any previous formal disciplinary action against the *issuer*, *director* or former *director*. For example, the disciplinary record of an *issuer*, *director* or former *director* could lead to the *UKLA* increasing the penalty where that *issuer*, *director* or former *director* has committed similar breaches in the past.

#### Previous action taken by the *UKLA*

- (9) The *UKLA* will seek to ensure consistency when it determines the appropriate level of penalty. If it has taken disciplinary action previously in relation to a similar breach, this will clearly be a relevant factor.

#### Action by other regulatory authorities

- (10) Where action by other regulatory authorities relates to the *issuer*, *director* or former *director* in question, this may be taken into consideration.

8.8.4 As provided by section 100 of the *Act* (Penalties), the *UKLA* will not take account of expenses which it incurs, or expects to incur, in discharging its functions under Part VI of the *Act* in determining its policy with respect to the amount of financial penalties.

## **8.9 Financial penalty income**

- 8.9.1 Section 100 of the *Act* (Penalties) provides that the *UKLA* must prepare and operate a scheme for ensuring that the amounts paid to it by way of penalties are applied for the benefit of *issuers* of *securities* admitted to the *official list*. Details of the scheme can be found in paragraph 12.6.

## **8.10 Discipline of issuers, director, former directors and sponsors: public censures**

- 8.10.1 Where the *UKLA* considers it inappropriate to impose a financial penalty on an *issuer*, *director* or former *director* it may consider that a statement censuring an *issuer*, *director* or former *director* may have particular value.
- 8.10.2 The *UKLA* has no statutory power to impose a financial penalty on a *sponsor*. As such any references in this Chapter 8 to financial penalties being a disciplinary sanction, or an alternative disciplinary sanction, do not apply to *sponsors*.
- 8.10.3 The *Act* enables the *UKLA* to publish a statement censuring an *issuer*, *director* or former *director* in the following circumstances:
- (1) the *UKLA* may issue a public censure on an *issuer* (under section 91), where it is entitled to impose a penalty on the *issuer* in respect of a breach of any provision of the *listing rules*; and
  - (2) the *UKLA* may issue a public censure on a *director* or former *director* of an *issuer* where it is entitled to impose a penalty on the *director* or former *director* who at the material time was knowingly concerned in the breach by an *issuer* of any provision of the *listing rules* (under section 91).
- 8.10.4 The *Act* enables the *UKLA* to publish a statement censuring a *sponsor* (under section 89 of the *Act* (Public censure of sponsor)) where it considers that the *sponsor* has contravened any requirement imposed on him by *listing rules* made as a result of section 88(3)(c) of the *Act*.

## **8.11 Factors relevant to determining whether to publish a statement censuring an issuer, director, former director or sponsor**

- 8.11.1 Where a breach of the *listing rules* has occurred, the *UKLA* may not consider that formal disciplinary action is warranted. For example, the proactive supervision and monitoring of *issuers*, *directors* and *sponsors* by the *UKLA* is central to promoting compliance, and some instances of non-compliance may be addressed satisfactorily by *issuers*, *directors*, former *directors* or *sponsors* without the need for formal disciplinary action. Alternatively, where the *UKLA* has concerns regarding the *behaviour* of an *issuer*, *director*, former *director* or *sponsor*, but has made no determination that a breach has occurred, it may issue a private warning.

- 8.11.2 In more serious cases, however, the *UKLA* will institute formal disciplinary action. The main criteria that the *UKLA* may take in to account in determining whether to take disciplinary action are listed in paragraph 8.5.
- 8.11.3 The criteria for determining whether it is appropriate to issue a public censure are similar to those for determining the level of financial penalty listed in paragraph 8.8. The starting point is that the *UKLA* will consider all the relevant circumstances of the breach. Some particular considerations may be relevant when the *UKLA* determines whether to issue a public censure rather than (in the case of *issuers*, *directors* or former *directors* only) impose a financial penalty. The following list is not exhaustive; not all of these factors may be relevant in a particular case, and there may be other factors that are relevant:
- (1) if the person has made a profit or avoided a loss as a result of the misconduct, this may be a factor in favour of a financial penalty, on the basis that a person should not be permitted to benefit from its misconduct;
  - (2) if the misconduct is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the misconduct: other things being equal, the more serious the misconduct, the more likely the *UKLA* is to impose a financial penalty;
  - (3) if the person has brought the misconduct to the attention of the *UKLA*, this may be a factor in favour of a public censure, depending upon the nature and seriousness of the misconduct;
  - (4) if the person has admitted the misconduct and provides full and immediate co-operation to the *UKLA*, this may be a factor in favour of a public censure, depending upon the nature and seriousness of the misconduct;
  - (5) if the person has a poor disciplinary record or compliance history (for example, where the *UKLA* has previously brought disciplinary action in relation to the same or similar *behaviour*) this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;
  - (6) if the person has inadequate means (excluding any manipulation or attempted manipulation of their assets) to pay the level of financial penalty which their misconduct would otherwise attract, this may be a factor in favour of a lower level of financial penalty or a public censure. However, it would only be in an exceptional case that the *UKLA* would be prepared to agree to impose a public statement rather than a financial penalty, if a financial

penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include:

- (a) verifiable evidence that a person would suffer serious financial hardship if the *UKLA* imposed a financial penalty;
- (b) the likelihood of a severe adverse impact on an *issuer's* shareholders or a consequential impact on market confidence or market stability if the *UKLA* imposed a financial penalty. However, this does not exclude the imposition of a financial penalty which will have an impact on an *issuer's* shareholders;

## **8.12 Decision making procedure and publication**

8.12.1 The *Act* requires the *UKLA* to issue a *warning notice*, *decision notice* and a *final notice* before issuing a statement censuring an *issuer*, *director*, former *director* or *sponsor* or before imposing a financial penalty on an *issuer*, *director* or former *director*. Further information regarding the procedures the *UKLA* will follow in these circumstances is contained in Chapter 10. The *UKLA* will ordinarily publicise the imposition of a financial penalty on an *issuer*, *director* or former *director* by issuing a press release, giving details of the *behaviour* and the financial penalty imposed.

8.12.2 The *UKLA* will consider the circumstances of each case, but ordinarily will publicise the financial penalty by issuing a press release, giving details of the *behaviour* and the penalty imposed. However, the *Act* provides (section 391(6)) that the *UKLA* may not publish information in these circumstances where it would be unfair to the *issuer*, *director* or former *director* on whom the financial penalty is imposed or prejudicial to the interests of consumers.

## **8.13 Action involving other regulatory authorities**

8.13.1 Some types of *behaviour* by *issuers*, *directors*, former *directors* and *sponsors* may result not only in potential disciplinary action by the *UKLA*, but also potential action by the *FSA* under separate statutory powers and other regulatory authorities. These authorities could include, for example, an *RIE* and *designated professional bodies*, as well as *overseas* authorities. (Action concerning criminal offences and liaison with other prosecuting authorities is dealt with separately in the *FSA's* Enforcement Manual.)

8.13.2 A breach on a designated market, for example, could lead to the *FSA* considering whether there has been a breach of the *market abuse* provisions of the *Act* (Part VIII); the same breach could also constitute a breach of a rule of the relevant *RIE*. Chapter 11 describes the interaction with the market abuse regime and the *FSA's* Enforcement Manual



contains further *guidance* on *market abuse* cases which may involve not only potential action by the *FSA*, but also potential action by other regulatory authorities.

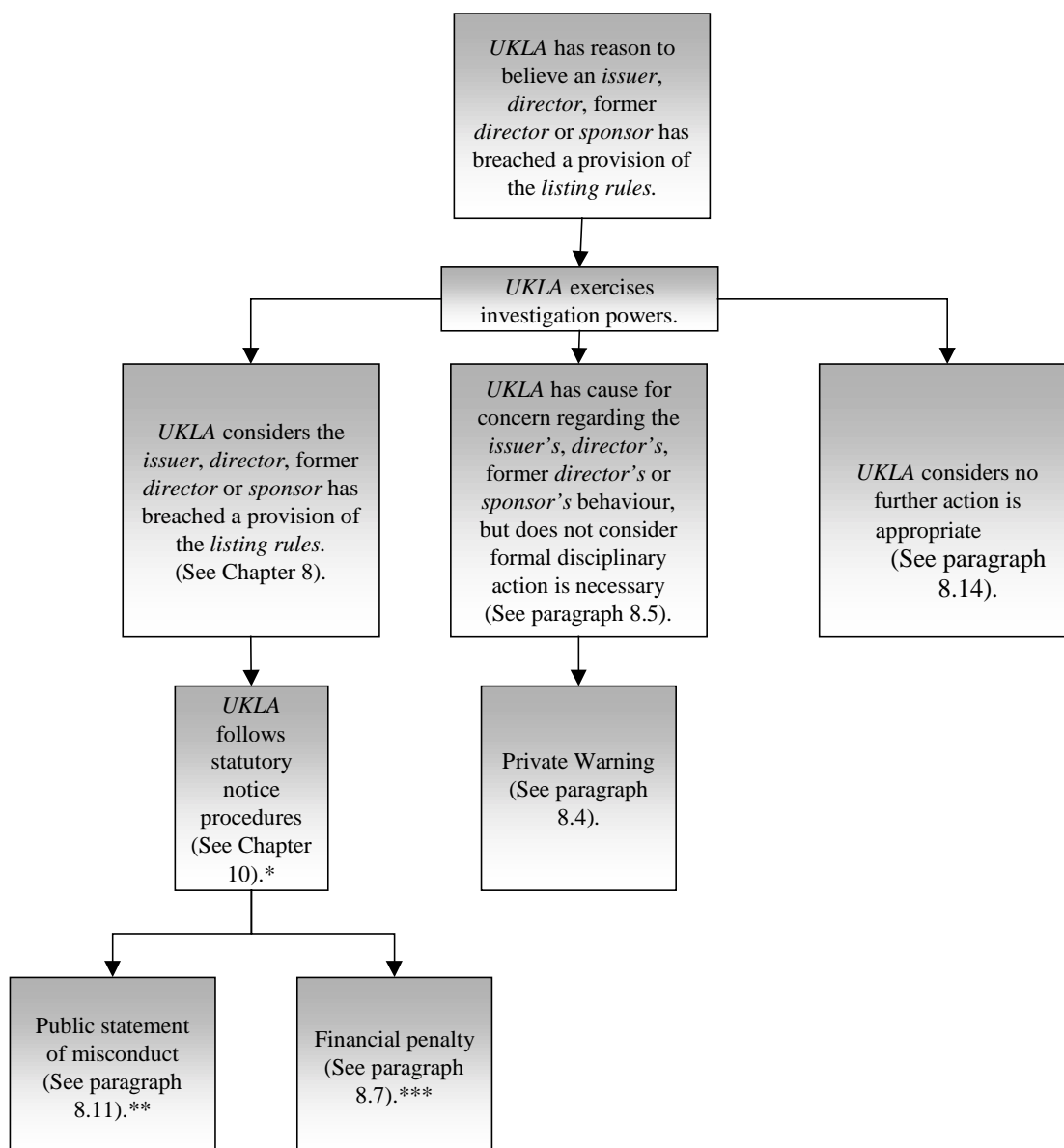
- 8.13.3 The *FSA* is developing operating arrangements with each of the relevant UK authorities concerning cases where more than one regulatory authority may have an interest. The purpose of these arrangements will be to ensure that the *FSA* and the other authorities approach the cases in a co-ordinated, effective and efficient manner, and to ensure that those who are the subject of investigations or potential disciplinary action are treated fairly. Similarly, the *FSA* is involved in contributing to a number of international initiatives to enhance effective enforcement action where overseas authorities also have an interest.
- 8.13.4 The *UKLA* will examine the circumstances of each case, and consider, in the light of the relevant investigation, disciplinary and enforcement powers, whether it is appropriate for the *UKLA* or another authority to take action to address the breach. It may be appropriate, of course, for both the *UKLA* and the other authorities to be involved, and to take action, in a particular case arising from the same facts. For example, the *UKLA* may seek to impose a financial penalty on a *director*, and for the Department for Trade and Industry to bring directors disqualification proceedings against him.
- 8.13.5 Where an *overseas* authority is involved, then similar considerations will apply: if the conduct constitutes a breach of the relevant UK provisions, as well as constituting a breach of the laws of the *overseas* jurisdiction, both the *UKLA* and the *overseas* authority will have an interest in taking action to protect their regulatory standards.

## **8.14 No further action letters**

- 8.14.1 In circumstances where the *UKLA* decides not to commence formal disciplinary proceedings/take formal disciplinary action, either in the context of a private warning letter or where there is insufficient evidence to substantiate a breach of the *listing rules*, the *UKLA* may write to the person informing him that no further action will be taken. This confirmation will be based on the information and evidence available to the *UKLA* at the time that such a letter is written and will reflect only the *UKLA's* then current view that no further action is appropriate; if further information comes to the *UKLA's* attention, such a letter will not be binding on the *UKLA*.

## Annex 1

### Discipline of *issuers, directors, former directors* and *sponsors*



\* Person may refer matter to *Tribunal*.

\*\* *Issuers, directors, former directors* and *sponsors*.

\*\*\* *Issuers, directors* and *former directors*.

## CHAPTER 9

### 9. SUSPENSION AND CANCELLATION OF THE LISTING OF SECURITIES

#### 9.1 Application of this Chapter

9.1.1 This Chapter applies to every *issuer*.

#### 9.2 Purpose of this Chapter

9.2.1 The purpose of this Chapter is to give *guidance* to *issuers* on how the *UKLA* will exercise the powers granted to it in Part VI of the *Act* to *cancel* and *suspend listing* in accordance with the *listing rules*. In particular the Chapter gives *guidance* on:

- (1) the circumstances in which the *UKLA* may *suspend listing*;
- (2) the circumstances in which the *UKLA* may *cancel listing*;
- (3) when and how the *UKLA* will determine decisions in respect of *suspensions* and *cancellations of listing*;
- (4) the procedures for the *cancellation* and *suspension of listing*; and
- (5) the procedures for *restorations*.

#### 9.3 Power of the UKLA to suspend listing

9.3.1 Under section 77(2) of the *Act* the *UKLA* may, in accordance with the *listing rules*, *suspend listing*.

9.3.2 The *suspension of listing* will often need to be considered by the *UKLA* under urgent time pressure. *Issuers* who are in any doubt about whether a *suspension of listing* would be required or permitted by the *UKLA* should make early contact with the *UKLA* to determine this.

9.3.3 Under *listing rule* 1.15 where the smooth operation of the market is, or may be, temporarily jeopardised or where protection of investors so requires, the *UKLA* may *suspend listing*, with effect from such time as it may determine, at any time and in such circumstances as it thinks fit (whether or not at the request of the *issuer* or its *sponsor* or agent on its behalf).

9.3.4 The following is a non-exhaustive list of examples of circumstances in which the *UKLA* will normally *suspend listing*:

- (1) the *issuer* fails to publish financial information in accordance with the *listing rules*;

- (2) the *issuer* fails to meet the continuing obligations of *listing*;
- (3) the *issuer* is unable to accurately assess its financial position and inform the market accordingly;
- (4) there is or may be a leak of price sensitive information and the *issuer* is unwilling or unable to issue an appropriate announcement within a reasonable amount of time;
- (5) there is an announcement of a reverse takeover (see *listing rule* 10.24) where this does not coincide with the publication of a class 1 *circular* and *listing particulars* (see 9.17.6);
- (6) a *secondary listed issuer* is, or is going to be, suspended in its country of *primary listing*; or
- (7) if the *issuer* has appointed administrators or receivers, or is an investment trust and is winding up.

9.3.5 Depending on the reason for the *suspension of listing*, it will be dealt with, in the first instance, by different teams within the *UKLA*. Generally, the monitoring team will deal with *suspensions of listing* due to one of the reasons listed in paragraph 9.3.4(1) to (4) and the equity and capital markets group will deal with *suspension of listing* for any other reason. Thereafter the *suspension* or *cancellation of listing* will normally be processed by the listing applications team.

#### **9.4 Power of the UKLA to cancel listing**

9.4.1 Under section 77(1) of the *Act* the *UKLA* may, in accordance with the *listing rules*, *cancel listing* if satisfied that there are special circumstances which preclude normal regular dealings in any *securities*.

9.4.2 When exercising its discretion under section 77(1) of the *Act* the *UKLA* will take into account all the relevant circumstances.

9.4.3 The *UKLA* will normally *cancel listing* if a *security* has its *listing suspended* for more than six months or if the *UKLA* believes that there are insufficient shares held in public hands (see *listing rule* 3.18).

#### **9.5 Suspension or cessation of trading on an RIE**

9.5.1 Any security which ceases to be *admitted to trading* on at least one *RIE* will, as soon as the *UKLA* becomes aware that this is the case, have its *listing suspended*.

9.5.2 When the *UKLA* receives a request from either an *overseas* exchange or *competent authority* or an *issuer*, or itself proposes to *suspend listing*, the *UKLA* will normally liaise with any *RIE* on whose market the *security* in question is traded to enable, so far as possible, *suspension of listing* and suspension of trading takes effect simultaneously.

- 9.5.3 The *UKLA* may, where it considers that the *security* has been suspended from trading for too long a period, *cancel listing*. Before cancelling the *listing* in these circumstances the *UKLA* would normally expect to liaise with the *issuer* and the relevant *RIE*.

## **9.6 The suspension and cancellation of listing process**

- 9.6.1 The *suspension* or *cancellation of listing* may be effected:

- (1) at the request of an *overseas* exchange or *competent authority* where an *issuer* is quoted (see paragraph 9.7);
- (2) at the request of the *issuer* (see paragraphs 9.8 to 9.10); or
- (3) unilaterally by the *UKLA* (see paragraph 9.11).

## **9.7 Suspensions and cancellations of listing at the request of an overseas exchange or competent authority or a secondary listed issuer**

- 9.7.1 The *UKLA* will not automatically impose a *suspension* or *cancellation of listing* at the request of an *overseas* exchange, or *competent authority*, following the suspension or cancellation of a *secondary listed issuer's securities* on its *home exchange*. In particular, the *UKLA* will not normally *suspend* or *cancel listing* following the suspension or cancellation of trading only of the security on its *home exchange*.
- 9.7.2 If a *secondary listed issuer* requests a *suspension* or *cancellation of listing*, following a suspension or cancellation on its *home exchange*, the *issuer* should send to the *UKLA* written confirmation that the *suspension* or *cancellation of listing* has become effective or, if the suspension or cancellation has not yet become effective, confirmation of the time and date that it is proposed to become effective on its *home exchange*.
- 9.7.3 Where a *suspension* or *cancellation of listing* request is received from an *overseas* exchange, or *competent authority*, the *UKLA* shall, wherever practical, contact the *issuer* or its *sponsor* before arranging the suspension or cancellation of listing. Accordingly, *issuers* are encouraged to contact the *UKLA* at the same time as they contact their *home exchange*.
- 9.7.4 If the *UKLA* is unable to contact the *issuer*, *sponsor* or other appropriate person (for example the depository in the case of depository receipts) it will arrange the *suspension* or *cancellation of listing* when it is satisfied that the *securities* in question have been, or will be, suspended or cancelled on their *home exchange*.

**9.8 Matters common to both suspensions and cancellations of listing at the request of the issuer**

9.8.1 Where an *issuer* requests a *suspension* or *cancellation of listing* it (or, if appropriate, an agent acting on its behalf) is encouraged to make early contact with the *UKLA* (by telephoning either the *UKLA* Helpdesk or an appropriate member of *UKLA* staff) to allow for the *suspension* or *cancellation of listing* to be effected in accordance with the requirements of the *UKLA* and, so far as possible, the *issuer*.

9.8.2 In order to process a *suspension* or a *cancellation of listing* as efficiently as possible, the following information should be submitted to the *UKLA*, addressed to a member of *UKLA* staff who has been involved with any matter to which the *suspension* or *cancellation of listing* relates or, in the absence of such a person, marked for the attention of the Director of Listing, as early as possible:

- (1) a written request from the *issuer* (or, if appropriate, an agent on behalf of the *issuer*) for the *suspension* or *cancellation of listing*. This request must include:
  - (a) the name of the *issuer*;
  - (b) details of the *securities* to which it relates and the *RIEs* on which they are traded;
  - (c) a clear explanation of the background and reasons (which would normally be one of those listed in paragraph 9.3.4 in relation to a *suspension* of listing) for it;
  - (d) the date on which the *issuer* requests the *suspension* or *cancellation of listing* to take effect;
  - (e) if relevant, a copy of any *circular* or announcement or other document upon which the *issuer* is relying;
  - (f) if being made by an agent on behalf of the *issuer*, confirmation that the agent has the authority of the *issuer* to make it;
  - (g) the name and contact details of the person at the *issuer* (or, if appropriate, an agent acting on behalf of it) who the *UKLA* should liaise with in relation to it; and
  - (h) if the *issuer* is making a conditional request, a clear statement of the applicable conditions.
- (2) a copy of the announcement(s) (if any) which the *issuer* proposes to issue via an *RIS*:

- (a) either announcing the *suspension* or *cancellation of listing*; or
- (b) which it is relying on in making its *suspension* or *cancellation of listing* request (for example where the *issuer* is announcing a reverse takeover under *listing rule* 10.39),

which, in either case, should go out after the dealing notice issued via an *RIS* announcing the *suspension* or *cancellation of listing*.

9.8.3 The time taken for the request to be effected will depend on the reason for the *suspension* or *cancellation of listing*. It will normally be quicker where the *issuer* or its agent has provided, at the outset, an adequate description of the reason(s) and circumstances that have given rise to the request and all the information required under paragraphs 9.8.2 and, if relevant, 9.9.1 and 9.10.1.

9.8.4 Occasionally a document will be approved by the *UKLA* that refers to an impending *suspension* or *cancellation of listing*. *Issuers* should be aware that a formal *suspension* or *cancellation of listing* request is still required from the *issuer* in the form set out in paragraph 9.8.2 above. The *suspension* or *cancellation of listing* request must be received ahead of the *suspension* or *cancellation of listing* date, and in any event not less than 24 hours before the time at which the *issuer* requests the *suspension* or *cancellation of listing* to take effect, to allow the *UKLA* time to make the necessary arrangements.

9.8.5 If an *issuer* is subject to a scheme of arrangement under section 425 of the Companies Act 1985 (the “scheme”), it should be aware that if the scheme does not become effective, or does become effective but evidence of this fact is not received and acknowledged by the *UKLA* before 7.30am on a particular day, the *suspension of listing* will be effected from the start of trading on the day on which the scheme is expected to, or does, become effective. At the start of trading the day following (or if the scheme becomes effective before 7.30am and evidence of this is received by the *UKLA* before this time, the day itself) the scheme becoming effective, the *issuer’s securities* will be *cancelled*. *Issuers* should be aware that they are still expected to submit a formal request for a *suspension* or *cancellation of listing* in these circumstances. *Issuers* who are in any doubt about the *UKLA’s* approach to *suspensions* and *cancellations of listing* in relation to schemes should contact the *UKLA*.

## **9.9 Suspension of listing at the request of the issuer**

9.9.1 In addition to the information required under paragraph 9.8.2, a *suspension of listing* request should also include details of the time the *issuer* wants the *suspension of listing* to take effect.

- 9.9.2 When a *suspension of listing* is required urgently the request, once agreed, will be actioned immediately by the *UKLA*. However, *issuers* should be aware that even in these circumstances a *suspension of listing* will normally take up to 30 minutes to be effected after receipt of all the information required under paragraphs 9.8.2 and 9.9.1 above.
- 9.9.3 *Suspension of listing* requests received for the start of trading should be timed at 7.30 am to allow time to resolve any last minute problems before the start of trading.
- 9.9.4 *Issuers* should be aware that the *UKLA* will not necessarily *suspend listing* (notwithstanding a request from an *issuer* or an agent on its behalf) if the *UKLA* is not satisfied that the circumstances prevailing at the time warrant such a *suspension of listing*.

## **9.10 Cancellation of listing at the request of an issuer**

- 9.10.1 Documents that may be required to accompany the *cancellation of listing* (under paragraph 9.8.2(1)(e)) would include:
- (1) in the case of a *cancellation of listing* following the completion of the compulsory acquisition procedures under Part XIII A of the Companies Act 1985, a copy of the notice sent to dissenting shareholders of the offeree together with written confirmation that there have been no objections made to the court within the prescribed period;
  - (2) in the case of a *cancellation of listing* under *listing rule* 1.23(a) an extract from, or a copy of, the offer document clearly showing the intention to cancel the offeree's *listing* and a copy of the announcement stating the date on which the *cancellation* was expected to take effect; and
  - (3) in the case of a *cancellation of listing* following a scheme of arrangement being effected under section 425 of the Companies Act 1985, a copy of the certificate from the Registrar of Companies that the scheme has become effective.
- 9.10.2 *Cancellations of listing* will only take effect at the start of trading. Accordingly, where an *issuer* wishes the *UKLA* to *cancel a listing* it should ensure that all of the documentation and information required under paragraph 9.8.2 is received by the *UKLA* well before the date on which the *issuer* wishes the *cancellation of listing* to take effect and in any event not later than 3.00pm on the day before the *issuer* wishes the *cancellation of listing* to take effect. Current procedures between the *UKLA* and the *RIEs* mean that if all of the documentation and information required under paragraph 9.8.2 is received after 3.00pm on the day before the *issuer* wishes the *cancellation of listing* to take effect it will normally take effect at the start of the next but one business day.



9.10.3 *Issuers* should note that the provisions of the *Act* apply to *cancellations of listing* whether the *cancellation* is at the request of the *issuer* or not. Hence, the necessary *statutory notices* (see Chapter 10) will have to be issued, with the attendant periods during which *issuers* may make representations or refer the matter to the *Financial Services and Markets Tribunal*. *Issuers* should therefore allow sufficient time to process these *statutory notices*, which may therefore necessitate prompt replies declaring that they do not wish to make representations or refer the matter to the *Financial Services and Markets Tribunal*.

## **9.11 Suspension or cancellation of listing unilaterally imposed by the UKLA**

9.11.1 The *UKLA* may, where the smooth operation of the market is, or may be, temporarily jeopardised or where protection of investors so requires, *suspend listing* (notwithstanding that the *issuer* does not request such *suspension of listing*).

9.11.2 Also the *UKLA* may, where special circumstances exist which preclude normal regular dealings in the *securities*, *cancel listing* (notwithstanding that the *issuer* does not request such *cancellation of listing*).

9.11.3 “Special circumstances” in paragraph 9.11.2 will normally include when a *suspension of listing* has lasted for longer than six months without the *issuer* taking adequate action to obtain a *restoration*.

9.11.4 During a *suspension of listing*, the *UKLA* will review the progress made by the *issuer* towards obtaining a *restoration*.

9.11.5 Under *listing rule 3.14A* the *UKLA* will *cancel listing* where a security is no longer *admitted to trading*.

9.11.6 In the event that the *UKLA* decides to unilaterally *suspend or cancel a listing* it will usually:

- (1) contact the *issuer* (or, if appropriate, its *sponsor*) and explain the reasons why the *UKLA* considers it appropriate to *suspend or cancel*;
- (2) allow the *issuer* or an appropriate agent to make representations to the *UKLA* in respect of the proposed *suspension or cancellation of listing*. The amount of time available for these representations will depend on the urgency of the *suspension or cancellation of listing*;
- (3) allow the *issuer* an opportunity to request the *suspension or cancellation of listing* and provide any of the information *listed* in paragraphs 9.8.2 or 9.9.1 (as applicable) as the *UKLA* may specifically require; and

- (4) in the case of a *suspension*, issue a dealing notice via an *RIS* announcing the *suspension* which will not state that the *suspension* was at the *issuer's* request.
- (5) in the case of a *cancellation of listing*, issue a dealing notice via an *RIS* in the names of the *UKLA* and the relevant *RIE(s)* announcing the *cancellation of listing* which will not state that the *cancellation of listing* was at the *issuer's* request.

## **9.12 Circumstances when the UKLA will not normally suspend listing at the request of the issuer**

9.12.1 The *UKLA* will not normally *suspend listing* for one of the following reasons:

- (1) to fix the price of a *security* at a particular level prior to:
  - (a) the placing by the *issuer* (under *listing rules* 4.7 to 4.9) of *securities*; or
  - (b) the announcement of the terms of an open offer (under *listing rules* 4.22 and 4.23) of such *securities*,

with the apparent aim of having a higher base price from which the permitted discount can be applied; and
- (2) to fix the price of a *security* at a particular level during an offer period (as defined in the *Takeover Code*).

## **9.13 Withdrawal or revocation of a suspension or cancellation of listing request**

- 9.13.1 At any time before the *suspension* or *cancellation of listing* takes effect, the *issuer* may withdraw its request. However, if the *UKLA* considers that a *suspension* or *cancellation of listing* is necessary it may impose such a *suspension* or *cancellation of listing* unilaterally (see paragraph 9.11).
- 9.13.2 This withdrawal should in the first instance be made by telephone but the *UKLA* will expect the *issuer* to give written confirmation of the withdrawal as soon as possible, explaining the reasons for the withdrawal.
- 9.13.3 If an *issuer* has published either a statement or a *circular* that states that the *issuer* is, or intends, to seek a *suspension* or *cancellation of listing* and the *issuer* no longer so intends, it should publish, without delay, a statement to that effect via an *RIS*.
- 9.13.4 The *UKLA* may, at any time before the *suspension of listing* takes effect, cancel the *suspension of listing* request if the circumstances surrounding the *suspension of listing* have altered such as to no longer warrant a *suspension of listing*.

9.13.5 If the *UKLA* revokes a *suspension of listing* request it will immediately inform the *issuer*, or its agents, of the fact and confirm the reasons for the revocation.

#### **9.14 Compliance with the listing rules whilst listing is suspended**

9.14.1 An *issuer* who has the *listing* of any its *securities suspended* must, under *listing rule* 1.16, still comply with the requirements of the *listing rules*.

#### **9.15 Restoration and revocation of a cancellation of listing**

9.15.1 The effect of a *restoration* or the revocation of a *cancellation of listing* is that the *securities* concerned will be re-admitted to the *official list*.

#### **9.16 Restorations at the request of an overseas exchange or secondary listed issuer**

9.16.1 The *UKLA* will not automatically *restore* at the request of the *home exchange*, or *competent authority*, following suspension on the *overseas exchange* of any kind of a *secondary listed issuer's securities*.

9.16.2 If a *secondary listed issuer* requests a *restoration* following its *home exchange* restoring such *securities*, the *issuer* should send to the *UKLA* written confirmation that the *securities* have been restored on its *home exchange* or, if the *restoration* on its *home exchange* has not yet become effective, confirmation of the time and date that it is proposed to become effective.

9.16.3 Where a *restoration* request is received from an *overseas exchange* the *UKLA* shall, wherever practical, contact the *issuer* or its *sponsor* before arranging the *restoration*. Accordingly, *secondary listed issuers* are encouraged to contact the *UKLA* at the same time as they contact their *home exchange*.

9.16.4 If the *UKLA* is unable to contact the *issuer*, *sponsor* or other appropriate person (for example the depository in the case of depository receipts) it will arrange the *restoration* when it is satisfied that the *securities* in question have been, or will be, restored on their *home exchange*.

#### **9.17 Restorations at the issuer's request**

9.17.1 An *issuer* who has the *listing* of any kind of its *securities suspended* may apply to the *UKLA* to have them *restored*.

9.17.2 Wherever possible a *restoration* should be applied for by the *issuer* (or, if appropriate, an agent acting on its behalf) sufficiently in advance of the time and date the *issuer* wishes the *restoration* to take effect. *Issuers* are encouraged to make early contact with the *UKLA* (by telephoning either the *UKLA* helpdesk or an appropriate member of *UKLA* staff) to allow the

*restoration* to be effected in accordance with the requirements of the *UKLA* and, so far as possible, the *issuer*.

- 9.17.3 *Restoration* applications received for the start of trading should be timed at 7.30 am to allow time to resolve any last minute issues before the start of trading.
- 9.17.4 *Restorations* will normally be actioned by the *UKLA* following an oral request from the *issuer* (or agent acting on their behalf). The *UKLA* may require documentary evidence that the events that lead to the *suspension of listing* are no longer current (for example, financial reports have been published or an appropriate announcement has been made) in order to process the *restoration* request.
- 9.17.5 If a *restoration* is required urgently the request, once agreed, will be actioned immediately by the *UKLA*. However, *issuers* should be aware that even in these circumstances a *restoration* will normally take up to 30 minutes to be effected.
- 9.17.6 Under *listing rule 10.39 restorations* in respect of *issuers* who are the subject of a reverse takeover will usually take effect at the start of trading on the *business day* next following the publication of the class 1 *circular* and *listing particulars* in relation to the transaction. If an *issuer* proposes to announce the terms of the reverse takeover and publish the class 1 *circular* and *listing particulars* on the same day, the announcement and publication of the documents must occur before 7.30 am on that day. If announcement and publication does not occur prior to 7.30 am the *suspension of listing* will take effect immediately prior to the announcement and will usually be *restored* the next day following publication of the class 1 *circular* and *listing particulars*. *Issuers* and their advisers should liaise closely with the *UKLA* to ensure that *securities* are *suspended* and *restored* in accordance with the *UKLA*'s requirements.
- 9.17.7 Following a *restoration* a dealing notice will be issued via an *RIS* by the *UKLA* announcing the *restoration*.
- 9.17.8 *Issuers* should be aware that the *UKLA* will not necessarily *restore listing* (notwithstanding a request from an *issuer* or an agent on its behalf) if the *UKLA* is not satisfied that the circumstances prevailing at the time warrant a *restoration*.

## **9.18 Withdrawal of an application to restore securities**

- 9.18.1 An *issuer* may withdraw its application to *restore* at any time whilst the *securities* to which the application relates still have their *listing suspended*. In the first instance the withdrawal request should be made by telephone to the relevant member of *UKLA* staff but the *UKLA* would normally expect the *issuer* to confirm the withdrawal in writing, addressed to the relevant member of *UKLA* staff or marked for the attention of the Director of Listing.

- 9.18.2 Notwithstanding a withdrawal of an application to *restore* the UKLA may *restore* unilaterally if it believes the circumstances warrant this (see paragraph 9.20).

## **9.19 Revocation of a cancellation of listing**

- 9.19.1 An *issuer* who has the *listing* of any kind of its *securities* *cancelled* may not apply to the UKLA to have them readmitted to the *official list* other than as part of the *supervisory notice* regime (see Chapter 10) (or an *application for listing* (see Chapter 2)). If *securities* are readmitted to the *official list* under the *supervisory notice* regime the UKLA will give the *issuer* notice in writing of this fact.
- 9.19.2 Readmittance of any *securities*, following a decision to revoke a *cancellation of listing*, will take effect as soon as practicable subject to the fact that it can only take effect at the start of trading on any particular day.

## **9.20 Unilateral restoration by the UKLA**

- 9.20.1 The UKLA may, when it considers it appropriate, *restore* (notwithstanding that the *issuer* does not request such *restoration*). The UKLA may exercise the power to *restore* where it considers the smooth operation of the market is no longer jeopardised or where protection of investors no longer requires the *suspension of listing*.
- 9.20.2 In the event that the UKLA decides to *restore* unilaterally it will usually:
- (1) contact the *issuer* and explain the reasons why it considers the *restoration* appropriate; and
  - (2) allow the *issuer* or an appropriate adviser to make representations to the UKLA in respect of the proposed *restoration*. The amount of time available for these representations will depend on the urgency of the *restoration*.
  - (3) issue a dealing notice via an *RIS* announcing the *restoration*.

## **9.21 Procedures governing the UKLA's decisions in relation to suspensions and cancellations of listing**

- 9.21.1 Under the *Act*, the UKLA must follow certain procedures (which involve the giving of *supervisory notice(s)*) when making decisions in relation to *cancellations* and *suspensions of listing* (other than decisions relating to an application to *restore securities*). These procedures are set out in Chapter 10. Decisions relating to:
- (1) a *cancellation of listing* other than at the request of the *issuer* are made by the *RDC* (see Chapter 10); and

- (1) all other circumstances within paragraph 9.21.1 are made by the *UKLA*'s executive procedures (see Chapter 10).

9.1.1 Under the Act, when the *UKLA* is making decisions in relation to an application to restore securities it must follow certain other procedures (which involve the giving of warning, decision and final notices). These procedures are, set out in Chapter 10. Decisions on whether to refuse or grant an application to restore will be taken under executive procedures.

## **9.22 Suspensions of securitised derivatives listed under chapter 24**

9.22.1 In addition to the matters discussed in the rest of this chapter, an *issuer* of securitised derivatives should be aware of the following additional *guidance*.

9.22.2 In the case of a securitised derivative relating to a single underlying instrument, in the event of that underlying instrument being suspended, the *UKLA* will normally *suspend the listing* of all securitised derivatives to which that underlying instrument relates.

9.22.3 In the case of a securitised derivative relating to a basket of underlying instruments, in the event of one or more underlying instruments of a basket being suspended, the *UKLA* will normally *suspend the listing* of all securitised derivative baskets to which that underlying instrument relates.

## **9.23 Restoration of securitised derivatives listed under chapter 24**

9.23.1 Once an underlying instrument is restored, the likelihood is that the *listing* of the securitised derivative will be *restored* provided no other factors have arisen that would necessitate the suspension of that securitised derivative. In addition, in the case of a securitised derivative relating to a basket of underlying instruments that has been suspended, the *listing* of the securitised derivative may be restored by the *UKLA*, irrespective of whether or not the underlying instrument has been restored, if:

1. the *issuer* of the securitised derivative confirms to the *UKLA* that despite the suspension of the relevant underlying instrument(s) a market in the securitised derivative will continue to be made; and
2. the *UKLA* is satisfied that the restoration of the listing of the securitised derivative is not contrary either to the goal of the protection of investors or to the smooth operation of the market.

## CHAPTER 10

### 10. STATUTORY NOTICE DECISION-MAKING: THE RDC AND EXECUTIVE PROCEDURES

#### 10.1 Application of this Chapter

10.1.1 This Chapter applies to *issuers, directors, former directors* and *sponsors*.

#### 10.2 Purpose of this Chapter

10.2.1 This Chapter gives *guidance* on the *UKLA's* decision making and other procedures for giving *statutory notices* in the circumstances listed in annex 1 to this Chapter. Section 395 of the *Act* (The Authority's procedures) requires the *UKLA* to publish a statement of its procedure for the giving of *statutory notices*. The purpose of this Chapter is to fulfil this obligation with regard to the *UKLA*.

#### 10.3 Statutory notices

10.3.1 The *Act* designates certain notices as *warning notices, decision notices* or *supervisory notices* (together, "*statutory notices*") for which there are certain specified procedures, actions and protections. The table below summarises the *statutory notices* and related notices:

Section of the <i>Act</i>	Notice	Description	See Para
387	<i>Warning notice</i>	A <i>warning notice</i> gives the recipient details about action that the <i>UKLA</i> proposes to take and about the right to make representations.	10.6
388	<i>Decision notice</i>	A <i>decision notice</i> gives the recipient details about action that the <i>UKLA</i> has decided to take.	10.7
388	<i>Further decision notice</i>	A further <i>decision notice</i> gives the recipient details about different action from that set out in a <i>decision notice</i> and which the <i>UKLA</i> has decided to take concerning the same matter covered by the <i>decision notice</i> . The <i>UKLA</i> may give a further <i>decision notice</i> only if the person to whom the original <i>decision notice</i> was given consents.	10.8

389	<i>Notice of discontinuance</i>	A <i>notice of discontinuance</i> identifies proceedings set out in a <i>warning notice</i> or <i>decision notice</i> and which are not being taken or are being discontinued.	10.9
390	<i>Final notice</i>	A <i>final notice</i> sets out the terms of action that the <i>UKLA</i> has decided on and the date it takes effect.	10.10
395(13)	<i>Supervisory notices</i>	A <i>supervisory notice</i> gives the recipient details about action that the <i>UKLA</i> has taken or proposes to take.	10.14 to 10.16

10.3.2 The *UKLA* has different decision making procedures depending on whether or not a *statutory notice* is given. Events leading to the giving of a *statutory notice* are covered in the other Chapters of this guidance manual. Annex 1 to this Chapter lists the relevant references.

10.3.3 Decisions whether to give a *statutory notice* and decisions concerning the *statutory notice* once it has been given (a *statutory notice associated decision*, see paragraph 10.17.2), will be taken by a *decision maker*. References to the *decision maker* concerning *statutory notice decisions* are to decisions taken by:

- (1) the *Regulatory Decisions Committee (RDC)*; or
- (2) *UKLA* staff under executive procedures.

10.3.4 Paragraphs 10.17 to 10.19 describe the allocation of decisions between the *RDC* and executive procedures. Paragraphs 10.20 to 10.22 provide further information on the *RDC*. Paragraphs 10.23 to 10.28 provide further information on executive procedures.

## 10.4 Other Decisions

10.4.1 The *UKLA* will make regulatory decisions falling outside of section 395 of the *Act*. These will include exercise of statutory powers which do not require *statutory notices* to be given. For example: when the *UKLA* grants an *application for listing*; decisions on applications for *variations*; decisions to give *individual guidance*; and decisions generally in the course of the *UKLA*'s oversight of *issuers*. They also include decisions on recommendations by *UKLA* staff to the *RDC*.



10.4.2 The *UKLA*'s general policy is that regulatory decisions should be taken at a level of seniority which is appropriate to the decision having regard to:

- (1) the significance of the decision to those who would be affected by it;
- (2) its novelty in light of stated policy and established practice;
- (3) the complexity of the relevant considerations;
- (4) the range of alternative options; and
- (5) the extent to which the facts relating to the decision are or may be disputed.

10.4.3 The *UKLA* expects that most decisions will be made by individuals accountable through line management to the *FSA* Board within the management structure of the *UKLA*. Where appropriate, decisions will be made collectively by a group of staff. Decisions will be made within the stated policies of the *UKLA* and in accordance with the *Act* and other legal requirements.

## **10.5 Statutory notice procedure – warning notice and decision notice procedure**

10.5.1 The *Act* requires the *UKLA*, when proposing to exercise its powers in certain circumstances, to use the *warning notice* and *decision notice* procedure. The circumstances to which the *warning notice* and *decision notice* procedures in this Chapter apply are set out in Annex 1 to this Chapter. A flowchart, provided in Annex 2 to this Chapter illustrates the procedure for giving *warning notices* and *decision notices*.

10.5.2 Paragraph 10.3.1 summarises the purpose of *warning notices* and *decision notices*.

## **10.6 Warning notice procedures**

10.6.1 For the circumstances listed in Annex 1 to this Chapter, if *UKLA* staff consider that action is appropriate, they will recommend to the relevant *decision maker* that a *warning notice* be given. A specimen *warning notice* is shown at Annex 4.

10.6.2 After considering the staff recommendation, the *decision maker* may:

- (1) decide not to take further action (with or without a private warning (see Chapter 8)); or
- (2) decide to give a *warning notice* to the person concerned.

- 10.6.3 If the *UKLA* decides to give a *warning notice* to a person, in accordance with section 387 of the *Act* (Warning notices), the *warning notice* must:
- (1) state the action which the *UKLA* proposes to take;
  - (2) be in writing;
  - (3) give the *UKLA*'s reasons for the proposed action;
  - (4) state whether section 394 of the *Act* (Access to Authority material) applies (see paragraphs 10.11 to 10.13); and
  - (5) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it.
- 10.6.4 If the *UKLA* decides to take no further action and the *UKLA* had previously informed the person concerned that it intended to recommend action, the *UKLA* will communicate this decision promptly to the person concerned.
- 10.6.5 The *warning notice* will contain a statement that the person concerned is entitled to make representations to the *UKLA*. The notice must specify a reasonable period, of at least 28 days from receiving the *warning notice*, within which the person to whom it is given may make representations.
- 10.6.6 The procedures for making representations are set out in paragraph 10.29.
- 10.6.7 The *warning notice* will contain, where appropriate, a statement that the mediation scheme is available. The applicability of the *FSA*'s mediation scheme is described in Appendix 1 to this guidance manual.

## **10.7 Decision notice procedure**

- 10.7.1 The *decision maker* will consider any representations in relation to a *warning notice* which has already been given. A decision will be stated in a *decision notice* or (where appropriate) a *notice of discontinuance* or other written notice. The *decision notice* sets out the terms of the decision. A specimen *decision notice* is at Annex 5 to this Chapter.
- 10.7.2 In accordance with section 388 of the *Act* (Decision notices), the *decision notice* must:
- (1) be in writing;
  - (2) give the *UKLA*'s reasons for its decision to take the action to which the *decision notice* relates;
  - (3) state whether section 394 of the *Act* (Access to Authority material) applies (see 10.11 to 10.13);

- (4) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and
- (5) give an indication of:
  - (a) any right to have the matter referred to the *Tribunal* given by the *Act*; and
  - (b) the procedure on referring a case to the *Tribunal*.

10.7.3 The *decision maker* may decide to take action different to that proposed in the *warning notice*. However, under section 388(2) of the *Act*, that action must be made under the same Part of the *Act* as the action proposed in the *warning notice*.

## **10.8 Further decision notice**

10.8.1 Under section 388(3) of the *Act*, following the giving of a *decision notice* but before the *UKLA* takes action to which the *decision notice* relates, the *UKLA* may give the person concerned a further *decision notice* relating to different action concerning the same matter. Under section 388(4) of the *Act*, the *UKLA* can only do this if the person receiving the further *decision notice* gives his consent. In these circumstances the following procedure will apply:

- (1) *UKLA* staff will recommend to the *decision maker* that a further *decision notice* be given, either before or after obtaining the person's consent;
- (2) the *decision maker* will consider whether the action proposed in the further *decision notice* is appropriate in the circumstances;
- (3) if the *decision maker* decides that the action proposed is inappropriate, he will decide not to give the further *decision notice*. In this case, the original *decision notice* will stand and the person's rights in relation to that notice will be unaffected. The *UKLA* will notify the person concerned accordingly;
- (4) if the *decision maker* decides that the action proposed is appropriate then, subject to the person's consent being obtained, a further *decision notice* will be given;
- (5) a person who had the right to refer the matter to the *Tribunal* under the original *decision notice* will have that right under the further *decision notice*. The time period in which the reference to the *Tribunal* may be made will begin from the date on which the further *decision notice* is given.

10.8.2 For the purposes of establishing whether the person receiving the further *decision notice* gives his consent, the *UKLA* will normally require consent

in writing. If the person concerned is an individual, the *UKLA* will normally require a letter or signed memorandum from him recording his consent. If the person concerned is a body corporate or partnership, the *UKLA* will normally require a letter or signed memorandum on behalf of the body corporate or partnership stating its consent.

## **10.9 Notice of discontinuance**

10.9.1 If the *UKLA* decides not to take action proposed in a *warning notice* or the action to which a *decision notice* relates, section 389 of the *Act* (Notices of discontinuance) requires the *UKLA* to give a *notice of discontinuance* to the person to whom the *warning notice* or *decision notice* was given. (Section 389 of the *Act* does not apply if the discontinuance of the proceedings results in the granting of an application made by the person to whom the *warning notice* (or *decision notice*) was given.)

10.9.2 *A notice of discontinuance:*

- (1) must identify what proceedings are being discontinued (section 389(3)); and
- (2) will state, or be accompanied by a statement, that the *UKLA* may publish information about the matter (section 391(2)). The *UKLA* may publish information about the matter if the person to whom the *notice of discontinuance* is given consents to publication or requests the *UKLA* to publish information about the matter.

## **10.10 Final notice**

10.10.1 Under section 390 of the *Act* (Final notices), the *UKLA* must give a *final notice* to the person to whom it has given a *decision notice*:

- (1) if the matter was not referred to the *Tribunal* within the period of 28 days of the date when the *decision notice* was given, or where some other period is prescribed in the *Tribunal rules*, within that period, in which case the *UKLA* will give a *final notice* at the same time as it takes the action to which the *decision notice* relates;
- (2) if the matter was referred to the *Tribunal* within the period of 28 days of the date when the *decision notice* was given, or where some other period is prescribed in the *Tribunal rules*, within that period, in which case the *UKLA* will give a *final notice* at the same time as it takes action in accordance with any directions given by the *Tribunal* or the Court under section 137 of the *Act* (Appeal on a point of law).

10.10.2 *A final notice* sets out the terms of the statement, order, penalty or other action, and will give details of the date when the action takes effect.

## **10.11 Third party rights and access to UKLA material**

- 10.11.1 Sections 393 (Third party rights) and 394 (Access to FSA material) of the *Act* confer additional procedural rights relating to third parties and to disclosure of *UKLA* material. These rights apply in certain *warning notice* and *decision notice* cases referred to in section 392 of the *Act* (Application of sections 393 and 394). The cases in which these additional rights apply are identified in Annex 1 to this Chapter by asterisks; these are cases that do not arise from the *UKLA*'s response to an application.

## **10.12 Access to UKLA material**

- 10.12.1 If section 394 of the *Act* (Access to Authority material) applies and the *UKLA* gives a person a *warning notice* or *decision notice*, it must under section 394(1) allow that person ('A') access to:

- (1) the material on which the *UKLA* relied in taking the decision which gave rise to the obligation to give the *warning notice* (or the *decision notice*); and
- (2) any secondary material, which, in the opinion of the *UKLA*, might undermine that decision.

- 10.12.2 However, the duty under section 394(1) is qualified in the following ways:

- (1) under section 394(2), the *UKLA* does not have to allow A access to material that is *excluded material*;
- (2) under section 394(2) (a) and (b), the *UKLA* does not have to allow A access to material if this:
  - (a) relates to a case involving a person other than A; and
  - (b) was taken into account in A's case only for the purpose of comparison with other cases;
- (3) under section 394(3), the *UKLA* may refuse A access to particular material to which it would otherwise have to allow him access if, in the *UKLA*'s opinion, allowing him access to the material would not be in the public interest or would not be fair, having regard to:
  - (a) the likely significance of the material to the person concerned in relation to the matter about which he has been given a notice; and
  - (b) the potential prejudice to the commercial interests of a person (other than A) which would be caused by the material's disclosure.

- 10.12.3 If under section 394(2), the *UKLA* does not allow A access to material because it is *excluded material* consisting of a *protected item*, it must give A written notice of the existence of the *protected item* and of the *UKLA*'s decision not to allow him access to it (section 394(4)).
- 10.12.4 If under section 394(3), the *UKLA* refuses to allow A access to particular material, it must give him written notice of the refusal and the reasons for it (section 394(5)).
- 10.12.5 If the *UKLA* receives a request for access to material, the *UKLA* may within a reasonable period after the request was made:
- (1) provide facilities for the inspection and photocopying of the material that it considers it is required to disclose; and
  - (2) provide a photocopy of such material.
- 10.12.6 The *UKLA* will provide the first photocopy of the material free of charge, but will charge for subsequent copies it provides to the same person.
- 10.13 Third party rights**
- 10.13.1 If section 393 (Third party rights) applies and any of the reasons given in the *warning notice* relate to a matter which:
- (1) identifies a person ("the third party") other than the person to whom the *warning notice* is given; and
  - (2) in the *UKLA*'s opinion is prejudicial to the third party;
- then the *UKLA* must give the third party, in accordance with section 393 of the *Act*, a copy of the *warning notice*.
- 10.13.2 A copy of the *warning notice* will not be given if the *UKLA* considers that this would be impracticable, or the *UKLA* has already given the third party a separate *warning notice* about the same matter. Similarly, a copy of the *warning notice* will not be given if the *UKLA* gives the third party such a notice at the same time as it gives the *warning notice* which identifies him.
- 10.13.3 Paragraphs 10.13.1 and 10.13.2 apply similarly in relation to a *decision notice*.
- 10.13.4 Under section 393 of the *Act* (Third party rights), the *UKLA* must give a copy of the *notice of discontinuance*, *decision notice* or *final notice* (as appropriate) to a third party, who has been given a copy of the *warning notice* or *decision notice* (section 393(14), 393(5) and 390(1)).

- 10.13.5 If the *UKLA* gives a copy of a *warning notice* or *decision notice* to a third party, the copy must be accompanied by an indication of the third party's right under section 393(9) to refer the case to the *Tribunal* and the procedure on such a referral.
- 10.13.6 If the *UKLA* gives a copy of a *warning notice* or *decision notice* to a third party, the provisions about access to *UKLA* material also apply to the third party (paragraphs 10.12.1 to 10.12.6). Under section 393(12), the material that the *UKLA* must disclose under section 394 of the *Act* (Access to Authority material) is material that relates to the matter that identifies the third party.

## **10.14 Statutory notice procedure – supervisory notice procedure**

- 10.14.1 The *supervisory notice* procedure applies when:
- (1) under section 78(2) of the *Act*, the *UKLA* proposes to *cancel* or *suspend listing* or *cancels* or *suspends listing* with immediate effect; and/or
  - (2) under section 78(5) of the *Act*, the *UKLA* having considered representations from the *issuer*, decides to *cancel* or *suspend listing* or if the *cancellation* or *suspension of listing* has taken effect, not to *cancel* it.
- 10.14.2 Paragraph 10.3.1 summarises the purpose of *supervisory notices*.
- 10.14.3 In paragraphs 10.15 to 10.16.3, the *supervisory notice* about a matter first issued to the recipient is referred to as the “*first supervisory notice*” and the *supervisory notice* issued after consideration of any representations is referred to as the “*second supervisory notice*”. Paragraphs 10.14 to 10.16 set out the procedures which apply when the *UKLA* gives a *supervisory notice*. The flowchart in Annex 3 to this Chapter illustrates the procedure for the giving of *supervisory notices*. A specimen *first supervisory notice* is at Annex 6 to this Chapter and a specimen *second supervisory notice* is at Annex 7 to this Chapter.
- 10.14.4 The regulatory powers to which the *supervisory notice* procedure applies are essentially preventative, protective and remedial in nature, which is reflected in the procedure. The *supervisory notice* procedure differs from the *warning notice* and *decision notice* procedure in a number of ways which are set out below:
- (1) instead of a *warning notice*, the *UKLA* will give a first written *supervisory notice*;
  - (2) the *UKLA* may specify in the *first supervisory notice* that the action may take effect immediately (or on such date as may be specified in the notice) if the *UKLA*, having regard to the ground on which it is exercising the particular statutory power,

reasonably considers that it is necessary for the action to take effect immediately (or on that date);

- (3) section 393 (Third party rights) and section 394 (Access to Authority material) of the *Act* do not apply to the *supervisory notice* procedure;
- (4) the *Act* does not prescribe a minimum period within which representations may be made from the date of the first written *supervisory notice*; however, the *supervisory notice* will specify a reasonable period, having regard to all the circumstances of the case;
- (5) after the *UKLA* has considered any representations it will give a second notice; the second notice will either retract, confirm or vary the action proposed in the *first supervisory notice*, or rescind, confirm or vary action already imposed as a result of the *first supervisory notice*;
- (6) the *FSA's* mediation scheme does not apply to action arising from *supervisory notices*; and
- (7) under the *Act*, the procedures for *final notices* and *notices of discontinuance* do not apply to *supervisory notices*.

## **10.15 First supervisory notice**

10.15.1 If the *UKLA* staff consider that action is appropriate they will recommend to the relevant *decision maker* that a *supervisory notice* (under section 78(2) of the *Act*) be given. The recommendation will say whether the action should take effect immediately or on a specified date.

10.15.2 After considering the staff recommendation, the *UKLA* may:

- (1) decide to take no action; or
- (2) decide to give a *first supervisory notice* to the person concerned.

10.15.3 If the *UKLA* decides to give a *first supervisory notice* to a person, in accordance with section 78(2) of the *Act*, the notice must:

- (1) give details of the action;
- (2) inform him when the action takes effect;
- (3) state the *UKLA's* reasons for the action and for its decision as to when the action takes effect;
- (4) inform him of his right to refer the matter to the *Tribunal* and give an indication of the procedures on such a reference; and



- (5) inform him that he may make representations to the *UKLA* within such a period as may be specified in the notice (whether or not the matter has been referred to the *Tribunal*).
- 10.15.4 If the *UKLA* decides to take no further action and the *UKLA* had previously informed the person concerned that it intended to recommend action, the *UKLA* will communicate this decision promptly to the person concerned.
- 10.15.5 The procedures for making representations are set out in paragraphs 10.29.
- 10.16 Second supervisory notice**
- 10.16.1 The *UKLA* will consider any representations concerning a *first supervisory notice* which the *UKLA* has already given.
- 10.16.2 If the *UKLA* decides to take the proposed action, or to take action in a different way, or decides not to rescind action that is already effective, a *second supervisory notice* will be given.
- 10.16.3 If the *UKLA* decides to give a *second supervisory notice*, its content will depend on the action the *UKLA* decides to take:
- (1) if the *UKLA* decides to take the action proposed in the *first supervisory notice*, or if action has already been taken which the *UKLA* decides not to rescind, in accordance with section 78(5) of the *Act*, the notice must inform the person concerned of his right to refer the matter to the *Tribunal*. If a notice informs a person of his right to refer the matter to the *Tribunal*, it must also give indication of the procedure on such a reference;
- (2) if the *decision maker* decides to take different action from that proposed in the *first supervisory notice*, then in accordance with section 78(5) of the *Act*, the *second supervisory notice* must be in the same form as a *first supervisory notice* (see paragraph 10.15.3).
- 10.16.4 If the *decision maker* decides not to take action, or decides to rescind action that is already effective, then in accordance with section 78(8) or section 78(11)(b) of the *Act*, the person concerned must be informed in writing.

## **10.17 Allocation of decision making - the decision maker**

10.17.1 This section sets out the allocation of decision making between the *RDC* and executive procedures for decisions which:

- (1) give rise to an obligation to give a *statutory notice*; or
- (2) are associated with *statutory notice decisions* ("*statutory notice associated decisions*").

10.17.2 *Statutory notice associated decisions* include decisions:

- (1) to set or extend the period for making representations (see paragraphs 10.29 and 10.30);
- (2) as to whether a copy of the *statutory notice* needs to be given to any third party and the period for them to make representations;
- (3) to refuse access to *UKLA* material; and
- (4) as to the information it is appropriate to publish about the matter to which a *final notice* or an effective *supervisory notice* relates.

10.17.3 *UKLA* staff responsible for preparing and recommending action in individual cases will allocate cases to the *RDC* (by full or modified procedures) or to executive procedures in accordance with paragraphs 10.18 and 10.19.

## **10.18 Decisions to be taken by the RDC**

10.18.1 The *RDC* has responsibility for *statutory notice decisions* and *statutory notice associated decisions* if the *UKLA* proposes or takes any of the following actions:

- (1) to refuse an *application for listing*;
- (2) to seek a *cancellation of listing*;
- (3) to refuse an application for approval as a *sponsor*;
- (4) to cancel a person's approval as a *sponsor*;
- (5) to exercise the *UKLA's* powers to impose a financial penalty on an *issuer, director* or former *director* or issue a public censure on an *issuer, director, former director* or *sponsor*;

## **10.19 Decisions to be taken by executive procedures**

10.19.1 *Statutory notice decisions* and *statutory notice associated decisions* which are not taken by the *RDC*, will be taken under executive procedures.

- 10.19.2 The *statutory notice decisions* (and *statutory notice associated decisions*) in respect of *suspensions of listing* will be taken by executive procedures (where the *UKLA* decides or is required to use the statutory powers in question rather than to achieve the action required in other ways, for example through individual *guidance* or securing the agreement of an issuer to take action on a voluntary basis).

## **10.20 The Regulatory Decisions Committee**

- 10.20.1 The *Regulatory Decisions Committee (RDC)* is appointed by the *FSA* Board to exercise certain regulatory powers on behalf of the *FSA* Board. The *RDC* is accountable to the *FSA* Board for its decisions.
- 10.20.2 The *RDC* comprises a Chairman, one or more Deputy Chairmen, and a panel of other members.
- 10.20.3 The *RDC* is a body outside the *FSA*'s management structure. Apart from the Chairman, none of the members of the *RDC* is an *FSA* employee. The members comprise:
- (1) current and recently retired practitioners with financial services industry skills and knowledge; and
  - (2) other suitable individuals also representing the public interest.
- 10.20.4 The *RDC* is supported by the *RDC* Secretariat. The *RDC* Secretariat is separate from *FSA* staff involved in making recommendations to the *RDC*.

## **10.21 Appointment and removal of members of the RDC**

- 10.21.1 The Chairman of the *RDC* is appointed by the *FSA* Board on the recommendation of an independent group established by the Board for that purpose. A non-executive member of the *FSA* Board chairs the independent group. The *FSA* Board also appoints all other members of the *RDC*, including its Deputy Chairman or Deputy Chairmen, on the recommendation of the Chairman of the *RDC*.
- 10.21.2 All members of the *RDC* are appointed for fixed periods.
- 10.21.3 The *FSA* Board may remove a member of the *RDC* but only in the event of that member's misconduct or incapacity.

## **10.22 Constitution and procedure of the RDC**

- 10.22.1 The *RDC* will meet as a full committee or in panels. Except in an urgent *supervisory notice* case, where the Chairman or a Deputy Chairman and, where possible, any one other member of the *RDC* will make a decision, each meeting of the *RDC* will include:
- (1) its Chairman or a Deputy Chairman (who will chair the meeting); and
  - (2) at least two other members.
- 10.22.2 However, the composition and size of panels of the *RDC*, and the pattern of their meetings, may vary depending on the nature of the particular matter under consideration.
- (1) If a member of the *RDC* has a potential conflict of interest in any matter before the *RDC* he will disclose the conflict to the Chairman of the *RDC* (or if he is the Chairman of the *RDC*, to the Chairman or Deputy Chairman of the *FSA*). He will also disclose the conflict to the *RDC* Secretariat.
  - (2) If the Chairman of the *RDC* (or where appropriate the Chairman or Deputy Chairman of the *FSA*) considers it reasonable and appropriate, he will require the member of the *RDC* to stand down from consideration of that particular matter. The Chairman of the *RDC* (or Chairman or Deputy Chairman of the *FSA*) may ask another member of the *RDC* to assist him in considering the potential conflict.
- 10.22.3 The *RDC* Secretariat will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.
- 10.22.4 The meetings of the *RDC* will be in private, and will be conducted in the manner the *RDC* considers suitable in order to enable it to determine fairly the matters which it is required to consider.
- 10.22.5 Each member of the *RDC* present is entitled to vote on the matter under consideration. The Chairman of the meeting of the *RDC* will have a vote as a member of the *RDC* and will have the casting vote in a tie.
- 10.22.6 The *RDC* may require the *UKLA* staff to attend its meetings.
- 10.22.7 *UKLA* staff are entitled to put to the *RDC* the previous disciplinary record of the person, including any previous breach of *listing rules* (including the record prior to the *Act*). *UKLA* staff may also draw to the *RDC*'s attention the compliance history of the person, including that under previous legislation.
- 10.22.8 The *RDC* may not consider any of the matters in paragraph 10.22.7 for the purpose of proving a later breach. The matters in paragraph 10.22.7 may be considered when determining whether to take action or, where

appropriate, as one of the factors described in Chapter 8, in determining the size of the financial penalty.

10.22.9 Representations to the *RDC* are received in accordance with paragraph 10.29.

10.22.10 The *UKLA* will fix a date or dates for a meeting to consider the representations and to decide:

- (1) whether to take the action proposed;
- (2) if the action has been taken, whether to rescind the action; and
- (3) in either case, whether to take the action in a different way.

10.22.11 The *RDC* will ensure that a record is kept of:

- (1) who took the decision;
- (2) the representations made to the *RDC*;
- (3) the material considered by the *RDC*;
- (4) the nature of the decision;
- (5) the reasons for the decision; and
- (6) the dates on which the decision was taken and then communicated by the *UKLA* to the person concerned.

## **10.23 Executive procedures for statutory notice decisions and statutory notice associated decisions**

10.23.1 All *statutory notice decisions* (and *statutory notice associated decisions*) under executive procedures (i.e. those in relation to *suspensions of listing*) are made under authority delegated by the *FSA* Board. The *FSA* Chairman's Committee, or any other senior staff committee empowered by the *FSA* Board to make *statutory notice decisions* by executive procedures may from time to time determine that particular categories of *statutory notice decisions* (and *statutory notice associated decisions*) which may be made by executive procedures. The *Listing Authority Committee* will be responsible for all such decisions taken using executive procedures by the *UKLA*.

## **10.24 Separation of functions**

10.24.1 Section 395(2) of the *Act* (The Authority's procedures) requires that the *UKLA's* procedure for the giving of *statutory notices* must be designed to secure that "the decision which gives rise to the obligation to give any

such notice is taken by a person not directly involved in establishing the evidence on which that decision is based".

- 10.24.2 In accordance with section 395(2) of the *Act*, *statutory notice decisions* taken under executive procedures will not be taken by staff directly involved in establishing the evidence on which that decision is based, except in accordance with section 395(3) of the *Act* (see paragraph 10.28).

**10.25 Decision making using executive procedures by an individual UKLA staff member**

- 10.25.1 The following sub-paragraphs of 10.25 have application to decisions regarding *suspension of listing* at the *issuer's* request.

- 10.25.2 If an individual member of the *Listing Authority Committee* or his delegate (of at least the level of associate) makes a *statutory notice decision* (or *statutory notice associated decision*) the decision will be:

- (1) on the recommendation of a *UKLA* staff member of at least the level of associate; and
- (2) with the benefit of legal advice (where appropriate) from an *FSA* staff member of at least that level.

- 10.25.3 The individual who takes a decision under executive procedures is accountable to the *FSA* Board through line management responsible for the decision concerned.

- 10.25.4 A *UKLA* staff member who considers that a *statutory notice decision* (or *statutory notice associated decision*) should be taken above his own level may refer that decision to a more senior level. If a *UKLA* staff member consults another staff member about a decision, the decision remains the independent decision of the *UKLA* staff member who consults his colleague, unless it is agreed that the decision should instead be taken by the colleague, and the colleague has the delegated authority to do so.

- 10.25.5 If an individual responsible for a decision by executive procedures (or a more senior *UKLA* staff member with responsibilities in relation to the decision concerned) considers that it warrants collective consideration, the individual may:

- (1) take the decision himself, following consultation with other *UKLA* staff members, as above; or
- (2) refer it to the *Listing Authority Committee*, which will take the decision itself.

**10.26 Decision making using executive procedures by the Listing Authority Committee**

10.26.1 The following sub-paragraphs of 10.26 have application to decisions regarding unilateral *suspension of listing*.

10.26.2 The *Listing Authority Committee* will consist of such *UKLA* staff members as the *FSA* Chairman's Committee may from time to time determine.

10.26.3 The *Listing Authority Committee* is accountable for its decisions to the *FSA* Chairman's Committee, and through it, to the *FSA* Board.

10.26.4 The *Listing Authority Committee* may operate through standing or specific sub-committees to consider particular decisions or classes of decision, for which accountability will lie through the committee. Each meeting of the *Listing Authority Committee*, or sub-committee, will include:

- (1) an individual with authority to act as its chairman; and
- (2) at least one other member.

10.26.5 The *Listing Authority Committee* will operate on the basis of a recommendation from a *UKLA* staff member of at least the level of associate, and with the benefit of legal advice (where appropriate) from an *FSA* staff member of at least that level.

10.26.6 In general, but subject to the need to act swiftly in exceptionally urgent cases, the *UKLA* staff's recommendation will go before the *Listing Authority Committee*. In an exceptionally urgent case where:

- (1) in the *UKLA* staff's opinion, any delay would or might temporarily jeopardise the smooth operation of the market or where protection of investors so requires; and
- (2) two members of the *Listing Authority Committee* are not available;

the *UKLA* staff's recommendation will be considered and the decision made by a member of the *FSA*'s executive of at least Director of Division level.

**10.27 Executive procedures - general**

10.27.1 A *statutory notice* given under executive procedures will identify the *decision maker*. A decision to give a *second supervisory notice* will normally be by the same *decision maker* (that is, the individual or committee) who made the decision to give the *first supervisory notice*.

- 10.27.2 If an *issuer* wishes to make representations in response to a *first supervisory notice*, those representations will be received in accordance with paragraph 10.29.
- 10.27.3 The *decision maker* will ensure that a record is kept of:
- (1) who took the decision;
  - (2) any representations to the *decision maker*;
  - (3) the material considered by the *decision maker*;
  - (4) the nature of the decision;
  - (5) the reasons for the decision; and
  - (6) the dates on which the decision was taken and then communicated to the person(s) concerned.
- 10.27.4 *UKLA* staff are required by their contract of employment to comply with a Code of Conduct which imposes strict rules to cover the handling of conflicts of interest which may arise from personal interests or associations. *UKLA* staff who are subject to a conflict of interest must declare that interest to the person to whom they are immediately responsible for the decision. In the case of decisions by the *Listing Authority Committee*, any conflict of interest must be declared to the Chairman of the Committee (or, if the person with the conflict is the chairman, to the *FSA* Chairman's Committee). The individual to whom the conflict of interest is declared will decide whether that conflict precludes the involvement of the *UKLA* staff member in making a decision.

## **10.28 Section 395(3) decisions**

- 10.28.1 Under section 395(3) of the *Act*, the *UKLA*'s procedure may permit a decision which gives rise to an obligation to give a *supervisory notice* to be taken by a person involved in establishing the evidence on which the decision is based if:
- (1) the *UKLA* considers that, in a particular case, it is necessary in order to protect the interests of consumers; and
  - (2) the person taking the decision is of a level of seniority laid down by the procedure.
- 10.28.2 The *UKLA* expects to exercise the power provided by section 395(3) only in exceptional cases. This means cases in which the *UKLA* believes action is needed to protect the interests of investors, but in which the requirements of independence cannot be met.



- 10.28.3 An individual who may make such a decision shall be a member of the *FSA's* executive of at least Director of Division level or a member of a committee which reports directly to the *FSA* Chairman's Committee.

## **10.29 Representations**

- 10.29.1 Any *warning notice* or *first supervisory notice* will contain a statement that the person concerned will have a certain amount of time in which to make representations to the *decision maker*. In the case of a *first supervisory notice* the person concerned may make representations whether or not the matter to which the notice relates has been referred to the *Tribunal*.
- 10.29.2 If a *second supervisory notice* is given where the *decision maker* has decided to take action different from that which was proposed in the *first supervisory notice*, the *decision maker* will provide a similar statement about the right to make representations.
- 10.29.3 In the case of a *warning notice*, section 387(2) of the *Act* requires that the *warning notice* must specify a reasonable period for the making of representations. This must be at least 28 days. The *Act* does not specify a minimum period that the *UKLA* must give for making representations for *supervisory notices*.
- 10.29.4 In deciding on the period to make representations, the *decision maker* will have regard to the circumstances of each case, including the nature of the proposed action and its likely effect on the person concerned. The *decision maker* will have particular regard to the risk to the *UKLA's* regulatory functions of any delay in imposing proposed action.
- 10.29.5 The period for representations will normally be:
- (1) in relation to *warning notices*: 28 days from the date when the person receives the notice, subject to his right to seek an extension of time; and
  - (2) in relation to *supervisory notices*: 28 days from the date when the person receives the notice, subject to his right to seek an extension of time.

## **10.30 Request for an extension of time**

- 10.30.1 After receiving the *warning notice* or *first supervisory notice*, if the person concerned considers that its stated period for representations is too short, then he may, within 14 days of receiving the notice, request the *UKLA* in writing for more time. In the case of a *warning notice*, this may be appropriate, for example, if a person has entered or wishes to enter into settlement discussions with *UKLA* staff.

10.30.2 In accordance with section 387(3) of the *Act* and other relevant sections of the *Act*, the *decision maker* may extend the period of time for representations specified in the *warning notice* or *first supervisory notice*.

10.30.3 Requests for an extension of time will be considered by the *decision maker* who will notify the recipient of the notice promptly whether the request has been accepted or not.

### **10.31 Written representations**

10.31.1 Any written representations should be sent to the *UKLA* at the address stated in the *warning notice* or *supervisory notice*.

### **10.32 Oral representations**

10.32.1 If he so chooses, a person who receives a *warning notice* or *first supervisory notice* may make oral representations to the *decision maker* and attend a meeting for that purpose.

10.32.2 Oral representations may be made in addition to written representations, although there is no obligation to do so. If the person wishes to make oral representations he should send a written notification of this to the *UKLA* at the address stated in the *warning notice* or *first supervisory notice*. The notification should be made by the end of the period for representations specified in the notice. The notification should specify the matters on which the person wishes to make oral representations, include an estimate of how much time they expects the representations will take, and provide the names and qualifications of any representatives appointed to attend the meeting at which oral representations will be made. If after notifying the *UKLA* of their intention to make oral representations, the person chooses not to make those representations, the *decision maker* will consider the matter on the basis of the written representations alone.

10.32.3 A person may appoint a representative of his choice (who may be legally qualified) to attend the meeting at which oral representations will be made. The representative may make or assist in making the representations.

10.32.4 The *decision maker* will specify a time as soon as is reasonably possible after receiving the notification for receiving the oral representations. The *decision maker* may specify the place where he will receive the representations and may specify that the representations will be received in private. The *decision maker* may limit the type, length and content of any representations. The *decision maker* may ask the person or his representative to clarify any issue arising out of the representations and may require the person (and any representatives) to leave the meeting after they have made their representations.

10.32.5 Paragraphs 10.34.1 and 10.34.2 explain the procedure where no representations are received or made.

### **10.33 Third parties**

- 10.33.1 Paragraphs 10.29 to 10.34 apply also to a third party who has received a copy of a *warning notice*, in relation to those matters affecting the third party.

### **10.34 Default procedures**

- 10.34.1 If the *UKLA* receives no response or representations by the time a decision is to be made about the giving of the *decision notice* or *second supervisory notice*, the *decision maker* may regard as undisputed the allegations or matters in the *warning notice* or *first supervisory notice*. In such cases, a *decision notice* or *second supervisory notice* will be given accordingly. A person who has received a *decision notice* or *second supervisory notice* and has not previously made any response or representations to the *UKLA*, may, nevertheless, refer the *UKLA's* decision to the *Tribunal* as described in paragraphs 10.36 to 10.38.
- 10.34.2 In exceptional cases, the *decision maker* may permit representations from a person who has received a *decision notice* (or a *second supervisory notice*) given in accordance with paragraphs 10.7 and 10.8 (or 10.16), and shows on reasonable grounds that he did not receive the *warning notice* (or *first supervisory notice*), or that he had reasonable grounds for not responding within the specified period. In these circumstances, the *decision maker* may decide to give a *notice of discontinuance* (see paragraph 10.9) or a further *decision notice* (or a written notice or a *supervisory notice*).

### **10.35 Delegation of RDC decisions and modified RDC procedures**

- 10.35.1 The *RDC* has delegated the making of *statutory notice decisions* in relation to the *cancellation of listing* at the request of the *issuer* (and *statutory notice associated decisions*) to the Chairman of the *RDC* or to *UKLA* staff, so that they are made by modified rather than full *RDC* procedure:
- 10.35.2 In these circumstances *UKLA* staff may decide to use the modified decision making process in the following paragraphs in 10.35.
- 10.35.3 *UKLA* staff will make recommendations to issue a *first supervisory notice* to at least one other member of staff who is:
- (1) a member of the *Listing Authority Committee*; and
  - (2) not directly involved in establishing the evidence on which the decision is based.

- 10.35.4 A member of the *Listing Authority Committee* will consider the recommendations. If they are satisfied that the *issuer* concerned has requested and agrees to the *cancellation of listing*, they will consider whether the *UKLA* should give a *first supervisory notice* (see paragraph 10.15).
- 10.35.5 If the member of the *Listing Authority Committee* decides to give the *first supervisory notice* and the *issuer* concerned accepts its terms, the *UKLA* will then consider whether to give a *second supervisory notice* (see paragraph 10.16.1 to 10.16.3) confirming the decision.
- 10.35.6 The *UKLA* will only give the *second supervisory notice* when it is satisfied that the *issuer* concerned accepts the terms of the *first supervisory notice*, and the circumstances of the case have not materially changed since that notice was given. If *UKLA* staff are not satisfied, or circumstances of the case have changed, they will refer the possible giving of a *second supervisory notice* to the *RDC*. In such cases the *RDC* will follow the process in paragraphs 10.16.1 to 10.16.3.
- 10.35.7 *UKLA* staff will make recommendations in relation to *statutory notice associated decisions* to at least one other member of staff who is:
- (1) at an appropriate level of seniority; and
  - (2) not directly involved in establishing the evidence on which the decision is based.
- 10.35.8 *UKLA* staff at the appropriate level of seniority will consider the recommendations and the *UKLA* shall take action accordingly.

## **10.36 References to the Tribunal, publication and service of notices**

- 10.36.1 A person who receives a *decision notice* or *supervisory notice* (including a third party who has been given a copy of a *decision notice*) has the right to refer the *UKLA*'s decision to the *Tribunal*.
- 10.36.2 The *Tribunal* is established under Part IX of the *Act* (Hearings and Appeals) and governed by Part IX of the *Act* and Schedule 13 to the *Act* (The Financial Services and Markets Tribunal). The *Tribunal* is independent of the *FSA* and appointed by the Lord Chancellor's Department in terms of the Financial Services and Markets Tribunal Rules 2001 (the *Tribunal rules*).
- 10.36.3 Under section 133(1) of the *Act* (Proceedings: general provisions), any reference to the *Tribunal* must be made within 28 days of the date on which the *decision notice* or *supervisory notice* is given, or within any period prescribed by the *Tribunal rules*. Under section 133(2) of the *Act*, the *Tribunal rules* may allow a reference to be made after the end of the 28 day period.

- 10.36.4 A reference to the *Tribunal* will be a full rehearing of the matter that gave rise to the decision referred to the *Tribunal*. On a reference the *Tribunal*:
- (1) must determine what (if any) is the appropriate action for the *UKLA* to take in relation to the matter referred (section 133(4)); and
  - (2) may consider any evidence relating to the subject-matter of the reference, whether or not it was available to the *UKLA* at the time the *UKLA* took its decision.
- 10.36.5 In determining a reference:
- (1) made as a result of a *decision notice*, the *Tribunal* may (section 133(6)) not direct the *UKLA* to take action which the *UKLA* would not, as a result of section 388(2) of the *Act* (Decision notices), have had the power to take when giving the *decision notice*;
  - (2) made as a result of a *supervisory notice*, the *Tribunal* may (section 133(7)) not direct the *UKLA* to take action which would otherwise have required the giving of a *decision notice*.
- 10.36.6 On determining a reference, the *Tribunal*:
- (1) must (section 133(5)) remit the matter to the *UKLA* with such directions (if any) as the *Tribunal* considers appropriate for giving effect to its determination; and
  - (2) may make recommendations as to the *UKLA*'s regulating provisions or its procedures.
- 10.36.7 Under section 133(9) of the *Act*, the *UKLA* must not take any action specified in a *decision notice* during the period within which a reference may be made to the *Tribunal*. Nor may it take such action, if the matter is referred, until the reference, and any appeal against the *Tribunal*'s decision, has been finally disposed of.
- 10.36.8 The *UKLA* is required to act in accordance with the determination of, and any direction given by the *Tribunal* and an order of the *Tribunal* will be enforceable as if it were an order of the county court or, in Scotland, as if it were an order of the Court of Session.

## **10.37 Publication**

- 10.37.1 Section 391(7) of the *Act* (Publication) provides that information which is published may be published in such a manner as the *UKLA* considers appropriate. The *UKLA* will consider the particular circumstances of each case in deciding what method of publication will be appropriate.

- 10.37.2 If the *UKLA* has given a *notice of discontinuance*, the *UKLA* may, if the person to whom the notice is given consents, publish such information it considers appropriate about the matter to which the discontinued proceedings related (section 391(2)). Similarly, section 391(3) indicates that where a *notice of discontinuance* has been copied to a person, the *UKLA* may, if the person to whom the notice is copied consents, publish such information as it considers appropriate about the matter to which the discontinued proceedings related, so far as relevant to that person.

## **10.38 Service of notices**

- 10.38.1 The Financial Services and Markets Act 2000 (Service of Notices) Regulations 2001 (SI 2001 No 1420) govern service of *statutory notices* and other notices and documents which must be served by the *UKLA* under the *Act*.
- 10.38.2 The methods by which the *UKLA* may give a notice to a person are:
- (1) delivery of the notice to the person or to the person's nominee; or
  - (2) leaving the notice at the person's proper address; or
  - (3) posting the notice to that address; or
  - (4) transmitting the notice by fax or other means of electronic communication to the person where the person agrees in writing to receive the notice by such means.
- 10.38.3 These Regulations make provision for the service of notices on different classes of persons, including bodies corporate, partnerships and unincorporated associations.
- 10.38.4 A notice given by the *UKLA* is deemed to have been received in the following circumstances:
- (1) if the notice is left at the person's proper address, on the *business day* after it is left at that address;
  - (2) if the notice is posted to an address in the United Kingdom, on the second *business day* after posting;
  - (3) if the notice is posted to an address in any *member state* (other than the United Kingdom), on the fifth *business day* after posting;
  - (4) if the notice is given by fax (if the recipient has indicated in writing that he is willing to receive the notice by such means and a follow-up copy is sent by another method by the end of the following business day), on the *business day* after the day on which the document is transmitted; and

- (5) if the notice is given by electronic means (if the recipient has indicated in writing that he is willing to receive the notice by such means), on the *business day* after the day on which the document is transmitted.

## Annex 1

### Application of decision making procedures – warning notices, decision notices and supervisory notice

Section of the Act	Description	Chapter reference	Decision maker
74(2)	Refusal of <i>application for listing</i>	2	RDC
77(1)	<i>Cancellation of listing</i>	9	RDC/ Executive Procedures
77(2)	<i>Suspension of listing</i>	9	Executive Procedures
88	Refusal of application to be a <i>sponsor</i>	4	RDC
88 *	Cancellation of person's approval as a <i>sponsor</i>	4	RDC
89 *	Public censure of a <i>sponsor</i>	8	RDC
91 *	Imposition of penalty or publication of censure	8	RDC

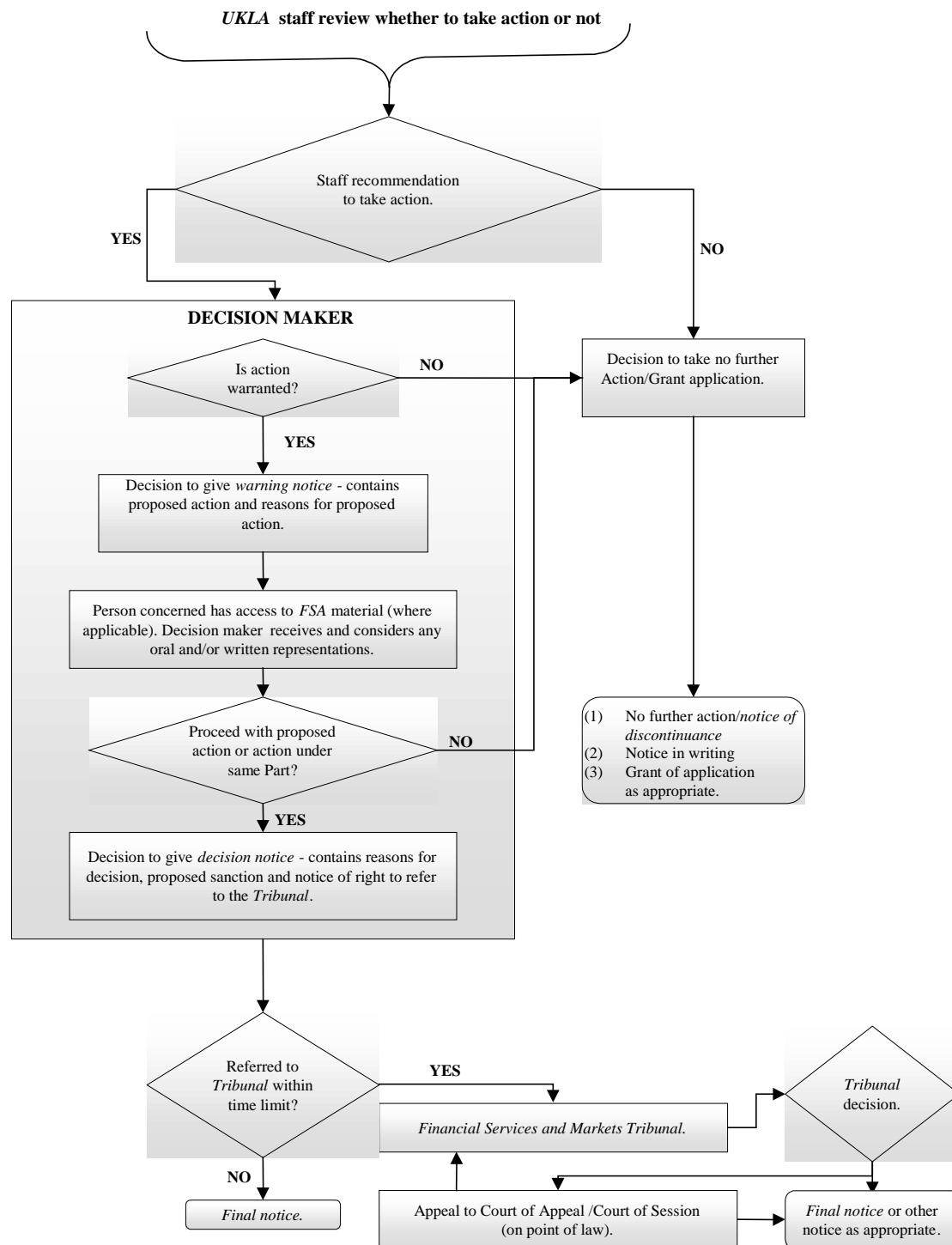
Note 1: Third party rights and access to FSA material apply to the powers listed in this table where indicated by an asterisk - \*.

Note 2: Where the “*decision maker*” column indicates that the decision maker is either the RDC or executive procedures, this will depend on whether the *cancellation of listing* is at the request of the *issuer* or not.



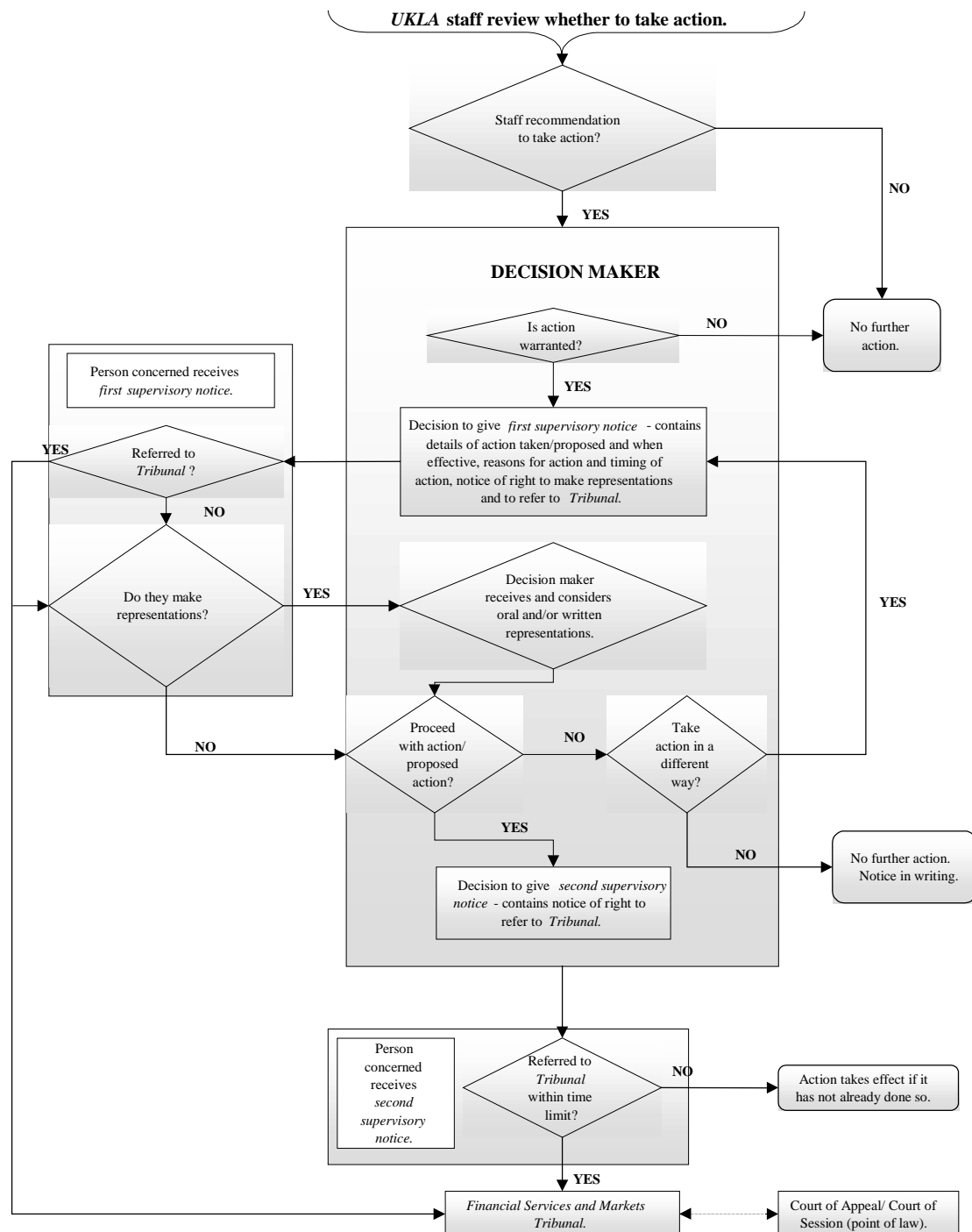
## Annex 2

### The UKLA's decision-making procedure involving warning and decision notices



### Annex 3

## The UKLA's decision-making procedures for supervisory notices



**Annex 4**  
**Specimen warning notice**

To: [Issuer or other person]  
Of: [address]

[Date]

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## WARNING NOTICE

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**TAKE NOTICE:** The Financial Services Authority (acting in its capacity as competent authority for listing) of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) proposes to take the following action against you

**PROPOSED ACTION**

[Details of proposed action including details of any financial penalty, the text of any public statement of misconduct, and the terms of any prohibition order]

**REASONS**

[Reasons for the proposed action]

**DECISION MAKER**

The decision to give this notice was made by [identity of relevant committee or individual] on behalf of the FSA

**IMPORTANT**

This warning notice is sent to you in accordance with section 387 of the Financial Services and Markets Act 2000 (the “Act”) (see paragraph 10.6 of the UK Listing Authority guidance manual).

You may make written and oral representations to the FSA. If you wish to make representations you must do so within [28] days of receiving this warning notice or such longer period as may be permitted by the FSA. Written representations should be made to the Secretary, Regulatory Decisions Committee, at the above address (see paragraphs 10.29 to 10.34 of the UK Listing Authority guidance manual).

[Section 394 of the Act applies to this warning notice. In accordance with section 394, you are entitled to have access to:

- (a) the material upon which the FSA has relied in deciding to give you this notice;
- and

- (b) any secondary material which, in the opinion of the FSA, might undermine that decision.

[[The following secondary material exists]/[There is no such secondary material] to which you must be allowed access. (See paragraphs 10.6.3 and 10.12.1 of the UK Listing Authority guidance manual)]

[The FSA operates a mediation scheme for certain disciplinary and market abuse cases, where settlement discussions have taken place but broken down. You may use this scheme, but you are not obliged to do so.] (See paragraph 10.6.7 and Appendix 1 to the UK Listing Authority guidance manual).

Please contact [contact name and details] at the FSA for more information.

**Annex 5**  
**Specimen decision notice**

To: [Issuer or other person]  
Of: [address]

[Date]

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## DECISION NOTICE

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**TAKE NOTICE:** The Financial Services Authority (acting in its capacity as competent authority for listing) of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) has decided to take the following action against you

**ACTION**

[Details of action (if any) including, for example, details of any financial penalty, or the text of any public statement of misconduct, or the refusal of an application for listing or for approval as a sponsor]

**REASONS**

[Reasons for the FSA’s decision to take the action]

**DECISION MAKER**

The decision to give this notice was made by [identity of relevant committee or individual] on behalf of the FSA

**YOUR RIGHTS**

This decision notice is sent to you in accordance with section 388 of the Financial Services and Markets Act 2000 (the “Act”) (see paragraph 10.7 of the UK Listing Authority guidance manual).

[Section 394 of the Act applies to this decision notice. In accordance with section 394, you are entitled to have access to:

- (a) the material upon which the FSA has relied in deciding to give you this notice;  
and
- (b) any secondary material which, in the opinion of the FSA, might undermine that decision.

[[The following secondary material exists]/[There is no such secondary material] to which you must be allowed access. (See paragraphs 10.11 to 10.13 of the UK Listing Authority guidance manual)]

Section [*insert relevant section*] of the Act entitles you, if you wish, to refer the FSA’s decision to the Tribunal. Under section 133 of the Act, you have 28 days from the

date of this decision notice to refer the matter to the Tribunal, although the Tribunal may permit you a longer period (see paragraph 10.36 of the UK Listing Authority guidance manual). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal rules.

**Annex 6**  
**Specimen first supervisory notice issued**  
**under section 78(2) of the Act**

To: [Issuer]  
Of: [address]

[Date]

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## **SUPERVISORY NOTICE**

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**TAKE NOTICE:** The Financial Services Authority (acting in its capacity as competent authority for listing) of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) [has decided/ proposes] to [take the following action against you]:

**[PROPOSED] ACTION**

[Details of [proposed] action including details of suspension or cancellation of listing]

**EFFECTIVE DATE**

[The date on which any suspension or cancellation of listing is to take effect or has taken effect]

**REASONS**

[Reasons for the [proposed] action, including reasons for the determination as to when the action is to take effect]

**IMPORTANT**

This supervisory notice is sent to you in accordance with section 78(2) of the Financial Services and Markets Act 2000 (the “Act”) (see 10.14 and 10.15 of the UK Listing Authority guidance manual.)

You may make written and oral representations to the FSA. If you wish to make representations you must do so within [28] days of receiving this supervisory notice or such longer period as may be permitted by the FSA (see 10.29 of the UK Listing Authority guidance manual).

You may also refer this matter to the Financial Services and Markets Tribunal (“the Tribunal”). Under section 133 of the Act you have 28 days from the date of this supervisory notice to refer the matter to the Tribunal, although the Tribunal may permit you a longer period (see 10.36 of the UK Listing Authority guidance manual). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal rules.

Please contact [contact name and details] at the FSA for more information.

**Annex 7**  
**Specimen second supervisory notice issued**  
**under section 78(4) of the Act**

To: [Issuer]  
Of: [address]

[Date]

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## **SUPERVISORY NOTICE**

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**TAKE NOTICE:** The Financial Services Authority (acting in its capacity as competent authority for listing) of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) has decided to [take the following action against you]:

### **THE FSA’S DECISION**

[The FSA has considered the representations made by you] [no representations were made by you] in response to the supervisory notice given to you on [date]. The FSA has decided to [take the action proposed in that notice] [not to vary the actions taken in that notice].

### **ACTION**

[Details of action taken or to be taken]

### **EFFECTIVE DATE**

[The date on which any suspension or cancellation of listing is to become or has become effective]

### **REASONS**

[Reasons for the action, including reasons for the determination as to when the action is to take effect]

### **YOUR RIGHTS**

This supervisory notice is sent to you in accordance with section 78(4) of the Financial Services and Markets Act 2000 (the “Act”) (see 10.14 to 10.16 of the UK Listing Authority guidance manual).

If you have not already done so, you may also refer this matter to the Financial Services and Markets Tribunal (“the Tribunal”). Under section 133 of the Act you have 28 days from the date of this supervisory notice to refer the matter to the Tribunal, although the Tribunal may permit you a longer period (see 10.36 of the UK Listing Authority guidance manual). The detailed procedures for making a reference to the Tribunal are contained in section 133 of the Act and the Tribunal rules.

Please contact [contact name and details] at the FSA for more information.



# CHAPTER 11

## 11. INTERACTION WITH THE MARKET ABUSE REGIME

### 11.1 Application of this Chapter

- 11.1.1 This Chapter applies to every *issuer*, *director*, former *director* and *sponsor*.

### 11.2 Purpose of this Chapter

- 11.2.1 This Chapter gives *guidance* on the UKLA's approach to circumstances involving possible breaches of the *listing rules*, which may also amount to *market abuse*.

### 11.3 Overlap with the market abuse regime

- 11.3.1 Behaviour of *issuers*, *sponsors*, *directors* and former *directors* may fall within the scope of the Code of Market Conduct which is established under the *market abuse* regime. When acting within the scope of the *listing rules*, they will also have to bear in mind the provisions of the Code of Market Conduct.
- 11.3.2 This manual is not intended to give *guidance* generally about the application of the Code of Market Conduct. The Code of Market Conduct forms Chapter 1 of the Market Conduct Sourcebook (MAR). However, there are two specific aspects of the interaction between the market abuse regime and the *listing rules* on which *guidance* is given here: compliance with the *listing rules*, and investigation and disciplinary action.

### 11.4 Compliance with the listing rules

- 11.4.1 Section 118(8) of the *Act* provides that behaviour which conforms with a rule made by the *FSA* will not amount to *market abuse* where the rule includes a provision to that effect. Accordingly, compliance with a rule made by the *FSA* is not automatically given safe harbour status.
- 11.4.2 Some *listing rules* require or permit certain behaviour, including those *listing rules* which concern dealings in *listed securities* by *issuers*, their *directors*, and their relevant employees. Clearly, such behaviour and dealings may come within the scope of the Code of Market Conduct.
- 11.4.3 Clearly, the majority of the *listing rules* address matters unconnected to *market abuse*. However, there are some *listing rules* that expressly require or permit behaviour which, in the absence of a safe harbour, might be interpreted by some as resulting in *market abuse*. These *listing rules* have been given safe harbour status in the Code of Market Conduct.

11.4.4 *Listing rule 1.10* sets out the specific *listing rules* that have been granted safe harbour status. These *listing rules* fall into a number of categories covering the:

- (a) disclosure of information;
- (b) standards of care with respect to making disclosures;
- (c) timing of announcements, dealings and publication of documentation; and
- (d) requirements with respect to the content of announcements.

## **11.5 Investigation and disciplinary action**

11.5.1 It is possible that certain behaviour could be a breach of *listing rules* and also amount to *market abuse*. In such circumstances the *FSA* will consider both aspects of the behaviour.

11.5.2 When the *FSA* is investigating such behaviour, it is likely to seek information from firms, *issuers* and other persons. In such circumstances, the *FSA* will make it clear under which powers it is seeking to obtain information.

11.5.3 After reviewing the information obtained, the *FSA* will consider whether further action under the *listing rules* or under the *market abuse* regime appears appropriate. The *FSA* will consider all the circumstances of the case including the factors set out in paragraph 8.5 above, and in relation to market abuse will consider the factors set out in paragraph 14.4 of Chapter 2 of the Enforcement Manual.

11.5.4 Where more than one person may be involved in particular behaviour, action may be taken under the *listing rules* against one person and under the market abuse regime against a different person (as appropriate to the circumstances of the case): for example, against an *issuer* under the *listing rules* and against a *director* under the market abuse regime. Where such action is taken, the *FSA* will make it clear from the statutory notice that is sent to a particular person whether the action is being taken against the person under the *market abuse* regime or in relation to a breach of the *listing rules*.

## CHAPTER 12

### 12. FEES

#### 12.1 Application for this Chapter

- 12.1.1 This Chapter applies to *issuers*, *sponsors* and persons seeking an authorisation to omit information from a *POS Regs prospectus* or a *supplementary POS Regs prospectus* under Regulation 11(3) of the *POS Regs*.

#### 12.2 Purpose of this Chapter

- 12.2.1 This Chapter describes the *UKLA*'s approach to the charging of fees in relation to:
- (1) an *application for listing* or the continued inclusion of *securities* in the *official list*. Such fees are charged under *listing rule 1.2*;
  - (2) an application for approval as a *sponsor* and for continued inclusion in the *list of sponsors*. Such fees are charged under *listing rule 2.4*; and
  - (3) an authority to omit from a *POS Regs prospectus* or *supplementary POS Regs prospectus* information that would otherwise be required by the *POS Regs*.

#### 12.3 Level of fees

- 12.3.1 The *UKLA* will set fees at such a level as it considers will allow it to meet the expenses incurred in carrying out its functions under the provisions of the *Act* (or any incidental purpose) and to maintain adequate reserves. The *UKLA* can also set fees which allow it to cover costs arising from the transfer of the functions of the *UKLA* from the London Stock Exchange and the costs arising on the assumption of its functions under the *Act*. It is the intention that these transitional costs will be recovered over the three year period immediately following N2.
- 12.3.2 Details regarding the level of fees charged by the *UKLA* are published by the *UKLA* and are available on request. They are also available from the *web-site*.

#### 12.4 Fees in relation to an application for listing

- 12.4.1 The *UKLA* will require payment of a fee when an *issuer* makes an *application for listing*. This requirement is set out in *listing rule 7.11(c)*. This fee is intended to cover the cost of processing the *application for listing* and the approval of the *listing particulars* or *supplementary listing particulars* (or other such document as appropriate). Any delay in paying

the fee applicable to the *application for listing* will delay completion of the *application for listing*.

## **12.5 Fees in relation to the continued inclusion of securities on the official list**

12.5.1 These fees will generally be made up of two components: annual fees and transaction fees.

12.5.2 Annual fees are charged once a year and are intended to cover the cost of monitoring the activities of issuers as a whole and compliance with the relevant continuing obligations of the *listing rules*. The first annual fee following a successful application for listing will be charged on a pro rata basis to cover the period up to the next invoice date.

12.5.3 Transaction fees relate to specific events or transactions that an issuer might be involved with during the year. These will include the issue of non-routine circulars, in respect of which the UKLA requires an issuer whose document requires approval to provide the appropriate fee at the time of application for approval.

## **12.6 Financial penalty income**

12.6.1 Section 100 of the *Act* (Penalties) provides that the *UKLA* must prepare and operate a scheme for ensuring that the amounts paid to it by way of penalties are applied for the benefit of *issuers* of *securities* admitted to the *official list*. The *UKLA* will allow a permitted deduction from the annual fees of an amount equal to that *issuer's* share of the amounts paid to the *UKLA* by way of penalties. *Issuers* will be notified annually of the amount of the permitted deduction for each relevant year.

## **12.7 Fees in relation to an application for approval as a sponsor**

12.7.1 The *UKLA* will require payment of a fee when a person applies for approval as a *sponsor*. Any delay in paying the fee for application for approval as a *sponsor* will delay completion of the application for approval.

## **12.8 Fees in relation to the continued inclusion on the list of sponsors**

12.8.1 An annual fee will be charged in relation to a person's continued inclusion on the *list of sponsors* maintained by the *UKLA*. Such fees are charged annually in advance. The first fee following a successful application will be charged on a pro rata basis to cover the period up to the next invoice date. This annual fee is intended to cover the cost of monitoring the activities of *sponsors*, including on-site visits. This review work is set out in more detail in Chapter 3 of this guidance manual.

**12.9 Fees in relation to an authorisation to omit information from a POS Regs prospectus or supplementary POS Regs prospectus**

- 12.9.1 Regulation 11(3) of the *POS Regs* empowers the *UKLA* to authorise the omission of information from a *POS Regs prospectus* or *supplementary POS Regs prospectus* whose inclusion would otherwise be required by the *POS Regs*.
- 12.9.2 The *UKLA* will require payment of a fee when an application for the omission of information from a *POS Regs prospectus* or *supplementary POS Regs prospectus* under Regulation 11(3) of the *POS Regs* is made. Such fees, which should be sent to the *UKLA* when the application is first made, are charged under Regulation 11(5) of the *POS Regs*.

**12.10 Issue of invoices and the recovery of unpaid fees**

- 12.10.1 The *UKLA* expects to issue invoices for annual fees at least 30 days before the date on which they fall due.
- 12.10.2 Section 99(5) of the *Act* permits the *UKLA* to recover fees as a debt owed to the *UKLA* and the *UKLA* will consider taking action for recovery through the civil courts.
- 12.10.3 In addition, the *UKLA* may be entitled to take regulatory action. What action (if any) that is taken by the *UKLA* will be decided upon in light of the particular circumstances of the case.



### MEDIATION SCHEME FOR FSA DISCIPLINARY CASES

#### 1. Introduction

- 1.1 A person who is or may be subject to enforcement action may discuss the proposed action with *FSA* staff through settlement discussions. Settlement discussions take place on an informal basis after the *FSA* has given a warning notice. Where *FSA* staff have recommended that disciplinary action be taken against a person, the mediation scheme will be available to those persons against whom action is proposed after settlement discussions have broken down. This Appendix sets out the procedure for settlement and the framework of the mediation scheme.

#### 2. Settlement

- 2.1 If a person who is or may be subject to enforcement action wishes to discuss the proposed action with *FSA* staff on an informal basis, he may do so after the *FSA* has given the *warning notice*. The *warning notice* will contain details of the person to contact for these purposes. (There is no bar on discussions at an earlier stage, but they are likely to be less productive until the *FSA* has given the *warning notice* to the person concerned.) The *FSA* and the person concerned should agree that discussions will take place on a without prejudice basis, and that neither party may subsequently rely on admissions or statements made in the context of the discussions, or documents recording the discussions.

- 2.2 The terms of any proposed settlement will:

- (1) be put in writing and be agreed by *FSA* staff and the person concerned;
- (2) include a statement of the facts and any breaches admitted by the person concerned and the proposed action to be taken; and
- (3) be considered by the *RDC*.

- 2.3 Having considered the terms of the proposed settlement, the *RDC* may do any of the following, or any combination of option (1) and options (2) and (3):

- (1) ask to meet the relevant *FSA* staff or the person concerned in order to assist in its consideration of the proposed settlement; and/or
- (2) accept the proposed settlement by issuing a *decision notice* or (where appropriate) *notice of discontinuance* based on the terms of the settlement; or
- (3) decline the proposed settlement.

2.4 Where the *RDC* declines the proposed settlement, it may invite *FSA* staff and the person concerned to enter into further discussions to try to achieve a settlement. The *RDC* may extend the period of representations (if they have not already done so), or, if they have already made representations, the *RDC* will proceed to give a *decision notice*.

2.5 If it is not possible to reach an agreed proposed settlement of the case by informal discussions, the person concerned may elect to submit the case to mediation.

### **3. Mediation**

3.1 Mediation is a confidential without prejudice dispute resolution process in which a neutral mediator assists the parties in trying to settle their differences. The mediator is not a judge or arbitrator and has no power to bind the parties, but rather operates as a facilitator of the discussions.

3.2 As mediation will be without prejudice, admissions made by the parties in the course of the mediation and documents prepared for the purposes of the mediation may not be referred to in subsequent hearings relating to the dispute if the mediation is unsuccessful. However, if the mediation results in a proposed settlement of the dispute which is approved by the *RDC*, the terms of the proposed settlement will form the basis of a *decision notice*, and subsequent *final notice*, issued by the *RDC*.

3.3 Following the issue of a *warning notice* the person will have access to certain material on which the *FSA* has relied in deciding to commence disciplinary proceedings (see paragraph 10.12 of the *UKLA* guidance manual). The period following the issue of the *warning notice* is therefore a natural point for informal settlement discussions to take place in an attempt to resolve the matter. Mediation is intended to supplement those discussions where the parties consider that the involvement of a neutral mediator is required to facilitate further progress.

### **4. Scope of mediation scheme**

4.1 Mediation will be available in cases involving disciplinary matters (see Chapter 8 of the *UKLA* guidance manual).

4.2 In each appropriate case the mediation scheme will be available to any person against whom a *warning notice* is issued. The mediation scheme will be available after the *warning notice* has been issued and before the *RDC* issues a *final notice*. The relevant *warning notice* will state the circumstances in which mediation is available for that matter under the terms of the scheme.

4.3 The person is not obliged to submit its case for mediation.



## **5. Mediation provider**

5.1 The scheme will be administered by a body (the Mediation Provider) which:

- (1) is independent of the *FSA*;
- (2) provides a panel of experienced mediators who are independent of the *FSA*; and
- (3) has suitable expertise and experience in the administration of mediation schemes.

## **6. Starting the mediation**

6.1 The *FSA* will offer the mediation facility in all appropriate cases (see paragraph 4 of this Appendix 1). If the person agrees to submit the case to mediation, the parties will send a joint Mediation Notice in an agreed form to:

- (1) the Mediation Provider; and
- (2) the secretary to the *RDC*.

6.2 The Mediation Notice will commit each party to use their best endeavours to progress the mediation process in a timely manner.

6.3 The person may request in the Mediation Notice that the 28 day time period for making oral/written representations to the *RDC* be extended by a maximum of 14 days, to allow time for the mediation to be completed. On receipt of a Mediation Notice requesting such an extension, the *RDC* will notify the parties and the Mediation Provider of its agreement to the requested extension or of any other extension that it sees fit.

6.4 If required, the person may apply to the *RDC* for a subsequent extension in order to complete the mediation (see paragraph 7.5 of this Appendix 1) the total extension shall not exceed 28 days, other than in exceptional circumstances.

## **7. Setting up the mediation**

7.1 Once the parties have agreed to mediate, and a Mediation Notice has been sent to the Mediation Provider, the Mediation Provider will liaise with the parties in order to deal with the matters set out in this paragraph 7 of this Appendix 1:

### Appointment of mediator

7.2

- (1) The Mediation Provider will maintain a panel of suitable mediators, and recommend in each case a mediator to the parties. The parties are free to accept or decline the recommendation. If

either party declines the recommendation, the Mediation Provider will seek to obtain agreement on another mediator from the panel.

- (2) If the parties cannot agree a mediator within 7 days of the Mediation Notice being received by the Mediation Provider, the Mediation Provider will appoint a mediator.
- (3) The mediators on the panel will all be:
  - (a) experienced commercial mediators; and
  - (b) accredited by / registered with a recognised mediation organisation.
- (4) Experience and expertise of the financial services sector will not be compulsory for panel mediators, but may be desirable.
- (5) Mediators will, in accepting appointments, be required to confirm to the parties that they have no conflicts of interest in doing so.

#### Date for mediation

7.3 The Mediation Provider will liaise with the parties and the mediator to agree:

- (1) a suitable date for the mediation;
- (2) a timetable for the mediation process as a whole; and
- (3) the date for submission of case summaries and exchange of documents referred to in the case summaries.

#### Duration of mediation

7.4

- (1) Most mediations should last no longer than one full day, but in complex cases more time may be necessary. The mediator will assist the parties in deciding how much time to set aside. If the mediation requires more time than originally allotted to it, the parties may ask the Mediation Provider to set up a further day(s).
- (2) The parties and the mediator will use their best endeavours to complete the mediation as soon as practicable.

#### Mediation timetable

7.5

- (1) In complex cases, the agreed timetable may extend beyond the initial extension agreed by the *RDC*, in which case the parties may request a further extension from the *RDC* (see paragraph 6.4 of this Appendix 1).

- (2) If the mediation has not started within the allotted timetable, the *FSA* may decline to mediate, and the matter will be referred to the decision notice stage.

### Venue

- 7.6 The mediation may take place at any venue acceptable to the parties and the mediator. This may be at the offices of the Mediation Provider, the mediator (if different), the *FSA* or elsewhere.

### Mediation agreement

7.7

- (1) Each mediation will take place pursuant to the terms of a mediation agreement. The agreement will set out the terms on which the mediation will take place, in particular, the agreement will provide that:
  - (a) the mediation will be “without prejudice” and confidential; and
  - (b) the parties who attend the mediation will have authority to agree proposed settlement terms (subject, in relation to the *FSA* staff, to paragraph 7.9 of this Appendix 1).
- (2) The Mediation Agreement will be signed by the parties, the mediator and the Mediation Provider.

### Confidentiality

7.8

- (1) Confidentiality is a key element of the mediation process. It means that:
  - (a) matters disclosed in, and documents created for the purposes of, the mediation cannot be referred to in the public domain; and
  - (b) matters disclosed by one party to the mediator in confidence will not be disclosed to the other party without consent.
- (2) Under the mediation scheme, however, confidentiality will be limited in that:
  - (a) if any information indicating potentially criminal conduct is disclosed to the mediator, the mediator will not be required to keep that matter confidential (and may choose to terminate the mediation);

- (b) the terms of any settlement reached will, if approved by the *RDC*, be incorporated in a decision notice, and subsequent final notice, which may be made public;
  - (c) the *FSA* may publish information regarding the operation of the scheme on an anonymous basis in the *FSA's* annual report. Such information may include, for example, the number of mediations conducted under the scheme and the number of those mediations which have resulted in agreed settlements.
- (3) In all other respects, documents prepared for the purposes of, and discussions taking place in the course of, the mediation will retain the confidential status they had during the mediation itself.

#### Authority to settle

### 7.9

- (1) A key feature of mediation is the requirement that those who attend the mediation on behalf of each party have full authority to agree proposed settlement terms. In general, the *FSA's* decision-making process for regulatory enforcement cases requires that the *RDC* approves any decision to take or refrain from taking disciplinary action. Therefore, the *RDC* must approve any proposed settlement terms agreed at the mediation.
- (2) The *FSA* will be represented during the mediation proceedings and at the mediation itself by the *FSA* staff who initially recommended that disciplinary action be taken. In order to minimise the risk that the proposed settlement terms agreed at the mediation will not be approved, the *FSA* will endeavour to ensure that the relevant members of the *RDC*, or as many of its relevant members as possible, are available for consultation by telephone during the mediation. This is to enable a clear indication to be given to the parties and the mediator of whether the *RDC* will find the proposed settlement terms acceptable.
- (3) However, no involvement of the *RDC* in the mediation will in any way compromise its right subsequently to decline to approve the settlement terms.
- (4) If the *RDC* decides to decline to approve the settlement terms agreed at the mediation, the parties may, with the consent of the *RDC*, return to the mediation process if they wish to explore further settlement options. If they do, the *RDC* will ensure that its views are clearly stated as to why the terms previously agreed were not acceptable.

### Paperwork for the mediation

#### 7.10

- (1) Mediation requires the parties to be able to discuss the dispute in an informed way. Therefore, each party attending the mediation will be required to produce:
  - (a) a short case summary setting the issues in dispute; and
  - (b) any documents referred to in the case summary.
- (2) These documents must be submitted to the Mediation Provider in triplicate at least one week before the mediation. The Mediation Provider will be responsible for the exchange of documents.
- (3) The parties and the mediator may agree to dispense with the requirement to produce documentation prior to the mediation.

### Costs

- (1) The costs of the Mediation Provider (including the fee payable to the mediator) in administering and conducting the mediation process will be agreed between the FSA and the Mediation Provider when the Mediation Provider is appointed.
- (2) For each mediation, the Mediation Provider will invoice the parties for the anticipated costs of administering and conducting the mediation in advance. The FSA and the person will bear half of these costs each. Any additional costs incurred by the Mediation Provider will be invoiced after the mediation. These costs will also be shared. The costs referred to in this paragraph do not include legal or other costs that the FSA or person may incur in relation to the mediation, which will be the responsibility of the parties.

## **8. Preliminary meeting**

- 8.1 Once appointed, the mediator may (at his discretion) call a preliminary meeting with the parties and their advisers (if any). This may be used to ensure that the parties are properly prepared for the mediation, agree the issues for discussion and understand how the process will operate.

## **9. Termination of the mediation**

- 9.1 The mediation will take place at the agreed time and place.
- 9.2 If the person withdraws from the mediation process after it has agreed to mediate, it will be responsible for its share of any costs incurred by, or owing to, the Mediation Provider (see paragraph 7.10 Costs of this Appendix 1).

9.3 The Mediation Agreement will set out the terms on which a party and/or the mediator may terminate the agreement. These will include terms providing that:

- (1) either party may withdraw from and terminate the mediation at any stage prior to or during the mediation (subject to the provisions on costs in paragraph 9.2 of this Appendix 1, for terminations prior to the mediation taking place);
- (2) either party and/or the mediator may withdraw if the mediation has not taken place within the agreed timetable; and
- (3) the mediator may withdraw from and terminate the mediation if, for example, a criminal offence by or involving a party to the mediation is disclosed to him (see paragraph 7.8(2)(a) of this Appendix).

## **10. Result of the mediation**

10.1 Mediation can only give rise to two outcomes:

- (1) a proposal for settlement agreed between the parties; or
- (2) no agreed proposal.

10.2 If no agreed proposal is reached, the mediation will be terminated and the case will proceed to the decision notice stage. Subsequently, a final notice will be issued.

10.3 If a settlement proposal is agreed, it will be considered by the *RDC*, which will decide whether to approve it. If it is approved, a *decision notice*, and subsequently a *final notice*, will be issued reflecting the terms of the agreement reached. If it is not approved, the parties may return to the mediation only with the *RDC's* consent. If it does not consent, the case will continue towards the *decision notice* stage.

## **11. Advisers**

11.1 The parties may bring legal or other advisers of their choice with them to the mediation, although it is important to preserve the informality of the mediation process.

## **12. Review of mediation procedures**

12.1.1 The use of mediation in the disciplinary context is a novel approach in the area of financial regulation, but reflects current trends in civil litigation. The *FSA* proposes to operate the mediation scheme on a pilot basis for 1 year and monitor and review its operation at the end of that period. The *FSA* proposes to publish core information relating to the operation of the scheme in the *FSA's* Annual Report.

# **THE PSI GUIDE**

**The UKLA's guidance on the dissemination of price sensitive information**

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# **1. Introduction**

- 1.1 Stock markets need a flow of relevant and timely information to function efficiently. Information on a listed company's performance and prospects is of particular importance as this is the basis on which many investment decisions are made; if the information deviates from the generally accepted view of a company's status it can have a significant effect on the price of its listed securities. This price sensitive information, or "PSI" for short, can encompass a very wide range of subjects and what is price sensitive for one company will not necessarily be so for another.
- 1.2 Recognising the vital importance of such information the UK Listing Authority ("UKLA") requires that the market as a whole, and not just select groups or individuals, has rapid access to it. These requirements are set out in the UKLA's listing rules where amongst the "continuing obligations" placed on listed companies are duties to announce unpublished price sensitive information without delay via a mechanism that seeks to disseminate it to the largest possible number of market participants. The core requirements are set out in Chapter 9 of the listing rules and reprinted here in Annex 1.
- 1.3 The UKLA first published its guidance on the dissemination of price sensitive information in 1994, in response to a desire in the market for a practical guide to the interpretation of these continuing obligations of the listing rules. This is the first version of the guidance to be published since the transfer of the competent authority for listing role to the Financial Services Authority ("FSA"). It has been updated to take account of recent amendments to the listing rules, developments in market practice and to clarify a few matters that are believed to require further explanation. In other respects this guidance remains essentially unchanged.
- 1.4 This guidance is based on the premise that communication between companies and the market is desirable and should be of positive benefit to both. It recognises the value to both companies and the market of a dialogue between analysts and a company that builds up a view of a business's potential.
- 1.5 While this guidance is directed primarily at listed companies we believe that all market participants will find it useful. In particular, listed companies' advisers, shareholders and analysts, including those representing institutional fund managers as well as broking firms, will find it useful to take note of its contents.
- 1.6 This updated guidance also coincides with the coming into force of the market abuse regime, which has areas of overlap with the listing rules requirements on the dissemination of price sensitive information. Brief guidance is provided on the overlap at Section 27 of this Guide, however this document can only be a guide to compliance with those listing rules that deal with the dissemination of price sensitive information and it is not the appropriate place to explain the new regime. Readers are therefore

directed to the FSA's Code of Market Conduct for guidance on the market abuse regime.

FSA 2001

## **2. Scope of the Guidance**

- 2.1 This document provides guidance on those obligations in the listing rules that require a listed company to announce price sensitive information to the market. The material in this guide does not impose additional obligations beyond those set out in the listing rules and the statements in this document do not constitute enforceable rules.
- 2.2 If a person acts in accordance with the guidance set out in this document, in circumstances contemplated by that guidance, then the UKLA will proceed on the footing that the person has complied with the aspects of the rule or other requirement to which that guidance relates.
- 2.3 However, the UKLA recognises that not all the advice will be appropriate for every circumstance faced by a listed company and that companies may validly employ other practices in their efforts to comply with the listing rules. There is therefore no obligation on listed companies to follow the suggestions in this guide. In addition, situations will inevitably arise which are not covered by the guidance and this document is not designed to be an exhaustive statement of an issuer's, sponsor's or director's obligations.
- 2.4 Furthermore, this guidance cannot constrain decisions by the courts or remove the need for companies to make their own judgements in the light of the particular circumstances they face.
- 2.5 The UKLA may take action under the listing rules against listed companies, their directors and former directors knowingly concerned with a breach by that issuer and sponsors. Naturally, this guidance is principally aimed at those groups against whom action can be taken under the listing rules and their advisers. However, all market practitioners are encouraged to read and take note of the guidance particularly those, like analysts, whose job involves assessing information on listed companies with a view to making or advising on investment decisions. An understanding of the guidance will inform their dealings with listed companies and reduce the risk of regulations being breached.

### **3. Identifying unpublished price sensitive information**

#### **Price sensitive information**

- 3.1 A listed company is under an obligation to ensure that any price sensitive information which emanates from itself, its advisers or agents, with the listed company's authority, is given to the market as a whole and is sufficient and not inaccurate or misleading. A listed company is obliged to announce unpublished price sensitive information by virtue of paragraphs 9.1 to 9.2 of the listing rules (see Annex 1 below). Unless the listed company falls within one of the exceptions dealt with in Section 4 below, this information must be released without delay and in the manner required by the listing rules. Listed companies should also be aware that the UKLA may, in addition, require them to announce information by virtue of paragraphs 1.5 and 1.6 of the listing rules (see Annex 1 below).
- 3.2 Price sensitive information is defined in the listing rules as information which may (paragraph 9.1), or would be likely to (paragraph 9.2), lead to a substantial movement in the price of a company's listed securities. Such information will include major new developments, changes in the company's financial condition or business performance or changes in the company's expectation of its performance.
- 3.3 Precisely what will constitute price sensitive information will vary widely from company to company, depending on a variety of factors such as the company's size, developments in its recent past and activity in its sector. For example, a particular item of information such as a given percentage movement in expected profits may not have the same degree of price sensitivity for a small cap company as it has for a FTSE 100 company. For companies in highly volatile sectors the market will react to a much broader range of information. Market sentiment about a sector can also affect the price sensitivity of an item of information. It is therefore not possible to set out a formula for identifying price sensitive information that will cover all possible permutations and situations.
- 3.4 To be prescriptive about the theoretical size of the price movement that the information would have to cause in order for an announcement to be necessary would also be of limited practical value and could give issuers false comfort. The issuer and its advisers have to decide whether to announce before the information has any impact on the market, so a stated share price movement beneath which an announcement would not be necessary would only be of value with the benefit of hindsight. In our opinion, no definition could ever catch every permutation of factors that might impact on an issuer and issuers that could not fit their precise situation into a set of conditions in the guidance might thereby be misled into thinking that they did not have a duty to announce under the listing rules.

- 3.5 Consequently, the UKLA believes that the company itself, if necessary in consultation with its advisers, is best placed to determine what information is likely to have a substantial effect the price of its listed securities.
- 3.6 However, there are certain general factors that will potentially have a significant effect on a company's share price. In particular, a company should be able to assess whether an event or information known to the company would have a significant effect on future reported earnings per share, pre-tax profits, borrowings or other potential determinants of the company's share price. The listing rules also prescribe certain matters that must be announced to the market because they may be price sensitive. These include dividend announcements, board appointments or departures, profit warnings, share dealings by directors or substantial shareholders, acquisitions and disposals above a certain size, annual and interim results, preliminary results, rights issues and details of other offers of securities. In other areas the judgement of the company and its advisers will necessarily be required. This guidance seeks to assist in these judgements by conveying the spirit within which investor communications are to be conducted.
- 3.7 In exercising their judgement companies should remember that, in general, the more specific the information, the greater the risk of it being price sensitive. For that reason, companies should not disclose specific data, least of all financial information such as sales and profit figures, to selected groups rather than to the market as a whole. Even within these constraints, there is plenty of scope for companies to hold a useful dialogue with their shareholders and other interested parties about their prospects, business environment and strategy (particularly in the medium and long term).
- 3.8 Companies should also be aware that the fact that a company has nothing to announce can, in certain circumstances, be price sensitive. For example, in the case of a wholly unfounded rumour that a company was engaged in a takeover, a denial by the company that this was the case could have an effect on that company's share price. The UKLA will not require a company to make an announcement denying such wholly unfounded rumours (see Section 15 below), but if the company does decide to respond, we prefer, if possible, that it does so by issuing a formal announcement via a Regulatory Information Service rather than by a comment to a journalist.
- 3.9 The Model Code, which forms an appendix to Chapter 16 of the listing rules, provides a definition of unpublished price sensitive information at paragraph 1(f). However, whilst this definition is useful in general terms it does not cover the use of the term in the rest of the listing rules. The Model Code is concerned with share dealing by directors, certain employees and related parties. Consequently the definition of unpublished price sensitive information in the Model Code is drafted to follow the requirements of the Criminal Justice Act 1993 and applies to

information likely to have an effect on the price of “any securities”. The obligation in Chapter 9 of the listing rules relates to information that could affect the price of the listed company’s own securities.

- 3.10 If a company is uncertain whether a matter should be announced the UKLA provides a Helpline which provides advice on such matters. The details of the Helpline are set out at Annex 2.

### **Information which is not public knowledge**

- 3.11 The listing rules generally require information to be notified to a Regulatory Information Service in order for it to be made public. The information published by a Regulatory Information Service is picked up by news wires, internet sites, broadcast and print media and market professionals allowing for a broad and rapid dissemination of the information.
- 3.12 The system of disseminating information via Regulatory Information Services is explained below at Section 24 and notification when an issuer’s Regulatory Information Service is closed for business is dealt with at Section 25.
- 3.13 The UKLA encourages the use of other means of dissemination in addition to Regulatory Information Services, but not as an alternative and never in advance of them. In relation to the internet, this topic is expanded at Section 23 below.
- 3.14 Certain potentially price sensitive information will already be in the public domain and so does not need to be announced. For example, a change in UK interest rates is information that can have an effect on the price of a company’s listed securities; however, companies are not required to announce the fact of a change in interest rates as this is already public knowledge. An announcement might only be required if the change had an unusual or unexpected effect on the company.
- 3.15 However, when assessing whether a matter requires announcement or whether it has already been made public companies must bear in mind that the simple fact that it is possible for the information to be obtained by the public is not necessarily enough. If the information is not readily available because a fee is required to obtain it or it is not a matter of general knowledge that it can be obtained, then an announcement will be required.
- 3.16 If in any doubt, the company should release the information through its Regulatory Information Service.

## **4. Exemptions from the duty to disclose**

- 4.1 While the obligation in paragraphs 9.1 to 9.2 of the listing rules is to announce unpublished price sensitive information without delay, the UKLA recognises that it can be impractical to announce all such information immediately. A premature announcement could jeopardise commercial negotiations, might be misleading or might cause serious loss to shareholders. Consequently the listing rules provide exemptions to the general obligation to announce.

### **Paragraph 9.35**

- 4.2 Listing rule 9.35 requires certain board decisions to be announced without delay and not later than 7.30 am on the next following business day. Listing rule 9.35 only applies to information required to be announced by virtue of paragraphs 12.40 and 12.49 of the listing rules. Listing rule 9.35 does not apply to the disclosure of information under listing rules such as 9.1 to 9.2 which require information to be announced without delay unless one of the exceptions discussed in the listing rules apply.

### **Information concerning impending developments or matters in the course of negotiation**

- 4.3 The most common exemption to the general obligation to disclose is set out in paragraphs 9.4 and 9.5 of the listing rules (see Annex 1). Paragraph 9.4 states that a company need not announce information about impending developments or matters in the course of negotiation while paragraph 9.5 lists the types of individual or organisation to whom the company can selectively disclose such information in order to facilitate the development or negotiations. In general terms this would cover matters such as merger talks or new product development. It would also allow the company to give the information those that it needs to in order to complete the activity, such as its advisers or counterparties.
- 4.4 The company can only delay announcing the information if it is able to keep it confidential within the group of recipients permitted by paragraph 9.5. If it appears that the information has leaked, irrespective of who was responsible for the leak, the company is required to make an announcement without delay. Dealing with leaks of confidential information or rumours is dealt with at Sections 8 and 15 below.

### **Handling of confidential information**

- 4.5 Companies are sometimes confronted with the problem of how long to keep an issue confidential and what constitutes the proper time for its release. There are many issues which are inherently price sensitive where it is essential to maintain confidentiality until the major elements have

been finalised and where premature release of information would be more misleading than informative. This might include, for example, the development of a new product, the planning of a major redundancy programme, the negotiation of significant financing arrangements, or the preparation of a takeover or partial disposal. Once these issues have been finalised an announcement should be made without delay, unless a dispensation has been granted by the UKLA to avoid prejudicing a company's legitimate interests. If a dispensation is believed necessary the company or its advisers should contact the Helpline, details of which are in Annex 2. However, if, during negotiations, the circle of parties involved becomes too large to ensure the confidentiality of the information, or there is a danger that information has leaked to parties not directly involved, an announcement should be made.

### **Where disclosure will prejudice a company's legitimate interests**

- 4.6 The listing rules also permit the UKLA to grant a dispensation from the requirement to make an announcement where disclosure of the information might prejudice a company's legitimate interests. This provision is set out at paragraph 9.8 of the listing rules (see Annex 1). This dispensation will only be granted in very limited circumstances as paragraphs 9.4 and 9.5 will cover most commercial reasons for delaying an announcement. The company should also consider preparing a holding announcement for issue in the event of a breach of confidence.
- 4.7 In general terms, paragraph 9.8 is only intended to be used in extremis, such as where an announcement at a particular point in time might jeopardise the issuer's ability to continue to trade. However, the dispensation can cover a broad range of events and each case will turn on its particular facts.
- 4.8 If an issuer believes that it has a situation that merits a paragraph 9.8 exemption it should contact the UKLA without delay and we will give the matter rapid consideration. A Helpline is provided by the UKLA as a confidential initial point of contact for such queries. The Helpline number is in Annex 2.



## **5. A framework for the handling of price sensitive information**

### **Responsibility for handling price sensitive information**

- 5.1 The overall policy for control and dissemination of price sensitive information is the responsibility of the listed company's board of directors, although its execution will usually be delegated. Companies should have a consistent procedure for determining what information is sufficiently significant for it to be price sensitive and for releasing that information to the market.
- 5.2 Responsibility for communication with analysts, investors and the press should be clearly defined. In our experience, a number of the problems and uncertainties that companies have faced in handling price sensitive information have arisen because companies have not identified those responsible for communication. If a few employees who are aware of the company's policy and the legal and regulatory requirements are clearly identified to all within the company, the senior management will be better able to control the dissemination of information and reduce the chance of unauthorised or careless disclosure. Staff should be prohibited from communicating information to anyone outside the company if they have not been given this responsibility.
- 5.3 Companies may find it helpful to identify to analysts and the press those employees responsible for communications. Companies might also consider making their internal policies on communication known outside the company. This may be of particular assistance in avoiding pressure to prematurely reveal information which is confidential (the policy could, for example, include a statement that a company never comments on a market rumour, or refuses to comment on retail performance in the Christmas period before a given date – subject to its obligation to release price sensitive information without delay).
- 5.4 Companies should make arrangements to keep price sensitive information confidential until the moment of announcement. They must not allow this information to seep into the public domain. Companies sometimes attempt to justify this practice as a means of allowing a share price to adjust gradually to unexpected information. However, this is unfair to shareholders and potential investors and is unlikely to change the long-term impact of the information.

### **Release of price sensitive information**

- 5.5 There is a risk that price sensitive information may appear in a trade journal, an internal briefing or other limited means of communication. The company should be alert to the impact of such information and consider whether a formal announcement is appropriate. If the information is or is

likely to be transmitted to a group wider than that permitted by listing rules 9.4 and 9.5, then an announcement should be made without delay.

- 5.6 If a meeting is to be held (e.g. with shareholders, analysts or at a press conference), companies should consider in advance how to respond to questions designed to elicit price sensitive information. If it is planned to disclose price sensitive information, the information should not be given at the meeting before it is announced to the market.
- 5.7 Where companies issue lengthy releases either to shareholders or to the market as a whole which include comments on current or future trading prospects, this information should be given due prominence and not hidden in the body of the announcement.

### **Use of Advisers**

- 5.8 Where appropriate, companies should make use of their advisers to assist in determining whether information is potentially price sensitive. There are many events which can trigger significant movements in share prices, such as information on a new product, the fact that sales of a new product are not meeting expectations, or that the company has obtained a large order or embarked on a major redundancy programme. It is vital to make a prompt assessment of the likely impact of the information.
- 5.9 To assist this process, companies and their advisers should be aware of the market expectations built into the company's share price. Advisers have day to day experience of assessing market expectations and are obliged to keep information confidential. If, after discussion, doubt over the sensitivity of information remains, the company should avoid selective disclosure and make an announcement.
- 5.10 Companies might also consider producing a "sensitivity list" with the assistance of their advisers, setting out the types of information that are likely to be price sensitive for that particular company and incorporating this into their communications policy. The sensitivity list should also be subject to periodic review in order to keep it up to date. This will assist the company when it comes to identifying price sensitive information in the future (see also paragraph 20.1 below).

### **Training**

- 5.11 Once the company has developed its communications policy and identified those individuals who are to be responsible for handling communications it should ensure that these individuals are well trained in identifying and handling unpublished price sensitive information. Training on the handling of price sensitive information should include maintaining its confidentiality until its release is required and the appropriate procedures for distributing it. Training should also be given on dealing with external contacts including: analysts; PR agencies; the

company's advisers; the press; institutional investors; private investors; and regulators.

- 5.12 More general training could also be given to other employees to ensure that they do not inadvertently breach any regulations and that they pass any matters concerning the dissemination of price sensitive information to the appropriate individuals within the company. This training could be concentrated on those employees most likely to come into contact with people outside the company, especially prior to a site visit by analysts, investors or the press (see also paragraph 14.6 below).

## **6. Regular statements on a company's position**

- 6.1 Some problems with price sensitive information could be overcome if more companies had a structured communications plan with regular updates on their trading position and immediate prospects. Companies may choose to use, for example, their quarterly internal management information as the basis for a regular trading statement at the end of each period for which accounts are produced. This practice is especially helpful if market expectations are out of line or there is a long gap between the end of the period and publication of the interim or preliminary results.
- 6.2 This statement may include a few key financial figures and an explanation of underlying trading conditions but it need not be detailed or complex or normally require an independent audit or external review. Alternatively the update can be primarily concerned with general comments on the company's overall performance and any variance from previous statements and need not include financial figures.

## **7. Responsibilities of directors of listed companies**

- 7.1 Directors of listed companies should be aware that, while primary responsibility for compliance with the listing rules lies with the company itself, they can also be held individually liable for a breach of the rules.
- 7.2 The Financial Services and Markets Act 2000 (“FSMA”) has given the UKLA the power to censure persons who are former directors of listed companies and who were directors at the time of a breach by the company and knowingly concerned in that breach. Under FSMA, directors and former directors will also be subject to fines for a breach of the listing rules. The UKLA’s fining policy, along with general guidance relating to the discipline of issuers and directors in respect of breaches of the listing rules is set out in the UK Listing Authority Guidance Manual, which forms part of Block 5 of the FSA’s Handbook of Guidance and Rules.

## **8. Handling of unexpected developments and inadvertent disclosure**

- 8.1 If a company is faced by an unexpected and significant event, for example a large foreign exchange loss, where an announcement would normally be required, a short delay is acceptable if it is necessary to clarify the situation. A holding announcement should be used where a company and its advisers believe that there is a danger of information leaking out where the facts are not yet in a position to be confirmed. The announcement should give an outline of the subject matter, the reasons why a fuller announcement cannot be made, and an undertaking to announce further details as soon as possible. In extreme circumstances, a company may ask the UKLA to suspend the listing of its shares until the company is able to clarify the position.
- 8.2 If price sensitive information is inadvertently disclosed on a selective basis, for example given to an analyst or journalist, the company should take immediate steps to ensure that a full announcement is made so that all users of the market have access to the same information. This should be done when the company first becomes aware of the selective disclosure.

## **9. The annual report and annual general meeting**

- 9.1 Companies are encouraged to make the most of existing opportunities for communicating with investors. In particular, through the annual report, or through the Chairman's address to the annual general meeting, a company may reinforce its corporate messages in non-technical terms and provide indicators of its future direction. While the annual general meeting is an opportunity for investors to discuss with directors issues affecting the company, arrangements should be made for any price sensitive information that is to be discussed at the meeting to be included in an announcement via a Regulatory Information Service at or before the time of the meeting.

## **10. Profit forecasts**

- 10.1 If a company has made a public forecast but it subsequently becomes aware that the outcome will be materially above or below the forecast figure, a further announcement should be made correcting the forecast as soon as possible.



## **11. Guidance to analysts**

- 11.1 With regard to the listing rules, companies have the main responsibility for the proper conduct of their relationships with the market. But several of the sections in this guidance set out the way in which companies relationships with analysts are to be conducted. Analysts themselves need to be aware of and operate within this framework if the relationship is to work smoothly.
- 11.2 Analysts should refrain from putting a company in the position where it is likely to commit a breach of the listing rules, in particular by selectively disseminating price sensitive information. For instance, analysts should not demand that a company correct its reports or persist in asking questions in briefings where this would involve the company using unpublished price sensitive information. These issues are dealt with in more detail below at Sections 12 to 14.
- 11.3 Analysts should be particularly aware that, while they are not subject to the listing rules, eliciting the selective dissemination of price sensitive information may leave them open to an FSA investigation of their conduct under separate FSA powers.

## **12. Questions from analysts and correction of analysts' forecasts**

- 12.1 Analysts play a constructive role in assisting the market in its understanding and valuation of companies. Companies are encouraged to assist analysts where possible in forming a view of their activities and trading prospects. Companies should, however, have a clear policy about the extent to which analysts' questions should be answered. For example, companies can explain information already in the public domain or discuss the markets in which they operate.
- 12.2 Companies should decline to answer analysts' questions where individually or cumulatively the answers would provide price sensitive information. If analysts' comments or views appear inaccurate (because they are based, for example, on a mistaken view of sales growth) companies can consider what public information is available to be drawn to their attention. The mere fact that information is unpublished does not make it price sensitive. Clearly, if there is unpublished information that is not price sensitive in itself, or in conjunction with other information, then companies can use this information to answer analyst's questions without making an announcement.
- 12.3 It is in the nature of analysts' forecasts that they should differ - sometimes significantly. In most circumstances a company is not obliged to make an announcement correcting public forecasts by analysts. However, a company should consider correcting serious and significant errors that come to its attention, which in its view have led to a widespread and serious misapprehension in the market.
- 12.4 Inaccurate forecasts by analysts are more likely to mislead the market in the case of small companies which may be researched by only one or two analysts and where there is little information on the company in the public domain. These companies may therefore be more likely to be in the position of having to make a corrective statement because the market is being seriously misinformed.

## **13. Draft reports from analysts**

- 13.1 If an analyst sends a company a draft report for its comments the company can, of course, choose whether or not to respond. Companies certainly should not consider themselves obliged to correct incorrect price sensitive information or assumptions and companies are free to decline to comment on any aspect of a draft report from an analyst. However, the UKLA does not prohibit companies from correcting analysts' reports and sometimes it may be necessary to comment as to do otherwise would be misleading.
- 13.2 If a company decides to comment on a draft report then it must take care that in doing so it does not breach the listing rules. Companies should understand that in commenting they should not disclose unpublished price sensitive information. If a company inadvertently discloses unpublished price sensitive information then it must make an announcement. If the company can comment on a draft report without using unpublished price sensitive information then, clearly, there is no need for it to make an announcement.
- 13.3 To limit the likelihood of inadvertently releasing price sensitive information, if a company believes that it is necessary to comment on a draft report it should avoid correcting the analysts' conclusions and should restrict itself to correcting the underlying data on which the analyst has based his or her conclusion. Companies should only correct the underlying data with information that is in the public domain or unpublished information that is clearly not price sensitive. If the company is aware of unpublished price sensitive data that would correct a fundamental misconception in an analyst's report, then it should publish the data via a Regulatory Information Service before it uses this information to correct the report.
- 13.4 Analysts should also note that it is inappropriate to put issuers in a position where they might commit a breach of the listing rules by pressurising them to comment on data in a way that would involve the dissemination of unpublished price sensitive information.
- 13.5 Companies should always remember that if they do decide to comment on an analyst's report they may find themselves forced to disclose unpublished price sensitive information to the analyst in order to avoid misleading that analyst and this carries with it the obligation to make an announcement.

## **14. Conduct of meetings with analysts**

- 14.1 Some companies are concerned that they may be mistakenly accused of providing price sensitive information in meetings with analysts. These companies should, if they think it necessary, look at internal procedures to reduce these risks. These procedures could, for example, include ensuring that more than one company representative is present during these meetings and that accurate records of all discussions are kept.
- 14.2 As these meetings normally only involve the company and the analysts it is difficult to refute allegations that there has been a selective dissemination of unpublished price sensitive information. In response to such criticism some companies have opened their briefings to include the press, and sometimes the public, as a non-participating audience. This access has been provided via telephone lines that allow the caller to listen in, but not speak, and visually via company web sites. There is a risk that this approach may merely drive the substantive discussions between the issuer and the analysts “underground” and merely allowing access to analysts’ briefings will not necessarily prevent the criticism. Nevertheless, we believe that this practice will help in a number of ways. It will help to limit the scope for uninformed criticism of analysts’ briefings, it will help educate the press and the public and it will help raise the company’s profile. Companies choosing to open up their conferences in this way should seek legal advice on the application of the financial promotion regime to these activities.
- 14.3 Evidence from the United States shows a widespread adoption of this practice amongst issuers, where the vast majority of companies have opened conference calls to the press and the public and almost half of companies are broadcasting meetings over the web, without apparent harmful effect.
- 14.4 Many UK issuers already announce the fact of an analysts’ briefing along with key information to be disclosed at the briefing. For example, this information might include key trends affecting the company’s performance if the briefing is a pre-close period briefing (see also Section 16). We believe that this practice is highly beneficial, and more listed companies should consider adopting it.
- 14.5 We are aware that giving journalists, and possibly the public, access to briefings will not provide a complete solution and we are not suggesting that UK listed issuers should be compelled to open up their briefings. Nor are we suggesting that anyone other than the analysts should be allowed to participate actively in the briefings. However, we do believe that it may assist issuers if they adopt this practice and that they should consider it. One of the UKLA’s main goals is to ensure equality of access to information for all market participants and opening up analysts’ briefings can only help in this respect.

- 14.6 Finally, companies should be aware of the danger of analysts obtaining price sensitive information during visits to the companies' premises. Employees meeting analysts during visits should be briefed as to the extent and nature of information that they can communicate (see also paragraph 5.12 above).

## **15. Press speculation**

- 15.1 Relationships with the press and other media, though often contributing to a well informed market, need particularly careful management in instances where potentially price sensitive information is involved. We are aware that this is a particularly difficult area to handle and that rumours may be circulated with the intention of provoking a company into making a premature announcement.
- 15.2 The starting point for companies, when dealing with rumours, is the continuing obligations in the listing rules. If there is no foundation for the rumours and the company has no price sensitive information to announce, there is no obligation to make an announcement. If the rumours do have a basis in fact, they may relate to matters in development or under negotiation and these matters are covered by paragraphs 9.4 and 9.5 of the listing rules; in these circumstances, the company only needs to make an announcement in relation to such matters if the development or negotiations have come to a successful conclusion, or if there has been a breach of confidence and information has leaked into the market.
- 15.3 We understand a reluctance to jeopardise commercial negotiations by reacting to every speculative rumour with an announcement and we do not require this as a matter of course, but we cannot condone a policy that leaves some investors dealing on the basis of speculation or misinformation and jeopardises market stability. The UKLA therefore does not require companies to make negative statements denying wholly unfounded rumours or speculation. However, if there are details contained in the rumour that suggest a breach of confidence has occurred and the matter is price sensitive the company must, under listing rule 9.4, make an announcement.
- 15.4 The indicators that will suggest that a breach of confidence has occurred will vary from case to case and the company will have to use its own judgement, usually in consultation with its advisors. As an example, a large multinational issuer that is known to have been in talks with a number of potential U.S. partners in the past is not necessarily obliged to respond to a rumour in the press that it is once again in talks with a U.S. company – even if it is in fact in such talks. However, if the rumour contains more concrete information, such as the name of the other party, or dates of meetings, or details of any proposed structure, or the amount of any consideration, then this would suggest that there has been leak and an announcement would be required without delay. An issuer should not wait until substantially the entire deal is revealed in the press before making an announcement. As soon as there is any indication that there has been a leak, the company should make an announcement.

- 15.5 The mere fact that the company's share price has reacted to a rumour will not be the only factor that the UKLA will take into account when deciding whether to require the company to issue an announcement.
- 15.6 In this context, companies should be prepared to give a "no comment" answer where journalists are pressing for unannounced price sensitive information. A "no comment" policy is often preferable to attempting to refute the story by making counter-comments to sections of the press. A company will find it helpful to have established internal procedures for handling these queries (see Section 5 above).
- 15.7 In order to be effective, a "no comment" policy must be used consistently. This means that companies must use the policy both when they are not obliged to announce by virtue of paragraphs 9.4 and 9.5 and also when they are not in possession of any unpublished price sensitive information. Any inconsistency may allow the company's audience to infer an answer and would be tantamount to selective disclosure.
- 15.8 Whilst the UKLA does not require a company make a negative statement denying a wholly unfounded rumour, if the company does decide to make such a denial the company should consider doing so via formal announcement rather than dialogue in a single publication. This will ensure that the whole market is informed rather than just the readers of a single newspaper or newswire service. In addition, companies should bear in mind that such denials can sometimes have an effect on its share price. If this is likely to be the case then a formal announcement would be best practice. We would also suggest that the company makes a negative statement, via its Regulatory Information Service, if the company tells us that it is concerned that reaction to a wholly unfounded rumour is resulting in a disorderly market.
- 15.9 Companies contemplating a response to a rumour are reminded of their obligations under listing rule 9.3A. Where a rumour has some basis a "no comment" response or a confirmation may be the company's only option.
- 15.10 The UKLA is likely to contact a company or its advisors if there are rumours relating to it in the media. The UKLA will not necessarily require an announcement, but will expect a full justification for the company's proposed course of action and confirmation of the company's true position so that the UKLA can monitor developments properly. The company and its advisors should not seek to mislead the UKLA in these circumstances as the company is obliged to provide this information under paragraph 1.3 of the listing rules. The company's response to the rumours may be investigated by the UKLA subsequently, particularly if it appears that the UKLA was misled at any point.

## **16. Close periods**

- 16.1 The term ‘close period’ applies to a period before any regular reporting event when, under the terms of the Model Code, the directors of a company and other “relevant employees” are not permitted to deal in its shares. Many companies make it an in-house rule that they will not communicate with the market during these periods. This is not a regulatory requirement. Even if companies do not wish to be pro-active in their investor communications during close periods, they are still required to announce price sensitive information where necessary.
- 16.2 Clearly, all the continuing obligations apply during close periods, as on any other occasion, and issuers should not disclose unpublished price sensitive information selectively to analysts or select groups of investors. Issuers should therefore refrain from selectively giving explicit or detailed unpublished information on their prospects, such as the company’s own estimates for its profits.
- 16.3 All the comments made above in Section 14 in relation to analysts’ briefings in general also apply to pre-close period briefings. Some companies already issue full announcements before pre-close period briefings, setting out the key trends affecting performance.



## **17. Making parties insiders**

- 17.1 At certain times, companies may want to give information in confidence to, for example, substantial shareholders or other parties with whom they are negotiating. Before a meeting at which price sensitive information is to be given, unless the relationship with the participants is automatically one of confidentiality (as it is, for example, with the companies' financial advisers, or solicitors) an established procedure should be followed. The relevant party should be told that, if he attends the meeting, he will not be able to deal in the company's securities before the information is made public. He should give consent to being made an 'insider' and this should be recorded. No one should be made an insider without his consent or for a longer period than necessary. The objective should be that all price sensitive information given in this way should be fully announced as soon as possible.
- 17.2 Many investment banks appoint a particular person to be on the confidential side of a "Chinese wall", so that the bank can receive and advise on price sensitive information without compromising its other activities. Companies should also note that, despite the relationships that they have built up with certain employees of a bank while working on a transaction, a number of these, such as sales staff and analysts, are inappropriate contacts for general matters. If the company wants to discuss potentially price sensitive information it should speak to someone who can receive this information without compromising the position of the bank and the company.

## **18. Employees as insiders**

- 18.1 Employees may be made insiders. Some employees have regular access to price sensitive information because of their duties, while others will be in possession of price sensitive information only occasionally. They must be made aware of the need at all times to observe the confidentiality of unpublished price sensitive information given to them. Companies that have a policy of keeping their employees informed in broad terms of the prospects and performance of the business should ensure that their ‘in-house’ publications or personal presentations to employees do not result in an inadvertent leak of price sensitive information. Where detailed information, for example that relating to a particular division or subsidiary of a company, is provided, its confidential status should be made clear.
- 18.2 Many issuers want to congratulate and give incentives to their staff by publishing sales results or the award of successful contracts in employee publications or on the company intranet. We have no objection to this information being given to its employees, but they should always bear in mind their obligations under the listing rules when doing so.
- 18.3 Not all information that a company wants to give its employees will be price sensitive and the issuer will have to use its judgement just as it does when determining the need to make any announcement. For example, the sales achievements of a single regional sales team of a large fast moving consumer goods manufacturer are unlikely to be price sensitive. In contrast, the sales achievements of a small manufacturer with only one sales team and a small product range are more likely to be price sensitive.
- 18.4 Information can be given to certain employees on a confidential basis, but the more people in a company who know price sensitive information, the greater the chance of a leak. The likelihood of a leak is increased if the issuer is in an industry where a number of its employees are in frequent contact with the media or market professionals. If a leak is likely then a Regulatory Information Service announcement should be made before the information is given to its employees. Issuers should also be aware that giving price sensitive information to its employees can make them “relevant employees” for the purposes of the Model Code.
- 18.5 Some listed companies believe they are unable to make union representatives insiders concerning matters such as takeovers or mergers that may result in restructuring, as to do so would be a selective disclosure of price sensitive information and a breach of the listing rules. In fact, paragraphs 9.4 and 9.5(c) of the listing rules specifically allow listed companies to discuss impending developments and matters in the course of negotiation with employee and union representatives on a confidential basis. As with any selective disclosure under paragraph 9.4, the larger the group of individuals privy to the information, the greater the chance of a leak and the greater the care that needs to be taken by the company.

## **19. Takeovers and mergers**

- 19.1 Takeovers or mergers are events that are likely to have an effect on the share price of listed companies that are involved in them. Paragraphs 9.4 and 9.5 of the listing rules ensure that a premature announcement is not required. Companies that are or may become involved in a takeover or merger should also have regard to the City Code on Takeovers and Mergers (the “City Code”) when considering the content and timing of announcements. The City Code can be obtained from the Panel on Takeovers and Mergers (“POTAM”), PO Box 226, The Stock Exchange Building, London EC2P 2JX.
- 19.2 The City Code has its own rules on secrecy, the timing of announcements and the occasions when it requires an announcement to be made. The City Code’s rules concerning secrecy before an announcement is made are set out at its paragraph 2.1. The general rules concerning announcements are set out at City Code paragraph 2.2, while paragraph 8 provides the requirements relating to the disclosure of dealings during an offer period.
- 19.3 The UKLA liaises regularly with POTAM to ensure that the listing rules are being complied with in areas where there is an overlap with the City Code. If the UKLA identifies rumours of a potential takeover or merger that has not been announced in accordance with the City Code and listing rules it will contact POTAM to verify rumours and to ensure that, if necessary, an announcement is made.

## **20. Announcements by industry regulators, trade associations and government departments**

20.1 Announcements by industry regulators, trade associations, government departments and other bodies may affect the share price of many companies. It is therefore advisable for companies to have an agreed understanding of the sensitivity of such statements and their likely effect on market expectations with these organisations so that announcements can be made to the market where appropriate (see also paragraph 5.10 above).

20.2 The FSA is party to an agreement with certain industry regulators which seeks to ensure that, if these regulators need to make an announcement that will affect the share price of listed companies, they do so via a Regulatory Information Service and according to principles that minimise leaks. Where a listed company is subject to an industry regulator that is party to this agreement achieving an agreed understanding regarding price sensitive statements with that regulator should be straightforward. The parties to this agreement are:

Civil Aviation Authority  
Environment Agency  
The Gaming Board for Great Britain  
Independent Television Commission  
Office for the Regulation of Electricity and Gas  
Office of the Rail Regulator  
Office of the National Lottery  
Office of Telecommunications  
Office of Water Services

20.3 Although not an industry regulator, the Office of Fair Trading was also closely involved in the discussions concerning the agreement and has agreed, where appropriate, to apply its principles.

## **21. Securities listed in more than one jurisdiction**

- 21.1 Companies listed in more than one jurisdiction should co-ordinate the release of announcements in all countries so that investors in each country have access to the information at the same time. Where the requirements of one jurisdiction go beyond those of the UKLA it is important to ensure that the information is also released in London. If a price sensitive announcement is made in another jurisdiction while the London market is closed, a copy of the announcement should be lodged immediately with a Regulatory Information Service in accordance with the procedures referred to in Section 24 below.
- 21.2 We recognise that some companies will not want to disadvantage investors in a particular jurisdiction and some therefore try to delay the announcement for a time when both markets are either open or closed. However, the general obligation of disclosure is that price sensitive information is announced without delay and paragraph 9.9 of the listing rules adds that announcements are to be made at the same time in all exchanges where a company is listed. We would therefore expect companies to fulfil their UK obligations and not to delay an announcement here simply on the basis that the other market was closed. As companies are increasingly quoted around the clock some issuers will always find that one jurisdiction where they are traded is open while others are closed and there will rarely be a time to announce when all markets are either open or closed.
- 21.3 Our attention has been drawn to the fact that an act in compliance with the listing rules might conflict with other obligations that are imposed upon a UK listed company. For example, the conflict might be a requirement to announce price sensitive information without delay under the listing rules while there is a requirement to delay announcement under the listing rules of another jurisdiction. These situations are very rare as the vast majority of listing authorities have requirements that are broadly similar to our own. As these situations are so rare we believe that each case should be dealt with on its own merits. If a company finds itself in such a position we advise it to contact the UKLA Helpline as soon as possible so that the matter can be discussed and appropriate guidance given (Annex 2).

## **22. Disclosing information under an embargo**

- 22.1 Some companies continue to disclose unpublished price sensitive information intentionally to journalists or others under an embargo that seeks to prevent them using the information until it has been released to a Regulatory Information Service. In general terms, we advise against this as the company loses control of the information as soon as it divulges it in this way. If it is believed that it is commercially necessary to disclose the information in this way, extreme caution should be exercised and appropriate, enforceable confidentiality undertakings should be obtained.
- 22.2 Disclosing information under an embargo is essentially selective disclosure. While paragraph 9.4 of the listing rules does permit some selective disclosure, this is only for the commercial purpose of facilitating a negotiation or a matter in development. Paragraph 9.5 clearly sets out the individuals or groups that can receive this information selectively and limits the dissemination to persons that need to receive it in order for the negotiations or development to take place (see Section 4 above and Annex 1). Journalists, amongst others, are not included in the list set out in paragraph 9.5.
- 22.3 Despite any undertaking from the recipient of the information the company may still be liable for a breach of the listing rules if that recipient then divulges the information or acts upon it in advance of a Regulatory Information Service announcement.
- 22.4 Furthermore, as giving information under an embargo is essentially selective dissemination, even if the recipient cannot make public use of the information immediately, the recipient may still benefit as he or she will be better prepared to react to the information as soon as the embargo is lifted and will be able to act ahead of the rest of the market.

## **23. The internet**

- 23.1 The growth of the internet has increased the speed and the breadth of the dissemination of information on listed companies. The vast majority of issuers now have intranet sites for their employees and a company web site, often with an investor relations page. Investor chat rooms also provide a further means of distributing information about issuers and, unfortunately, for spreading rumours.
- 23.2 In general terms, our view is that information dissemination on the internet is no different to information dissemination via any other media. Issuers are therefore free to publish any information they wish to over the internet - indeed, we encourage them to do so as it helps to keep investors of all types better informed about listed companies - provided that they also comply with their continuing obligations under the listing rules.
- 23.3 Therefore, any unpublished price sensitive information that a company intends to put on the web must be announced first, or simultaneously, via a Regulatory Information Service. It will often be impossible to put all the information to be disclosed via the internet in a Regulatory Information Service announcement, particularly if any graphics are to be included. However, we would require a Regulatory Information Service announcement setting out the nature of the information to be found on the internet, the price sensitive elements disclosed and the web address.
- 23.4 Issuers should also be aware that the internet is not to be used as a substitute for making full Regulatory Information Service announcements. Regulatory Information Service announcements should not be rendered misleading by the omission of some, possibly negative, details that are only revealed on the web. All the information currently included in Regulatory Information Service announcements should still be disseminated in this way. The internet should be seen as a supplement, not an alternative to full dissemination via a Regulatory Information Service.
- 23.5 Companies are not expected to monitor chat rooms for rumours or respond to every allegation that is made in these sites. However, if the company is made aware that information is being posted on a web site that suggests there has been a leak of price sensitive information that it had been keeping confidential in accordance with paragraph 9.4 of the listing rules, it should respond just as if the leak was being spread via more conventional media. In these circumstances companies are referred to the general discussion on responding to rumours at Section 15 above.

## **24. Regulatory Information Services**

- 24.1 Regulatory Information Service is the term for any organisation through which the listing rules require listed companies to disseminate price sensitive information. All such organisations are named in schedule 12 to the listing rules.
- 24.2 Issuers should consult their chosen Regulatory Information Service regarding the procedures for submitting announcements of price sensitive information.
- 24.3 A Regulatory Information Service will disseminate the full text regulatory announcements that are required by the listing rules by passing them on to news vendors. In most circumstances the listed company's obligation to announce is fulfilled once it has passed the information to a Regulatory Information Service, but if no Regulatory Information Service is open for business the company has an additional obligation. Section 25 below deals with the occasions when Regulatory Information Services are not open for business.



## **25. Notification when an issuer's Regulatory Information Service is not open for business**

- 25.1 When an issuer is required by the listing rules to notify information to its chosen Regulatory Information Service at a time when it is not open for business, it must ensure that there is adequate coverage of the information. The company can do this by submitting the announcement to any other Regulatory information Service that is named in the listing rules. If no Regulatory Information Service named in the listing rules is open for business the company must ensure adequate dissemination by distributing it to not less than two national newspapers in the United Kingdom and to two newswire services operating in the United Kingdom.
- 25.2 A practice has arisen where companies or their PR agents keep a major price sensitive announcement confidential until a Friday evening and Regulatory Information Services have closed for business. The announcement is then released to a Regulatory Information Service for publication when it reopens for business on the Monday morning. Meanwhile, the information is released to a single newspaper as a “scoop” for publication over the weekend, thereby increasing the likelihood of favourable coverage for the issuer. This practice has sometimes been referred to as the “Friday Night Drop”.
- 25.3 Paragraph 9.15 of the listing rules states that when a Regulatory Information Service is not open for business the company should distribute the information to not less than two national newspapers in the UK and to two newswires operating in the UK. The reason for this is to ensure adequate coverage for the information. The information should also be deposited at the Regulatory Information Service for release when it reopens. By only giving the information to one newspaper or newswire, a company would fail to comply with the requirements of paragraph 9.15.
- 25.4 Furthermore, the practice of keeping the information confidential until Regulatory Information Services have closed for business on a Friday may be in breach of paragraphs 9.1 or 9.2 of the listing rules, as the issuer may no longer be within the exemption provided by paragraphs 9.4 and 9.5. Those paragraphs permit a company to keep confidential matters that are in the course of negotiation or are impending developments. Once these processes have been concluded the information should be announced without delay in accordance with paragraphs 9.1 or 9.2. To delay announcement until Friday evening just to avoid dissemination via a Regulatory Information Service until Monday could therefore be a breach.
- 25.5 By giving the information to only one newspaper or newswire, the information will not be widely disseminated until it is released via a Regulatory Information Service on the Monday. This means that only a portion of the market would be in a position to absorb the information before the market opens on the Monday. A further concern is that as the

information is given to a single newspaper as a scoop, the presentation of the information being assessed is unlikely to be impartial. This is contrary to the UKLA's aim of the maintenance of an orderly market and simultaneous access to the same information for all market users.

- 25.6 An additional point to consider is the situation where the transaction is expected to complete before the Monday and an exclusive article is given to a single newspaper or newswire for publication over the weekend and a Regulatory Information Service for release on Monday. If completion is delayed until the Tuesday or later, the Regulatory Information Service may be able to delay the announcement. The journalist may not be so accommodating and the issuer may not be able to prevent the article being published. Companies are also referred to the guidance on disseminating information under an embargo at Section 22 above.

## **26. “Health warnings”**

- 26.1 We believe that certain companies, especially those operating in volatile sectors, should consider including a statement of risks or contingencies in all announcements as a matter of best practice. This would be of particular relevance to companies that are heavily reliant on research and development and/or to companies subject to significant “cash burn”. Examples of such issuers might be biotech or internet companies and, in fact, this practice has already been recommended in the BioIndustry Association Code. For instance, a biotechnology company announcing that initial trials of one of its drugs in development had been successful might add that there were still hurdles to overcome before the drug received approval from the medical regulators. This would help to ensure that the announcement is understood in its proper context.
- 26.2 Adopting this practice can give rise to benefits for issuers. In particularly volatile sectors investors can react, or indeed over react, to both good and bad news that would cause limited movement in a stable sector. The health warnings may help to temper this reaction and reduce the volatility of the sector.
- 26.3 We do not believe that this practice should be mandatory for every company, but we think that issuers of the types referred to above should consider adopting it. If companies do adopt this practice, the “health warning” should not be simply formulaic and perfunctory, but should be specific to the information released in the announcement.
- 26.4 We stress that these health warnings are not intended to be used as a formulaic defence to litigation, but as a way of explaining the context of information that the company announces in order to reduce the volatility of its share price.

## **27 Interaction with the market abuse regime**

- 27.1 Issuers, their directors and sponsors will have to be aware that activities within the scope of the listing rules may also fall within the scope of the market abuse regime set out in section 118 of FSMA. For example, one of the elements of market abuse is “behaviour [which] is likely to give a regular user of the market a false or misleading impression as to the supply of, or demand for, or as to the price or value of, investments of the kind in question;” (FSMA s.118(2)(b)). Activities covered by the listing rules on the dissemination of price sensitive information would therefore clearly have the capacity to overlap with this aspect of the market abuse regime.
- 27.2 We believe that it is beyond the scope of the PSI Guide to provide guidance on the market abuse regime and we do not want the users of the PSI Guide to see it as a substitute for, or an authoritative commentary on, the regime. We therefore urge readers to consult the Code of Market Conduct, which forms Chapter 1 of the FSA’s Market Conduct Sourcebook (MAR) for details of the way in which the market abuse regime will function and apply to them.
- 27.3 However, given the overlap between the market abuse regime and the listing rules it is worth mentioning that the Code of Market Conduct provides “safe harbours” for certain activities carried out in compliance with the listing rules. Acts that would otherwise appear to constitute market abuse would therefore not fall foul of that regime if they were done in compliance with one of the specified listing rules.
- 27.4 Conversely, acts that are held to be in breach of the listing rules may also be breaches of the market abuse regime. In such cases the FSA will consider both aspects of the behaviour. The UK Listing Authority Guidance Manual (Chapter 11) contains further information on this interaction between the listing rules and the market abuse regime.
- 27.5 The specific listing rules for which there are safe harbours are set out in the Appendix to Chapter 1 of the listing rules (see Annex 1) and also in Annex 1G of the Code of Market Conduct.

# Annex 1

## Extracts from the Listing Rules

### Publication of information

- 1.5 The UK Listing Authority may, at any time, require an issuer to publish such information in such form and within such time limits as it considers appropriate for the purpose of protecting investors and maintaining the smooth operation of the market.
- 1.6 If an issuer fails to comply with a requirement under paragraph 1.5 the UK Listing Authority may itself publish the information after having given the issuer an opportunity to make representations to the UK Listing Authority as to why the information should not be published.

## APPENDIX TO CHAPTER 1 OF THE LISTING RULES

### PROVISIONS OF LISTING RULES FOR WHICH SAFE HARBOURS ARE PROVIDED

Disclosure of information which is not generally available	8.3 9.4, 9.5, 9.15 17.25, 17.26, 17.67 paragraphs 11 and 12 of the Model Code
Standards of care	9.3A 17.24A 23.22(a) and 23.58A
Timing of announcements, documentation and dealings	9.4, 9.10(j), 9.11, 9.12, 9.14, 9.35 12.40, 12.48 15.9, 15.15 16.14 17.25, 17.33, 17.54 23.22(g), 23.61
Content of announcements	9.1, 9.2 14.1(a) and (b) 17.22, 17.23 23.22(a), 23.58
Purchase of own securities	15.1(b)

## **General obligation of disclosure for companies**

- | 9.1 A company must notify a Regulatory Information Service without delay of any major new developments in its sphere of activity which are not public knowledge which may:
  - (a) by virtue of the effect of those developments on its assets and liabilities or financial position or on the general course of its business, lead to substantial movement in the price of its listed securities; or
  - (b) in the case of a company with debt securities listed, by virtue of the effect of those developments on its assets and liabilities or financial position or on the general course of its business, lead to substantial movement in the price of its listed securities, or significantly affect its ability to meet its commitments.
- | 9.2 A company must notify a Regulatory Information Service without delay of all relevant information which is not public knowledge concerning a change:
  - (a) in the company's financial condition;
  - (b) in the performance of its business; or
  - (c) in the company's expectation as to its performance;

which, if made public, would be likely to lead to substantial movement in the price of its listed securities.
- 9.3 The requirements of paragraphs 9.1 and 9.2 are in addition to any specific requirements regarding notification contained in the listing rules.
- | 9.3A A company must take all reasonable care to ensure that any statement or forecast or any other information it notifies to a Regulatory Information Service or makes available through the UK Listing Authority is not misleading, false or deceptive and does not omit anything likely to affect the import of such statement, forecast or other information.
- | 9.4 A company need not notify to a Regulatory Information Service information about impending developments or matters in the course of negotiation, and may give such information in confidence to recipients within the categories described in paragraph 9.5. If the company has reason to believe that a breach of such confidence has occurred or is likely to occur, and, in either case, the development or matter in question is such that knowledge of it would be likely to lead to substantial movement in the price of its listed securities, the company must without delay notify to a Regulatory Information Service at least a warning announcement to the effect that the company expects shortly to release information which may lead to such a movement.
- 9.5 The categories of recipient referred to in paragraph 9.4 are:
  - (a) the company's advisers and advisers of any other persons involved or who may be involved in the development or matter in question;

- (b) persons with whom the company is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or places of securities of the company);
- (c) representatives of its employees or trades unions acting on their behalf; and
- (d) any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority.

The company must be satisfied that such recipients of information are aware that they must not deal in the company's securities before the relevant information has been made available to the public.

- 9.6 Information that is required to be notified to a Regulatory Information Service must not be given to anyone else before it has been so notified, except as permitted by paragraphs 9.4 and 9.15.
- 9.7 Where it is proposed to announce at any meeting of holders of a company's listed securities information which might lead to substantial movement in their price, arrangements must be made for notification of that information to a Regulatory Information Service so that the announcement at the meeting is made no earlier than the time at which the information is published to the market.

### **Exception**

- 9.8 If a company considers that disclosure to the public of information required by paragraph 9.1 or 9.2 to be notified to a Regulatory Information Service might prejudice the company's legitimate interests, the UK Listing Authority may grant a dispensation from the relevant requirement.

### **Equivalent information**

- 9.9 A company whose securities are also listed on any overseas stock exchange must ensure that equivalent information is made available at the same time to the public (by way of notification to a Regulatory Information Service) and to the market at each of such other exchanges.

### **Notification when a Regulatory Information Service is not open for business**

- 9.15 When an issuer is required by the listing rules to notify information to a Regulatory Information Service at a time when a Regulatory Information Service is not open for business, it must ensure that there is adequate coverage of the information by distributing it to not less than two national newspapers in the United Kingdom and to two newswire services operating in the United Kingdom. In addition, the issuer must ensure that the information is notified to a Regulatory Information Service, for release as soon as it re-opens.

### **Board decisions**

- 9.35      Decisions by the board of directors of a company on dividends, profits and other matters requiring announcement must be notified to a Regulatory Information Service without delay and not later than 7.30 am on the next following business day.



## **Annex 2**

### **UKLA's Helpdesk**

The UKLA operates a Helpdesk for enquiries relating to the listing rules. The Helpdesk number is:

**020 7943 0333**



# **THE CONTINUING OBLIGATIONS GUIDE**

**The UKLA's guide to the continuing obligations regime**

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# **1. INTRODUCTION**

## **Purpose of this Guide**

- 1.1 This Guide has been produced to assist listed companies to meet their continuing obligations under the listing rules. It aims to highlight some of the key continuing obligations listed companies and directors must comply with, provide cross-references to the detailed requirements and provide some assistance with those particular areas of the obligations where past experience suggests that this would be helpful. It also provides contact telephone numbers to assist companies in making direct contact with the relevant groups within the UKLA.

## **Sources of the continuing obligations**

- 1.2 The requirements relating to the continuing obligations can be found, principally, in the following chapters of the listing rules:
- Chapter 9 – general provisions of continuing obligations
  - Chapter 10 – transactions
  - Chapter 11 – transactions with related parties
  - Chapter 12 – financial information
  - Chapters 13 and 14 – documents not requiring prior approval and circulars
  - Chapter 15 – purchase of own securities
  - Chapter 25 – innovative high growth companies
- 1.3 Modified continuing obligations for overseas companies with a secondary listing in London, investment entities, companies with specialist securities listed (such as bonds) and companies with miscellaneous securities (such as warrants), are not covered in detail in this Guide but may be found in chapters 17, 21, 23 and 24 of the listing rules respectively.

## **Underlying principles of the continuing obligations**

- 1.4 There are two underlying principles behind all continuing obligations in the listing rules, namely:
- a) timely disclosure of all relevant information; and
  - b) equal treatment of all shareholders.
- 1.5 These principles are designed to protect investors by achieving an orderly market and ensuring that all users have simultaneous access to the same relevant information.

## **Monitoring of companies' continuing obligations**

- 1.6 Where a listed company realises that it has or may have breached its continuing obligations it should contact the relevant team (details of which are given under 'Key contacts' in Part 8 of this Guide) to discuss the matter and seek guidance on taking steps to ensure that similar breaches are prevented from recurring.
- 1.7 In the past, where the UKLA had identified a breach of one (or more) of the relevant rules by a listed company, the company was notified of the breach by letter. Companies are now usually initially contacted by telephone by a member of the relevant team as this provides a more practical means of ascertaining why the breach occurred, what corrective action may be necessary and how further breaches might be prevented.
- 1.8 Continuing obligations form an essential part of maintaining orderly markets and ensuring acceptable levels of investor protection. Where these obligations are not met and the UKLA considers it appropriate, one of a range of sanctions (set out in Chapter 1 of the listing rules) may be imposed.

## 2. Disclosure of Price Sensitive Information (PSI)

### General obligation of disclosure

- 2.1 **The principal disclosure obligation for listed companies** is to ensure that the information emanating from it, its advisers or agents is given to the market as a whole and is timely, sufficient and relevant. Selective disclosure of price sensitive information, without an announcement, is not generally permissible.

### Disclosure

- | 2.2 Listed companies must notify a Regulatory Information Service (“RIS”) of, amongst other things:
- a) major new developments that are not public knowledge and which may be price sensitive, **without delay**;
  - b) any change in the financial condition, performance or expectation of performance that is likely to be price sensitive, **without delay**;
  - c) impending or strategic developments or matters in the course of negotiation where there is reason to believe that a breach of confidence has or is likely to occur, **without delay**;
  - d) Board decisions that require announcement, without delay and by no later than 7.30 a.m. the next working day; and
  - e) any speech or announcement made to a shareholders’ meeting containing information which could be price sensitive, **at the same time or before**.
- 2.3 **Recipients of PSI** may not deal in the company’s securities before the information is made public. Individuals should have regard to the insider dealing provisions set out in the Criminal Justice Act 1993 and take legal advice where appropriate.

### General

- 2.4 **Accuracy of announcement:** listed companies must take all reasonable care to ensure that any information they notify to the Company Announcement Office is complete and not misleading, false or deceptive.
- 2.5 **Breaches of confidence:** if a company has reason to believe a breach of confidence has or is likely to occur (for example, evidenced by a press article or share price movement), the company should at least notify a RIS, issuing a warning announcement which should take the form explained in the listing rule 9.4.
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- 2.6 **Announcements required following a breach of confidence:** these confirm the accuracy of the information which has leaked and, pending a further, fuller announcement, give outline details of the impending development.
- 2.7 **Press speculation:** where the press carries an article on a company which is entirely speculative in nature, a company is not required to issue an announcement confirming this to be the case. Where there are elements of truth in an article, the company has reason to believe that a breach of confidentiality has occurred and the matter may be price sensitive, the company must at least issue a holding announcement.
- 2.8 **Advisers and negotiations:** Price Sensitive Information ('PSI') about impending developments or matters arising in the course of negotiation may, however, be given (under the stipulation that it is confidential) to a company's advisers or to those persons described in paragraph 9.5 of the listing rules.
- 2.9 **Notification when a RIS is not open:** if a company is required to notify information to a RIS at a time when it is not open, the company must ensure adequate coverage of the information by distributing it to not less than two national newspapers and to two newswire services in the UK. The company should also ensure that the information is relayed to a RIS for release as soon as it re-opens.
- 2.10 **Suspensions:** a company whose listing is suspended must continue to comply with all listing rules applicable to it.
- 2.11 **Dual listed stocks:** subject to complying with the obligations referred to above, companies with securities listed on more than one exchange need to co-ordinate announcements so the investors in each country have access to the same information at the same time.

#### **Further information and advice**

- 2.12 **Is it PSI?:** a precise or concise definition of 'price sensitivity' is not possible since a number of factors relating to a particular case need to be taken into account. Likewise there can be no precise or concise definition of the phrase 'a substantial movement in the company's share price'. Where uncertainty exists about whether information is price sensitive, companies should, in the first instance, seek advice from their advisers (company broker, lawyers etc).
- 2.13 **Problems, mistakes and dispensations:** where a problem or mistake over the handling of PSI occurs or disclosure might prejudice the company's legitimate interests, the issue should be discussed with the Monitoring Team (tel: Help Desk 020 7943 0333 ).
- 2.14 **More detailed guidance:** can be found in the booklet entitled 'Guidance on the dissemination of price sensitive information'. Copies can be obtained from The Financial Services Authority, 25 North Colonnade,

London E14 5HS or can be found on the UKLA Website address: [www.fsa.gov.uk](http://www.fsa.gov.uk). The booklet examines and provides further advice on, amongst other things:

- a) investor relations;
- b) analysts and journalists;
- c) handling PSI and its release;
- d) dual listed stocks; and
- e) 'insider' status.

2.15 **Mergers and Take-overs:** listed companies that are, or may become, involved in a take-over must also abide by the City Code on Take-overs and Mergers in relation to secrecy and the content and timing of announcements. Copies of the Code can be obtained from the Panel on Take-overs and Mergers, PO Box 226, The Stock Exchange Building, London EC2P 2JX (tel: 020 7382 9026).

### 3 Directors

#### Responsibilities of directors

- 3.1 Directors and proposed directors are responsible under the Financial Services and Markets Act 2000 for information contained in their company's listing particulars or supplementary listing particulars. In particular:
- a) **directors and proposed directors** must, without exception, make a statement (in the form specified in the listing rules) that they accept responsibility for information contained in listing particulars and incorporate it therein; and
  - b) **companies** must provide the UKLA, prior to such a document's approval, with a letter signed by every director confirming that all the necessary information required has been incorporated in the listing particulars.
- 3.2 **Listed companies** are required to ensure that their directors, individually and collectively, accept full responsibility for the company's compliance with the listing rules.

#### Directors' details

- 3.3 A listed company must include details about each of its directors and, where relevant, members of its senior management in any listing particulars published by it.
- 3.4 A company must notify to a RIS the following information in respect of any new director appointed to the Board, unless such details have already been disclosed in listing particulars or other circular published by the company:
- a) all directorships held by such director in any other publicly quoted company at any time in the previous five years, indicating whether or not the individual is still a director;
  - b) any unspent convictions relating to indictable offences;
  - c) any bankruptcies or individual voluntary arrangements of such person;
  - d) any receiverships, compulsory liquidations, creditors voluntary liquidations, company voluntary arrangements or any composition or arrangement with its creditors generally or any class of its creditors of any company where such person was a director with an executive function at the time of or within the 12 months preceding such events;

- e) any compulsory liquidations, administrations or partnership voluntary arrangements of any partnerships where such person was a partner at the time of or within the 12 months preceding such event;
- f) the receiverships of any asset of such person or of a partnership of which the person was a partner at the time of or within the 12 months preceding such event; and
- g) any public criticisms of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a director of a company or from acting in the management or conduct of the affairs of any company

or, if there are no such details to be disclosed, that fact.

3.5 This notification must be made either

- a) in the notification made regarding the appointment of the relevant director; or
- b) within 14 days of the appointment of the relevant director becoming effective.

### **Board changes**

| 3.6 **Listed companies** must notify a RIS of any change to the board including:

- a) the appointment of a new director;
- b) the resignation, retirement or removal of an existing director; or
- c) changes to any important functions or executive responsibilities of a director.

3.7 This must be done without delay and no later than the end of the business day after the decision (even though the change may not take effect for some time) or earlier, if necessary under the general obligation of disclosure in paragraph 9.4 of the listing rules.

3.8 The **notification** must state:

- a) the effective date of the change (if it has been decided) unless it is with immediate effect;
- b) whether the position is executive or non-executive; and

- c) the nature of any function or responsibility of the position where that is changing or in the case of a new appointment.

If the effective date is not yet known or has not yet been decided the notification should state this fact. Once the effective date is decided it must also be notified without delay.

## **General**

- 3.9 **Subsidiary companies:** the listing rules relating to board changes do not apply to subsidiary companies that are not listed, except where (particularly for large subsidiaries) those changes might be deemed price sensitive in the context of the listed parent company and would need to be announced under a company's general obligation of disclosure.
- 3.10 **Company secretary:** unless the company secretary is a main Board director, an announcement of any change in this role need not be made. However, it would be helpful for the Monitoring Team (Tel: Help Desk 020 7943 0333) to be notified of such changes so that its internal records can be updated.

## 4 Notification: share dealings and shareholders

### Directors' dealings

- 4.1 Details of share dealings by directors and connected persons received by a company from a director under sections 324 to 328 of the Companies Act 1985 need to be announced.
- 4.2 Listed companies must:
- a) notify the a RIS without delay and no later than the end of the business day following receipt of the information by the company; and
  - b) require each director to give them the information which they need in order to comply with the disclosure obligations.
- 4.3 **Directors** must provide the company with the required information as soon as possible after the transaction and no later than the fifth business day following that on which they became aware of the existence of the interest.
- 4.4 **A grant of options** to a director or a party connected to them must also be notified to the company as soon as possible and no later than the fifth business day following that on which they became aware of the existence of the interest. The company in turn must notify a RIS without delay.
- 4.5 Content of announcement (see Schedule 11 of the listing rules). The information, which must be included in the announcement, includes the:
- a) date on which the disclosure was made to the company;
  - b) date of transaction;
  - c) price;
  - d) amount and class of securities;
  - e) nature of the transaction;
  - f) nature and extent of the director's interest in the transaction; and
  - g) identity of the director and, where relevant, connected person.

### Notification of Savings Schemes – (Including Personal Equity Plans (PEPs) and Individual Savings Plans (ISAs))

- 4.6 **Single security saving schemes:** if a director's saving scheme is one that invests only in the securities of the listed company itself, the director must request the manager to notify him immediately the manager has dealt. Where a director has asked the manager to do this and a late notification

was due to the manager failing to notify the director immediately, the UKLA will take this into account in determining what action to take.

4.7 **General discretionary saving schemes:** Directors do not generally need to ask the manager of their scheme to notify them immediately the manager has dealt on the director's behalf, although some directors have agreed that their managers do so. However, as soon as the director does receive information regarding his dealing in the shares of the company of which he is a director, he must notify the company. We recommend that directors request monthly or quarterly statements from the manager and that the notifications submitted to a RIS make it clear that the saving scheme is discretionary.

4.8 **Listed companies:** the notification which the company sends to a RIS should state the date on which the information was received from the manager to show that the director was not late in notifying the company.

## General

4.9 **Date of director's notification to the company:** the listing rule relating to directors' dealings which is overlooked most often by companies is the requirement to notify a RIS of the date on which the director notified the company of the transaction.

4.10 **The DTI:** copies of all announcements which do not comply with the relevant Companies Act 1985 requirements (sections 324 to 328) are copied to the DTI.

4.11 **Annual Report and Accounts:** see Part 6 of this Guide

4.12 **Close or prohibited periods:** details of the restrictions on directors' dealings in their companies' shares are covered in Part 4 of this Guide.

## Further information and advice

4.13 **Directors' dealing forms:** schedule 11 of the listing rules contains a form on which directors' and connected persons' dealings can be notified to a RIS. The use of schedule 11 is not compulsory but we encourage companies to use it as it does help to ensure that companies comply with all the appropriate disclosure requirements.

4.14 **Advice on share dealing announcements:** listed companies are urged to seek advice from the Monitoring Team (tel: Help Desk 020 7943 0333) before making an announcement if they are at all unsure about what to announce or when to announce it.

## Interests of major shareholders

4.15 All information received from a major shareholder, in accordance with sections 198 to 208 of the Companies Act 1985 ('the Companies Act'), relating to their interests in the company's share capital must be announced.

- 4.16 **Listed companies** must notify a RIS of any information:
- a) disclosed to the company pursuant to sections 198 to 208 of the Companies Act; and
  - b) obtained by the company pursuant to section 212 of the Companies Act, that should have been disclosed to it pursuant to sections 198 to 208 of the Companies Act.

Notification must be made **without delay** and no later than the end of the business day following receipt of the information by the company.

- 4.17 **Content of notification:** the information which must be contained in the notification includes:
- a) the date on which the information was disclosed to the company; and
  - b) the transaction date, if known.

### **General**

- 4.18 **Substantial shareholders:** need to notify the company each time their holding goes through a percentage integer either upwards or downwards under the Companies Act requirements. If a substantial shareholder's interest falls below the threshold imposed by the Companies Act, the substantial shareholder must disclose this fact to the company, who in turn must notify a RIS.
- 4.19 **City Code:** listed companies are discharged of their responsibilities to notify a RIS of the information set out in paragraphs 9.11 and 9.12 of the listing rules if a substantial shareholder notifies a RIS of its holding pursuant to the City Code on Take-overs and Mergers or the Rules Governing Substantial Acquisitions of Shares, which are issued by the Panel on Take-overs and Mergers.
- 4.20 **Date of substantial shareholder informing the company:** the aspect of the major shareholding rules with which companies most often fail to comply is the requirement for the notification to include the date on which the substantial shareholder informed the company of the change.
- 4.21 **The DTI:** copies of all notifications which do not comply with the relevant Companies Act requirements are copied to the DTI.
- 4.22 **Listed companies** not subject to the Companies Act are required to notify a RIS of equivalent information notified to them.

### **Further information and advice**

- 4.23 **Schedule 10:** a copy of Schedule 10 can be found at the back of the listing rules. This is a pro forma announcement which can be completed if a company needs to make a notification regarding the interest of a major



shareholder. The use of Schedule 10 is not compulsory but we encourage companies to use it as it does help to ensure that companies comply with all the appropriate disclosure requirements.

### Company purchases of own shares

4.24 Purchases by a listed company, or on its behalf, of its own equity share or of any other of its securities, which are listed, must be announced.

4.25 **Listed companies** must:

a) secure prior approval from the UKLA of a circular to shareholders proposing the purchase of its own securities, where the:

(i) purchase is to be made from a related party (unless a tender or partial offer is to be made to all holders of that class of securities on the same terms or the purchase is made in the market under a general authority without prior understanding or agreement with the related party); or

(ii) use of the full authority to be sought would allow the purchase of 15% or more of the issued share capital;

b) notify a RIS of:

(i) any board decision to submit a proposal to shareholders for the purchase of the company's own equity shares (other than for the renewal of an existing authority) **without delay**;

(ii) the outcome of any subsequent shareholder's meeting, **without delay**;

(iii) any purchase by or on behalf of the company of its own equity shares **as soon as possible** and no later than 7.30 am on the next business day; and

(iv) any purchases, early redemption or cancellation of its own non-equity shares when an aggregate 10% of the initial amount of the securities (and each aggregate 5% thereafter) is purchased, redeemed or cancelled **by 7.30 am on the following day**.

4.26 **Content of notification:** details which need to be contained in the notifications include:

a) for the board decision:

(i) whether the proposals relate to specific purchases;

- (ii) if so, the names of the persons from whom the purchases are to be made;
  - (iii) whether the proposals relate to a general authorisation to make purchases;
- b) for equity securities:
  - (i) the date of purchase;
  - (ii) the number of shares purchased;
  - (iii) the price paid, or the highest and lowest prices paid;
- c) for non-equity securities:
  - (i) the amount of securities acquired, redeemed or cancelled since the last such notification;
  - (ii) the amount of securities remaining outstanding;
  - (iii) whether or not the securities acquired are to be cancelled.

| 4.27 **Content of Circulars:** circulars must include the information, as appropriate, referred to in paragraphs 14.1, 14.16, 15.4, 15.5, 15.11 and 15.14 of the listing rules.

## General

| 4.28 **Consent of other classes of security:** generally, approval must be obtained by extraordinary resolution from the holders of listed securities convertible into, exchangeable for or carrying a right to subscribe for a class of a company's own equity share that the listed company proposes to purchase.

| 4.29 **Close and prohibited periods:** purchases by a company of its own securities may generally not be made during those periods when its directors are prohibited from dealing under the Model Code.

| 4.30 **Exceptions:** the requirements on purchase of own securities do not apply to transactions entered into by a listed company or a member of its group on behalf of a third party or in respect of transactions entered into in the ordinary course of business by securities dealing businesses.

| 4.31 **Annual Report and Accounts:** must include the information on a company's purchase of its own securities as set out in the listing rules.

| 4.32 **Related party transactions:** transactions with related parties are discussed further in Part 7 of this Guide.

## 5. Model Code

- 5.1 The Model Code is designed to ensure that directors and certain other relevant employees (and people or companies closely connected with such directors or relevant employees) (see below under General points) of primary listed companies do not deal in the securities of the listed company at times when they may be in possession (or may be perceived to be suspected of being in possession) of unpublished price sensitive information. The Code itself is appended to Chapter 16 of the listing rules. Companies and individuals must, however, also have regard to the Criminal Justice Act 1993.

### Key aspects of the Model Code

- 5.2 Listed companies must:

- a) require their directors and any employees likely to be in possession of unpublished price sensitive information to comply with a code governing the share dealings of directors and relevant employees in terms no less exacting than those of the Model Code. Companies may therefore impose more rigorous restrictions upon dealings by directors and relevant employees than those set out in the Model Code;
- b) make all directors and relevant employees aware of their obligations under the code of dealing implemented on terms no less exacting than those of the Model Code and, in practice, regularly remind its directors and relevant employees of their obligations; and
- c) maintain written records, both of the request for clearance to deal and of the grant or refusal of such clearance.

- 5.3 Directors (or other relevant employees) must not:

- a) deal in securities of the company without seeking clearance from the chairman or other designated director; or
- b) deal in securities of the company on considerations of a short term nature and should take reasonable steps to ensure that persons connected with them ('connected persons') do not engage in such dealings.

- 5.4 **The chairman** (or other designated director) must not give permission to a director or relevant employee to deal if there exists any matter which constitutes unpublished price sensitive information, even if the director or relevant employee himself is not in possession of that information.

- 5.5 **The company secretary** cannot give permission to deal unless he/she is also a director and is designated for that purpose.

## **Awards of securities and options**

5.6 **Employee share schemes:** a grant of options may be made by the Board to employees and directors under an employee share scheme during a prohibited period if:

- a) the grant could not reasonably be made at any other time; and
- b) a failure to make the grant would be likely to indicate to the market that the company is in a prohibited period.

Where a grant is to be made to directors and/or relevant employees, it may only proceed in a prohibited period if, in addition to the above, the terms of the scheme set out:

- a) the timing of the grant, which has previously been approved or disclosed to shareholders, or is in accordance with the timing of previous grants; and
- b) the amount or value of the grant, or the basis on which it is calculated.

5.7 **Options and convertibles:** the exercise of options or the conversion of a convertible security during a prohibited period is not usually allowed even if the final date of the exercise or conversion falls in the prohibited period. However, companies should bear in mind that:

- a) the exercise may be permissible if the director could not have reasonably been expected to exercise the option or right prior to this time, for example, when the company has been in an exceptionally long prohibited period; and
- b) where the exercise or conversion during a prohibited period has been permitted, permission cannot be given for the sale of these securities during a prohibited period.

In case of doubt the UKLA's Monitoring Team (tel: 020 7943 0333) should be consulted.

## **Savings schemes (including single company schemes)**

5.8 A director can enter a scheme in which the company's shares are purchased by regular standing order, direct debit or salary deductions or are reinvested by standing election or acquired in lieu of remuneration without regard to the provisions of the Model Code if:

- a) clearance under paragraph 6 of the Model Code is sought prior to entering into, or cancelling or varying the terms of the directors' participation;
- b) the director does not enter the scheme in a prohibited period;

- c) the director does not carry out the first purchase in a prohibited period, unless irrevocably bound to do so; and
- d) the director does not cancel or vary the terms of his participation or carry out sales from the saving scheme in a prohibited period.

5.9 **Discretionary schemes** (excluding schemes investing only in the securities of the Listed Company): the Model Code does not apply where investments are at the discretion of a third party.

5.10 **Authorised unit trusts and open ended investment companies:** the Model Code does not apply to any dealings in the units of an authorised unit trust or an open ended investment scheme.

## Dealings

5.11 **Dealings** which are subject to the Model Code are defined in paragraph 1(b) (with reference to paragraph 19) of the Appendix to Chapter 16 and include agreements to sell or purchase securities and any rights or obligations, conditional or otherwise, to acquire or dispose of securities. Dealings which are subject to the Model Code also include:

- a) dealings between directors and/or relevant employees;
- b) off-market dealings; and
- c) transfers for no consideration other than where the director retains the beneficial interest under the Companies Act 1985.

5.12 **Exclusions:** a list of dealings which are not subject to the Model Code is included in paragraph 20 of the Appendix to Chapter 16 of the listing rules. Such dealings can take place at any time and directors or relevant employees do not need to ask permission to execute them.

## General

5.13 **Relevant employee:** is any employee of the listed company or group who, because of his or her office or employment, is likely to be in possession of unpublished price sensitive information. The list of relevant employees will not necessarily be a static list but will change depending on what is happening within the company at any given time. The list of relevant employees may comprise a small number of individuals who are permanently on the list and a larger group of employees who will be added or deleted from the list depending on the nature of the unpublished price sensitive information.

5.14 **Time limits:** while the listing rules do not impose a time limit for directors to deal, once permission to deal has been granted we recommend that companies allow directors a short time period to deal, say 24 hours. If a director has not dealt within the timeframe set out by the company, he should reaffirm that he is still able to deal to ensure the company has not entered a close or prohibited period since permission was granted.

- 5.15 **Connected persons and investment managers:** directors must seek to prohibit any dealings in their company's securities by such persons when the director is in possession of unpublished price sensitive information, subject to that being consistent with their duty of confidentiality (the meaning of the term 'connected person' is set out in section 346 of the Companies Act 1985). The action that a director must take to prohibit a connected person or investment manager from dealing in a prohibited period is set out in paragraph 12 of the Model Code.
- 5.16 **Exceptional circumstances:** permission may be given to a director to sell shares, but not to buy shares, during a close or prohibited period in exceptional circumstances. In such cases:
- a) the person responsible for giving the director permission to deal must decide whether the particular circumstances are exceptional or not; and
  - b) where a director sells shares, the notification to a RIS must include details of any exceptional circumstances in light of which the sale was allowed.
- 5.17 **Defining exceptional circumstances:** while it is not possible to provide a comprehensive list of exceptional circumstances, the Model Code provides an example of the kind of circumstances under which a dealing might be allowed, as being a pressing financial commitment on the part of the director that cannot otherwise be satisfied.
- 5.18 **Limitation:** directors and relevant employees are not subject to the provisions of the Model Code once they have left the company. However they do need to have regard to the insider dealing rules set out in the Criminal Justice Act 1993 and the Code of Market Conduct. The UKLA does have the power to take disciplinary action against a former director in relation to a breach of the listing rules.
- 5.19 **Qualification Shares:** A chairman or designated director may allow a director to acquire qualification shares where under the company's Articles of Association, the final date for their acquisition falls during a prohibited period and the director could not reasonably have been expected to acquire these shares at another time.
- 5.20 **Failure to comply with a company's code of dealing:** a company who becomes aware that its directors or relevant employees have failed to comply with the provisions of the Model Code as implemented by the company's code of dealing must inform the UKLA as soon as possible. Where the UKLA otherwise becomes aware of an apparent breach of the company's code of dealing by a company's directors or relevant employees, it will contact the company with a request for an explanation of the apparent breach of the company's code. The UKLA will seek to determine whether the company has taken all proper and reasonable steps to ensure compliance with the code of dealing in accordance with listing rule 16.18. If the UKLA determines that the company has breached

listing rule 16.18 it may take disciplinary action in accordance with listing rules 1.8 and 1.9. Additionally the UKLA may require the company to notify a RIS of the circumstances of any breach of the company's code of dealing by a director or relevant employee.

### **Further information and advice**

- 5.21      **Advice on the Code:** where there is any doubt about the application of the Model Code, listed companies should contact the Monitoring Team (tel: Help Desk 020 7943 0333 option 4) to discuss the matter, with a view to ensuring that a breach of the Model Code does not occur.

## 6. Financial Information and other matters

### Annual report and accounts

- 6.1 **Time limit:** all listed companies are required to publish their annual report and accounts as soon as possible after the accounts have been approved but **no later than six months** after the end of the financial period.
- | 6.2 **Preliminary results** must be notified to a RIS without delay and no later than 7.30am on the business day after board approval.
- | 6.3 A company must notify preliminary results to a RIS within 120 days of the end of the period to which the statement relates.
- 6.4 Failure to submit the preliminary results within the required timescale will result in a suspension of the company's securities. A company must continue to comply with the listing rules while suspended, including the disclosure requirements set out in Chapter 9. Should a company find that its financial position deteriorates to the extent it warrants disclosure while suspended, the company must issue an announcement via a RIS **without delay**.
- | 6.5 Companies will be contacted around one month before the final due date for publication of both its preliminary results and annual report and accounts to ensure timely disclosure.
- | 6.6 **Innovative high growth companies** listed under the provisions of Chapter 25 must prepare and publish via a RIS a report on its activities for each quarter of each financial year.
- 6.7 **Audit:** the annual accounts must be independently audited, in consolidated form (although, if the company's own accounts must be published because they contain significant additional information, then these must also be independently audited) and, if they do not give a true and fair view of the state of the company's or group's affairs and profit and loss, provide detailed additional information.
- 6.8 **Directors shareholdings:** at present, companies often fail to comply with the requirement for details of directors' shareholdings, split between beneficial and non-beneficial holdings and updated to within one month of the date of the notice of AGM, to be included in the annual report and accounts. Many companies either forget to include a statement that all shareholdings are beneficial or omit to state that the holdings have been updated to within one month of the notice of AGM. In including this information, listed companies should also include the split between beneficial and non-beneficial interests as at the period end.



## Corporate governance

- 6.9 The corporate governance requirements set out in Chapter 12 of the listing rules are in addition to the information required by law to be included in the company's annual report and accounts. These include, the disclosure requirements relating to the principles of good governance and the Combined Code.
- a) principles – a statement of how the company has applied the principles of the Section 1 of the Combined Code, which provides an explanation which enables its shareholders to evaluate how they have been applied; and
  - b) best practice provisions – a statement of whether the company has complied with the provisions of Section 1 of the Combined Code, specifying which provisions have not been complied with, for what period and the reasons for non-compliance.

## Interim reports

- 6.10 **Time limit:** all companies with listed ordinary shares, preference shares or the equivalent (e.g. common stock) are required to publish a half-yearly report on a group basis for the first six months of the financial year or period. Half-yearly reports must be notified to a RIS **without delay** and no later than 7.30am on the business day after board approval.
- 6.11 A company must notify a half-yearly report to a RIS within 90 days of the end of the period to which the statement relates.
- 6.12 Failure to submit the half-yearly report within the required timescale will result in a suspension of the company's securities.
- 6.13 Companies will be contacted around one month before the final due date for the interim report to ensure that the document will be received on time.
- 6.14 **Content:** the detailed requirements of the information to be included in the report are set out in Chapter 12 of the listing rules.
- 6.15 **Auditing Practices Board guidance on the Review of Interim Financial Information:** if the figures have either been audited or reviewed by the auditors pursuant to this Auditing Practices Board guidance, then the report of the auditors should be included.

## Change of accounting reference date

- 6.16 **Listed companies** must notify a RIS **without delay** of any change in their accounting reference date.
- 6.17 **Requirement for a second interim report:** if the change extends the new accounting period to more than 14 months, a second interim report must be published in respect of either:

- a) the period up to the old accounting reference date; or
- b) up to a period which is up to a date not more than six months prior to the new accounting reference date.

If a second interim statement is required, it must be published either within four months of the period under review, if the company's current financial year begins before 23 December 1999 or within 90 days of the period under review if the current financial year begins on or after 23 December 1999.

- 6.18 **Consultation:** should a company decide to use any date other than the old accounting reference date as the date for a second interim, the Monitoring Team (tel: Help Desk 020 7943 0333 option 4) should be consulted, to discuss the length of the interim period and the choice of comparatives.

## Other matters

### Shares in public hands

- 6.19 **25% threshold:** companies must notify the Monitoring Team (in writing) without delay if the proportion of any class of listed equity shares in public hands falls below 25%.
- 6.20 **Lower thresholds:** in those limited circumstances where a threshold of less than 25% is agreed between the UKLA and a company, notification is required as above when the proportion of those shares in public hands falls below that agreed threshold.

## Capital

- | 6.21 **Listed companies** must notify a RIS without delay of the specified matters relating to its capital covering:
- a) proposed alterations to capital structure;
  - b) new issues of debt securities;
  - c) changes to rights attaching to listed securities or securities into which they convert;
  - d) redemption or drawing (with notification both prior to and after any drawing);
  - e) the basis of allotment in respect of general offers to the public and open offers;
  - f) any time extensions in respect of temporary documents of title;
  - g) issues affecting conversion rights; and
  - h) results of new issues.

## 7. Transactions and documents

### Transactions by a listed company

- 7.1 The rules for transactions by a listed company (principally acquisitions and disposals) are designed to ensure that shareholders are informed of and, in the case of larger transactions, have the opportunity to vote on transactions which have an impact on the company.

### Transaction categories

- 7.2 **Excluded transactions:** a number of exclusions exist which are listed in chapter 10. For example, revenue transactions undertaken as part of the company's regular trading activities (for example, the buying and selling of stock or raw materials) are generally excluded.
- 7.3 There are four categories or classes of transaction, the category being determined by a series of calculations known as percentage ratios. Essentially the larger the transaction the more disclosure is required and the greater the need for shareholder approval:

<u>Size</u>	<u>Percentage ratios</u>	<u>Requirements</u>			
		<u>Announcement</u>	<u>Circular</u>	<u>Shareholder approval</u>	<u>Suspension</u>
Class 3	Less than 5%	**	-	-	-
Class 2	5% to less than 25%	Yes	-	-	-
Class 1	25% to less than 100%	Yes	Yes	Yes	-
Reverse takeover	100% or more	Yes	Yes	Yes	Yes ***

\*\*An announcement is only required if the transaction is an acquisition in respect of which the consideration includes the issue of securities for which listing will be sought or the company releases any details to the public.

\*\*\*A suspension may not be required if there is no announcement made by the company or a breach of confidence has not occurred prior to the publication of the relevant documents (provided the documents are published prior to 7.30am on the particular day).

### Percentage Ratios

- 7.4 The percentage ratios are the figures, expressed as a percentage, resulting from each of the following calculations:
- Assets – the gross assets the subject of the transaction divided by the gross assets of the listed company.
  - Profits – the profits attributable to the assets the subject of the transaction divided by the profits of the listed company

- c) Turnover – the turnover attributable to the assets the subject of the transaction divided by the turnover of the listed company.
- d) Consideration to market capitalisation – the consideration divided by the aggregate market value of all the ordinary shares of the listed company.
- e) Gross capital – the gross capital of the company or business being acquired divided by the gross capital of the listed company. This percentage ratio is only to be applied in the case of an acquisition of a company or business.

7.5 The listing rules set out in detail how to calculate each ratio (paragraphs 10.7 to 10.16) and explain which figures should be used for classification purposes (paragraphs 10.17 to 10.19).

7.6 As noted below where a particular ratio calculation is anomalous or inappropriate, the UKLA may agree to substitute an alternative calculation. Listed companies are encouraged to discuss the class tests and underlying ratio calculations with the Equity and Capital Markets Group at an early stage, where there is concern about the appropriateness of a particular ratio calculation.

## General

7.7 **Is a transaction caught?:** if there is any doubt about whether a transaction falls within any of the four categories the matter should be discussed with the UKLA's Equity and Capital Markets Group (tel: Help Desk 020 7943 0333 ).

7.8 **Half-year balance sheet:** if a company has published a balance sheet in the half-yearly report, the assets from the half-yearly report must be used for classification purposes, even if the balance sheet has not been reviewed by the auditors.

7.9 **Any change to a percentage ratio:** that alters the classification of a transaction, between the time it was first discussed with the UKLA and announcing the transaction, must be discussed with the Equity and Capital Markets Group.

7.10 **Anomalous results:** where any of the above calculations produces an anomalous result (for example where a percentage ratio involves comparing profits with losses) the Equity and Capital Markets Group must be consulted. In such circumstances the UKLA may agree to substitute that particular percentage ratio with other relevant indicators of size.

7.11 **Inappropriate calculations:** where the sphere of activity of the listed company makes a calculation inappropriate, the Equity and Capital Markets Group must again be consulted and the UKLA may agree to

disregard the calculation and require the substitution of other relevant indicators of size.

- 7.12 **Other issues:** since each transaction usually has unique aspects, companies are encouraged to speak to their advisers and the Equity and Capital Markets Group at an early stage if they are in any doubt as to the classification or there is any doubt about the application of the transaction rules. Companies listed under Chapter 25 provisions must consult the Equity and Capital Markets Group at an early stage.

### **Announcements**

- 7.13 Listed companies must:

- a) notify a RIS, where required, as soon as the terms of a transaction have been agreed; and
- b) make a supplementary notification and advise the Equity and Capital Markets Group or Monitoring Team without delay if, at any time after the initial announcement, the listed company becomes aware that:
  - (a) there has been a significant change affecting any matter contained in that earlier announcement; or
  - (iii) a significant new matter has arisen which would have been required to be mentioned in that earlier announcement if it had arisen at the time of the preparation of that announcement.

- 7.14 Contents of announcements. The detailed content requirements for each class of transaction may be found in the following paragraphs of the listing rules:

- |    |                    |             |
|----|--------------------|-------------|
| a) | Class 3            | 10.29-10.30 |
| b) | Class 2            | 10.31-10.34 |
| c) | Class 1            | 10.31-10.38 |
| d) | Reverse Take-overs | 10.39       |

- 7.15 **Review:** announcements do not normally have to be reviewed prior to publication by the UKLA, unless the UKLA so requests. Circulars, however, generally do need to be reviewed prior to publication.

## **Class 1 circulars**

7.16 **Contents:** the specific requirements for the contents of Class 1 circulars are described in:

- a) paragraphs 10.40 to 10.43 of the listing rules.
- b) appendix to Chapter 10

## **Transactions with related parties**

7.17 Transactions between companies (or their subsidiary undertakings) and their directors or substantial shareholders (or their associates) or persons or other entities which exercise significant influence over them are subject to specific requirements to provide a safeguard against parties which have (or may be perceived as having) a position of influence over a company and to protect those involved in the transaction from inappropriate or misinformed criticism.

7.18 A transaction with a related party will normally require an announcement, a circular to shareholders seeking their approval and the abstention of the related party from voting.

7.19 **Small transactions:** in certain circumstances, for example where the transaction is very small, the requirements referred to in paragraph 10 above do not apply. Instead, before the transaction is completed, the company must provide the UKLA with the following in writing:

- a) details of the proposed related party transaction;
- b) confirmation from an acceptable independent adviser that the terms of the transaction are fair and reasonable and
- c) an undertaking to include details of the related party transaction in the next Annual Report and Accounts.

In these circumstances, the company or its adviser should liaise with the Equity and Capital Markets Group Help Desk (020 7943 0333).

## **Further information and advice**

7.20 **Related party definition:** the definition of a related party is, of necessity, complex. In any case of doubt the company must consult the Equity and Capital Markets Group at an early stage (Help Desk 020 7943 0333 option 2).

7.21 **Mergers and Take-overs:** a listed company that is or may become involved in a merger or take-over should be aware of the provisions and restrictions set down in the City Code on Take-overs and Mergers. Copies of the Code can be obtained from the Panel on Take-overs and Mergers, PO Box 226, The Stock Exchange Building, London EC2P 2JX (tel 020 7382 9026).

## Documents and circulars

7.22 Chapter 14 of the listing rules sets out:

- a) general requirements which apply to all circulars sent by a company to its shareholders;
- b) specific requirements for circulars of a routine nature; and
- c) requirements for certain documents and circulars which, if complied with, obviate the need for the company to submit them to the UKLA prior to publication.

## Circulars

7.23 **Listed companies** must:

- a) seek prior approval from the UKLA before any circular, save those defined as of a routine nature, may be circulated or made publicly available;
- b) support their application for prior approval by providing the UKLA with three copies of (as applicable) the:
  - (i) circular;
  - (ii) working capital letter and confirmation of independence in the form set out in Schedule 1A from the sponsor; and
  - (iii) statement of adjustments.
- c) ensure the circular provides a clear and adequate explanation of the subject matter;
- d) ensure two copies of any circular in its final form (whether or not required to be submitted to the UKLA for prior approval) are lodged with the UKLA for publication by making them available to the public at the Document Viewing Facility at the same time as it is despatched to shareholders; and
- e) notify, without delay, a Regulatory Information Service when a document has been submitted for publication through the Document Viewing Facility, unless the full text of the document is provided to a Regulatory Information Service.

7.24 **Circulars of a routine nature:** which do not need prior approval by the UKLA before publication are those relating to:

- a) authority to allot shares;
- b) disapplication of pre-emption rights;

- c) increase in authorised share capital;
- d) reduction of capital;
- e) a capitalisation issue;
- f) scrip dividend alternative;
- g) scrip dividend mandate schemes;
- h) purchase of own securities;
- i) notices of meetings;
- j) early redemption of debt securities;
- k) reminders of conversion rights; and
- l) chapter 13 documents (see paragraph 7.29 below).

## **General**

- 7.25 **Timing of document approval:** approval will normally only be given on a business day between the hours of 9.00am and 5.30pm unless specific alternative arrangements are made in advance. It will normally take approximately two hours from submission of the final document for the UKLA to approve the document.
- 7.26 **Definition of circular:** any document issued to holders of listed securities including notices of meetings but excluding listing particulars, annual reports and accounts, interim reports, proxy cards and dividend or interest vouchers.
- 7.27 **Is it unusual?:** Enquiries relating to whether or not the features of a circular are unusual should be directed to the Equity and Capital Markets Group (tel: Help Desk 020 7943 0333 option 2).
- 7.28 **Problems, mistakes and variations:** where a problem or mistake has occurred or a variation is to be sought relating to routine circulars, queries should be directed to the Equity and Capital Markets Group (tel: Help Desk 020 7943 0333 option 2).

## **Documents (other than circulars) not requiring prior approval**

- 7.29 Documents that comply with the requirements of Chapter 13 of the listing rules do not generally require submission to the UKLA in draft and include:
- a) trust deeds;
  - b) employees' share schemes and long term incentive schemes involving the issue of new shares;



- c) temporary and definitive documents of title; and
- d) proxy forms.

7.30 **Listed companies** must ensure that:

- a) documents not requiring the UKLA's prior approval or routine circulars comply with the requirements of the listing rules;
- b) two copies of those documents not requiring prior approval are lodged in final form with the UKLA (marked for the attention of the Equity and Capital Markets Group, UKLA) with any letter of compliance no later than:
  - (i) the date of despatch of the notice convening the meeting to decide on the document or amendment to it;
  - (ii) where there is no such meeting, the date of despatch of the document to the holders of the relevant securities; or
  - (iii) where there is no such meeting and no such despatch, the effective date of the document or amendment to it.

7.31 A company with only debt securities listed is not required to lodge an amendment to its memorandum and articles of association unless the proposed amendments affects the rights of holders of debt securities.

### **Letter of compliance**

7.32 In the case of trust deeds a letter of compliance will be required from the company's legal advisers or other suitably qualified professional advisers at the same time it is lodged with the UKLA.

7.33 In cases where it may not be possible to give a letter of compliance, the Equity and Capital Markets Group must be consulted at an early stage and a draft of the document (with an explanation of any unusual matters) must be submitted to the Equity and Capital Markets Group.

### **General**

7.34 **Exceptions:** where a document or a circular that would otherwise be of a routine nature has unusual features or fails to comply exactly with all the necessary requirements of Chapter 13, a company should consult the Equity and Capital Markets Group (tel: Help Desk 020 7943 0333 option 2) which may:

- a) permit variations from the requirements; or
- b) require the company to obtain prior approval for the document from the UKLA.

## **8. Key contacts**

### **The UKLA**

- 8.1 The responsibilities of the UKLA include the:
- a) admission of securities to listing;
  - b) review and approval of circulars, listing particulars and prospectuses;
  - c) discussion of listing and eligibility requirements with companies and their advisers;
  - d) monitoring of compliance by listed companies with the continuing obligations; and
  - e) enforcement and compliance with the listing rules development of, and consultation on, proposals to amend the listing rules.

### **The UKLA's Monitoring Function**

- 8.2 Monitoring of the continuing obligations is carried out by:

**The Monitoring Team:** responsible for monitoring compliance with the general disclosure requirements in respect of price sensitive information and those continuing obligations related to directors' and substantial shareholders' dealings and the Model Code (tel: Help Desk 020 7943 0333 option 4). The Monitoring Team is also responsible for monitoring small transactions, financial information and related continuing obligations.

### **Equity and Capital Markets Group**

- 8.3 **The Equity and Capital Markets Group** pre-vets listing particulars, other documents sent to shareholders, and documents relating to specialist securities including Eurobonds, GDRs, warrants and convertible bonds. The work of reviewing and approving these documents is carried out by the Equity and Capital Markets Group (tel: Help Desk 020 7943 0333 option 2).
- 8.4 The group is split into transaction teams, which are made up of a team manager and a mixture of full-time employees and seconded staff from a variety of backgrounds including accountants, lawyers and other individuals with a corporate finance background.
- 8.5 Communication with the Equity and Capital Markets Group is usually through the sponsor or other adviser to the issuer but companies are encouraged to contact the Equity and Capital Markets Group, if appropriate.
- 8.6 Matters discussed with the Equity and Capital Markets Group include:

- a) points of principle prior to submission of draft documentation;
  - b) detailed issues raised by the Equity and Capital Markets Group on a particular transaction; and
  - c) interpretation and advice on related listing rules.
- 8.7 Where discussions take place which do not involve the issuer's sponsor or other adviser, the company should ensure that the sponsor is advised of the matters discussed as soon as practicable.

### **Listing Application Team**

- 8.8 **The Listing Application Team** is responsible for admitting securities to the Official List. The team is also responsible for the calculation and collection of the UKLA's listing fees. (tel: Help Desk 020 7943 0333 option 3).

### **Some non-UKLA contacts**

- 8.9 **The Panel on Take-overs and Mergers** is responsible for the City Code on Take-overs and Mergers. The responsibilities under the Code apply to those actively engaged in the securities markets and are also regarded by the Panel as applying to directors of companies which are subject to the Code and to persons or groups who seek to gain or consolidate effective control of such companies or who otherwise participate in, or are connected with, transactions to which the Code applies (tel: 020 7382 9026).
- 8.10 **The Financial Reporting Council** (tel: 020 7404 8818) is the overarching and facilitating body of the Accounting Standards Board and the Financial Reporting Review Panel and has the general role of:
- a) promoting good financial reporting; and
  - b) providing guidance to the Accounting Standards Board on work programmes and on broad policy issues.
- 8.11 **The Accounting Standards Board (ASB)** is responsible for making, amending and withdrawing accounting standards, under statutory authority and issues 'best practice' statements on related matters (tel: 020 7404 8818).
- 8.12 **The Financial Reporting Review Panel** is authorised by the Secretary of State for Trade and Industry to review company accounts for compliance with company legislation and accounting standards and can seek an order from the Court to remedy accounts if necessary (tel: 020 7404 8818).



**Guidance Notes issued by the UKLA**

# LISTING RULES - GUIDANCE NOTE No. 01

## Status of Guidance Notes

*This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not constitute rules or regulations. The purpose is to improve understanding of how the listing rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.*

*This Guidance Note should be read in conjunction with the listing rules, including the definitions where appropriate.*

## **Significant Change Statement and Indebtedness**

### Introduction

- 1.1 Prior to January 2000 issuers were required by the listing rules to disclose details of their indebtedness in certain circumstances in a prescribed format. Following deletion of the relevant rule (paragraph 6.E.15 of the listing rules) issuers must consider whether changes in their indebtedness should be disclosed under paragraph 6.E.8 of the listing rules, in accordance with this Guidance Note. Paragraph 6.E.8 requires the following disclosure in listing particulars, certain circulars and issue notes:
- “A description of any significant change in the financial or trading position of the group which has occurred since the end of the last financial period for which either audited financial statements or interim financial statements have been published, or an appropriate negative statement.”
- 1.2 This Guidance Note applies to the significant change statement required by paragraph 6.E.8 of the listing rules in all cases except as stated in sections 1.3 and 1.4 below.
- 1.3 This Guidance Note does not apply to the significant change statement required in the following cases:
- an issuer of certificates (paragraph 6.0.11 of the listing rules) unless such certificates represent the shares of that company;
  - transactions with related parties (paragraph 11.10(a) of the listing rules);
  - shelf documents (table 1A, appendix 1 to Chapter 5 of the listing rules); and
  - circulars relating to purchase of own shares (paragraph 15.5 of the listing rules).
- 1.4 Nor does this Guidance Note apply to the significant change statement required in relation to debt securities because there is a separate requirement derived from the Consolidated Admissions and Reporting Directive to disclose details of indebtedness in such cases (paragraph 6.L.6 of the listing rules).
- 1.5 Where an issuer's business is entirely or substantially that of banking, insurance or the provision of similar financial services, this Guidance Note

will not apply to share or cash transactions by that issuer provided that the UK Listing Authority is satisfied that:

- disclosure of changes in indebtedness would not provide significant information for investors; and
- the issuer's solvency and capital adequacy are suitably regulated by another regulatory body.

### **Significant change**

- 2.1 In this Guidance Note, "significant change" means any change which may be significant to an investor or potential investor for the purpose of making an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer.

### **Financial or trading position**

- 2.2 When making the significant change statement, the UK Listing Authority will expect issuers and their advisers to have reviewed the issuer's indebtedness position as part of their due diligence work, and, if appropriate, to include in the relevant documentation a reference to any significant change in the consolidated indebtedness of the issuer's group since the date of the latest published balance sheet.

### **Indebtedness**

- 2.3 The UK Listing Authority considers indebtedness to include:
- any loan capital outstanding in all members of the group (including loan capital created but unissued) and term loans (including those secured by third parties);
  - all other borrowings and indebtedness in the nature of borrowing of the group, including bank overdrafts, liabilities under acceptances (other than normal trade bills) or acceptance credits, hire purchase commitments and obligations under finance leases; and
  - any contingent liabilities or guarantees of the group.
- 2.4 As a general rule, no account should be taken of liabilities or guarantees between undertakings within the same group and indebtedness should be considered gross of any cash balances.

### **Effective date**

- 3.1 This guidance represents best practice from the date of issue and will continue in effect until the UK Listing Authority otherwise indicates.

**These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.**

## **APPENDIX**

### **Further information**

Requests for further information or queries about this Guidance Note should be made to the Equity and Capital Markets Group using the UK Listing Authority Help Desk on 020 7943 0333.

### **Related rules**

Chapter 5, appendix 2 - paragraphs 1(a), 2(d) and 3(d)

6.E.8

6.L.4(c)

6.L.6

6.O.11

### **Related documents**

None



# LISTING RULES - GUIDANCE NOTE No. 02

## Status of Guidance Notes

*This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not constitute rules or regulations. The purpose is to improve understanding of how the listing rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.*

*This Guidance Note should be read in conjunction with the listing rules, including the definitions where appropriate.*

## **The Model Code and Investment Entities**

### **Introduction**

- 1.1 Under paragraph 15.1 of the listing rules, a company is prohibited from dealing in its own securities at a time when a director of the company would be prohibited from dealing under the Model Code. Since the abolition of ACT, which had previously imposed a substantial tax cost on share buy backs, share buy back programmes have become an important activity for investment trusts.
- 1.2 Paragraph 21.20(j) of the listing rules permits an investment company (including an investment trust) and its directors to deal in the securities of the company during a close period, if the company can confirm that all related price sensitive information that directors may have or be thought to have has previously been notified to a Regulatory Information Service.
- 1.3 Information included in investment companies' interim and final results statements may be superseded prior to its publication by the regular calculation and publication (daily or weekly) of net asset values ('NAV'). The information in the results statements may therefore no longer be price sensitive at the time of publication.
- 1.4 This note provides guidance on the information that the company needs to have notified to a Regulatory Information Service to be considered for a dispensation from the close period provisions of the Model Code. The company (or its advisers) should contact the UK Listing Authority at an early stage to apply for a dispensation which will be granted in relation to specific close periods on a case by case basis.

### **Conditions for an exemption**

- 2.1 A company requesting dispensation under paragraph 21.20(j) of the listing rules from the close period provisions of the Model Code would normally be expected to be calculating (and notifying such calculation to a Regulatory Information Service), on a regular (weekly or more frequent) basis the net asset value in respect of each class of security in which it is proposed to deal.

Such calculation of net asset value should:

- (a) be in respect of not less than 90 per cent. of the company's gross assets; and

- (b) comply with industry accepted standards.
- 2.2 Companies which do not calculate and publish regular updates of net asset values may be granted an exemption if they publish information after the relevant period end which includes all price sensitive information which is to be included in the forthcoming results statement.
- 2.3 It is unlikely that the UK Listing Authority will consider it appropriate to grant an exemption under paragraph 21.20(j) of the listing rules to companies which have significant interests in unquoted securities or other investments (see paragraph 21.6 of the listing rules) and/or companies deriving significant revenues from commercial businesses.

### **Applications for exemption**

- 3.1 Companies seeking an exemption under paragraph 21.20(j) of the listing rules should write to the Company Monitoring & Enquiries Group at the UK Listing Authority, at the earliest opportunity. Companies will be expected to provide written submission at least 5 clear business days prior to the proposed dealing date.
- 3.2 The letter should provide:
  - (a) details of the information notified (or to be notified) to a Regulatory Information Service which supersedes that to be published by the company in the forthcoming results;
  - (b) confirmation that there is no material difference between the information already (or about to be) published, and that to be included in the forthcoming results announcement;
  - (c) confirmation that there is no other unpublished information which constitutes price sensitive information in respect of the company's securities (e.g. in relation to the company's dividends); and
  - (d) details of any interests or investments that fall within section 2.3 above.
- 3.3 An exemption granted under paragraph 21.20(j) of the listing rules will only be valid for a specified period (typically from the date of the grant of the exemption by the UK Listing Authority to the date of the release of the forthcoming results); companies will therefore need to apply for another exemption should they, or any director of the company, wish to deal in their own securities in any subsequent close period.

### **Effective date**

- 4.1 This guidance represents best practice from the date of issue and will continue in effect until the UK Listing Authority otherwise indicates.

**These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.**

## **APPENDIX**

### **Further information**

Requests for further information or queries about this Guidance Note should be made to the Company Monitoring Group using the UK Listing Authority Help Desk on 020 7943 0333.

General guidance on industry accepted standards for the calculation of net asset values of investment trust companies can be sought from The Association of Investment Trust Companies (AITC) on 020 7 282 5555.

### **Related rules and appendices**

15.1  
16.18  
Chapter 16, appendix - paragraph 3  
21.20(j)

### **Related documents**

None

# LISTING RULES - GUIDANCE NOTE No. 03

## Status of Guidance Notes

*This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not represent rules or regulations. The purpose is to improve understanding of how the listing rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.*

*This Guidance Note should be read in conjunction with the listing rules, including the definitions where appropriate.*

## **Non-controlling Interests in a Merged Business effected through a Dual Headed Structure**

### Introduction

- 1.1 This guidance note explains how the UK Listing Authority will apply the listing rules in the case of companies which hold a non-controlling interest in a merged business effected through a dual headed structure.
- 1.2 There are a number of examples of such structures where the business of a UK primary listed company has been merged with that of a company listed in another jurisdiction (“overseas listed parent”) and the merged business is jointly managed and controlled by the two or more listed parent companies. The assets of the UK listed company may subsequently comprise a minority interest in the combined business, which will normally be equity accounted by the UK listed company. These arrangements are commonly referred to as “dual headed” structures.
- 1.3 Such companies do not comply with paragraph 3.6 of the listing rules as they do not operate through subsidiary undertakings or control the underlying assets of the business. However, subject to satisfying the criteria listed below, these companies will be admitted to listing.

### Applicable criteria

- 2.1 Applicants should be able to demonstrate a three year record for the underlying businesses making up the merged business and all the conditions for listing set out in Chapter 3 of the listing rules should be complied with in respect of the parts of the business which have not been previously listed in the UK.
- 2.2 The overseas listed parent company, which does not need to have a listing in the UK, must have a listing on another exchange.
- 2.3 The UK listed parent company should hold a minimum investment of at least 30% in the merged business. The 30% limit coincides with the definition in the listing rules of a “controlling shareholder”, at which level it is deemed that an investor has significant influence over its investment.

- 2.4 The UK listed parent company should be able to demonstrate that it jointly controls the merged business. This may be evidenced through, for example, shareholders' agreements, veto rights, super-majority voting or a deadlocked board.
- 2.5 The merged business will be required to comply with all continuing obligations as if that business were listed in the UK in its own right. This includes the Model Code, which will apply to directors of any operating Board or Committee and relevant employees of the merged businesses, as well as the directors of both listed parent companies. Companies are encouraged to discuss with the UK Listing Authority how compliance with continuing obligations will be achieved at an early stage.
- 2.6 The related party transaction provisions set out in Chapter 11 of the listing rules will apply to the UK listed parent company, the merged business and the overseas listed parent company. For example, substantial shareholders and directors of the overseas listed parent company and directors of any operating Board or Committee will be considered to be related parties for the purposes of the listing rules.
- 2.7 Variations to any shareholders' agreement, governing the operation of the dual headed structure and the relationship between its parent companies, will normally be considered to fall within Chapter 11 of the listing rules, subject to the de-minimis exemptions set out in Chapter 11.
- 2.8 Transactions undertaken by the merged business or either of the listed parents will be subject to the transaction rules set out in Chapter 10. The class tests for the merged business will be calculated by comparing the whole of the target with the whole of the merged business.
- 2.9 Controlling shareholder provisions will apply to any controlling shareholder (30% or more) of either the UK or overseas listed parent companies.
- 2.10 Common accounting policies should be used for the UK listed parent company and the merged business.
- 2.11 Full accounts should be published in accordance with UK or US GAAP or International Accounting Standards for the merged business in addition to such accounts being published for the UK listed parent company. Accounts for the UK and overseas listed parent companies may be published as supplementary information to the full scope information for the merged business.
- 2.12 Equivalent interim financial information on the merged business should be published in addition to, or in conjunction with, the interim financial information for the UK listed parent company.
- 2.13 Where an announcement is required in respect of the merged business, it should be released simultaneously on the exchanges of both the UK and overseas listed parent companies.

## **General**

- 2.14 If the merged business is covered by any of the specialist Chapters the usual requirements of those Chapters will apply in addition to these criteria.
- 2.15 This Guidance Note deals specifically with dual headed structures. Other related structures that do not fall within the scope of this Guidance Note will arise. Such structures should be discussed with the UKLA at an early stage if a listing in the UK is contemplated or if a UK listed company will be involved in the dual headed structure.
- 2.16 Unless stated above all listing rules will apply in the usual manner.

## **Effective date**

- 3.1 This guidance represents best practice from the date of issue and will continue in effect until the UK Listing Authority otherwise indicates.

**These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.**

## **APPENDIX**

### **Further Information**

Requests for further information or queries about this Guidance Note should be made to the UK Listing Authority Help Desk on 020 7943 0333.

### **Related rules**

3.6

3.6A

3.12

3.13

Chapters 9 to 12

### **Related documents**

None

# LISTING RULES - GUIDANCE NOTE No. 04

## Status of Guidance Notes

*This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not constitute rules or regulations. The purpose is to improve understanding of how the listing rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.*

*This Guidance Note should be read in conjunction with the listing rules, including the definitions where appropriate.*

## **Companies undertaking Major Capital Projects**

### **Introduction**

- 1.1 Under paragraph 3.6A of the listing rules, the UK Listing Authority may list the securities of a company which cannot comply with paragraphs 3.3(a) (audited accounts for three years) and 3.6 (nature and duration of business activities) of the listing rules.
- 1.2 Where the UK Listing Authority is satisfied that the admission of such companies is desirable in the interests of the applicant and investors, admission will be subject to the satisfaction of appropriate special conditions. In addition, the UK Listing Authority may impose additional disclosure requirements to ensure that it is satisfied that investors have the necessary information available to arrive at an informed judgement concerning the applicant and the securities for which listing is sought.
- 1.3 This note provides guidance on the additional conditions for listing and disclosure requirements for companies undertaking major capital projects which are likely to be imposed. Companies should contact the UK Listing Authority at an early stage to discuss a proposed application for listing.

### **Conditions for listing**

- 2.1 A company undertaking a major capital project should satisfy the conditions for listing set out in Chapter 3 of the listing rules. In addition, the following additional criteria are likely to be imposed:
  - (a) the company should be making an initial investment in an infrastructure or other capital project;
  - (b) the company should be able to demonstrate that the project is expected to be commercially viable;
  - (c) the minimum raised pursuant to the marketing at the time of listing and the total capital requirement for the project should both be at least £150 million; and



- (d) the company should demonstrate that the directors and management have, collectively, appropriate experience and expertise to manage the project.

### **Listing particulars**

2.2 The listing particulars of the company should comply with, *inter alia*, the requirements of either Chapter 5 or 23 of the listing rules (depending on the type of security being issued) and should also include:

- (a) comprehensive technical evaluations and market research for the project;
- (b) an estimate of its funding requirements for a period of two years following the listing or, where relevant, a longer period and a statement that these requirements can be met, under current estimates, from existing resources and from the proceeds of the issue of securities made at the time of the listing; and
- (c) a prominent and detailed statement of the arrangements agreed by directors, senior management and substantial shareholders not to dispose of the company's securities following admission. If there are no such arrangements for one or more directors, senior managers or substantial shareholders then the listing particulars should contain a prominent statement that there are no such arrangements for the parties concerned together with an explanation of the reasons for the absence of such arrangements.

### **Independent report**

2.3 The listing particulars should state:

- (a) the risk factors that could prevent the business achieving profitability;
- (b) the assumptions in the company's business plan;
- (c) the viability of the business and in particular its commercial potential; and
- (d) the time scale for the production of revenues.

2.4 The listing particulars should also provide an assessment by a reputable independent body or bodies appropriate to the circumstances. The assessment should include reports on the statements made under section 2.3(a) to (d) above.

### **Notification**

2.5 A company admitted to listing pursuant to these arrangements should notify a Regulatory Information Service without delay of:

- (i) information relating to the disposal of shares by way of an exception allowed within the lock-in arrangements disclosed pursuant to section 2.2(c) above; and
- (ii) the details of any variation of the lock-in arrangements disclosed pursuant to section 2.2(c) above or by way of subsequent announcement under this section.

**Effective date**

3.1 This guidance represents best practice from the date of issue and will continue in effect until the UK Listing Authority otherwise indicates.

**These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.**

## **APPENDIX**

### **Further information**

Requests for further information or queries about this Guidance Note should be made to the UK Listing Authority Help Desk on 020 7943 0333 for the Equity and Capital Markets Group.

### **Related rules**

3.6A

### **Related documents**

None

# LISTING RULES - GUIDANCE NOTE No. 05

## Status of Guidance Notes

*This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not represent rules or regulations. The purpose is to improve understanding of how the listing rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.*

*This Guidance Note should be read in conjunction with the listing rules, including the definitions where appropriate.*

## **Class One Disposals by Companies in Severe Financial Difficulty**

### Introduction

- 1.1 This guidance note has been issued to facilitate class one disposals by companies in severe financial difficulty. Such companies may find themselves with no alternative other than to dispose of a substantial part of their business within a short time frame in order to secure their ongoing working capital requirements.
- 1.2 Many companies in severe financial difficulty require an immediate working capital injection and, therefore, due to time constraints are not in a position to prepare a circular and convene an Extraordinary General Meeting to obtain prior shareholder approval. In these cases, where the situation is so serious that failure to complete the disposal immediately would result in the company no longer being able to continue to trade, many companies argue that it is not practical to obtain shareholder approval prior to completion of the disposal. Often, in these situations, the costs incurred when producing a class one circular represent a significant proportion of the funds realised.
- 1.3 If a company can demonstrate that it is in severe financial difficulty the UK Listing Authority will vary the requirements to prepare a circular and to obtain shareholder approval for the disposal, providing the criteria set out in sections 2.1 and 2.2 below are met.
- 1.4 All applications for such variations must be brought to the attention of the UK Listing Authority at the earliest available opportunity and at least 5 clear business days prior to the terms of the disposal being agreed. **Variations will not be granted retrospectively under any circumstances.**

### Applicable criteria

- 2.1 Companies applying for a variation must be able to demonstrate to the UK Listing Authority that they could not reasonably have entered into negotiations earlier to enable shareholder approval to be sought.

2.2 The following documents (“the documents”) must be submitted to the UK Listing Authority:

- confirmation from the company that negotiation does not allow time for shareholder approval with an explanation why, or, if there is time, why it is not appropriate in the circumstances to obtain shareholder approval. The company must also confirm that all alternative methods of financing have been exhausted and the only option remaining is to dispose of a substantial part of their business. In addition the company must state that by taking the decision to dispose of part of the business to raise cash, the directors are acting in the best interests of the company and shareholders as a whole and that unless the disposal is completed receivers/administrators/liquidators are likely to be appointed;
- confirmation from the sponsor that the company is in severe financial difficulty and that it will not be in a position to meet its obligations as they fall due unless the disposal takes place according to the proposed timetable;
- confirmation from the persons or institutions providing finance stating that further finance or facilities will not be made available and that unless the disposal is effected immediately, current facilities will be withdrawn; and
- a full announcement (“the announcement”).

**Disclosure in the announcement**

2.3 The announcement containing the disclosures set out in this section must be released over a Regulatory Information Service no later than the date the terms of the disposal are agreed:

- all relevant disclosures required under paragraph 10.31 of the listing rules;
- the name of the acquirer and the expected date of completion of the disposal;
- the full disclosure required under paragraph 6.G.1(b) of the listing rules in respect of the continuing group’s prospects for at least the current financial year;
- a statement that the directors believe that the disposal is in the best interests of the company and shareholders as a whole. In addition the directors must also state that if the disposal is not completed the company will be unable to meet its financial commitments as they fall due and consequently will be unable to continue to trade resulting in the appointment of receivers / liquidators / administrators;

- a statement incorporating the details of all the confirmations provided to the UK Listing Authority as set out in section 2.2 above;
- details of any financing arrangements (either current or future) if they are contingent upon the disposal being effected;
- if the disposal is to a related party as defined in Chapter 11.1 of the listing rules, then a statement as set out in paragraph 11.10(e) of the listing rules must be given. In this case, there must also be confirmation to the UK Listing Authority and a statement in the announcement that the disposal by the company to the related party is the only available option in the current circumstances;
- a statement by the company that in its opinion the working capital available to the continuing group is sufficient for the group's present requirements, that is, for at least 12 months from the date of the announcement, or, if not, how it is proposed to provide the additional working capital thought by the issuer to be necessary.

2.4 In addition, the announcement must contain any further information that the company and its advisers consider necessary. This should incorporate historical price sensitive information, which has already been published in relation to the disposal along with any further information required to be disclosed pursuant to paragraphs 9.1 and 9.2 of the listing rules.

### **Review and Approval**

2.5 The documents referred to in section 2.2 above, together with the announcement to be released by a Regulatory Information Service must be reviewed and approved by the UK Listing Authority prior to any variation being granted and any announcement being released. Other than in exceptional circumstances the documents must be lodged with the UK Listing Authority in draft form at least 5 clear business days before the terms of the transaction are agreed and in final form on the day of approval.

### **General**

2.6 Irrespective of the financial position of the company, paragraphs 9.1 and 9.2 of the listing rules continue to apply whilst the company is in the process of seeking a variation. The market must be kept informed at all times of any major new developments in the company's sphere of activities which are not public knowledge which may lead to a substantial movement in the price of its listed securities, or of any other relevant information which, if made public, would be likely to lead to a substantial movement in the price of the company's listed securities. The directors should also consider whether the company's financial situation is such that they should request the suspension of the company's listing pending publication of an announcement and clarification of the company's financial position.

### **Effective date**

- 3.1 This guidance represents best practice from the date of issue and will continue in effect until the UK Listing Authority otherwise indicates.

**These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.**

## **APPENDIX**

### **Further Information**

Requests for further information or queries about this Guidance Note should be made to the UK Listing Authority Help Desk on 020 7943 0333.

### **Related rules**

9.1, 9.2

10.4

10.31



# LISTING RULES - GUIDANCE NOTE No. 06

## Status of Guidance Notes

*This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not represent rules or regulations. The purpose is to improve understanding of how the Listing Rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.*

*This Guidance Note should be read in conjunction with the Listing Rules, including the definitions where appropriate.*

## **Conditions for listing: the nature and duration of business activities**

### **Introduction**

- 1.1 This note provides guidance on the factors that the UK Listing Authority will take into account when determining whether an applicant meets the requirement in paragraph 3.6(a) which requires its business to be supported by its historic revenue earning record.
- 1.2 Under paragraph 3.6A of the Listing Rules, the UK Listing Authority may list the securities of a company which cannot comply with paragraph 3.6 (a). This Guidance Note is also concerned with those applicants that cannot comply with the requirement for the business of an applicant to be supported by its historic revenue earning record and sets out the additional disclosure requirements and additional continuing obligations that may be applied where that requirement cannot be met.
- 1.3 The UK Listing Authority may admit such securities if it is satisfied that the admission of such companies is desirable in the interests of the applicant and investors. The UK Listing Authority may impose additional disclosure requirements and additional continuing obligations to ensure that it is satisfied that investors have the necessary information available to arrive at an informed judgement concerning the applicant and the securities for which listing is sought.
- 1.4 Companies seeking admission through paragraph 3.6A should contact the UK Listing Authority at an early stage to discuss their proposed application for listing.
- 1.5 By publishing this Guidance Note, the UK Listing Authority is seeking to standardise the additional information to be included in listing documents for securities admitted under paragraph 3.6A, improve consistency and promote comparability.

### **Background**

- 2.1 Paragraph 3.6(a) of the Listing Rules requires an applicant to satisfy a number of criteria before its application for admission to the Official List will be approved. An applicant must:

- be carrying on as its main activity an independent business either by itself or through one or more of its subsidiary undertakings;
  - have control over the majority of its assets;
  - have been in existence for at least three years and earned revenue throughout that period; and
  - have a business which is supported by its historic revenue earning record.
- 2.2 For some applicants, typically those operating in established markets, prospective investors can make a reasonable assessment of what its future prospects might be by considering the company's historic revenue earning record in the light of its own particular competitive advantages, the outlook for the sector in which it operates and the general macro economic climate.
- 2.3 The fact that some applicants may not meet this conventional business profile has challenged the principle in paragraph 3.6(a) that the business of an applicant must be supported by its historic revenue earning record. In particular this is true of applicants which are early stage businesses in new and volatile industry sectors. For such companies it may not be possible to make any reasonable assessment of what the future prospects of the applicant might be through any traditional assessment or analysis. Future prospects are much more likely to be determined by projections of demand for the applicant's products and services for which there may be no established pattern or precedent. The listing of such companies may however be desirable in the interests of both the applicant and investors.
- 2.4 Given the forward looking nature of these companies and the volatility of the industry sectors in which they typically operate, it is appropriate to require the inclusion of information in listing documents that more properly reflects these characteristics.
- 2.5 The introduction of chapter 25 of the Listing Rules has brought the operation of paragraph 3.6A into focus. Under chapter 25, young companies are able to list without having to comply with paragraph 3.6(a). On the other hand, businesses more than three years old, with similar characteristics but which are unable to meet the criteria in chapter 25 as they have been in existence for three years or more, must comply with the requirement in paragraph 3.6(a) and have a business which is supported by its historic revenue earning record. The end result is that such applicants may have been penalised for having a three-year revenue earning record and may have been considered to be ineligible under a strict interpretation of the Listing Rules.
- 2.6 Pursuant to paragraph 3.6A, we have adopted an approach whereby applicants which are unable to meet the particular requirements of paragraph 3.6(a) may nonetheless be eligible for listing provided they include in their listing documents certain additional information and comply with certain continuing obligations. As many of these prospective applicants have similar characteristics to some companies admitted under chapter 25, these additional disclosures and continuing obligations are based on those contained in that chapter.
- 2.7 Section 3 of this Guidance Note sets out the list of factors that the UK Listing Authority will take into account when determining whether an applicant

complies with paragraph 3.6(a). Section 4 of this Guidance Note describes the additional requirements and disclosures that the UK Listing Authority may require when admitting securities to listing under paragraph 3.6A.

**Factors that the UK Listing Authority will take into consideration**

- 3.1 The business of an applicant that has been in existence for three years or more but which demonstrates one or more of the following characteristics may not satisfy the criteria in paragraph 3.6(a) requiring the business of an applicant to be supported by its historic revenue earning record:
- a listing document that places significant emphasis on the development or marketing of products or services for which there is little evidence in the issuer's historic revenue earning record;
  - evidence that the value of the business on admission will be determined, to a significant degree, by reference to future developments for which there has been little evidence to date in the historic revenue earning record presented in the listing document;
  - an absence of evidence supporting a record of consistent revenue or profit growth throughout the historic revenue earning record presented in its listing document;
  - evidence that the business of the applicant has undergone a significant change in its scale of operations during the revenue earning record which resulted in significant increases in revenue and/or profits or whether the listing document indicates that the applicant is expected to undergo such a change;
  - evidence that the applicant is or has been loss-making or generating negative operating cash flows during the whole or part of the track record period;
  - evidence that 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
  - evidence of unusual levels of research and development expenditure or unusual levels of capital expenditure.
- 3.2 The criteria set out above are often evident in early stage businesses or in businesses that have spent a significant part of the track record period developing products which they are yet to exploit or to profit from. In such cases it is likely that the marketing undertaken by the applicant's advisers before admission will be geared very much towards the prospects for the development of the applicant's products and markets for which there may have been little actual evidence during the track record period. For such an applicant it may be in the interests of the applicants and investors that it be admitted to listing if the information that investors may reasonably require to make an informed decision on the securities will be available.
- 3.3 These characteristics may therefore be indicative that paragraph 3.6(a) is not satisfied and that the applicant may therefore have to rely on the exercise of discretion under paragraph 3.6A leading to a requirement for an applicant to include the information set out in the appendix in its listing document. They

are not however exhaustive and applicants displaying some of these or similar characteristics should contact the UK Listing Authority at an early stage.

**Additional information that may be required to be included in listing documents and continuing obligations**

- 4.1 The UK Listing Authority will consider all relevant circumstances when determining whether to exercise the discretion to admit securities to listing under paragraph 3.6A and whether additional information should be disclosed or additional continuing obligations should be imposed.
- 4.2 Having taken into account the factors set out in paragraph 3.1 of this Guidance Note and any other relevant considerations drawn to the attention of the UK Listing Authority by the sponsor or the issuer in relation to the issuer's application to the Official List, the UK Listing Authority may impose additional requirements and may require the disclosure as described in the appendix to be included in the issuer's listing document.
- 4.3 Where additional information is required to be included in the issuer's listing document, the applicant may also be required to comply with the continuing obligations set out in paragraphs 10 to 13 of the appendix to this Guidance Note.
- 4.4 In assessing whether the additional disclosures and continuing obligations set out in the Guidance Note will apply, the UK Listing Authority reserves the right to require the presentation to it of information such as market research, financial projections and roadshow presentation material to assist it in assessing the eligibility of an applicant.

**Other matters**

- 5.1 These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.
- 5.2 Requests for further information or queries about this Guidance Note should be made to the UK Listing Authority Help Desk on 020 7943 0333.

**Related rules**

- 6.1 3.6(a), 3.6A.

## **Appendix**

The UKLA will be minded to impose the conditions in this Appendix as a condition of exercising its power referred to in rule 3.6A.

### **Conditions for listing**

1. The financial record for the period of existence of a business activity must be presented for up to three years and the latest accounts, if any, must be in respect of a period ended not more than six months prior to the date of the listing particulars. The company must comply with paragraph 3.3(b) to (e) in respect of this financial information. Where a company chooses to include quarterly report information since the latest accounts, this must also be prepared in accordance with paragraphs 3.3(b) to (e).
2. The UK Listing Authority reserves the right to require the presentation to it of material such as market research, financial projections and road show presentations to assist it assess the eligibility of an applicant. This information may be shared with the UK Listing Authority's independent expert advisers.

### **Non-financial operating data**

3. When an issuer listed under the provisions of this Guidance Note publishes non-financial operating data in listing particulars, that data must have been derived from sources covered by the confirmation required under paragraph 25.5.
4. Non-financial operating data includes any information, statistics, ratios or other data which purports to represent the performance of the issuer's business activities and which cannot be sourced or derived from the issuer's financial data included in the listing particulars pursuant to the requirements of chapter 12.
5. Any non-financial operating data must be clearly identified as such in the listing particulars and must be presented in a summarised form together with details of the definitions and basis of preparation adopted. The listing particulars must clearly state the purpose for which the information has been prepared. The listing particulars should also include a clear statement that the non-financial operating data is that used by the directors in managing the issuer's business and that such data will be reported in subsequent interim and annual reports.
6. Where non-financial operating data is published in the listing particulars, the sponsor must:
  - (a) obtain written confirmation from the issuer that the non-financial operating data published in the listing particulars has been properly extracted from the issuer's records; and
  - (b) be satisfied that this confirmation has been given after due and careful enquiry by the issuer.
7. In the case of a new applicant to which this Guidance Note applies or, in exceptional circumstances where the UK Listing Authority so requires of a listed issuer to which this Guidance Note applies, the sponsor must:
  - (a) obtain written confirmation from the issuer that the directors have established procedures which provide a reasonable basis for them to

make proper judgements as to the reporting of non-financial operating data of the issuer and its group; and

- (b) be satisfied that this confirmation has been given after due and careful enquiry by the issuer.

### **Listing Particulars**

8. The listing particulars of a new applicant applying the provisions of this Guidance Note must comply with the requirements of chapter 5 and must contain:

- (a) in a separate prominent section, entitled “Business development and prospects”, a detailed explanation of the issuer’s business plan and strategic objectives, including, in particular, the development in the foreseeable future of new sales markets, new products and/or services, the introduction of new methods of business, processes or technology, and the assumptions upon which the plan is based. This section should include the issuer’s commentary on key milestones in the development of the business;
- (b) in another separate prominent section, entitled “Risk factors”, full details and an explanation of the risks associated with the business and in particular, any factors which could have a substantial adverse effect on the issuer’s financial condition or which could endanger the issuer’s business success.

9. The listing particulars must also give, in relation to each of the new applicant’s products and services the development of which may have a material effect on the future prospects of the company, a full description of:

- (a) the type of product and/or services being developed;
- (b) the expected advantages of the product and/or services including any appropriate technical information;
- (c) the nature and effectiveness of the research and development undertaken, if relevant;
- (d) the development status of the product and/or service including the results of validations, if relevant;
- (e) in relation to any product or technologies undergoing validation, any material information relating to the prospects of the successful completion of such validation;
- (f) all material information relating to any relevant intellectual property rights of the company, including:
  - (i) the extent to which such rights are registered or unregistered;
  - (ii) the extent to which such rights comprise confidential or proprietary information;
  - (iii) the exact status of any patent position, which must include details of the nature of the applications filed, the expected timetable in relation to any patents pending and the potential impact of any significant prior applications by third parties;
  - (iv) the copyright position in relation to any software which is a part

- of or connected with the product;
- (v) any third party rights which could affect the development or operation of the company's business; and
- (vi) the extent to which the company relies on any intellectual property rights of third parties;
- (g) the extent to which the development of the company's business is dependent on any key individuals, identifying the individuals concerned;
- (h) the current or expected market competitors;
- (i) the basis of any claimed market potential; and
- (j) the future strategy of the company regarding the generation of significant revenues from the product and/or services, including:
  - (i) whether the company intends to implement the strategy itself or in collaboration with others;
  - (ii) the extent to which the company will need to rely on third parties to exploit the company's products or services;
  - (iii) where the company intends to collaborate with others in relation to the implementation of the strategy, details (including the consideration and parties) and the financial effect of any agreement or intended agreement; and
  - (iv) if the strategy varies according to the expected major markets for the product, an explanation of any geographical or segmental variants.

### **Continuing obligations**

#### **Quarterly reporting**

10. The issuer must prepare and publish (by notifying it to a Regulatory Information Service) a report, on a group basis where relevant, on its activities for each quarter of each financial year. The quarterly report shall contain financial data and non-financial operating data relating to the business operations and the results of the issuer for the reporting period, including explanatory notes thereto.
11. The first quarterly report shall cover the first three months, the half-yearly report shall cover the first six months and the third quarterly report shall cover the first nine months of the financial year. A fourth quarterly report will not be required if the fourth quarter ends with the financial year end.
12. First and third quarterly reports shall be prepared in accordance with the provisions of paragraphs 12.46 to 12.60. Where the figures in the quarterly report have been audited or reviewed by auditors pursuant to guidance published by the Auditing Practices Board on Review of Interim Financial Information, the report of the auditors must be reproduced in full.

### **Non-financial operating data**

13. Where the issuer's listing particulars contain non-financial operating data as key measures of the development of the company's business, the issuer must include comparative data for all such figures in its subsequent quarterly and half-yearly reports and in the annual financial statements, unless otherwise agreed by the UK Listing Authority.



# PIP SERVICE CRITERIA

**Procedures in relation to applications for the approval of services provided by a Primary Information Provider (“PIP”)**

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## **1. Introduction**

- 1.1 The minimum standards set out below must be met by any PIP that wishes to have its service approved for the dissemination of regulatory information. It is anticipated that more than one service will meet these standards, giving listed companies and other persons with announcement obligations a choice of PIP services. Each listed company and other such person will be able to choose whichever approved PIP service best meets its needs. Each PIP service will be able to compete freely with other PIP services for this custom.

**An applicant must apply in writing accompanied by supporting reports as described below.**

- 1.2 The Financial Services Authority ("the FSA") will require the applicant to provide, at its own expense and as part of the application, a report by a reporting accountant qualified to act as auditor, confirming that, in its opinion, the applicant meets the criteria set out at paragraphs 2.1 to 2.42 below.
- 1.3 Applicants should be aware that there may be a delay in processing applications if the information submitted to the FSA is inaccurately compiled or incomplete.
- 1.4 At any time after receiving an application and before determining it, the FSA may give notice to the applicant to require it to provide additional information or documents. The circumstances of each application will dictate what additional information or procedures are appropriate.
- 1.5 In addition, in considering the application, the FSA may:
- carry out any enquiries which it considers appropriate;
  - request the applicant, or any specified representative of the applicant, to attend meetings at the FSA to answer questions and explain any matter the FSA considers relevant to the application;
  - require any information provided by the applicant to be verified in such manner as the FSA may specify; and
  - take into account any information which it considers appropriate in relation to the application.
- 1.6 Once the PIP service has been approved by the FSA, an annual review by a reporting accountant qualified to act as auditor, must be undertaken and a report prepared confirming that over the preceding 12 months it has continued to meet the criteria set out in paragraphs 2.1 to 2.42.

### **FSA approval of a PIP service**

- 1.7 The FSA will make its decision once it has assessed all the information provided in accordance with paragraphs 1.1 to 1.5 above. The length of the process will relate directly to the complexity of the application, but in any event will not be more than six months after the date on which a full application has been received by the FSA. The FSA will not grant an application until all the information and documents that the FSA has requested in connection with the application have been provided.

## **Maintenance of the schedule of approved PIP services in the Listing Rules**

- 1.8 No PIP service is approved until it is included in the appropriate schedule to the Listing Rules.
- 1.9 When the FSA intends to approve a PIP service it will, subject to consultation, amend the schedule to the Listing Rules by adding the name of the approved PIP service.
- 1.10 In the event of a PIP service failing to meet the PIP service criteria set out at paragraphs 2.1 to 2.42 at any time, the FSA may, without delay, remove its name from the appropriate schedule to the FSA's Listing Rules.

## **2. PIP service criteria**

- 2.1 Set out below are the standards that are required to be met in order for a PIP service to be included in the list of approved PIP services which will be set out in a schedule to the Listing Rules. These standards may be amended to take account of factors such as: advances in technology; changes in market practice; and the consolidation of markets.
- 2.2 For the purpose of these criteria, “regulatory information” means information required to be disseminated pursuant to the Listing Rules, information issued by the London Stock Exchange acting as a recognised investment exchange<sup>1</sup> (“an RIE”) and information disseminated by, or as required by, regulatory bodies (see paragraph 2.31).

### **Security**

- 2.3 A PIP service must meet at least the following standards:

#### *Validation of input*

- 2.4 There must be appropriate measures in place to ensure that: there is certainty as to who submitted the regulatory information and on behalf of which organisation; the submitter is authorised to submit the announcement; there is no corruption of data in the input process; and there is no unauthorised access to the regulatory information during the input process.

#### *Processing*

- 2.5 Regulatory information must be processed securely and not misused. There must be controls over the physical location and individuals providing the PIP service to ensure that the regulatory information is processed securely and to prevent the misuse of regulatory information by such individuals or other parties.
- 2.6 To that end, as a minimum, the following controls must be in place in respect of provision of the PIP service:
- the working environment must be secure;
  - the computer-based systems must incorporate access controls; and

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<sup>1</sup> Under part XVIII of the Financial Services and Markets Act 2000.

- external telephone calls concerning the content of regulatory information announcements must be recorded; and
- the working environment must be free of unauthorised surveillance.

2.7 Individuals providing the PIP service must be under a duty to keep confidential any regulatory information to which they might have access.

*Validation of output*

2.8 A mechanism must be in place to ensure that the intended recipients of regulatory information from the relevant PIP service are certain that the information has been sent by an FSA-approved PIP service.

*Breaches of security*

2.9 In the event that there is a breach of any security measure relating to the provision of a PIP service, the UK Listing Authority Division of the FSA ("the UKLA") must be notified immediately and, without delay following the notification, must be provided with a detailed report of the breach and any corrective steps taken.

**Information that must be recorded and preserved by a PIP service**

2.10 For the purposes of providing a detailed report on any breach of security or to assist the FSA in the performance of its functions, the following information regarding the regulatory information that it processes, must be recorded and preserved by a PIP service:

- name of person submitting regulatory information;
- security validation details;
- date and time regulatory information received;
- medium in which regulatory information received;
- company name;
- embargo details (if relevant);
- details of PIP service staff in contact with regulatory information from receipt to release;
- details of any changes made to a document by a PIP service during processing; and
- date and time regulatory information released.

2.11 The information described in paragraph 2.10 above must be preserved for a minimum of three years.

2.12 The information described in paragraph 2.10 above must be made available on request to the FSA.

## **Operational hours**

2.13 The PIP service must be able to:

- receive regulatory information 24 hours a day, seven days a week; and,
- release regulatory information at least between the core hours of 07.00 and 18.30 UK time, on any business day (being any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in England under the Banking and Financial Dealings Act).

### *Timing of the release of regulatory information*

2.14 The PIP service must include the means to embargo regulatory information for release at a date and time specified by a submitter of the information.

2.15 The PIP service must include the means to cancel the embargo on an announcement and cause its immediate release if so instructed by the FSA.

2.16 The PIP service must include the means to stay the release of any regulatory information if so instructed by the FSA, until further notice is given by the FSA.

## **Management of regulatory information**

2.17 A set of headline categories is provided in the appendix to these PIP service criteria. With the exception of regulatory announcements notified to a PIP service by the LSE acting as an RIE, these headline categories, and no others, must be used when releasing regulatory announcements.

### *Prioritisation of regulatory information*

2.18 95% of regulatory information received electronically must be released within five minutes of receipt, unless embargoed.

2.19 Regulatory information received by facsimile or hard copy must be prioritised without delay, according to the type of headline category.

2.20 "Urgent priority" regulatory information received by facsimile or hard copy must be released without delay.

2.21 Priority must be given to regulatory information submitted by the FSA, as Competent Authority for Listing, if so requested by the FSA.

### *Receipt and release*

2.22 Regulatory information should be recorded as received once it first enters a PIP service's processing systems.

2.23 Regulatory information should be recorded as released once it has left a PIP service's processing systems.

## **Distribution**

### *Connections with Secondary Information Providers ("SIPs")*

- 2.24 A PIP service must include in its application for approval, details of its connections with SIPs. Thereafter, a PIP service must inform the FSA immediately if any of the connections it has with SIPs are removed.

### *Re-submission of information*

- 2.25 A PIP service must monitor its own systems to ensure, with reasonable certainty, that the regulatory information it processes has been successfully transmitted to SIPs.
- 2.26 If a SIP informs a PIP service that transmission of regulatory information has failed, a PIP service must re-transmit the missing regulatory information. A PIP service must re-transmit failed transmissions, immediately, but in any event within five minutes of being informed of the failure by a SIP.

## **Output format**

- 2.27 Regulatory information must be provided to SIPs in the following format:

- in unedited full text as submitted to the PIP service; and
- in an industry standard format.

### *Necessary output information fields*

- 2.28 A PIP service must identify (in an information field) that information provided to a SIP is regulatory information.
- 2.29 Announcements of regulatory information must include the following information fields:
- company name;
  - company short name<sup>2</sup>;
  - headline (as edited, if necessary, by issuer);
  - headline category code<sup>3</sup>;
  - time and date of receipt by PIP service;
  - time and date of release by PIP service;
  - sequence number; and
  - unique announcement identification number.

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<sup>2</sup> A 20 character short form name for a company or other body, allocated by the FSA.

<sup>3</sup> A two or three letter code representing each headline category, available from the FSA.

- 2.30 To ensure that recipients have received the entire contents of a regulatory information announcement, the end of all announcements must be clearly marked in the text body.

### **Announcements by regulatory bodies**

- 2.31 Regulatory information from, or as required by, the following regulatory bodies must be disseminated if so requested by that body:

- FSA;
- Panel on Takeovers and Mergers;
- DTI;
- Competition Commission;
- Civil Aviation Authority\*;
- Environment Agency\*;
- The Gaming Board for Great Britain\*;
- Independent Television Commission\*;
- Office of the Gas and Electricity Markets\*;
- Office of the Rail Regulator\*;
- Office of the National Lottery\*;
- Office of Water Services\*;
- Office of Telecommunications\*;
- Office of Fair Trading\*; and
- Financial Reporting Review Panel.

### **Charges**

#### *Transparent charges*

- 2.32 Charges for any PIP service must be clearly stated and indicate the activities covered so that they can be readily compared with competing PIP services.
- 2.33 An applicant must provide to the FSA with its application details of its charges to persons or entities submitting regulatory information. Thereafter, any changes to those charges must also be provided to the FSA without delay.

#### *Charges to regulatory bodies*

- 2.34 No charges shall be made for the release of regulatory information produced under the UKLA's "Guidelines for the Control and Release of Price-Sensitive Information by Industry Regulators." by the regulatory bodies listed in paragraph 2.31 above.

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\* These regulatory bodies are signatories to the UKLA's "Guidelines for the Control and Release of Price-Sensitive Information by Industry Regulators."



- 2.35 A PIP service must supply an output feed of regulatory information, exclusive of all other information, to the FSA, or an agent appointed by the FSA to act on its behalf, free of charge.

### **Receiving regulatory information**

- 2.36 The PIP service must be capable of receiving and releasing to SIPs regulatory information submitted by the entities listed below:

- listed companies;
- entities acting as agents for listed companies; and
- the regulatory bodies listed in paragraph 2.31 above; and
- other entities or persons required to submit regulatory information.

### **Recovery provisions**

- 2.37 A PIP service must adequately provide for possible disruptions to its operations. Recovery provisions must be sufficient to ensure that there is minimum disruption to the continuous operation of a PIP service.

- 2.38 If a PIP service's operations are disrupted it must inform the FSA and its clients without delay.

### **Contact provisions**

- 2.39 The names and contact details of personnel who will be available 24 hours a day, seven days a week, must be provided to the FSA, to assist it with its regulatory responsibilities.

- 2.40 In extreme circumstances the LSE, acting as an RIE, may need to contact a PIP service in order to fulfil its regulatory responsibilities.

- 2.41 A PIP service must provide to the FSA without delay any information that the FSA may reasonably require for the performance of its functions.

### **PIP service support**

- 2.42 A PIP service must provide support to its clients and SIPs during the hours it would normally release regulatory information and, at least, between the core hours of 07.00 and 18.30 UK time on any business day.

### **Exclusion of a PIP service**

- 2.43 If the FSA withdraws its approval of a PIP service, the relevant PIP service should, without delay, inform its clients and connected SIPs that it is no longer authorised to process and release regulatory information.

- 2.44 A PIP service should continue to observe the requirement of paragraph 2.11 above, if it is excluded.

**Appendix to PIP service criteria - Headline categories for use with regulatory announcements**

<b>URGENT PRIORITY</b>	
<b>Headline category</b>	<b>Description</b>
Temporary Suspension	Submitted to indicate that a security has been temporarily suspended from the Official List
Statement re. Suspension	Statement regarding the suspension of listing/trading of a company's listed securities
Restoration of Listing	Submitted to indicate that a security has been restored to the Official List
Official List Notice	Submitted to indicate that a security has been admitted/cancelled from the Official List
Miscellaneous	Miscellaneous urgent priority announcements
<b>HIGH PRIORITY</b>	
<b>Headline category</b>	<b>Description</b>
1 <sup>st</sup> Quarter Results	First quarter financial results
3 <sup>rd</sup> Quarter Results	Third quarter and nine months financial results
Acquisition	Statement regarding an acquisition of a company or assets
AGM Statement	Statement made at a company's AGM
Capital Reorganisation	Notification of the restructuring of a company's existing share capital
Conversion of Securities	Notification of the details of a conversion of securities (e.g. warrants/convertible loan stock)
Disclosure Table	Notification of companies currently in offer period
Disposal	Statement regarding the disposal of a company or assets

Drilling Report	Report given by mineral, oil and natural gas companies
EGM Statement	Statement made at a company's EGM
EMM Disclosure	POTAM requirement for exempt market makers to disclose dealings
Formal Notice	Notification of the issue of a debt instrument programme and publication of relevant listing particulars
Final Results	Full year/4 <sup>th</sup> quarter financial results
Further re (insert appropriate text)	Announcement made following an initial, related announcement
Interim Results	Half year/2 <sup>nd</sup> quarter financial results
Issue of Debt	Notification of an issue of debentures, debenture or loan stock, bonds and notes, whether secured or unsecured
Issue of Equity	Notification of an issue of equity shares e.g. offer for subscription/offer for sale/rights issue
Letter of Intent Signed	Statement regarding a letter of intent signed between entities
Merger Update	Statement regarding decision whether a takeover/merger has been referred for investigation to the Competition Commission /Secretary of State for Trade and Industry
Offer by [add offeror's name]	Statement giving details of an offer announced by the offeree
Offer for [add offeree's name]	Statement giving details of an offer announced by the offeror
Offer Lapsed	Statement declaring that the required acceptances for an offer to be successful have not been obtained and that the offer has lapsed
Offer Rejection	Statement that an offer has been rejected
Offer Talks Terminated	Statement that a company's offer discussions have been terminated without an offer being made
Offer Update	Statement giving an update on an offer e.g. offer acceptances/offer

	extension/offer becoming wholly unconditional
Prior Notice of Merger	Statement regarding proposed mergers
Product Launch	Statement regarding the launch of a new product by a company
Purchase of Own Securities	Notification of a share buy-back
Re Agreement	Statement regarding an agreement between entities
Re Alliance	Statement regarding an alliance between entities
Re Contract	Statement regarding a contract entered into/awarded/signed
Re Joint Venture	Statement regarding a joint venture between entities
Regulatory Application	Application by a company to a regulatory body for a product or service (e.g. approval to market a pharmaceutical product)
Regulatory Approval	Approval from a regulatory body for a company's product or service (e.g. approval to market a pharmaceutical product)
Research Update	A statement giving an update on research (e.g. clinical trials)
Response to (insert appropriate text)	Statement submitted in response to a previous statement made another entity
Restructure Proposals	Operational restructuring of a company
Result of AGM	Notification of the result of any voting at an AGM
Result of EGM	Notification of the result of any voting at an EGM
Result of Equity Issue	Notification of the result of an issue of equity shares e.g. offer for subscription/offer for sale/rights issue
Result of Meeting	Outcome of a meeting other than an AGM or EGM
Result of Tender Offer	Notification of the result of a tender offer
Rule 8 - [insert name of offeree or offeror]	POTAM requirement for the disclosure of dealings during an offer period

SAR - [insert name of company]	Notification of a holding required by POTAM Substantial Acquisition Rules 3 and 5. The company name inserted should be the name of the company in which shares have been acquired or disposed of
Scheme of arrangement	Statement giving details of a scheme of arrangement
Statement re (insert appropriate text)	Statement regarding a particular POTAM issue
Statement re (insert appropriate text)	Statement regarding a particular issue
Statement re (insert appropriate text)	Statement by the Competition Commission regarding the outcome of its investigation of a takeover/merger
Statement re Possible Offer	Statement that a company is in discussions which may or may not lead to an offer being made
Statement re Press Comment	Statement regarding press comment
Statement re Share Price Movement	Statement regarding a movement the price of a company's listed securities
Syndicate Results	Statement of results submitted by Lloyd's insurance syndicates
Tender Offer	Notification of a tender offer
Trading Statement	Statement regarding a company's trading performance (e.g. profit warning)
Miscellaneous	Miscellaneous high priority announcements

<b>MEDIUM PRIORITY</b>	
<b>Headline category</b>	<b>Description</b>
Additional Listing	Notification of any addition to a company's existing share capital
Base Rate Change	Statement regarding a change in the interest rate offered/charged by a financial institution
Block listing Interim Review	Six monthly notification by a company issuing securities on a regular basis (see Schedule 5 of the FSA Listing Rules)
Compulsory Acqn of Shares	Statement regarding the compulsory acquisition of shares
Director Shareholding	Notification of interests of directors and connected persons (see Schedule 11 of the FSA Listing Rules)
Directorate change	Notification of any change to a company's board e.g. appointments/resignations/changes to important functions or executive responsibilities of a director
Dividend Declaration	Declaration of a dividend (issued by a company itself as opposed to Regulatory Benefits Department of the London Stock Exchange - see below)
FRN Variable Rate Fix	Update of interest rate for a floating rate note
Geographical Distribution	Notification by an investment company/trust of the geographical distribution of its assets
Holding(s) in Company	Notification of major interest in shares (see Schedule 10 of the FSA Listing Rules)
Net Asset Value(s)	Notification by an investment company/trust of its Net Asset Value
Total Assets Value	Notification by an investment company/trust of its Total Asset Value
Treasury Stock	Notification of the rate of interest payable on treasury stocks

Miscellaneous	Miscellaneous medium priority announcements
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<b>LOW PRIORITY</b>	
<b>Headline category</b>	<b>Description</b>
Annual report & accounts	Notification that a company's annual report & accounts have been published and are available for public inspection
Change of Adviser	Notification of a change of a company's stockbroker/financial adviser etc.
Change of Name	Notification of a company's change of name
Circ re.[insert appropriate document title]	Notification that a document issued to holders of listed securities (including notices of meetings but excluding listing particulars, annual report and accounts, interim reports, proxy cards and dividend or interest vouchers) is available for public inspection
Company Secretary Change	Notification of the appointment/resignation of a company secretary
Director Declaration	Notification of details of all directorships held by a director in any other publicly quoted company and any details required by paragraph 6.F.2(b) to (g) of the FSA Listing Rules
Doc re. [insert appropriate document title]	Notification that a document issued to holders of listed securities is available for public inspection
New Accounting Ref Date	Notification of a change in a company's accounting reference date
Notice of AGM	Notification of a company's annual general meeting
Notice of EGM	Notification of a company's extraordinary general meeting
Notice of Results	Notification of the date financial results will be published
Offer Document Posted	Statement that offer document has been posted to holders of a company's listed securities
Miscellaneous	Miscellaneous low priority announcements
Test Message	Message submitted to test announcement system but not published



## GLOSSARY OF DEFINITIONS APPLICABLE TO THE UKLA GUIDANCE MANUAL (EXCLUDING THE APPENDICES)

“Act”	the Financial Services and Markets Act 2000;
“admission” or “admission to listing”	admission to the <i>official list</i> of the UKLA and “admitted” shall be construed accordingly (see <i>listing rule</i> 7.1 as to when admission becomes effective);
“AIM”	the Alternative Investment Market of the London Stock Exchange;
“application for listing”	an application for <i>listing securities</i> under Part VI of the <i>Act</i> by the submission to the UKLA in the form found in schedule 3A or 3B (as appropriate) to the <i>listing rules</i> , duly completed;
“admitted to official listing on a stock exchange”	<i>admission to listing</i> together with <i>admission to trading</i> , and “officially listed on a stock exchange” shall be construed accordingly;
“admitted to trading”	admitted to trading on an <i>RIE’s</i> market for listed securities and “admission to trading” shall be construed accordingly;
“authorised person”	as defined in section 31 of the <i>Act</i> (Authorised persons);
“behaviour”	any kind of behaviour, including action or inaction;
“business day”	any day which is not a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in England under the Banking and Financial Dealings Act 1971;
“cancellation of listing”	a discontinuance of <i>listing</i> of any <i>securities</i> under section 77(1) of the <i>Act</i> and “listing cancelled” and “cancel listing” shall be construed accordingly;
“checklist”	a checklist (available from the <i>website</i> ) that sets out those <i>listing rules</i> which are relevant to a particular type of transaction;
“circular”	any document issued to holders of listed securities including notices of meetings but excluding listing particulars, annual reports and accounts, interim reports, proxy cards and dividend or interest vouchers;
“clear business day”	in relation to the submission of draft documents,

	means that period of <i>business days</i> excluding the day when the draft document is submitted and the intended date of publication of the document;
“ <i>company</i> ”	any <i>body corporate</i> wherever incorporated;
“ <i>competent authority</i> ”	<p>(a) the authority designated under Schedule 8 to the <i>Act</i> (Transfer of functions under Part VI (Official Listing)) as responsible for admitting <i>securities</i> to, and for removing <i>securities</i> from, the <i>official list</i>; for the time being the <i>UKLA</i>;</p> <p>(b) an authority exercising functions corresponding to those in (a) in another <i>member state</i>.</p>
“ <i>decision maker</i> ”	either the <i>RDC</i> or <i>UKLA</i> staff determined in accordance with the provisions of paragraphs 10.18, 10.19 and 10.35 of the <i>UKLA</i> guidance manual;
“ <i>decision notice</i> ”	a notice issued by the <i>FSA</i> in accordance with section 388 of the <i>Act</i> (Decision notices);
“ <i>designated professional body</i> ”	a professional body designated by the Treasury under section 326 of the <i>Act</i> ;
“ <i>Directives</i> ”	both, or either, as the context shall require, of the Consolidated Admissions and Reporting Directive and the Public Offers Directive,
- Consolidated Admissions and Reporting Directive	Directive 2001/34/EC of the European Parliament and of the Council on the admission of securities to official stock exchange listing and on information to be published on those securities,
- Public Offers Directive	Council of the European Communities Directive 89/298/EEC, co-ordinating the requirements for the drawing up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public;
“ <i>director</i> ”	as in sub-paragraph (a) of the definition of director in section 417(1) of the <i>Act</i> and in relation to an <i>issuer</i> which is not a body corporate, a person with corresponding powers and duties;
“ <i>eligible employee</i> ”	a member of a <i>sponsor’s</i> staff that has been registered with the <i>UKLA</i> in accordance with the procedures set out in chapter 4 of the <i>UKLA</i> guidance manual;

<i>“excluded material”</i>	(in relation to access to <i>FSA</i> material) material as defined in section 394(7) of the <i>Act</i> ;
<i>“final notice”</i>	a notice given by the <i>UKLA</i> under section 390 of the <i>Act</i> (Final notices);
<i>“Financial Services and Markets Tribunal”</i>	the <i>Tribunal</i> established under section 132 of the <i>Act</i> (The <i>Financial Services and Markets Tribunal</i> ) and run by the Lord Chancellor’s Department;
<i>“financial system”</i>	the financial system operating in the <i>United Kingdom</i> , as defined in section 3 of the <i>Act</i> ;
<i>“first supervisory notice”</i>	a notice given in accordance with section 78(2) as defined in section 395(13) of the <i>Act</i> (The Authority's procedures);
<i>“FSA”</i>	the Financial Services Authority;
<i>“guidance”</i>	<i>guidance</i> consisting of information and advice given by the <i>UKLA</i> in accordance with the <i>Act</i> ;
<i>“home exchange”</i>	the <i>overseas</i> exchange on which a security is <i>primary listed</i> ;
<i>“insider dealing”</i>	as described in section 52 of the Criminal Justice Act 1993;
<i>“issuer”</i>	<i>body corporate</i> or other legal person or undertaking (including a <i>public sector issuer</i> ) any class of whose <i>securities</i> has been admitted, or is proposed to be the subject of an application for admission;
<i>“investigator”</i>	an investigator appointed under section 97(2) of the <i>Act</i> ;
<i>“list of sponsors”</i>	the list of <i>sponsors</i> maintained by the <i>UKLA</i> in accordance with section 88(3)(a) of the <i>Act</i> ;
<i>“listed”</i>	admitted to the <i>official list</i> of the <i>UKLA</i> and “listing” shall be construed accordingly;
<i>“Listing Authority Committee”</i>	a committee of the <i>UKLA</i> consisting of senior management;
<i>“listing particulars”</i>	listing particulars or <i>supplementary listing particulars</i> under Part VI of the <i>Act</i> or both or, as provided for in <i>listing rule 5.1(e)</i> of <i>listing rules</i> , a <i>prospectus</i>

<i>“listing rules”</i>	the listing rules which are made by the competent authority for the purposes of Part VI of the <i>Act</i> and published in the book entitled “The Listing Rules”, as from time to time amended (except that the best practice provisions at the end of the book, Chapter headings, paragraph headings and the section at the start of each Chapter headed “Scope of Chapter” do not form part of the <i>listing rules</i> )
<i>“market abuse”</i>	as described in Chapter 1 of the Market Conduct Sourcebook published by the <i>FSA</i> ;
<i>“member state”</i>	a state that has ratified the Agreement on the European Economic Area and the expression “non member state” shall be construed accordingly;
<i>“non-routine circular”</i>	any <i>circular</i> which, under the <i>listing rules</i> , must be formally approved by the <i>UKLA</i> prior to them being circulated or made publicly available;
<i>“nominated adviser”</i>	a nominated adviser as defined under the <i>AIM</i> rules;
<i>“notice of discontinuance”</i>	a notice given by the <i>UKLA</i> in accordance with section 389 of the <i>Act</i> (Notices of discontinuance) which states that the <i>UKLA</i> has decided not to take the action proposed in a <i>warning notice</i> or the action to which a <i>decision notice</i> relates;
<i>“official list”</i>	the list maintained by the <i>UKLA</i> in accordance with section 74(5) of the <i>Act</i> (The official list) for the purposes of Part VI of the <i>Act</i> (Official listing);
<i>“overseas”</i>	outside the United Kingdom. (Note: the United Kingdom includes England and Wales, Scotland and Northern Ireland but excludes the Channel Islands and the Isle of Man);
<i>“overseas company”</i>	a company incorporated outside the United Kingdom;
<i>“POS Regs”</i>	the Public Offers of Securities Regulations 1995 (SI 1995/1537);
<i>“POS Regs prospectus”</i>	a public offer prospectus within the meaning of the <i>POS Regs</i> ;
<i>“primary listing”</i>	a listing of a security by a competent authority, equivalent regulatory body or stock exchange by virtue of which the <i>issuer</i> is, as respects that security, subject to the full requirements applicable

	to listing of that competent authority, equivalent regulatory body or stock exchange;
“ <i>prospectus</i> ”	a prospectus or <i>supplementary prospectus</i> under Part VI of the <i>Act</i> or both;
“ <i>protected item</i> ”	as defined in section 413 of the <i>Act</i> ;
“ <i>RIE</i> ”	a recognised investment exchange for the purposes of the <i>Act</i> ;
“ <i>Regulatory Decisions Committee</i> ” or “ <i>RDC</i> ”	a committee of the Board of the <i>FSA</i> and described in paragraph 10.20;
“ <i>restoration</i> ”	the lifting of the <i>suspension of listing</i> of any <i>securities</i> which have had their <i>listing suspended</i> and “restore” and “restored” shall be construed accordingly;
“ <i>RIS</i> ”	Regulatory Information Service;
“ <i>Schedule 1A</i> ”	the confirmation of independence given by a <i>sponsor</i> in schedule 1A to the <i>listing rules</i> ;
“ <i>second supervisory notice</i> ”	a notice given in accordance with section 78(5) as defined in section 395(13) of the <i>Act</i> (The Authority's procedures);
“ <i>secondary listing</i> ”	a <i>listing</i> which is not a <i>primary listing</i> and “secondary listed issuer” shall be construed accordingly;
“ <i>securities</i> ”	anything which has been, or may be, admitted to the <i>official list</i> ;
“ <i>Single Market Directives</i> ”	(as defined in paragraph 1 of Schedule 3 to the <i>Act</i> (EEA Passport Rights)) the Banking Consolidation Directive, the Second Banking Co-ordination Directive, the Insurance Directives and the Investment Services Directives;
“ <i>sponsor</i> ”	a person approved, under section 88 of the <i>Act</i> by the <i>UKLA</i> , as a sponsor;
“ <i>sponsor employee</i> ”	a director, partner or employee of a <i>sponsor</i> ;
“ <i>sponsor's group</i> ”	a <i>sponsor</i> , its parent, subsidiaries and fellow subsidiaries;

<i>“sponsor services”</i>	the services, specified under <i>listing rule 2.9</i> in accordance with section 88(3)(b) of the <i>Act</i> , that a <i>sponsor</i> is required to perform;
<i>“statutory notices”</i>	<i>warning notices</i> , <i>decision notices</i> and <i>supervisory notices</i> ;
<i>“statutory notice decision”</i>	any decision to give a <i>statutory notice</i> ;
<i>“statutory notice associated decision”</i>	any decision concerning a <i>statutory notice</i> once it has been given;
<i>“suspension of listing”</i>	a suspension of <i>listing</i> of any <i>securities</i> under section 77(2) if the <i>Act</i> and “suspend listing” and “listing suspended” shall be construed accordingly;
<i>“supervisory notice”</i>	a notice given in accordance with section 78(2) or (5) as defined in section 395 (13) of the <i>Act</i> (The Authority's procedures);
<i>“supplementary listing particulars”</i>	supplementary <i>listing particulars</i> produced in accordance with the <i>listing rules</i> ;
<i>“supplementary POS Regs prospectus”</i>	supplementary <i>POS Regs prospectus</i> ;
<i>“supplementary prospectus”</i>	supplementary <i>prospectus</i> produced in accordance with the <i>listing rules</i> ;
<i>“takeover bid”</i>	an offer, within the meaning of the <i>Takeover Code</i> , or any other similar conduct governed by that code;
<i>“Takeover Code”</i>	The City Code on Takeovers and mergers made by the <i>Takeover Panel</i> ;
<i>“Takeover Panel”</i>	The Panel on Takeovers and Mergers;
<i>“Tribunal”</i>	the <i>Financial Services and Markets Tribunal</i> ;
<i>“UKLA”</i>	the <i>FSA</i> acting in its capacity as the competent authority for the purposes of Part VI of the <i>Act</i> , including where the context so permits, any committee, employee, officer or servant to whom any function of the <i>UKLA</i> may for the time being be delegated;
<i>“United Kingdom” or “UK”</i>	England and Wales, Scotland and Northern Ireland (but not the Channel Islands or the Isle of Man);



“ <i>variation</i> ”	a dispensation or modification of the application of the <i>listing rules</i> or the <i>Act</i> , or the exercise of any specific discretion provided under the <i>listing rules</i> , the <i>Act</i> or the <i>POS Regs</i> ;
“ <i>warning notice</i> ”	a notice issued by the <i>UKLA</i> in accordance with section 387 of the <i>Act</i> (Warning notices);
“ <i>website</i> ”	the <i>UKLA</i> website at the following address: <a href="http://www.fsa.gov.uk">http://www.fsa.gov.uk</a> .