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THE OFFICIAL LIST, AIM &
THE PROSPECTUS DIRECTIVE

A GUIDE TO LISTING EQUITY SECURITIES ON
THE LONDON MARKETS AND THE CONTINUING
OBLIGATIONS OF LISTED COMPANIES

Giles Elliott and Vica Irani

September 2005
About this Guide

The European Union has, in line with its Financial Services Action Plan adopted in 1999, taken significant steps in recent years towards harmonising the regulatory framework for raising capital within the EEA. The Prospectus Directive is a key part of this process and aims to create common standards for the issue of equity and other securities in the EEA. Some states, such as the United Kingdom and Ireland, have fully implemented the directive by the required date of 1 July 2005 while a number of others, including Spain and Italy, have yet to do so. Any confusion caused by these timing differences is reduced by the fact that the European Commission’s implementing regulation, the Prospectus Regulation, which contains much of the detailed, substantive changes required by the directive, has had direct effect in all member states from 1 July 2005. The bottom line is that for any company seeking to raise capital in the EEA, there is no hiding from the new law. However, as will be explored in this guide, there still remains significant differences between the requirements of the two main London equity markets, the Official List and AIM.

This publication is written for companies and advisers considering or involved in the raising of equity capital on the London markets. It describes in detail the changes to the listing regime in the United Kingdom that occurred with implementation of the Prospectus Directive on 1 July 2005. It analyses and compares the eligibility and other listing requirements of the two markets and provides a commentary on the content requirements of a prospectus or admission document, as the case may be, required at the time of an IPO. In terms of the continuing obligations of a company once listed, the guide describes the new disclosure rules and other continuing obligations facing a listed company and highlights the rules governing further secondary offerings and acquisitions.

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CHAPTER 1

ELIGIBILITY FOR LISTING ON THE OFFICIAL LIST

INTRODUCTION

The Prospectus Directive is a “maximum harmonisation” directive, which has rendered the UK unable to impose additional “super-equivalent” requirements in relation to the matters covered by it. However, the Prospectus Directive does not purport to regulate the requirements for obtaining and maintaining a listing on any particular regulated market, and therefore the UK has had more discretion in relation to the listing regime applicable in the context of the Official List. The FSA has also used the introduction of the new regime as an opportunity to undertake a general review of the listing framework as a whole.

The FSA did consider, and consult on, the removal of many of the super-equivalent eligibility requirements contained in the Listing Rules, such as the requirement for an issuer’s business to be independent and supported by a three year revenue earning track record, unqualified accounts and a clean working capital statement. The removal of these was proposed on the basis that the relevant information could be disclosed to the market and investors allowed to make their own informed judgement on the issuer accordingly. However, the consultation process revealed that the majority of respondents supported the retention of these eligibility requirements on the basis that the Official List is not generally appropriate for start ups, and to ensure that the listing regime did not become entirely disclosure based. In light of this feedback, the majority of the super-equivalent eligibility requirements contained in the Listing Rules have been retained.

The eligibility criteria are contained in Chapters 2 and 6 of the new Listing Rules and, save as described below, broadly mirror the eligibility requirements contained in the old Listing Rules. The requirements in Chapter 2 apply in respect of the listing of all securities, with those in Chapter 6 applying only to primary listings of equity securities.

A. GENERAL REQUIREMENTS FOR ALL SECURITIES

The general eligibility requirements contained in Chapter 2 include the following:

1 “Super-equivalent” requirements are those more onerous than the requirements contained in the relevant European directive.
i. Incorporation & Validity (LR 2.2.1 and 2.2.2)

An applicant must be duly incorporated or otherwise validly established according to the relevant laws of its place of incorporation or establishment, and must be operating in conformity with its constitution. Note that the Listing Rules do not actually require an applicant to be a public company (although this may be a requirement under applicable corporate law, for example, to facilitate future offers of shares to the public).

In addition, the securities to be listed must conform with the law of the applicant’s place of incorporation, be duly authorised in accordance with the applicant’s constitution and have any necessary statutory or other consents.

ii. Admission to trading on the London Stock Exchange (LR 2.2.3)

The previous distinction between admission to listing on the Official List and admission to trading has been preserved, and in order to be eligible for listing, securities must also be admitted to trading on a Recognised Investment Exchange’s market for listed securities. Officially listed equity securities will typically be admitted to trading on the London Stock Exchange’s main market.

iii. Transferability (LR 2.2.4)

As under the previous rules, in order to be listed, securities must be freely transferable, fully paid and free from all liens and restrictions on the right of transfer (except any restrictions imposed for failure to comply with a notice under section 212 of the Companies Act 1985) (company investigations).

FSA guidance suggests that the FSA may modify this rule to allow partly paid securities to be listed if it is satisfied that their transferability is not restricted and investors have been provided with appropriate information to enable dealings in the securities to take place on an open and proper basis. Further, the FSA may in exceptional circumstances modify or dispense with the rule requiring securities to be freely transferable where the applicant has the power to disapprove of the transfer of shares if it is satisfied that this power would not disturb the market in those shares.

In contrast with the equivalent requirement under the AIM Rules (see Chapter 5 for further details), the Listing Rules’ requirement for securities to be freely transferable is not subject to a carve out to cater for overseas laws or regulation (e.g. where the laws of any jurisdiction, such as the United States, place restrictions upon transferability of securities or where the issuer wishes to restrict transferability to limit the number of shareholders domiciled in a particular country to ensure that it does not become subject to statute or regulation). Whilst this would appear to pose a problem for US

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2 This requirement does not apply to a “public sector issuer” (for example, a state, local authority, or a statutory body).
issuers, or those wishing to restrict the number of US shareholders, the FSA has indicated informally that they would be willing to consider modifications on a case by case basis and we have had experience of it doing so.

iv. Market Capitalisation (LR 2.2.7 and 2.2.8)

The expected aggregate market value of all securities (excluding treasury shares) to be listed by a new applicant must be at least £700,000 for shares and £200,000 for debt securities. This minimum market capitalisation requirement may be modified by the FSA if it is satisfied that there will be an adequate market for the securities concerned.

v. Whole class to be listed (LR 2.2.9)

An application for listing of securities of any class must relate to all securities of that class issued or proposed to be issued. It is not possible to only list part of a class of securities.

vi. Prospectus or Listing Particulars (LR 2.2.10 and 2.2.11)

Where required, a prospectus or listing particulars must be issued and approved in accordance with the Prospectus Rules or LR 4, as applicable.

Under the Prospectus Rules, an issuer seeking to admit “securities” to an ISD regulated market (such as the Official List) is required to publish a prospectus approved by the competent authority in its “home member state”.

As explained in further detail in Chapter 2 of this Guide, Chapter 4 of the Listing Rules requires listing particulars to be published for the listing of most specialist securities which fall outside the scope of the Prospectus Directive. The content requirements for listing particulars are broadly the same as those applicable to a prospectus.

Further details of the relevant approval and content requirements for a prospectus are set out in Chapters 3 and 4.

vii. Convertible Securities and Warrants/Options (LR 2.2.12 to 2.2.14)

Convertible securities will only be eligible for admission to listing if the securities into which they are convertible are or will be listed.

The requirements for listing warrants or options to subscribe for equity securities are the same as those applicable in the context of the admission of the underlying equity securities.

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3 This does not apply to tap issues where the amount of the debt securities is not fixed.
B. REQUIREMENTS FOR THE PRIMARY LISTING OF EQUITY SECURITIES

In addition to satisfying the general eligibility requirements of Chapter 2 of the Listing Rules outlined above, an issuer seeking a primary listing of equity securities must comply with the further eligibility requirements contained in Chapter 6 of the Listing Rules:

i. Accounts (LR 6.1.3)

As under the previous rules, an applicant must have unqualified audited accounts that cover at least three years ending no more than six months before the date of the relevant prospectus. However, the requirement for the accounts in respect of this three year period to be prepared in accordance with International Accounting Standards or equivalent which was initially included in the new rules was deleted to bring the new Listing Rules into line with the Prospectus Rules which require the financial information in a prospectus to be prepared to IAS or equivalent standards for two years only.

This change does not, however, impact on the requirement for issuers to demonstrate a three year revenue earning track record. In practice, it means that issuers could disclose IAS or equivalent financial information for two financial years, and local GAAP for the third.

ii. Nature and Duration of Business Activities (LR 6.1.4 to 6.1.7)

An applicant must demonstrate that at least 75% of its business is supported by an historic revenue earning record for the three year period referred to above, that it controls the majority of its assets and has done so for at least that period and that it will be carrying on an independent business as its main activity (main activity equating to 75% of its business). This requirement represents a change to the previous requirement, which applied to the entire business of an applicant, as opposed to 75%.

FSA guidance indicates that in determining what amounts to 75% of an applicant’s business, the FSA will take into account factors such as the assets, profitability and market capitalisation of the business. Note that even if an applicant’s business has been in existence for a three year period, it may nonetheless fail to satisfy this requirement if:

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4 This requirement does not apply to scientific research based companies or mineral companies. See paragraph C of this Chapter 1 for further details.

5 This requirement is contained in paragraph 20.1 of Annex 1 to the Prospectus Rules.

6 These requirements do not apply to scientific research based companies or mineral companies. See paragraph C of this Chapter 1 for further details.
• it has a business strategy that places significant emphasis on the development or marketing of new products and services, i.e. products and/or services which have not represented a significant part of the historic revenue earning record;
• the value of the business at the time of listing will be determined to a significant degree by reference to future developments rather than past performance;
• the relationship between the value of the business and its revenue or profit earning record is significantly different from that of other similar companies in the same sector;
• there is no record of consistent revenue, cash flow or profit growth throughout the historic revenue earning record;
• the applicant’s business has undergone a significant change in its scale of operations during the period of the historic revenue earning record; or
• it has significant levels of research and development expenditure or significant levels of capital expenditure.

iii. Working Capital (LR 6.1.16 to 6.1.18)

An applicant must satisfy the FSA that its group has sufficient working capital for at least the next twelve months from the date of publication of the prospectus. Whilst, in most cases, the Prospectus Rules will require an issuer to include a “working capital statement” in its prospectus, a clean working capital statement is also an eligibility requirement for listing.

The Prospectus Rules require the inclusion of a working capital statement in all prospectuses for equity issues, including those issued by FSA regulated entities, such as banks. Regulated entities were previously not normally required to make a working capital statement, and because much of a bank’s working capital funding (such as deposits) is not committed financing, such entities may have difficulty in providing the standard working capital statement. Whilst the FSA has not been able to alter the requirements of the Prospectus Directive, it has, for the purposes of determining eligibility for listing, set out an alternative for regulated issuers which is based on solvency and capital adequacy, rather than traditional “working capital”. In line with the approach taken under the Prospectus Rules, the Listing Rules require that regulated entities are not only meeting their capital adequacy and solvency requirements, but that they are expected to do so for the next twelve months without needing to raise further capital.

However, the FSA may dispense with this requirement if an applicant already has equity securities listed and if it is satisfied that the prospectus contains satisfactory proposals for providing additional working capital thought by the applicant to be necessary.
iv. **Shares in Public Hands (LR 6.1.19 and 6.1.20)**

As is the case under the old Listing Rules, 25% of the shares\(^8\) must, by no later than the time of admission, be distributed to the public in one or more EEA states (account may also be taken of holders in a non-EEA state if the shares are listed in the relevant state\(^9\)).

The definition of “public” is unchanged for these purposes, and shares held by directors, their connected persons, persons with the contractual right to nominate a director, trustees of an employee share scheme and any person (or persons in the same group) with an interest in 5% or more of the shares of the relevant class, will not be held in public hands.

The FSA did consider imposing a requirement that, in addition to the 25% free float requirement, the company’s shareholder base must also exceed 100, but this was removed as a result of consultation.

v. **Warrants or options (LR 6.1.22)**

The total of all issued warrants or options to subscribe for equity shares may not exceed 20% of the issued equity share capital of the applicant\(^10\) as at the time of issue of the warrants or options (excluding rights under employee share schemes).

vi. **Settlement (LR 6.1.23)**

To be listed, securities must be eligible for electronic settlement. Unlike the old Listing Rules and the AIM Rules, there is no specific dispensation for issuers who may be subject to overseas regulation prohibiting the electronic settlement of its securities. However, the FSA has informally said that it may consider dispensations to this on a case by case basis.

vii. **Eligibility criteria removed from the old Listing Rules**

The requirement that directors and senior management must have appropriate expertise and experience has been removed from the old Listing Rules on the basis that the disclosure of relevant managerial experience and the enhanced corporate governance standards in the revised Combined Code provide adequate protection for investors.

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\(^8\) Excluding treasury shares.

\(^9\) FSA guidance indicates that a lower percentage may be accepted if it considers that the market will operate properly with a lower percentage in view of the large number of shares and the extent of their distribution to the public.

\(^10\) Excluding treasury shares.
The requirement that a company with a controlling shareholder must be capable of carrying on its business independently has also been removed on the basis that the existence of a controlling shareholder and nature of its relationship with the issuer will need to be disclosed in the prospectus and the new Listing Principles and continuing obligations will provide investors with ongoing protection.

C. SPECIALIST ISSUERS OR SECURITIES

The specific chapters in the old Listing Rules on property companies (Chapter 18), mineral companies (Chapter 19), scientific research based companies (Chapter 20), innovative high growth companies (Chapter 25) and strategic investment companies (Chapter 27) have been deleted. The only separate chapters for specialist issuers remaining in the new Listing Rules are the chapters on investment entities and venture capital trusts (the chapters in the previous Listing Rules on investment entities and venture capital trusts have been replicated in the new Listing Rules, and the FSA plans to consult on this at the same time as consultation takes place on the implementation of the Transparency Obligations Directive in 2006).

Other than with respect to investment entities and venture capital trusts, the new Listing Rules only include specific modifications to the eligibility criteria for mineral companies and scientific research companies – other specialist issuers will simply need to satisfy the general eligibility criteria. In addition to the eligibility requirements for listing, the FSA has stated that it will adopt the CESR Recommendations\(^\text{11}\) which provide guidance on the interpretation of certain provisions of the Prospectus Directive, and which include recommendations for supplemental disclosure in the case of certain specialist issuers. These recommendations are referred to in more detail in Chapter 3 of this Guide.

The specific eligibility criteria applicable to specialist issuers are as follows:

i. Mineral Companies (LR 6.1.8 to 6.1.10)

The definition of a mineral company in the new Listing Rules is wide and includes any company or group whose principal activity is the extraction (which can include exploration) of mineral resources (which include metallic and non-metallic ores, mineral oils, natural gases, hydrocarbons and solid fuel).

A mineral company does not need audited accounts covering at least three years, and nor does it need to demonstrate that it has an independent business, that it controls the majority of its assets or that at least 75 per cent of its business is supported by a three year revenue earning track record. However, to the extent that a mineral company has

\(^{11}\) The Committee of European Securities Regulators’ recommendations for the consistent implementation of the European Commission’s Regulation on Prospectuses no 819/2004, issued in February 2005.
accounts, the accounts must comply with the general criteria set out in the new LR 6.1.3R, namely that they have been independently audited, are less than six months old and are unqualified.

Where a mineral company is a new applicant to the Official List and does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested, it must demonstrate that it has a ‘‘reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights which give it influence in decisions over the time and method of extraction of those resources’’ (LR 6.1.10). The requirement in the previous Listing Rules that the proven and probable value of the company’s reserves is not less than 50 per cent of the expected market capitalisation of the issuer has been deleted.

In addition, the CESR Recommendations require certain additional disclosures, and an expert’s report (in a form to be agreed with the relevant competent authority), in all mineral company prospectuses. See Chapter 3 for further details.

ii. Scientific Research Based Companies (LR 6.1.11 to 6.1.15)

Again, scientific research based companies do not need audited accounts that cover at least three years. In addition, they do not need to demonstrate that their business is independent, that they control the majority of their assets and that at least 75 per cent of their business is supported by a three year revenue earning track record. However, to the extent that they do have accounts, they must have been independently audited, be less than six months old and unqualified.

However, whilst the requirement, for example, for a technical expert’s report has been removed, many of the other additional eligibility requirements of scientific research based companies have been preserved, including:

- that the company can demonstrate its ability to attract funds from sophisticated investors;
- that the company intends to raise at least £10 million pursuant to a marketing at the time of listing;
- that the company has a capitalisation before the marketing at the time of listing of at least £20 million (based on the issue price and excluding the value of any securities which have been issued in the six months prior to listing);
- that the company has, as its primary reason for listing, the raising of finance to bring identified products to the stage where they can generate significant revenues; and
that the company can demonstrate that it has a three year record of operations in laboratory research and development including details of patents granted or details of progress of patent applications and successful completion, or the successful progression of, significant testing of the effectiveness of its products.

The CESR Recommendations require various additional disclosures for prospectuses issued by scientific research based companies, including details of the relevant collective expertise and experience of the key technical staff and a comprehensive description of each product the development of which may have a material effect on the future prospects of the issuer. See Chapter 3 for further details.

iii. Other cases

Other types of company including ‘innovative’ or ‘high growth’ companies (previously covered by Chapter 25 of the old Listing Rules) which cannot comply with the usual eligibility criteria have to satisfy the FSA that a listing is appropriate and that the necessary information is available to investors. Factors which the FSA will take into consideration include a new requirement to demonstrate an overriding reason why the applicant is seeking a listing rather than admission to a market more suited to a company without a historic revenue earning record. In considering whether there is an overriding reason for a listing the FSA will also take into account factors such as whether the applicant:

• is attracting significant funds from sophisticated investors;
• is undertaking a significant marketing of securities in connection with admission and a listing is a significant factor in its ability to raise funds; and
• will have a significant market capitalisation on admission (LR 6.1.15G).

This guidance is very similar to the current eligibility criteria that the FSA applies to innovative high growth companies. It is, however, likely to be quite difficult to establish an overriding reason which will satisfy the FSA that a listing is appropriate.

iv. Property Companies

Whilst the specific Chapter and requirements for property companies have been removed from the Listing Rules, pursuant to the CESR Recommendations, property company prospectuses must include a valuation report (see Chapter 3 of this Guide for further details).
D. OVERSEAS ISSUERS

In the case of the securities of a company incorporated in a non-EEA state that are not listed in its country of incorporation or in the country in which the majority of its shares are held, the FSA will need to be satisfied that the absence of the listing in that jurisdiction is not due to the need to protect investors.

In general terms, overseas companies with a primary listing on the Official List are required to comply with the Listing Rules in full to the extent that they are permitted to do so. Overseas companies are exempt from the requirement to replicate the UK company law pre-emption requirements, and, instead of “complying or explaining” against the UK’s Combined Code, will be required to state their compliance with their domestic corporate governance regime and explain the way in which their actual practices differ from the Combined Code. However, subject to these limited exceptions, the FSA will generally expect overseas listed companies to adhere to the same standards of Listing Rule compliance as UK incorporated companies.
CHAPTER 2

THE LISTING PROCESS AND DOCUMENTATION REQUIRED FOR AN OFFICIAL LIST IPO

A. THE PROSPECTUS

i. Requirement to Publish a Prospectus or Listing Particulars on an IPO

Under the Prospectus Rules (PR1.2.1) and s85 of the FSMA, a “prospectus” is required, subject to certain exemptions, if an issuer:

- offers “transferable securities” to the public in the UK; or
- seeks the admission of “transferable securities” to trading on a regulated market in the UK (the Official List is a regulated market for these purposes).

“Transferable securities” for these purposes encompasses most transferable securities and include shares, securities equivalent to shares in companies, bonds and other forms of securitised debt and any other securities normally dealt in giving rise to the right to acquire transferable securities. Certain securities, such as government securities, units in an open ended investment scheme and (for the purposes of the “offer to the public” regime) securities included in an offer where the total consideration is less than €2,500,000, are excluded from the scope of the Prospectus Directive. Furthermore, both the European Commission and the FSA have taken the view that most options granted under employee benefit schemes will not be “transferable securities”. In addition, the current view is that loan notes issued on takeovers will generally not be caught by the new regime, as long as the terms of the loan notes state that they are not transferable (or limit transfer rights to family members and trusts).

The available exemptions from the requirement to publish a “prospectus” are described in detail in Chapter 7 of this Guide. However, these exemptions are typically only relevant in determining whether an offer is being made to the public and, as such, apply primarily to issues of securities by companies not listed on regulated markets.
markets (for example, AIM listed companies) or further issues of securities by companies already listed on the Official List. A “prospectus” will generally be required on every primary listing of equity securities on the Official List.

As was the case under the previous listing regime, the “prospectus” is the central document to an issuer’s listing process and is the document on the basis of which investors will invest. In addition to being the principal selling document for the offering, the prospectus also helps the FSA to assess the suitability of the applicant for admission to listing.

The form and contents of a prospectus are prescribed by the Prospectus Rules and the FSMA. In addition to complying with the specific content requirements, a prospectus must satisfy a general duty to disclose all information necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses and prospects of the issuer and the rights attaching to the securities in question (PR 2.1.1 and s87A of the FSMA). Further details of the content requirements applicable to a “prospectus” are set out in Chapter 3 of this Guide.

For most purposes, the new regime has eliminated the distinction between a “prospectus” and “listing particulars”. Under Chapter 4 of the new Listing Rules, “listing particulars” are required in the case of an application of specialist securities (including those listed in Part 1 of Schedule 11A to the FSMA) which do not require the publication of a prospectus. In order to preserve the flexibility of its debt capital markets, the London Stock Exchange has established a listed, but unregulated, market for issuers of debt and specialist securities (e.g. Eurobonds and depositary receipts) known as the Professional Securities Market (PSM). As it is not a regulated market, the prospectus regime will only apply to securities admitted to trading on the PSM in the context of offers to the public of such securities. As most debt and specialist securities are only issued to sophisticated investors (and hence will not constitute offers “to the public”) under the available exemptions contained in the Prospectus Rules), the requirement to produce a prospectus will very rarely apply to issues of these securities in practice. However, under the new Listing Rules (Chapter 4), issuers of these specialist securities would still need to publish listing particulars and have these approved by the FSA. In the limited cases to which “listing particulars” are relevant, they will effectively contain equivalent information to that which would have been included in a prospectus, although the level of disclosure is not generally as extensive as would be required for a full prospectus in respect of equity securities.
ii. Approval and Filing of the Prospectus

Before a prospectus may be published, it must be submitted to, and approved by, the FSA (PR 3.1.10R) (see paragraph (iii) below for the approval requirements applicable to overseas issuers). In the case of an IPO, the draft prospectus and related documents must be submitted to the FSA at least 20 business days prior to the intended approval date (PR 3.1.3R) and, as under the previous requirements, must be substantially complete and annotated in the margin to indicate compliance with the relevant requirements of the Prospectus Rules. Under s87A(1) of the FSMA and PR 3.1.7R, the FSA may not approve a prospectus unless it is satisfied that:

- the UK is the “home member state” in relation to the issuer; and
- the prospectus contains all necessary information and otherwise complies with the Prospectus Rules and the FSMA.

Under the Prospectus Directive (as implemented by s87C of the FSMA), in the context of an IPO, the FSA is obliged to notify an issuer of its decision within 20 business days of the application for approval being received. However, where the FSA finds that the documents submitted are incomplete or that further information is required, this time limit only begins to run upon submission of the complete information, and so, as under the old listing regime, ensuring submission of a complete “first draft” to the FSA will be key to minimising the approval timetable.

Once a prospectus has been approved by the FSA, it must be filed and made available to the public at least six business days prior to the end of the offer (which is slightly longer than was the case under the old Listing Rules (PR 3.2.3R)). A prospectus may be made available to the public through:

- its publication in a national newspaper; or
- being made available in printed form free of charge to the public at the offices of the London Stock Exchange, or the registered office of the issuer and at the offices of the placing agent; or
- in electronic form on the website of the issuer and, if applicable, the placing agent; or
- on the website of the London Stock Exchange.

Earlier proposals to make publication on an issuer’s website mandatory were dropped as a result of consultation, and the previous requirement for a formal notice in national newspapers relating to the admission of securities to listing has also been abolished. It is also worth noting that a prospectus no longer needs to be filed with Companies House. The FSA maintains a list of approved prospectuses on its website.
iii. **Passporting, Overseas Issuers and “Home Member State”**

The Prospectus Rules introduce the ability to “passport” prospectuses on a pan-European basis making it easier for issuers to raise capital across Europe. An issuer wishing to take advantage of the passport may either request a certificate of approval simultaneously with the application for approval of the prospectus or request a certificate after the approval of the prospectus. In the former case, the certificate will be issued within one day of the approval of the relevant prospectus and in the latter case, within three days of the request being made. The certificate together with the prospectus as approved is provided to the competent authority in the host member state and then facilitates the offer or admission (as applicable) in that member state.

Under the Prospectus Directive, each issuer is allocated a “home member state” which determines which authority in the EEA will be responsible for the approval of the relevant issuer’s prospectus. As mentioned above, once approved by the competent authority in the relevant EEA state, a prospectus may be used by the issuer for public offers and the admission of securities to trading on regulated markets throughout Europe.

For EEA issuers, the “home member state” is generally the state in which the issuer has its registered office. As described in more detail in Chapter 4, the position of non-EEA issuers is somewhat more complex. For non-EEA issuers, the home member state will generally be either (i) the member state in which a public offer of the issuer’s securities is or was first made after 31 December 2003 or (ii) the member state in which an application for admission of the issuer’s securities to trading on a regulated market is or was first made after 31 December 2003 (and where both limbs apply, the issuer may generally elect its home member state from the two relevant states).

Where the home member state of an issuer is not the UK, the prospectus must generally be approved by the competent authority in the relevant member state, rather than the FSA, and then “passported” into the UK. Even if the overseas issuer’s primary listing is being sought in the UK, its home state’s regulator, rather than the FSA, may be charged with vetting the prospectus.

However, in the context of an Official List IPO, even if the FSA is not the competent authority for the purposes of approving the prospectus, it will still be the relevant authority for the purposes of determining eligibility and approving the application for

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14 An issuer may normally only choose another member state to be its home member state when issuing debt securities with a minimum denomination of £1,000 or more and certain other types of other securities that are not shares.

15 This was the date on which the Prospectus Directive came into force.

16 Again, an issuer may normally only choose another member state to be its home member state when issuing debt securities with a minimum denomination of £1,000 or more and certain other types of other securities that are not shares.

17 The Prospectus Directive does allow for a competent authority to transfer the function of approving a prospectus to another member state. Please see Chapter 4 for further details.
admission to the Official List. Historically in the UK, from a listing perspective, eligibility requirements and document contents have always gone hand in hand with each other (for example, the three year track record, unqualified accounts and working capital requirement are eligibility conditions, but will also be matters for inclusion in the prospectus). One effect of the new regime has been to sever the direct connection between eligibility requirements and document disclosure requirements, and for the first time in the UK, responsibility for approving the two aspects may fall to two different regulators.

Whilst the Prospectus Directive has harmonised the European regulatory regime for raising capital, it does not seek to govern or administer the Official List’s so-called “gold standard” primary listing requirements. A prospectus approved by the competent authority of another member state and “passported” into the UK is no guarantee that the issuer has satisfied the listing requirements applicable to the Official List nor that the application for a primary listing will be approved by the FSA, and accordingly, the FSA should be consulted at an early stage where an issuer seeking a listing on the Official List has a home member state which is not the UK.

B. SPONSOR

i. Requirement for a Sponsor (LR 8.2.1R)

Any company seeking a primary listing on the Official List is required to appoint a “sponsor” (generally, one of the investment banks will act as sponsor), and this is usually one of the first steps in the IPO process. The FSA has for some time relied on the sponsor regime to provide additional comfort as to issuers’ compliance with the Listing Rules, and whilst there was some discussion during the consultation process about the possibility of making the regime voluntary or removing it altogether, this regime has not only been retained, but has been strengthened under the new rules in the context of IPOs and major transactions undertaken by issuers with a primary listing on the Official List. The FSA views the sponsor as playing “an important role in helping to ensure that issuers meet the required standards” and has emphasised that it will be devoting extra resources to monitoring and supervising sponsors more closely. Coupled with the extension to the sponsor’s responsibilities under the new regime, this increase in the level of regulation and scrutiny to which sponsors are subject could well increase the perceived risks and potential liability attaching to their role.

18 Companies seeking a secondary listing are not required to appoint a sponsor; this is in line with the policy to bring the requirements for secondary listings closer to the European directive minimum.
ii. Contents of the Sponsor’s Declaration

As was the case under the old Listing Rules, a declaration from the sponsor is required to be submitted to the FSA with any application for listing, confirming that the sponsor has:

- provided all the necessary services required to be performed by it under Chapter 8 of the Listing Rules with due care and skill;
- taken reasonable steps to satisfy itself that the directors of the issuer understand the nature and extent of their responsibilities under the Listing Rules and Disclosure Rules;
- come to a reasonable opinion, based on its professional experience and after having made due and careful enquiry that:
  - the issuer has satisfied all requirements of the Listing Rules relevant to an application for admission to listing;
  - the issuer has satisfied all applicable requirements set out in the Prospectus Rules (this does not apply if the home member state of the issuer is not, or will not be, the UK);
  - the directors of the issuer have a reasonable basis on which to make the working capital statement required by Listing Rules;
  - the directors of the issuer have established procedures which enable the issuer to comply with the Listing Rules and the Disclosure Rules on an ongoing basis; and
  - the directors of the issuer have established procedures which provide a reasonable basis for them to make proper judgments on an ongoing basis as to the financial position and prospects of the issuer and its group.

The sponsor is also required to confirm that all matters known to it which, in its opinion, should be taken into account by the FSA in considering the application for admission to listing and in deciding whether the admission of the equity securities in question would be detrimental to investors’ interests have been disclosed with sufficient prominence in the prospectus or otherwise in writing to the FSA.

iii. Extensions to the Sponsor’s Declaration under the old Listing Rules

Whilst many of the areas covered by the declaration are the same as under the old Listing Rules, the new regime has changed the nature of the sponsor’s declaration in certain respects. The key standard under which the declaration is given has been amended, so that the sponsor must not merely be “satisfied” (as was the case under the old Listing Rules), but needs to have “come to a reasonable opinion, based on its
professional experience and after having made due and careful enquiry” as to the matters in question. This adds a potentially more onerous element of objectivity to the declaration, which was absent under the old regime.

Other extensions made by the new regime to the declaration previously required under the old Listing Rules include the requirement for a sponsor to confirm compliance with the Prospectus Rules, unless the issuer’s home member state is not, or will not be, the UK. In addition to increasing the sponsor’s accountability for an issuer’s compliance with the rules, this also has the indirect effect of requiring a sponsor to formalise its view to the FSA on whether or not an issuer’s home member state is the UK, and as referred to in Chapter 4, this may not always be a straightforward issue.

In addition, the new Listing Rules require a sponsor, for the first time, to confirm that it is of the reasonable opinion that the directors of the issuer have established procedures to enable the issuer to comply with the Listing Rules and Disclosure Rules on an ongoing basis, and a combination of the sponsor’s own due diligence and reliance on the auditors’ due diligence and comfort provided by issuer’s counsel as to the advice provided to the board would generally enable the sponsor to make this confirmation.

Under the new regime, a sponsor is required to confirm that all matters known to it which, in its opinion, should be taken into account by the FSA in considering the application for admission to listing and in deciding whether the admission of the equity securities in question would be detrimental to investors’ interests have been disclosed with sufficient prominence in the prospectus or otherwise in writing to the FSA. Whilst this is not dissimilar from the previous requirement under the old Listing Rules (pursuant to which a sponsor had to ensure it was satisfied that all matters known to it which, in its opinion should be taken into account by the UKLA had been disclosed to it), the new requirement does impose an obligation on the sponsor to give an opinion on the sufficiency of the disclosure, rather than simply be satisfied as to the mere fact of disclosure.

iv. Whistleblowing (LR 8.3.5R)

A sponsor is required to deal with the FSA in an open and co-operative way, and to disclose to the FSA in a timely manner any material information of which it has knowledge “which addresses non-compliance with” the Listing Rules or Disclosure Rules. This goes further than the previous requirement to provide such information relating to compliance as was reasonably required by the UKLA, as a sponsor can no longer wait for the regulator to ask for information regarding non-compliance. This also represents something of a conflict for issuers; the FSA has stated that issuers should use
appropriate advisers to determine compliance with the Listing Rules and Disclosure Rules, but the sponsor’s whistleblowing obligation may discourage issuers from full disclosure with their sponsor.

C. ANCILLARY DOCUMENTATION

As was the case under the old Listing Rules, an application for admission to listing requires the submission of a number of ancillary schedules and documents (as before, most of these are available on the FSA’s website). Some of these ancillary documents will relate to an issuer’s application for approval of a prospectus, and some to its application for admission to listing.

The documents required to obtain approval for a prospectus are detailed in paragraph A of Chapter 4, and in addition to these, the following documents will need to be submitted to the FSA the issuer’s application for a primary listing.

i. Eligibility Letter and Sponsor’s Declaration (LR 8.4.3R)

On a primary listing, a sponsor is required to submit a letter to the FSA setting out how the issuer in question satisfies the relevant eligibility criteria. This letter needs to be submitted, no later than at the time of submission of the first draft prospectus for approval, or, if the FSA is not approving the prospectus, at a time to be agreed with the FSA.

The sponsor’s declaration referred to in paragraph B above must be submitted either on the date the FSA is to consider the application for approval of the prospectus (and prior to the approval of the prospectus) or, if the FSA is not approving the prospectus, at a time to be agreed with the FSA.

ii. Documents to be provided 48 hours in advance (LR 3.3.2R)

The following documents must be submitted, in final form, to the FSA by midday two business days before the FSA is to consider the application.

- a completed application for admission of securities to the Official List.
- the approved prospectus.
- any approved supplementary prospectus.
- a copy of the issuer’s board resolution allotting the securities (or if this deadline can not be met, at least one hour before admission to listing is to become effective).

iii. Documents to be provided on the day the FSA is to consider the application (LR 3.3.3R)

The following documents must be submitted, in final form, to the FSA by 9.00 a.m. on the day the FSA is to consider the application:
• a completed shareholder statement.
• a completed pricing statement.

iv. Documents to be submitted as soon as practicable after the FSA has considered the application (LR 3.3.5R)

• A statement of the number of shares that were issued.
• A completed issuer’s declaration.

In addition, if the FSA so requests, the issuer must provide it with certain other documents relating to the issuer and its shares (LR 3.3.7R).
CHAPTER 3

FORM AND CONTENTS OF A PROSPECTUS AND RELATED ADVERTISEMENTS

A. FORMAT OF A PROSPECTUS

Under the Prospectus Rules, issuers are offered a choice of two distinct prospectus formats. Issuers may choose to produce a single prospectus document or a three-part prospectus comprising:

i. a registration document (this contains information relating to the issuer);

ii. a securities note (this contains details of the securities being offered or admitted to trading); and

iii. a summary (this covers the “essential characteristics and risks associated with” the issuer)

Whilst the “single document” format will undoubtedly prevail in most typical IPOs and secondary offerings, this new three-part format will provide a fast-track procedure for frequent issuers, with the registration document being used as a shelf prospectus for multiple issues. The registration document, which requires FSA approval, will remain valid for up to 12 months and can be used with a new securities note and a summary during that period whenever securities are offered to the public or admitted to trading.

In these circumstances, the securities note would operate to “update” the registration document and would need to include any information that would normally be contained in the registration document if there has been a material change or recent development which could affect investors’ assessments since the latest updated registration document or supplementary prospectus was approved. The securities note and summary will require separate approval by the FSA.

Under the Prospectus Rules (PR 2.2.10), a single document prospectus must comprise the following sections, in the following order:

i. a clear and detailed table of contents;

19 For debt issuance programmes, issuers also have the option of using a “base prospectus” and a “final terms” document (similar to the offering circular and pricing supplement previously used in the context of medium term note programmes).

20 In the case of a tri-partite prospectus, items (i), (iii) and (iv) apply to the registration document and securities note.
ii. a summary (of no more than 2,500 words\(^{21}\)) and which contains a prescribed “health warning”) which briefly and in non-technical language conveys the essential characteristics of, and risks associated with, the issuer and the securities;

iii. the risk factors linked to the issuer and the type of security covered by the issue; and

iv. the specific information on the issuer and securities required by the various schedules to, and “building blocks” set out in, the Prospectus Rules.

The Prospectus Rules (PR 2.3) sets out the minimum information to be included in a prospectus and adopts a “building-block” approach. Accordingly, the level of disclosure will be determined by the identity of the issuer and the type of securities involved. The specific disclosure items to be included in a prospectus will be based on a combination of the schedules and building blocks set out in Appendix 3 of the Prospectus Rules.

B. CONTENT REQUIREMENTS FOR A PROSPECTUS

The content requirements for a prospectus are prescribed by the Prospectus Directive and Prospectus Regulation as implemented by the Prospectus Rules and the FSMA. As was the case under the old Listing Rules, issuers must comply with both a general duty of disclosure, as well as specific disclosure requirements. The content requirements stem from “maximum harmonisation” European legislation and therefore should be uniform throughout the EEA. In addition to the specific requirements imposed by the legislation, under the Prospectus Rules, issuers must also be mindful of the CESR Recommendations\(^{22}\) and in determining whether or not the requirements have been complied with, the FSA will take into account an issuer’s compliance with the CESR Recommendations.

i. General Duty of Disclosure

Under s87A of the FSMA, a prospectus must contain all such information presented in an easily analysable and comprehensible form which, having regard to the particular nature of the securities and the issuer, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profits and losses, and prospects of the company and the rights attaching to the securities. This obligation is similar to the general duty of disclosure applicable under the previous listing regime.

\(^{21}\) The FSA has indicated that, in the case of very complex businesses/risk factors, it would be prepared to allow summaries to exceed 2,500 words (although not “excessively so”), but that in all other cases, it intends to interpret the 2,500 word limit “reasonably strictly”.

\(^{22}\) These are recommendations made by the CESR to the European Commission containing detailed guidance on the interpretation of the Prospectus Regulation.
Specific Disclosure Requirements

In broad terms, the prospectus on an IPO of equity shares must contain information on the following:

Registration document (Annex B):

- The persons responsible for the prospectus (see paragraph D below) and suitable responsibility statement (item 1)

  The language of the required responsibility statement is largely the same as that required under the old Listing Rules and requires those responsible to declare that “having taken all reasonable care to ensure that such is the case, the relevant information is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.”

- Prominent disclosure of risk factors that are specific to the issuer or its industry (item 4)

  Previously risk factors had often been included in offering documents as a matter of best practice. They are now mandatory under the new regime and, arguably, the typical introductory “health warning” regarding the non-exhaustive nature of the risks identified has been rendered less effective.

- Information about the issuer (item 5)

  This will include information on the history of the issuer, a description of its investments made in the period covered by the historic financial information, those in progress and principal committed future investments.

- Business overview (item 6)

  This will include a description of the issuer’s principal activities and markets, any exceptional factors affecting the same, and the basis for any statements made concerning the issuer’s competitive position.

- Organizational structure (item 7)

  As under the previous Listing Rules, a description of the issuer’s group and details of material subsidiaries will be required.

- Property, plant and equipment (item 8)

  This requires the inclusion of information regarding any material tangible fixed assets (including leased properties) and any major encumbrances thereon, together with a description of any environmental issues that may affect the
issuer’s utilisation of the tangible fixed assets. This represents an extension to the requirements under the old Listing Rules, which did not include disclosure of applicable environmental issues.

- **Operating and financial review (item 9)**

This area represents one of the most significant changes to disclosure requirements implemented by the new regime. The rules now require equity prospectuses to include an operating and financial review (which, whilst not identical, has some similarities to the OFR required in company annual reports). OFR sections in prospectuses will generally resemble the US style “MD&A” section typically found under the previous regime in offering documents for global offers or offerings with a US component.

The CESR Recommendations contain substantial guidance on the preparation of the OFR section and, as mentioned above, these should be borne in mind. The stated purpose of the OFR is to assist investors’ assessment of the past performance of the issuer. It should set out a fair, balanced and comprehensive analysis of the development and performance of the issuer’s business and financial condition, together with a description of the principal risks and uncertainties it faces.

The CESR Recommendations identify four overarching principles to be borne in mind in the context of an issuer’s preparation of the OFR:

- **audience**: the OFR should focus on matters relevant to investors and should not assume an existing detailed level of knowledge. Issuers should not assume that all investors will be sophisticated.

- **time-frame**: the OFR should discuss the performance of the periods of the historic financial information included in the prospectus and should identify those trends and factors relevant to the investors’ assessment of past performance and achievement of its long term objectives.

- **reliability**: the OFR should be neutral and even-handed in dealing with positive and negative aspects. Cross references should be provided where information is omitted from the OFR section on the basis of its inclusion elsewhere in the prospectus.

- **comparability**: whilst recognising that issuers may take different approaches in presentation, the CESR recommendations require the disclosures to be sufficient for the investor to be able to compare the information with similar information about the issuer for the period under

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23 *Management’s discussion and analysis of financial condition and results of operations.*
the review and suggest that comparability will be enhanced if the measures disclosed are accepted and widely used either within the relevant industry sector or generally.

- **Capital resources (item 10)**

  In addition to the working capital statement which will generally be required under Annex III and as an extension to the requirements under the old Listing Rules, an issuer is now required to include a discussion of its short and long term capital resources, cashflows and funding structure. Where the issuer has entered into commitments to make future investments or acquire fixed assets, the sources of funds required to fulfil these commitments must also be disclosed.

  Again, the CESR Recommendations include detailed guidance on the required discussion of capital resources and liquidity, and suggest that this discussion should encompass:

  - the issuer’s existing long term capital and funding structure;
  - applicable ratios (e.g. interest cover and debt/equity ratios);
  - cash inflows and outflows during the latest financial period (and any subsequent interim period), any material changes thereafter and any material unused sources of liquidity. This should also include an analysis of any material legal or economic restrictions (including any applicable exchange controls or tax consequences) on the ability of subsidiaries to repatriate funds, and any historic or anticipated impact of such restrictions on the issuer’s ability to meet its cash obligations;
  - funding and treasury policies (if already covered in the financial statements of the issuer, cross referencing rather than repeating the relevant information will suffice);
  - existing liquidity and anticipated sources of the funds needed to fulfil its commitments, together with a commentary on the level of borrowings, seasonality of borrowing requirements and maturity profile of borrowings and undrawn committed borrowing facilities;
  - covenants with lenders (if any breaches of covenant have, or are expected to occur, this should be disclosed together with the issuer’s proposal to remedy the situation). Again, if this information is already included in the context of the working capital statement, it need not be repeated, but must be clearly cross referenced.
The FSA has emphasised that the capital resources and liquidity discussion is not a means of qualifying an issuer’s working capital statement by the “back door” – any qualifications included in the capital resources discussion (whether express or implied) will require the working capital statement to be expressly qualified.

- **Research and development, patents and licences (item 11)**
  This will include a description of historic R&D policies and the amount spent on issuer-sponsored R&D activities. In the case of certain specialist issuers (such as scientific research based companies), the CESR Recommendations may require further information on this area to be disclosed – please see the section on “Specialist Issuers” below for further details.

- **Significant trend information (item 12)**
  This requires disclosure of significant recent trends since the end of the last financial year, together with information on any known factors that are reasonably likely to have a material effect on the issuer’s prospects for the current financial year. Note that, unlike the previous requirement under the old Listing Rule 6.G.1B, this does not require the directors to form a view of the issuer’s prospects for the current financial year, but only the disclosure of the generic factors reasonably likely to have a material effect on such prospects.

- **Profit forecasts or estimates (item 13)**
  As was the case under the previous Listing Rules, any profit forecast or estimates must be reported on, and the CESR Recommendations include detailed guidance on the preparation of these. Note that an issuer who has published a profit forecast or estimate (otherwise than in a previous prospectus) which is still outstanding at the time of publication of a prospectus may be required to include it in the prospectus if it is still material (and the CESR considers there to be a presumption that any such outstanding forecast will be material in the case of share issues, especially in the context of an IPO).

- **Administrative, management and supervisory bodies and senior management (item 14)**
  The disclosures previously required in relation to directors (for example their current and previous directorships, convictions, bankruptcies and public criticisms etc) have been extended to senior managers, (where the issuer has been established for less than 5 years) its founders, and, if applicable, any members of its administrative, management or supervisory bodies (this last
category is likely to be relevant only in the context of an issuer with a split tier management structure). For these purposes, the “senior managers” are those people who are relevant to establishing that the issuer has the appropriate expertise and experience for the management of its business. Note that, unlike the old Listing Rule 6.F.2, the new rules require disclosure of convictions for “fraudulent”, rather than “indictable” offences.

Potential conflicts of interests between duties to the issuer and private or other interests or duties must also be disclosed, as must any arrangement or understanding with major shareholders, customers or suppliers (or others), pursuant to which any director or senior manager was appointed.

- **Remuneration and benefits (item 15)**
  Remuneration and benefits are now required to be disclosed in relation to senior managers as well, and the new Rules require the information to be provided on an individual by individual basis. In addition, the old disclosure requirements under the previous Listing Rules have been extended to require disclosure of the total amount set aside or accrued to provide pension, retirement or similar benefits.

- **Board practices (item 16)**
  This section encompasses disclosure on directors/senior managers’ terms of office, benefits on termination, information on the audit and remuneration committees and a statement as to whether or not the issuer complies with the corporate governance requirements of its country of incorporation.

- **Employees (item 17)**
  An issuer is required to disclose either the number of employees at the end of each financial period or the average for each financial year in respect of the period covered by the historical financial information and, if possible and material, the breakdown by main category of employee activity and location. An issuer employing a significant number of temporary employees will also be required to include disclosure of the number of temporary employees on average during its most recent financial year. Shareholdings and share option details for directors and senior managers are also required to be disclosed, in addition to share option arrangements for employees as a whole.
Major shareholders (item 18)
As was the case under the old Listing Rules, shareholders with a notifiable interest (currently 3% in the UK, although due to change in 2007 pursuant to the Transparency Directive) are required to be disclosed, together with information on whether major shareholders have different voting rights. An issuer is also required to disclose (if known) whether it is controlled and to include information on the measures in place to ensure that any such control is not abused. Any arrangements which may result in a change of control must also be disclosed.

Related party transactions (item 19)
The CESR Recommendations suggest that the IFRS definition of “related party” should be used for these purposes.

Financial information concerning the issuer’s assets and liabilities, financial position and profits and losses for the latest 3 financial years (including proforma financial information) (item 20)
The old Listing Rules required the applicant to produce accounts for the prior 3 years in accordance with UK GAAP, US GAAP or IAS. As described in Chapter 2, the new eligibility rules merely require audited accounts for 3 years (LR 6.1.3R), allowing issuers to benefit from the more liberal regime under the Prospectus Rules, which generally only require that the last two of those years’ accounts have been prepared to IAS standards or equivalent.

Under the Prospectus Rules (as supplemented by substantial guidance provided by the CESR Recommendations), issuers are required to include the following historical financial information:

- three year historic financials and audit reports which are prepared in accordance with:
  - a) in the case of an EEA issuer, IAS (or, if not applicable, then the national accounting standards of the relevant member state); and
  - b) in the case of a non-EEA issuer, IAS, or national accounting standards which are “equivalent” to IAS. The CESR has advised that, subject to certain additional disclosures, US GAAP, Canadian GAAP and Japanese GAAP are “equivalent” to IAS.
The financial information included for the last two years must be prepared (or restated) on a basis consistent with that which will be used in the preparation of the issuer’s next financial statements\(^{24}\), which will be IAS for an EEA issuer admitted to a regulated market.

The Prospectus Regulation (article 35) includes certain transitional provisions which seek to reduce the burden on issuers and to enable them to adapt to the new standards\(^{25}\).

- Pro forma financial information in the event of a “significant gross change”. If applicable, this requirement will usually be satisfied by the inclusion of a pro forma, prepared in accordance with Annex II and reported on\(^{26}\).
- Interim financial information will be required if more than 9 months have elapsed since the issuer’s financial year end and, if more than 15 months have elapsed since the year end, this interim information will need to be audited. In addition, if the issuer has published any quarterly or half-yearly financial information since the date of its last audited accounts, this will need to be included.

- **Legal and Arbitration Proceedings (item 20.8)**
  Under the new rules, the disclosure requirement has been extended to include governmental proceedings in addition to legal and arbitration proceedings.

- **Additional Information, Material Contracts and Information on Holdings (items 21, 22 & 25)**
  As was the case under the old Listing Rules, the prospectus will need to include information on the issuer’s share capital and constitution, material contracts and subsidiary undertakings.

- **Third Party Information, Experts and Declarations of any Interest (item 23)**
  This requires consent statements (which in turn will trigger the requirement for responsibility statements) in respect of accountants’ reports, valuation reports and other expert reports.

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\(^{24}\) This will be of particular relevance in the context of an IPO. Typically, prior to listing, an issuer’s accounts will have been prepared in accordance with national GAAP, but following admission, it will be obliged to adhere to IAS.

\(^{25}\) These transitional provisions provide (inter alia) that no issuer is required to restate information to IAS for any period prior to 1 January 2004 (and, for issuers admitted to a regulated market as at 1 July 2005, the obligation to restate information to IAS only commences when the issuer publishes its first set of consolidated accounts under the IAS Regulation). Additional transitional provisions apply in the case of non-EEA issuers admitted to trading on a regulated market.

\(^{26}\) Note that pro forma information included on a “voluntary” basis must still comply with Annex II and be reported on.
In addition, in an extension to the old Listing Rules, where information has been sourced from a third party, the prospectus must include confirmation that this has been accurately reproduced and that, so far as the issuer is aware, nothing has been omitted to render it misleading. Note that this is not intended to qualify the responsibility statement and so should not be presented as such.

- **Documents on Display (item 24)**
  Note that material contracts, service contracts and statements of adjustments are no longer required to be put on display.

**Securities note (Annex III):**

- **The persons responsible for the prospectus and responsibility statement (item 1)**
  This will follow the equivalent requirement in Annex I – there is no need to repeat the responsibility statement in the context of a prospectus drawn up as a single document.

- **Prominent disclosure of risk factors that are material to the securities in question (item 2)**
  This is different to the risk factors required under Annex I, as the risk factors here will relate to the securities rather than the issuer. Whilst generic risk factors are certainly acceptable (for example, warning of share price volatility), the FSA encourages all issuers to be as specific as possible.

- **Working capital statement (item 3.1)**
  An issuer (rather than its directors as was previously the case) is required to confirm its opinion that the working capital is sufficient for its present requirements (12 months) or, if not, how it proposes to provide the additional working capital needed. Whilst this suggests that issuers may be able to qualify their working capital statement, note that, as set out in Chapter 1, issuers seeking a primary listing of equity securities on the Official List still need to satisfy the FSA’s eligibility condition requiring a clean 12 month working capital statement.

  The CESR Recommendations include detailed guidance on the preparation of the working capital statement and reiterate that, whilst guaranteed proceeds of the offering may be factored in, other assumptions, sensitivities or caveats will not usually be acceptable in the context of a “clean” working capital statement. An issuer who is confident of its working capital position for the initial 12 months but is aware of working capital difficulties beyond the 12 month period will nonetheless need to consider whether supplementary disclosure is appropriate.
Issuers may (subject to the eligibility condition referred to above) make a “qualified” working capital statement, but in this case, must make it absolutely clear that “it does not have sufficient working capital for its present requirements”. Having clarified this, the prospectus should then go on to disclose information on the timing and quantum of the working capital shortfall, as well as its proposed action plan and the implications of any of the proposed actions being unsuccessful, in each case, in sufficient detail to enable investors to be fully appraised on the actual working capital position of the issuer.

The CESR Recommendations emphasise the level of diligence issuers are expected to undertake into their working capital position to minimise the risk of the basis of the working capital statement subsequently being called into question and re-iterate the need for a thorough “working capital” exercise conducted by the issuer and its advisers.

- **Capitalisation and indebtedness (item 3.2)**
  The CESR Recommendations include a template for disclosure which should be followed “as much as possible”. The CESR Recommendations also require the capitalisation statement to be derived from the latest published financial information, together with disclosure of any material changes if the published figures are over 90 days old. The indebtedness statement must also be no more than 90 days old, but is not required to be sourced from published financials.

- **Interest of persons involved in the issue/offer (item 3.3)**
  This requires disclosure of any interests (including conflicting interests) which are material to the offer, with details of the persons involved and the nature of the interest in question.

- **Reasons for the offer and use of proceeds (item 3.4)**
  This section requires much more detailed disclosure than its equivalent under the old Listing Rules. The “use of proceeds” section must include a breakdown of the principal intended uses, including the amounts attributable to each, the order of priority and in the event of a funding shortfall for any “use”, details of the amount and sources of other funds required.

- **The securities to be offered/admitted to trading (item 4)**
  This requires a description of the securities and related matters. Items not always included in prospectuses under the previous regime include:
  - the ISIN number;
  - currency of the shares;
an indication of the existence of any mandatory takeover bids and/or squeeze out and sell out rules in relation to the shares;

- details of any public takeover bids which have occurred during the last or current financial year.

* Terms and conditions of the offer (item 5)
This section will be of most relevance in the context of offers for sale/subscription or open offers/rights issues.

* Admission to trading and dealing arrangements (item 6)
The issuer is required to disclose information regarding any application being made for the securities in question to be admitted to trading and the applicable dealing arrangements.

* Selling shareholders (item 7)
Details of any selling shareholders (including lock up arrangements) will need to be disclosed.

* Expenses of the offer (item 8)
As was the case under the previous regime, the total net proceeds and estimate of expenses of the offer must be disclosed.

* Dilution (item 9)
The amount and percentage of the dilution resulting from the offer is required to be disclosed.

* Additional Information (item 10)
As under Annex I, consent statements from experts and (in the case of third party information not produced at the issuer’s request) details of third party sources must be included.

Specialist Issuers (CESR Recommendations):
In addition to the general and specific disclosure requirements set out in the Prospectus Rules, the CESR Recommendations suggest various additional disclosures in the case of certain specialist issuers. Note also that, for specialist issuers seeking a primary listing on the Official List, the FSA’s eligibility conditions may also need to be reflected in the prospectus (see Chapter 1 for further details).
Mineral Companies

The CESR Recommendations require that all mineral companies (including prospectuses drawn up by companies that have been trading as a mineral company for more than three years) should set out:

- details of reserves;
- the expected period of working of those reserves;
- the periods and main terms of any licences or concessions and their economic conditions;
- indications of the progress of actual working; and
- an explanation of any exceptional factors that have influenced this information.

In addition, an issuer that has been a mineral company for less than three years should include the following information:

- where the issuer does not hold controlling interests in a majority (by value) of its investments, whether or not it has a reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction;
- financial matters:
  a) an estimate of the funding requirements for the company for at least two years following publication of the prospectus;
  b) estimated cash flow for the next two years or, if greater, estimated cash flow for the period until the end of the first full financial year in which commercial extraction of mineral resources is expected; and
  c) confirmation by an independent accountant or auditor that it is satisfied that the estimated cashflow has been stated by the issuer after due care and enquiry.

- an expert’s report, the content of which should be agreed with the relevant competent authority (no specific requirements are laid out in the CESR Recommendations).

Scientific Research Based Companies

Under the CESR Recommendations, the prospectus of a scientific research based company (which is also a start-up company) must include details of:
laboratory research and development to the extent material to investors, including details of patents granted and the successful completion or progression of significant testing of the effectiveness of the products. If there are no relevant details, a negative statement should be provided;

- the relevant collective expertise and experience of the key technical staff;

- any collaborative research and development agreements with organisations of high standing and repute within the industry, to the extent material to investors. In the absence of such agreements, explanation of how such absence could affect the standing or quality of its research efforts; and

- a comprehensive description of each product, the development of which may have a material effect on the future prospects of the issuer.

Scientific research based companies must also include the information required for start-up companies set out below.

**Start-up Companies**

The CESR Recommendations define a start-up issuer as a company that has been operating in its current sphere of economic activity for less than three years. This definition will therefore include companies which completely change their business less than three years before listing. Companies formed for the purposes of acting as holding companies for existing businesses are not considered to be start-up companies. In addition, special purpose vehicles are not considered to be start-up companies as they are formed for the purpose of the issuance of securities, not to conduct a business.

A prospectus issued by a start-up company should include a discussion of the issuer’s business plan, together with a discussion of the issuer’s strategic objectives and the key assumptions upon which the plan is based (including the development of new sales and new products during the next two financial years and a sensitivity analysis to variations in the major assumptions). Issuers are not obliged to include figures in this business plan. If the business plan includes a profit forecast, an independent auditor’s report is also required.

The prospectus should describe:

- the extent to which the issuer’s business is dependent upon any key individuals, identifying the individuals concerned;

- current and expected market competitors;

- dependence on a limited number of customers or suppliers; and

- any assets necessary for production which are not owned by the issuer.
A valuation report prepared by an independent expert on the services/products of the issuer may be included but is not mandatory.

- **Property Companies**
  Whilst the specific Chapter and requirements for property companies have been removed from the Listing Rules, pursuant to the CESR Recommendations, property company prospectuses must include a valuation report which should:
  
  o be prepared by an independent expert;
  o give the date or dates of inspection of the property;
  o provide all relevant details of material properties necessary for the valuation;
  o be dated and state the effective date of valuation for each property (which must not be more than 12 months prior to the date of the prospectus unless the issuer confirms that there have been no material changes since the date of valuation);
  o include a summary of freehold and leasehold properties and the aggregate of their valuations; and
  o include an explanation of the differences of the valuation figure and the equivalent figure included in the issuer’s latest published individual annual accounts or consolidated accounts, if applicable.

  Only a condensed report needs to be included in the prospectus.

- **Shipping Companies**
  A shipping company is defined in the CESR Recommendations as any issuer whose principal activities relate to the operation of ocean-going shipping, and that manages, leases or owns cargo and/or passenger vessels, either directly or indirectly.

  The prospectus of a shipping company should refer to:
  
  o the name of any ship management company or group (if other than the issuer) which manages the vessels and an indication of the terms and duration of its appointment, the basis of its remuneration and any arrangements relating to the termination of its appointment;
  o all relevant information regarding each material vessel which is managed, leased or owned directly or indirectly by the issuer; and
  o if the issuer has contracts to build new vessels or improve existing vessels, detailed information regarding each material vessel.
Issuers are expected to include a condensed valuation report, prepared by an experienced independent expert. The valuation report is not required if the issuer does not intend to finance new vessels, where there has been no re-valuation of any of the vessels for the purpose of the issue and it is prominently stated that the valuations quoted are as at the date of the initial purchase or charter of the vessel(s).

iii. **Omission of Information (PR 2.5)**

Omission of information from a prospectus is allowed where the FSA considers the disclosure of such information would be contrary to the public interest, seriously detrimental to the issuer or the information is of minor importance in the specific situation (PR 2.5.2R).

In addition, if in exceptional cases, certain information that is required to be included in a prospectus is inappropriate to the issuer’s activity or the legal form of the issuer or the securities to which the prospectus relates, the prospectus must contain equivalent information to the required information (PR 2.5.1R).

iv. **Incorporation by Reference (PR 2.4)**

Under the previous listing regime, the FSA did not permit issuers to incorporate information by reference in a prospectus. However, under the new rules it is now permitted in limited circumstances, on the basis that it will facilitate the process of drawing up a prospectus and render it less costly.

Issuers may incorporate information by reference in a prospectus only if such information has been approved by or filed with the FSA (PR 2.4.1R). Examples of information that may be incorporated by reference include instruments of incorporation, annual accounts and half-yearly accounts. Information incorporated by reference must be the latest available to the issuer (PR 2.4.3R).

If information is incorporated in the prospectus by reference to another document, the applicant must submit a hard copy of the document (annotated to indicate which item of the schedules and building blocks it relates to) to the FSA for vetting and approval, together with the rest of the prospectus (PR 3.1.1(5)R).

Where information is incorporated by reference, a cross-reference list must be provided in the prospectus to enable investors to identify easily specific items of information. Documents incorporated by reference must be in the same language as the prospectus and any material changes to the information incorporated by reference must be clearly stated in the prospectus. Issuers must be mindful at all times of not endangering investor protection in terms of comprehensibility and accessibility of information and should also, of course, ensure that any information incorporated by reference has been prepared and verified to “prospectus standards”.

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v. **Exclusion of Final Price (PR 2.3.2R) and Supplementary Prospectus**

Unlike the previous Listing Rules, which did not permit the FSA to approve a prospectus or listing particulars which omitted the final price, the Prospectus Rules permit a prospectus to be approved and published even without the final price and number of securities if:

- the prospectus discloses the criteria and/or the conditions in accordance with which the price and number of securities or, in the case of price, the maximum price; and
- the final price and number of securities must be filed with the FSA and published as soon as practicable.

Where an investor has agreed to buy or subscribe for securities in circumstances where the final offer price or the amount of securities to be offered to the public is not included in the prospectus, it may withdraw its acceptance within 2 working days of the date on which the competent authority is informed of the price and final number of securities unless the prospectus contains (in the case of the amount of securities), the criteria and/or conditions according to which the final number will be determined, or in the case of price, the criteria and/or conditions according to which the price will be determined or the maximum price (s87Q of the FSMA).

As under the previous regime, the new rules require the publication of a supplementary prospectus if, during the relevant period after publication of the original prospectus, a significant new factor, material mistake or inaccuracy relating to the information provided in the prospectus arises or is identified (s87G of the FSMA). However, unlike the previous position, an investor who has agreed to buy or subscribe securities on the basis of the original prospectus may withdraw his acceptance within 2 working days of the publication of the supplementary prospectus (s87Q of the FSMA).
C. ADVERTISEMENTS (PR 3.3.2R)

The Prospectus Rules have introduced new requirements for advertisements relating to a public offer or application for admission to trading. Any such advertisement must be consistent with the prospectus, must not be inaccurate or misleading, must state that a prospectus has or will be published (and indicate where it is or will be available) and be clearly recognisable as an advertisement.

Guidance recommends that any written advertisement should also include a bold and prominent statement to the effect that it is not a prospectus but an advertisement and that investors should not subscribe for any securities referred to except on the basis of information contained in the prospectus.

The Prospectus Rules also emphasise that all information concerning an offer or admission to trading, whether oral or in written form, must be consistent with the prospectus.

D. RESPONSIBILITY AND LIABILITY FOR A PROSPECTUS

Despite the harmonisation of content and, to some extent, distribution requirements for prospectuses, (save in relation to liability for the summary as referred to below) the Prospectus Directive provides no harmonisation of civil liability in respect of that content. The Prospectus Directive has largely deferred to individual member states to impose responsibility and liability for a prospectus. PR 5.5R imposes responsibility for a prospectus relating to equity securities for which the United Kingdom is the home Member State on, among others:

i. the issuer of the securities to which the prospectus relates;
ii. the issuer's "directors" or a person who has agreed to become a director;
iii. anyone stated in the prospectus as accepting responsibility;
iv. any person who has authorised the contents of a prospectus;
v. the offeror, if this is not the issuer unless the issuer is responsible for the prospectus, the prospectus was drawn up primarily by the issuer and the offeror is making the offer in association with the issuer.

For these purposes, the issuer's directors comprise:

i. All persons who are directors of the company at the time the prospectus is published.

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27 The Prospectus Rules requirements are in addition to the UK's “financial promotion” regime pursuant to the FSMA, and any applicable “financial promotion” restrictions must also be adhered to.

28 Issuers should bear in mind that these could extend to “draft” or “pathfinder” versions of a prospectus which may be circulated on a very restricted basis prior to publication of the final prospectus.
ii. All persons who have authorised themselves to be named and are named in the prospectus as a director.

iii. All persons who have agreed to become a director of the company either immediately or in the future (for example, after flotation).

As mentioned above, the prospectus must include a responsibility statement whereby those responsible accept responsibility for all the information in the prospectus and confirm that “having taken all reasonable care to ensure that such is the case, the information contained in this document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import”.

One important feature of the new regime is the abolition of the “split responsibility statement” on takeovers; where a prospectus is published (see Chapter 7 for further details) directors will now be required to take responsibility for information on both offeror and target.

As was the case under the previous rules, if a prospectus is published which contains inaccurate or misleading information (or omits any requisite information), the persons responsible for the prospectus may be liable to compensate a disgruntled investor who has suffered loss as a result (s90 of the FSMA). The one area where the Prospectus Directive does attempt to harmonise liability is for the summary of the prospectus (designed to meet the concern that a person responsible could be liable for incomplete information contained in the summary, especially as there is a limit of 2,500 words). The Prospectus Directive provides that civil liability attaches to the summary only if it is misleading, inaccurate or inconsistent when read together with the rest of the prospectus.
CHAPTER 4

APPROVAL AND PUBLICATION OF A PROSPECTUS

A. THE APPROVAL PROCESS

As mentioned in Chapter 2, before a prospectus may be published, it must be submitted to, and approved by, the issuer’s competent authority (which, is the FSA for UK issuers) (PR 3.1.10 R). Under s87 of the FSMA and PR 3.1.7R, the FSA may not approve a prospectus unless it is satisfied that:

i. the UK is the “home member state” in relation to the issuer; and
ii. the prospectus contains all necessary information and otherwise complies with the Prospectus Rules and FSMA.

In order to obtain this approval, an issuer is required to lodge the following with the FSA (PR 3.1.1R):

i. a completed Form A (Application for approval of a prospectus);
ii. the prospectus;
iii. if the order of items in the prospectus does not coincide with the orders in the schedules and building blocks, a cross reference list identifying the pages where each item can be found in the prospectus;
iv. a letter identifying non-applicable items in the schedules and building blocks;
v. if information is incorporated in the prospectus by reference to another document, a copy of that document;
vi. any request for omission of information from the prospectus;
vii. share application form;
viii. a copy of the issuer’s board resolution allotting the securities;
ix. contact details of individuals able to answer queries from the FSA; and
x. any other information the FSA may require.

The completed Form A, relevant fee, and drafts of all other documents referred to above must be submitted to the FSA at least 20 working days before the intended approval date (in the context of an IPO or an issuer not otherwise listed on a regulated market) and at least 10 working days before the intended approval date in the context of a prospectus published by an issuer with a listing on a regulated market. Final form versions of any draft documents submitted must be submitted to the FSA before midday on the approval date.
B. PUBLICATION REQUIREMENTS

Once a prospectus has been approved by the FSA, it must be filed and made available to the public at least six business days prior to the end of the offer (which is slightly longer than was the case under the old Listing Rules (PR 3.2.3R). A prospectus may be made available to the public through:

i. its publication in a national newspaper; or

ii. being made available in printed form free of charge to the public at the offices of the London Stock Exchange, or the registered office of the issuer and at the offices of the placing agent; or

iii. in electronic form on the website of the issuer and, if applicable, the placing agent; or

iv. on the website of the London Stock Exchange.

Earlier proposals to make publication on an issuer’s website mandatory were dropped as a result of consultation, as respondents felt that there were a number of issuers without a website, and that this may have also resulted in inadvertent breaches of overseas securities legislation.

The previous requirement for a formal notice in national newspapers relating to the admission of securities to listing has also been abolished. Note also that a prospectus no longer needs to be filed with Companies House.

C. OVERSEAS ISSUERS: HOME MEMBER STATE

Under the Prospectus Directive, each issuer has a ‘home member state’ regardless of whether or not it is incorporated in the EEA. The competent authority of an issuer’s ‘home member state’ is the entity responsible for approval of prospectuses and so the identity of the relevant home member state will be important.

The home member state of an issuer of equity (including convertibles) or low denomination debt incorporated in the EEA (an EEA issuer), will always be the member state in which it has its registered office.

However, the analysis is more complex for issuers of equity (including convertibles) and low denomination debt not incorporated in the EEA (a non-EEA issuer), as their home member state will be either:

i. the member state in which their securities are intended to be offered to the public for the first time after 31 December 2003; or

29 Low denomination debt for these purposes comprises non-equity securities with a denomination under £1,000 or near equivalent in another currency.
ii. the member state in which they make their first application for admission to trading on a regulated market in the EEA, at the election of the issuer\textsuperscript{30}. The flow-chart in Appendix II illustrates the manner in which a home member state may be selected.

The regulations are ambiguous in the context of a public offer made simultaneously in a number of member states or where securities are admitted to trading on a regulated market at the end of the public offer period – current market sentiment suggests that an issuer could still choose, but this would need to be reviewed on a case by case basis. For the purpose of determining whether a “public offer” has been made, the relevant rules are the ones which were in force in the relevant state at the time the offer was made.

Non-EEA issuers already listed on a regulated market are also required to elect their home member state, by notice in writing to the relevant competent authority. Whilst the market view is that the home member state of such issuers will be the state in which they are listed, given the ambiguity in the definition, non-EEA issuers do need to ensure that they have made valid elections in this regard.

Once a home member state is determined for a non-EEA issuer, this is permanent and is not something the issuer can subsequently change. In addition to its implications under the Prospectus Directive, the member state selected will generally also be the issuer’s home member state for the purposes of the Transparency Directive, which is due to be implemented in member states by 20 January 2007\textsuperscript{31}.

Both EU and non-EU issuers of debt with a denomination equal to, or greater than, €1,000, (or near equivalent in another currency) and most derivatives (unless the underlying securities belong to the issuer’s group) still have a free choice of “home member state” on an issue-by-issue basis. This means that an issuer may have several home member states: one governing all issues of equity and low-denomination debt, and different ones for individual debt issues.

D. TRANSFER OF APPROVAL

As a general rule, it will always be the competent authority in the issuer’s home member state approving the prospectus. However, there may be circumstances where the competent authority of another member state is better placed to approve it (for example, where the public offer is being undertaken in another member state, or the issuer is applying for admission on a regulated market in another member state). Both

\textsuperscript{30} Or offeror or person asking for admission, although an election by either of these can effectively be overridden by the issuer.

\textsuperscript{31} The Transparency Directive deals with continuing obligations and disclosure requirements for issuers listed on regulated markets in the EEA. Under the Transparency Directive, an issuer can have only one home member state and an election in relation to the home member state remains valid for three years.
competent authorities in question (the transferor and transferee) must agree to the transfer. The FSA has indicated that it would only agree to a transfer if, in all the circumstances, it considers such transfer to be in the best interests of investors.

If the issuer’s home member state is the UK, the procedure for seeking a transfer from the FSA to another competent authority is as follows:

i. the person making the request must do so in writing to the FSA at least ten working days before the date the transfer is sought;

ii. the request must:
   * set out the reasons for the proposed transfer;
   * state the name of the competent authority to whom the transfer is sought; and
   * include a copy of the draft prospectus for which application is sought for transfer of the approval to another Member State;

iii. the FSA will consider transferring the function of approving a prospectus to the competent authority of another EEA State:
   * if requested to do so by the issuer, offeror or person seeking admission or by another competent authority; or
   * in other cases if the FSA considers it would be more appropriate for another competent authority to perform that function.

In practice, if a transfer to another competent authority is to be sought, issuers and their advisers would be well advised to contact the FSA and the other relevant competent authority at the earliest possible stage.

E. PASSPORTING

The Prospectus Rules introduce the ability to “passport” prospectuses on a pan-European basis, making it easier for issuers to raise capital across Europe. However, even though all member states were required to implement the Prospective Directive by 1 July 2005, not all have done so and so an issuer wishing to take advantage of the new “passporting” facility will need to ascertain whether the new regime has been properly implemented in the member states in question.

i. "Passport" from the UK

Any UK issuer wishing to “passport” a prospectus to other member states should comply with the following:

* prepare a prospectus in accordance with the Prospectus Rules, and have this vetted by the FSA in the normal way;
In order to make a public offer in another Member State, the FSA will need to send that Member State the following (the Required Information):

- a certificate of approval;
- a copy of the prospectus as approved; and
- a summary of the prospectus, including a translation where required by the competent authority of the relevant Host State.

A request to the FSA to supply the Required Information to the competent authority in the proposed host state can be submitted either at the time the draft prospectus is submitted for approval by the FSA or subsequently (bearing in mind that a prospectus is, in principle, valid for a period of 12 months from approval).

The request must be made in writing on a “Form B” and must include:

- the relevant prospectus as approved; and
- a translation of the summary if required by the competent authority of the relevant Host State.

The FSA must provide the Required Information to the competent authority of the relevant host state:

- within one working day of the date of approval of the prospectus if the request is submitted together with a draft prospectus for approval; or
- otherwise, within three working days beginning on the date of the request.

The FSA will inform the applicant as soon as practicable after it has supplied the Required Information to the competent authority of the relevant host state and the relevant public offer in that state can then be made.

The procedure where the securities are to be admitted to trading on a regulated market of another member state will be the same as above but the issuer will also have to comply with any additional requirements relating to the admission of securities to trading on the relevant market.

ii. “Passport” to the UK

A non-UK issuer wishing to “passport” a prospectus into the UK (for the purposes of making a public offer or seeking admission to trading on a regulated market) should comply with the following:

- prepare a prospectus and have it approved by its home member state competent authority in accordance with the rules of that competent authority.
- the competent authority of the home member state would then provide the FSA with the Required Information and the FSA will, as soon as practicable:
inform the issuer, offeror or person seeking admission that it has received
the Required Information; and
○ publish the Required Information on its website.

The relevant issuer will then be able to offer securities to the public in the UK.

If the issuer also wishes to apply for admission of the securities to trading on a
regulated market then, in addition to the above, it would also be required to
follow the procedures set out in the Listing Rules for admission to listing of
securities of the relevant type. See Chapter 2 for further details.

iii. Liability

Issuers wishing to take advantage of the pan-european “passporting” opportunities
offered by the new regime should bear in mind that the Prospectus Directive has not
harmonised prospectus liability across Europe. This means that an issuer who has
passported a prospectus in more than one member state will be subject, in relation to
the prospectus, to the civil liability regime of each Member State in which the
prospectus is passported, and so should take advice accordingly.
CHAPTER 5

ELIGIBILITY FOR ADMISSION TO TRADING ON AIM

Given that AIM is no longer a "regulated market", the implementation of the Prospectus Directive has left the previous regime for new applicants seeking an admission to trading on AIM largely unchanged. Unlike with an application for admission to the Official List, there are limited restrictions on the ability of an applicant to seek to have its shares admitted to trading on AIM. There is no requirement for a minimum historic trading record, there is no requirement that a minimum amount of the shares of the company should be in public hands and there is no minimum market capitalisation.

As was the case under the previous regime, there are however some conditions that may need to be satisfied in order to facilitate the admission of an issuer to trading on AIM:

i. Public Company
   Whilst there is no specific requirement under the AIM Rules for an applicant to be a public company, an English company would need "public company" status in order to enable it to offer shares to the public.

ii. Lock-ins for new businesses (AR 7)
   Where the issuer’s main activity is a business which has not been independent and earning revenue for at least two years, the AIM Rules require all directors and senior employees of the company to enter into lock-in agreements such that they will not dispose of shares in the company for a period of at least one year following admission, save in limited circumstances.

iii. Investing companies (AR 8)
   In the case of an “investing company” seeking admission, the AIM Rules require it to raise at least £3 million in cash via an equity fundraising on, or immediately before, admission.

iv. Special conditions (AR 9)
   The London Stock Exchange has a residual ability to require compliance with special conditions as a pre-requisite to admission, although in practice this power is rarely used.
v. **Transferability of shares (AR 32)**

All AIM companies must ensure that their shares are freely transferable except where, in any jurisdiction, statute or regulation places restrictions upon transferability or where the AIM company is seeking to limit the number of shareholders domiciled in a particular country to ensure that it does not become subject to statute or regulation.

This carve out caters, *inter alia*, for US companies (or non-US companies who are treated as a “Category 3 Issuer” for the purpose of US securities laws) who may need to adhere to US regulations imposing restrictions on transfer, and also enables companies to manage their shareholder base to ensure that they do not become subject to certain US regulations by virtue of having a certain number of US shareholders. The equivalent requirement under the Listing Rules for Official List issuers is not subject to this carve out.

vi. **Settlement (AR 36)**

Save where the London Stock Exchange otherwise agrees, AIM securities must be eligible for electronic settlement. In practice, the London Stock Exchange has been willing to waive the requirement for securities to be eligible for electronic settlement where this is prohibited by applicable law or regulation (for example, US securities laws restrict the electronic settlement of securities in US companies (or non-US companies who are treated as a “Category 3 Issuer” for the purpose of US securities laws)).
CHAPTER 6

THE ADMISSION PROCESS AND DOCUMENTATION FOR AN AIM IPO

A. THE ADMISSION DOCUMENT

As mentioned in Chapter 2, a prospectus is required in two circumstances:

i. where an issuer is making an offer of transferable securities to the public; and

ii. where an issuer is seeking admission to a regulated market.

The regime heralded by the Prospectus Directive and, in particular, the requirement for all prospectuses to be approved by the FSA was viewed by AIM as a potential threat to one of AIM’s key advantages: the ability for issuers and their advisers to control their own documents and, as a result, control their own fundraising timetable. With this in mind, on 12 October 2004, AIM ceased to be a “regulated market”, becoming an “exchange regulated market” instead.32

As a result of the “de-regulation” of AIM’s status, an AIM IPO or offering will only require a FSA-approved prospectus where an “offer to the public” is also being made. An AIM IPO conducted via an institutional placing will not normally incorporate an “offer to the public” for these purposes33 and, under the AIM Rules (AR 3), would typically require the publication of an “AIM admission document” instead.34 With the repeal of the POS Regulations34 the London Stock Exchange over-hauled the disclosure requirements for AIM admission documents. Consultation was undertaken on several alternatives (including retaining the previous POS Regulations requirements) and in determining the minimum content requirements for an admission document under the new regime, the London Stock Exchange has used the specific requirements of Annex I to III of the Prospectus Rules as a starting point. As was the case under the previous rules, the additional requirements of Schedule 2 to the AIM Rules must also be adhered to35.

32 The consequences of the change in AIM’s status could extend beyond the ambit of the Prospectus Directive and definitions of “listed” or “publicly traded” securities drafted by reference to “regulated markets” will not include AIM securities. Note, for example, that AIM securities may not be suitable consideration in the context of listed company takeovers in Germany.

33 Please see Chapter 7 for details of the definition of an “offer to the public” and an analysis of the applicable exemptions.

34 The Public Offers of Securities Regulations 1995 or “POS Regulations” was the previous legislation governing offers of securities by unlisted and AIM companies and contained the content requirements for prospectuses and AIM admission documents published by such companies.

35 These include a clean working capital statement, disclosures on directors, disclosure of any promoters, the investing strategy for an investing company, lock in arrangements and the requisite health warning.
However, the intention in the London Stock Exchange's review was never to introduce changes to the previous regime which would materially increase the costs of joining AIM by requiring significant additional legal or financial due diligence, nor to raise disclosure standards to those of the Official List, and so certain of the more onerous disclosure requirements have been carved out or left to the nominated adviser’s discretion. However, despite this, the new rules will certainly see a number of disclosures (such as material contracts or share capital history) previously included as a matter of best practice now being a mandatory requirement.

Key items carved out include:

i. pro forma financial information where there has been a “gross significant change” from historic financial information;

ii. the operating and financial review;

iii. capital resources;

iv. research and development, patents and licences;

v. administrative, management, and supervisory bodies and senior management;

vi. remuneration and benefits;

vii. working capital;

viii. capitalisation and indebtedness;

ix. interests of those in the offer;

x. terms and conditions of the offer;

xi. admission to trading and dealing arrangements; and

xii. documents on display.

AIM companies will only need to report on the basis of IAS in respect of financial years commencing on or after 1 January 2007, and under Schedule 2, historic financial information included in admission documents in respect of financial periods prior to that date may be presented in accordance with UK GAAP rather than IAS.

As mentioned above, in addition to items carved out altogether, certain items have been carved out on a “qualified basis” which means that they may be excluded at the discretion of the nominated adviser. These items include:

i. principal markets;

ii. shareholdings and share options of non-board members of senior management.

Note that the previous disclosures required under Schedule 2 to the AIM Rules in relation to directors continues to apply.

This is governed by Schedule 2 to the AIM Rules which requires a clean working capital statement from the Directors covering the next 12 months.
In addition to the specific disclosure requirements, as was the case under the previous rules, AIM admission documents must also satisfy a general duty to disclose any other information which it considers necessary to enable investors to form a full understanding of the assets and liabilities, financial position, profits and losses, and prospects of the applicant and its securities, and the rights attaching to those securities, and any other matter contained in the admission document.

In view of issuers' overriding general duty to disclose all material information, and of the responsibility reserved to the Nominated Advisers in ensuring compliance with the rules, there may well be cases where “carved out” items ought to be disclosed as a matter of best practice.

B. THE NOMINATED ADVISER

Each issuer must appoint, and then retain, a nominated adviser (often referred to as a “Nomad”) at all times. The London Stock Exchange approves, and maintains a list of, corporate finance firms who are qualified to act as “Nomads”. The Nomad will initially advise on an issuer’s eligibility for AIM and is required to confirm to the London Stock Exchange that the directors understand the nature of their obligations and responsibilities, both in relation to the listing process and afterwards, and that, to the best of the nominated adviser’s belief, the directors of the issuer are complying with the AIM Rules on admission. The judgement as to whether a company is suitable for admission to AIM rests with the nominated adviser, not the London Stock Exchange. In many ways therefore, the role of Nomads in the context of AIM deals is a more onerous one than the role reserved to Sponsors in the context of the Official List.

The responsibilities of the nominated adviser are owed solely to the London Stock Exchange, and, under AR 39, include the following:

i. the Nomad is required to confirm to the London Stock Exchange, in the context of any issuer producing an admission document that:

- the directors have received satisfactory advice and guidance as to the nature of their obligations to ensure compliance by the issuer with the AIM Rules;
- to the best of its knowledge and belief, having made due and careful enquiry, all relevant requirements of the AIM Rules have been complied with; and
- in its opinion, it is satisfied that the issuer and the securities which are the subject of the application are appropriate to be admitted to AIM.
ii. the Nomad must comply with its obligations under the AIM Rules. It is also required to:

- be available at all times to advise and guide the directors of the relevant AIM company on their obligations to ensure compliance by the AIM company on an ongoing basis with the AIM Rules;
- submit a “Nomad’s declaration” whenever the AIM company is required to produce an admission document;
- provide the London Stock Exchange with any other information in such form and within such timescales as it may reasonably require;
- liaise with the London Stock Exchange as appropriate;
- review regularly an AIM company’s actual trading performance and financial condition against any profit forecast, estimate or projection included in the admission document or otherwise made public on behalf of the AIM company with a view to determining whether there has been a material change which should be announced (under AR 17);
- inform the London Stock Exchange when it ceases to act as Nomad to any particular AIM company;
- abide by the relevant eligibility criteria at all times; and
- act with due skill and care at all times.

C. ANCILLARY DOCUMENTATION

i. 10-Day Announcement
The applicant must provide to the London Stock Exchange, at least 10 business days before the expected date of admission to AIM, the information specified by Schedule 1 of the AIM Rules. This includes the company’s name, address and country of incorporation, a description of the company’s business, the number and type of securities for which it is seeking admission (and detailing the number and type of securities to be held as treasury shares), an indication of whether it will be raising capital on admission, the names, addresses and functions of the directors and proposed directors, the persons who are interested in 3% or more of its securities, its anticipated accounting reference date, the name and address of its nominated adviser and broker and details of where the admission document will be available. Quoted applicants are required to produce additional information as set out in the supplement to Schedule 1 of the AIM Rules.
ii. Other application documents

At least three business days before the expected date of admission, an applicant must submit to the Exchange:

- an electronic version of its admission document;
- the first year’s AIM fee;
- a completed application form; and
- a declaration in the prescribed form under Rule 39 and Schedules 6 and 7 of the AIM Rules from the nominated adviser (as described in paragraph B above).

D. FAST TRACK TO AIM

The London Stock Exchange has recently also introduced a fast track admission route to AIM. The rules permit companies already listed on the Australian Stock Exchange, Euronext, Deutsche Börse, JSE Securities Exchange (South Africa), Nasdaq, New York Stock Exchange, Stockholmsbörsen, the Swiss Exchange, the Toronto Stock Exchange or the UK’s Official List (referred to as “designated markets”) and which have been trading on a designated market for at least 18 months to use their existing annual report and accounts as a basis for admission to trading on AIM.

Issuers wishing to use the expedited admission route will need to comply with limited eligibility conditions (see Chapter 5 for further details) and will need to appoint a nominated adviser and broker.

The key advantage of the fast track route is that an issuer’s annual report and accounts takes the place of the admission document, and is simply supplemented by a fuller pre-admission announcement. Admission on this expedited basis will require the following:

i. At least 20 business days before the expected date of admission, the issuer will need to submit to the London Stock Exchange the information required by the “10-day announcement” referred to above plus:

- the name of the designated market on which it has been traded, and the date from which it has been traded on such market;
- confirmation that it has adhered to any legal and regulatory requirements involved in having a listing on the relevant designated market;
- a website address where the company’s latest published report and accounts, recent public documents and announcements and details of the rights attaching to its securities can be viewed (and where more than 9 months have elapsed since the financial year end to which its most recent annual accounts relate, audited interim statements will also be required to be available on a website);
• details of its intended strategy following admission;
• a description of any significant change in the financial or trading position of the issuer which has occurred since the end of the last financial period for which audited accounts have been prepared;
• a statement confirming that the issuer’s directors have no reason to believe that the working capital available to the issuer or its group will be insufficient for at least 12 months from admission;
• details of any lock in arrangements required pursuant to the AIM Rules (as described in paragraph (ii) of Chapter 5);
• a brief description of the arrangements for settling transactions in its securities;
• information equivalent to that required for an admission document which is not currently public (in addition to the specific disclosure requirements for admission documents, note that the AIM Rules require that an Admission Document must contain any other information an issuer reasonably considers necessary to enable investors to form a full understanding the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the securities, the rights attaching to those securities and any other matter contained in the admission document. This information would also need to be included in the “fast track” announcement, or a link provided to the information, to comply with the requirement that information equivalent to that required by an Admission Document is made available); and
• the number of each class of securities held as treasury shares.

ii. At least three business days before the expected date of admission, the issuer will need to submit to the London Stock Exchange:
• three copies of its latest report and accounts (which must have been prepared in accordance with, or reconciled to, UK GAAP, US GAAP or IAS);
• a formal application for the admission of the securities;
• the Nomad’s declaration referred to above.

Although the procedure should indeed provide a faster entry procedure for qualifying issuers, the content requirements in relation to the pre-admission announcement will still require due diligence and verification procedures to be undertaken, to ensure that the company has published accurate information equivalent to that required by an Admission Document and to enable the required working capital comfort to be given.
E. ROUTE TO THE OFFICIAL LIST

One of the effects of AIM’s change in status from a “regulated market” to an "exchange regulated market" is that moving to the Official List using the previous AIM fast track will no longer be an option for AIM companies. An AIM company wishing to move up to the Official List will need to produce a full, approved prospectus and will need to adhere to the standard listing requirements and conditions (see Chapters 1 to 4 for further details).
CHAPTER 7

FURTHER ISSUES ON THE OFFICIAL LIST & AIM: IS A PROSPECTUS REQUIRED?

As mentioned above, under the new regime, a “prospectus” is required, subject to certain exemptions, if an issuer:

- offers “securities” to the public in the UK; or
- seeks the admission of “securities” to trading on a regulated market in the UK (the Official List is a regulated market for these purposes).  

In order for a security to be caught under the new regime, it must be a “transferable security”. The key consideration in determining whether a security is a “transferable security” for these purposes appears to lie in whether it is negotiable on a capital market. Both the European Commission and the FSA have taken the view that most options granted under employee benefit schemes will not be “transferable securities”. In addition, the current view is that loan notes issued on takeovers will generally not be caught by the new regime, as long as the terms of the loan notes state that they are not transferable (or limit transfer rights to family members and trusts). Note also that securities included in an offer where the total consideration under the offer is less than €2,500,000 (calculated over a period of 12 months) fall outside the scope of the “offer to the public” regime and so no prospectus will be required in the context of such an offer. This exemption is not relevant where a prospectus is required because a company’s securities are to be admitted to trading on a regulated market.

A prospectus will be required in the event of either an offer to the public or admission to a regulated market. Each limb has its own set of exemptions, and whilst there is a certain degree of overlap, the availability of an exemption under one limb will not necessarily mean that the issue is also exempt under the other.

A. DEFINITION OF “OFFER TO THE PUBLIC

The definition in the Prospectus Directive of an “offer of securities to the public” refers to “a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable
an investor to decide to purchase or subscribe to these securities’’ and goes on to state that ‘‘this definition shall also be applicable to the placing of securities through financial intermediaries’’ (Article1(d)).

i. **Secondary Market Trading**

The width of the definition of an ‘‘offer to the public’’ has led to concerns that normal secondary market communications, such as the posting of prices by traders on electronic dealing systems, could amount to an ‘‘offer of securities to the public’’. In response to market concerns, in implementing the Prospectus Directive, the UK regulations have clarified that a communication in connection with trading on a regulated market and certain other markets will not amount to a public offer that requires publication of a prospectus (s102B(5) of FSMA).

ii. **Communications**

Another key difference from the previous definition of ‘‘public offers’’ applicable in the UK40 lies in the absence under the new rules of express reference to ‘‘acceptance’’ of the offer which would give rise to a ‘‘contract’’ for the issue of the securities in question. Whilst in theory this definition could encompass a broad range of related communications (e.g. newspaper articles or analyst reports), the Treasury has clarified, in its feedback to consultation that it does not regard information presented by journalists for illustrative or informative purposes only as constituting an offer, and the current market view is that a sensible approach would reflect the following:

- the person issuing the communication must have a legitimate interest in the offer being progressed;
- an ‘‘offer’’ must have been made, or have a reasonable prospect of being made;
- the nature of the information included must be sufficient to enable an investment decision to be made (this will typically require adequate descriptions of the securities, the issuer’s business and prospects and a price (or price range) would ordinarily be required – of course, less information may suffice for these purposes in the context of a very well known issuer or highly publicised offering).

B. **EXEMPTIONS FROM “AN OFFER TO THE PUBLIC”**

Offerings falling within any the following categories will not constitute an ‘‘offer to the public’’. Note that these exemptions may be combined in the context of any particular offering:

40 The previous definition required a person to make an offer of securities ‘‘which if accepted, would give rise to a contract for their issue or sale by him or by another person with whom he has made arrangements for their issue or sale’’.

55
i. **an offer of securities made to or directed at “qualified investors” only:**

The implementation of a registration system for qualified investors is optional for EEA states, and is being introduced by the FSA with a view to encouraging smaller issuers to approach private investors and others when seeking to raise capital. The FSA has decided that prospective qualified investors will be able to self-certify their status. “Qualified investors” fall into three main categories:

- legal entities that are **authorised or regulated** to operate in the financial markets (such as investment firms, financial institutions, insurance companies, collective investment schemes and pension funds), entities whose corporate purpose is solely to invest in securities, national and regional governments, central banks and similar institutions and other legal enterprises that are not small and medium-sized enterprises (SMEs);
- individuals resident in the UK and SMEs with a registered office in the UK who are registered by the FSA on its register of qualified investors; and
- investors **authorised as a qualified investor by any other EEA State** for the purposes of the Prospectus Directive.

An individual wishing to register on the FSA’s register of qualified investors must, as well as being resident in the UK, meet at least two of the following criteria:

- he has carried out transactions of a significant size on securities markets at an average frequency of at least 10 per quarter over the previous four quarters;
- his securities portfolio exceeds €500,000;
- he works or has worked for at least one year in the financial sector in a professional position which requires knowledge of securities investment.

A company wishing to register must, as well as having its registered office in the UK, be small enough to qualify as an SME, which means that it must meet at least two of the following criteria, according to its last annual accounts:

- its average number of employees is less than 250;
- its total balance sheet does not exceed €43 million;
- its annual net turnover does not exceed €50 million.

ii. **an offer of securities made to or directed at fewer than 100 persons, other than qualified investors, per EEA State:**

The ability for an issuer to make an offer to 99 non-qualified investors in each EEA state (or to any number outside the EEA) (which may be in addition to qualified investors) without requiring a prospectus does amount to a considerable relaxation of the position under the previous rules.
Unlike the position under the previous rules, the 100 person exemption is not aggregated over a 12 month period. The Treasury did initially try and introduce this concept, but withdrew this as a result of consultation feedback highlighting the lack of any such provision in the Prospectus Directive and the consequent "gold-plating" that this would have involved41. In addition, respondents expressed concern over the difficulties in assessing the number of offerees for the purposes of aggregation. As a result, the issue of whether successive offers of securities constitute a single offer for the purposes of this exemption has been left to be determined on a case by case basis, and it is for the FSA to ensure that any potential ambiguity in the regulations is not abused.

The consultation period for the new rules saw a great deal of debate between the FSA and representatives of the smaller cap sector over the interpretation of this exemption, and in particular, its applicability in the context of discretionary private client brokers. Many AIM offerings in particular involve placings to discretionary private client brokers who have the ability to make an investment decision on behalf of their underlying clients without reference to them. To the surprise of the industry, the FSA’s initial view was that if shares were placed with discretionary private client brokers, their clients would count towards the 100 person threshold. However, in response to industry concerns, the regulations implemented by the Treasury expressly clarify that an offer to a discretionary private client broker who:

- is a qualified investor; and
- has complete authority to take decisions on behalf of his client without reference to the client

will be deemed to be an offer to the relevant broker and not the underlying clients. Note that a nominee shareholder will not fall within this "safe harbour" and neither will a broker which has an advisory or execution-only relationship with his underlying client, as it will be the clients who make the ultimate investment decision and hence who count towards the 100 person threshold.

iii. an offer of securities where the minimum consideration per investor is at least €50,000;

This should prove to be a useful exemption in our view, and, by imposing a minimum €50,000 commitment, issuers should be able to facilitate some shareholder participation in offerings without triggering the prospectus obligation.

41 The Prospectus Directive is a “maximum harmonisation” directive and as such, the UK is not able to impose any “super-equivalent” provisions.
iv. an offer of securities where the minimum denomination per unit is at least €50,000;

v. an offer of securities with a total consideration of less than €100,000 taken over a period of 12 months;

In view of the fact that, as mentioned above, offers raising less than €2,500,000 over a 12 month period fall outside the “public offer” regime, it is difficult to see where this exemption would be used.

vi. shares issued in substitution for shares of the same class already issued if the new issue does not involve any increase in the issued capital;

vii. securities offered in connection with a takeover made by means of a securities exchange offer if a document is available containing information which is regarded by the FSA as being equivalent to that of a prospectus;

The FSA has indicated that it will require the “equivalent” document to be identical to a prospectus, and will vet this document to ascertain whether it would be prospectus equivalent. Schemes of arrangement (including those implementing takeovers) are not currently regarded as constituting “offers” for this purpose and so will not require publication of this “equivalent” document.

viii. securities offered or allotted in connection with a merger, if a document is available containing information which is regarded by the FSA as being equivalent to that of a prospectus;

ix. shares offered or allotted free of charge to existing shareholders (i.e. a bonus issue) and dividends paid out in the form of shares of the same class as the shares in respect of which the dividends are paid (i.e. scrip dividends or dividend reinvestment schemes), provided a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;

x. securities offered or allotted to existing or former directors or employees by their employer which has (or whose affiliated undertaking has) securities already admitted to trading on a regulated market, provided a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer.

Whilst this exempts shares issued under share incentive arrangements operated by companies listed on the Official List or other EEA regulated markets, AIM companies or unlisted companies will need to rely on another exemption in the context of securities issued to employees. Such possible exemptions include the following:-

- non-transferable share options fall outside of the prospectus regime as they do not constitute “transferable securities”. The issue of shares pursuant to the exercise of such options will therefore also be exempt.
the exemption for offers to less than 100 persons may be useful in the context of an issuer with fewer than 100 participating employees per EEA state.

- share awards with a total consideration of under €2.5 million will also fall outside the “offer to the public” regime.

Also, as mentioned above, a prospectus will not be required in respect of securities included in an offer where the total consideration under the offer is less than €2,500,000. This limit is calculated over a period of 12 months. This exemption is not relevant where a prospectus is required because a company’s securities are to be admitted to trading on a regulated market. The UK did consider, and consult on, whether an additional regime should be introduced for under €2,500,000 offerings conducted by unlisted or AIM companies. However, in response to market feedback which favoured the more flexible approach for small offers advocated by the Prospectus Directive, the UK decided against introducing an additional regulatory regime for small offerings42.

C. EXEMPTIONS FROM “ADMISSION TO TRADING ON A REGULATED MARKET”

In order for a company listed on the Official List to issue further shares without requiring a prospectus, it must fall within both an exemption from the “offer to the public” regime and an exemption from the requirement for a prospectus to be published upon admission to the Official List. The key exemptions from the obligation to publish a prospectus in the context of “admission to a regulated market” are as follows:

i. shares representing, over a period of 12 months, less than 10% of the number of shares of the same class already admitted to trading on the same regulated market;

As under the previous rules, listed companies are (subject to the availability of a suitable “offer to the public” exemption) able to issue 10% of their issued share capital without triggering the prospectus requirements.

The FSA has stated that in calculating the 10% limit, neither shares issued in the previous 12 months which fall within an exemption from the requirement to issue a prospectus in connection with the admission of shares to a regulated market nor any shares issued and admitted prior to 1 July 2005 need to be included. Note however that such shares will be taken into account in calculating the issued share capital of the company to which the 10% threshold applies.

42 Note that the UK’s “financial promotion” regime still applies to small offerings.
ii. shares issued in substitution for shares of the same class already admitted to trading on the same regulated market, provided the issue of the shares does not involve any increase in the issued capital;

iii. securities offered in connection with a takeover made by means of a securities exchange offer if a document is available containing information which is regarded by the FSA as being equivalent to that of a prospectus;

As mentioned above, the FSA has indicated that it will require the “equivalent” document to be identical to a prospectus, and will vet this document to ascertain whether it would be prospectus equivalent. It should be noted that this “equivalent document” will not benefit from the passport which would be available to an approved prospectus. Unlike the equivalent provision under the “offer to the public” rules, a takeover undertaken by way of a scheme of arrangement involving the issue of listed securities will not necessarily be exempt.

iv. securities offered or allotted in connection with a merger, if a document is available containing information which is regarded by the FSA as being equivalent to that of a prospectus;

v. bonus issues of shares, scrip dividend issues of shares and dividend reinvestment schemes, provided the shares are of the same class as the shares in respect of which the dividends are paid and as the shares already admitted to trading on the same regulated market and if a document is made available containing information on the number and nature of the shares and the reasons for and details of the offer;

vi. securities offered or allotted to existing or former directors or employees by their employer or an affiliated undertaking, provided the securities are of the same class as those already admitted to trading on the same regulated market and a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer;

viii. shares resulting from the conversion or exchange of other securities or from the exercise of the rights conferred by other securities, provided the shares are of the same class as the shares already admitted to trading on the same regulated market;

viii. securities already admitted to trading on another regulated market, subject to certain conditions including:

- the securities having been admitted to that regulated market for more than 18 months,
the ongoing obligations for trading on the other regulated market have been fulfilled; and
the person requesting the admission to trading under this exemption making a summary document available.

It should be emphasised that these are only exemptions from the obligation to publish a prospectus in connection with an admission to trading. One of the above issues of securities could nevertheless still qualify as an offer of securities to the public and require a prospectus for that reason. For instance, a rights issue or open offer may not require a prospectus because it falls within the 10% exemption but it may nevertheless constitute an offer to the public.

D. SECONDARY OFFERINGS BY OFFICIAL LIST COMPANIES

i. Placing

A placing of shares to qualified investors and/or fewer than 100 other persons per member state which represents less than 10% of the issuer’s issued share capital over a 12 month period will not require a prospectus. The previous Listing Rules required offerings at a discount to the market price of more than 10% to be conducted via a rights issues. The new Listing Rules have changed the position on this and discounted offerings may now be undertaken as non pre-emptive placings as long as shareholder approval has been obtained.

Placings in excess of the 10% limit referred to above will require a prospectus even though they will not constitute an “offer to the public”.

ii. Open Offers and Rights Issues

Open offers and rights issues will invariably require a prospectus even if they fall within the 10% limit, as they will typically constitute an “offer to the public”.

Under the previous rules in the UK, rights issues were subject to a less stringent disclosure regime comprising a circular or abbreviated prospectus rather than a full prospectus. However, this will no longer apply under the new regime. No preferential treatment is afforded to rights issues which will accordingly typically require a full prospectus.

iii. Shares issued in connection with Takeover Offers

No “prospectus” is required under the rules as long as an “equivalent document” is published, and the FSA has indicated that this equivalent document must be identical to a prospectus. The FSA will vet the “equivalent document” to ensure its equivalence with a prospectus, and so in practice, the exemptions available here will not result in significant time or cost savings.
E. SECONDARY OFFERINGS BY AIM COMPANIES

i. Placing

No prospectus will be required as the “qualified investor” and “100 person” exemptions should mean that a placing is not an “offer to the public”. In this regard, the new regime offers more flexibility that the old rules – not only has the “50 person” threshold applicable under the POS Regulations been increased to 100 persons per EEA state, but the definition of “qualified investor” has also been extended.

ii. Open Offers and Rights Issues

Open offers and rights issues to all shareholders will generally constitute “offers to the public” thus requiring publication of an FSA-approved prospectus. However, there are a number of alternatives available to AIM companies wishing to raise further funds without the publication of a prospectus:

- Many placings on AIM disregard the guidelines of investor protection committees recommending that placings of over 10% of the issuer’s issued share capital be accompanied by an open offer, and on this basis, even larger fundraisings could be conducted by way of a placing only, thereby avoiding the need for a prospectus. We are also seeing a more flexible approach being taken by AIM companies with respect to the dis-application of pre-emption rights, which would further facilitate larger placings. In February 2005, the DTI published Paul Myners’ report into shareholder pre-emption rights in the UK. Paul Myners concluded that while the principle of shareholders having pre-emptive rights was valuable and should not be eroded, the existing blanket approach to disapplying these rights, due to a rigid interpretation of the existing guidelines, was not working as intended.

In view of the report’s recommendations for increased flexibility and shareholder communication, particularly for smaller or high-tech companies (the biotech sector was cited in particular as an industry for whom the rigid approach to pre-emption was proving debilitating), coupled with the increased time and cost involved in open offers or rights issues under the new regime, we are likely to see an increase in pre-emption dis-applications sought, and the number (and size) of placings undertaken.

- As mentioned above, AIM issuers who wish to provide shareholders with an opportunity to participate in an offering may undertake a “qualified open offer”, imposing a minimum €50,000 commitment to ensure that the offering does not constitute an “offer to the public”, and this may well serve as a useful compromise.
iii. Shares issued in connection with Takeover Offers

No “prospectus” is required under the rules as long as an “equivalent document” is published, and the FSA has indicated that this equivalent document must be identical to a prospectus. The FSA will vet the “equivalent document” to ensure its equivalence with a prospectus, and so in practice, the exemptions available here will not result in significant time or cost savings.

However, unlike the position with Official List companies, shares issued pursuant to a scheme of arrangement will not require publication of this “equivalent” document, as a scheme of arrangement is not currently regarded as constituting an “offer to the public”.
CHAPTER 8

CONTINUING OBLIGATIONS AND DISCLOSURE RULES FOR OFFICIAL LIST COMPANIES

A. LISTING PRINCIPLES (LR 7)

The new Listing Rules introduce six over-arching “listing principles” applicable to issuers with primary listings of equity securities on the Official List. These listing principles are enforceable by the FSA as “rules” and are designed to ensure that the spirit, as well as the letter, of the Listing Rules are adhered to. These listing principles require a relevant issuer to:

i. take reasonable steps to enable its directors to understand their responsibilities and obligations as directors;

This will require listed companies to operate appropriate training programmes for directors covering their obligations under the Listing Rules and Disclosure Rules. Issuers who had programmes in place under the previous regime may find that these need to be updated to reflect the new rules.

This listing principle requires the listed company to take “reasonable steps” and any breach of this principle will therefore be assessed by the FSA by reference to an objective test.

ii. take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations;

The FSA has clarified that this listing principle is limited to a listed company’s obligations under the Listing Rules and Disclosure Rules and does not extend to matters outside the Listing Rules and Disclosure Rules, such as internal control requirements of the Combined Code.

FSA guidance has identified that the focus of this listing principle is on listed companies having adequate procedures, systems and controls in relation to:

- identifying whether any obligations arise under Chapters 10 and 11 of the Listing Rules (i.e., announcements and circulars in relation to significant transactions and related party transactions); and

- the timely and accurate disclosure of information to the market (LR 7.2.2G).
The timely and accurate disclosure of information to the market is a key obligation of listed companies and for these purposes FSA guidance provides that a listed company with a primary listing of equity securities should have adequate systems and controls to be able to ensure that:

- it can properly identify information which requires disclosure under the Listing Rules or Disclosure Rules in a timely manner; and
- any such information is properly considered by the directors and that such a consideration encompasses whether the information should be disclosed (LR 7.2.3G).

iii. act with integrity towards holders and potential holders of its listed equity securities;

There is clearly an overlap here with the Disclosure Rules and “market manipulation” regime43, and the behaviour targeted by this listing principle could include any deliberate act to mislead shareholders or potential shareholders.

iv. communicate information to holders and potential holders of its listed equity securities in such a away as to avoid the creation or continuation of a false market in such listed equity securities;

This listing principle overlaps with the Disclosure Rules in particular. In response to market concerns regarding the relationship between this listing principle and the Disclosure Rules, the FSA has provided guidance stating that this listing principle is designed to remind issuers, at a high level, that accurate and timely communication with the market is an important part of the UK regulatory regime. The FSA has emphasised that it is not intended to cut across or change existing rules relating to disclosure and that it does not go beyond or require more than the detailed Listing Rules or Disclosure Rules. In particular, the FSA has clarified that this listing principle does not require an issuer to prevent inappropriate market reaction as this would extend the listing principle to matters outside an issuer’s control.

v. ensure that it treats all holders of the same class of its listed equity securities that are in the same position equally in respect of the rights attached to such listed equity securities;

The reference to holders who “are in the same position” retains some flexibility for issuers who are restricted by the laws of other jurisdictions from treating all shareholders in exactly the same way.

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43 The “market manipulation” regime in the UK is principally governed by s397 of the FSMA – a detailed analysis of this area is outside the scope of this Guide.
vi. **deal with the FSA in an open and co-operative manner.**

This listing principle supplements LR 1.3.1R(3) of the Listing Rules which provides that an issuer must provide to the FSA as soon as possible “any other information or explanation that the FSA may reasonably require to verify whether listing rules are being and have been complied with”.

Whilst the concept of over-arching “principles” is new to the Listing Rules, it is a concept with which the UK market is familiar, as it has been a feature of financial services and takeover regulation for some time. However, opinion appears to be divided on the merits of introducing listing principles to the Listing Rules. Whilst it is generally accepted that the use of “general principles” in the City Code on Takeovers and Mergers has provided a useful context for the interpretation of specific rules and has filled the gaps left by specific rules where no particular result is dictated, there remains a concern that the FSA might exploit the inherent ambiguity in the drafting of the principles and might use the listing principles (in particular, the fourth principle on avoiding a false market) to pursue issuers in the absence of a specific breach. In addition, the listing principles have been criticised as they duplicate, in some respects, the more detailed rules.

The FSA has responded to market concerns by confirming that it will exercise enforcement powers “reasonably and proportionately” and that “in policy terms, the listing principles are not intended to apply different standards and processes to issues than are expected under the existing rules”. Guidance has been included in the new Listing Rules stating that the principles should be interpreted together with the underlying rules and guidance and that they are designed to assist issuers in identifying their obligations under the underlying rules. The FSA has clarified that the principles do not expand the scope of the rules, particularly in the case of detailed provisions such as the Disclosure Rules. Nonetheless, the introduction of these general principles to the Listing Rules will require issuers to take a broader view of their regulatory obligations and will undoubtedly make it more difficult for any issuers wishing to circumvent the specific rules to do so without consequence.

**B. DISCLOSURE RULES**

**i. Disclosure of inside information**

The disclosure obligations for issuers under the Disclosure Rules are designed to ensure that there is prompt and fair disclosure of relevant information to the market. Issuers are under an express responsibility to take all reasonable care to ensure any
information they give to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information\(^{44}\). This requirement largely replicates its counterpart under the previous Listing Rules, although under DR 1.3.5R, there is now a further requirement that issuers must not combine an announcement with the marketing of activities in a manner likely to be misleading and issuers are now required, therefore, to have regard to the wider context of their marketing activities against which any announcement will be interpreted.

Chapter 2 of the Disclosure Rules provides that issuers must notify a RIS as soon as possible of any inside information which directly concerns the issuer, unless DR 2.5.1R applies (which allows the disclosure of inside information to be delayed).

- **Definition of “inside information” (DR 2.2.3 to 2.2.8):**
  
  Inside information is information of a precise nature which:
  
  - is not generally available;
  
  - relates directly or indirectly to one or more issuers of qualifying investments or to the qualifying investments themselves; and
  
  - would, if generally available, be likely to have a significant effect on the price of the qualifying investments (that is, qualifying investments actually issued by the issuer) or on the price of related investments\(^{45}\).

  For these purposes, information will be precise if it indicates circumstances that exist or may reasonably be expected to come into existence (or an event that has occurred or may reasonably be expected to occur) and is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the relevant share price. The test therefore requires issuers to form a judgement on the likelihood of the circumstances taking place and whether there is sufficient certainty as to what will happen to enable its effect to be measured.

  As under the previous Listing Rules, central to the operation of the “insider information” test is the issue of price sensitivity. In determining the likely price significance of information, guidance on the Disclosure Rules (DR 2.2.4G(1)) recommends that an issuer should assess whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions and would therefore be likely to have a significant effect on the price of the issuer’s financial investments.

\(^{45}\) Section 118C of the FSMA
As with previous guidance on disclosure of price sensitive information, the FSA guidance on the Disclosure Rules indicates that there is no figure (percentage change or otherwise) that can be set for any issuer when determining what constitutes a significant effect on the price of the financial instruments, as this will vary from issuer to issuer. Guidance on the operation of the “reasonable investor test” requires an issuer to take account of the fact that the significance of information will vary between issuers and depend on a variety of factors such as the issuer’s size, recent developments and market sentiment about the issuer and the sector in which it operates. In addition, the issuer is to assume that a reasonable investor will make investment decisions relating to the investment to maximise his economic self-interest.

Furthermore, any assessment should take into consideration the anticipated impact of the information in light of the totality of the issuer’s activities, reliability of the source and other market variables. Information that is likely to be considered relevant to a reasonable investor’s decision includes information that affects:

- the assets and liabilities of the issuer;
- the performance or expectation of performance of the issuer’s business;
- the issuer’s financial condition;
- the course of the issuer’s business;
- major new developments in the issuer’s business; and
- information previously disclosed to the market

The general disclosure obligation in DR 2.2.1R reinforces section 397 of FSMA, under which, it is a criminal offence to dishonestly conceal material facts in circumstances which create a false market. The failure to comply with the Disclosure Rules may be evidence of dishonest concealment of materials facts for the purpose of section 397.

- **Timing of Disclosure:**
  Subject to a very limited ability to delay disclosure, the Disclosure Rules require any required announcement to be made “as soon as possible”.46

New guidance under the Disclosure Rules (DR 2.2.8G) requires the issuer’s directors to carefully and continuously monitor any changes in the company’s circumstances that may mean that an announcement is required. Compliance with the Disclosure Rules will therefore require an issuer’s executive officers to

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46 This is generally considered to be the equivalent of the requirement for announcements to be made “without delay” under the old Listing Rules.
monitor performance and give consideration to whether there has been a change in the company’s expectation as to its performance. They must draw any material change in expectation as soon as possible to the attention of the board for it to review and make a formal decision on any required announcement. When changes in the company’s circumstances are under consideration, a listed company should also consider consulting its financial advisers as early as possible. This guidance replicates the position taken by the FSA in its public statement of Marconi’s breach of the old disclosure obligations under paragraph 9.2 of the old Listing Rules.

Note that the FSA is not likely to regard the inability physically to convene a full board meeting as justifying a delay in releasing inside information, as most issuers can delegate authority to make “emergency” announcements to a small number of directors, who can quickly agree a course of action during a telephone meeting; and where an issuer is faced with an unexpected event, it may be able to issue a holding announcement.

• Unexpected events and holding announcements:

Whilst, as a general rule, an issuer must announce all inside information in its possession as soon as possible, where it is faced with an unexpected and significant event, a short delay may be acceptable if necessary to clarify the situation (DR 2.2.9G). The duration of any acceptable delay will depend on the circumstances in question – however, this will be judged by the FSA with the benefit of hindsight, and so it will be important for an issuer to be able to demonstrate that it reacted reasonably and expeditiously to the event in question.

As was the case under the previous Listing Rules, the issuer should make a holding announcement where it believes there is a danger that inside information is likely to leak out before the facts and their impact can be confirmed. In such cases, the announcement should contain as much detail of the subject matter as possible, the reasons why a fuller announcement could not be made and an undertaking to announce further details as soon as possible (DR 2.2.9G).

Where the issuer is unable or unwilling to make a holding announcement, trading of its securities may be suspended until it is in a position to make such an announcement (DR 2.2.9G(3)). Note that an issuer whose trading is suspended must still comply with applicable Disclosure Rules. An issuer who is in any doubts about the timing of its disclosure obligations should consult the FSA at the earliest opportunity.
Publication on an Issuer’s Website (DR 2.3)

Where an issuer has an internet site, the Disclosure Rules provide that:

- inside information announced via a RIS must be available on the issuer’s internet site by the close of the business day following the day of the RIS announcement;
- an issuer must ensure that inside information is notified to a RIS before or simultaneously with publication on its internet. Guidance makes it clear that an issuer should not publish inside information on its internet site as an alternative to or in advance of its disclosure via a RIS;
- an issuer must, for a period of one year following publication, post on its internet sites all inside information that it is required to disclose via a RIS (DR 2.3.5R).

ii. Delaying Disclosure

Under DR 2.5.1R, an issuer may delay public disclosure of inside information so as not to prejudice its legitimate interests where:

- such omission would not be likely to mislead the public;
- the person receiving the information owes the company a duty of confidentiality; and
- the company is able to ensure the confidentiality of the information

Whilst accepting that “delaying disclosure of inside information will not always mislead the public” FSA guidance emphasises that developing situations should be monitored in case a disclosure is required if circumstances change. This reinforces the new guidance to the directors under DR 2.2.8G to continuously monitor circumstances to ensure compliance with the Disclosure Rules. The FSA appears keen to ensure that this exemption should not be applied too widely and has indicated that, other than in relation to impending developments or in the following limited circumstances there are unlikely to be other circumstances justifying a delay in disclosure:

- negotiations in course or related elements where the outcome or normal pattern of these negotiations would be likely to be affected by public disclosure. In particular, where the issuer’s financial viability is in grave and imminent danger (although not within the scope of insolvency law) public disclosure of the information may be delayed for a limited time where public disclosure would seriously jeopardise the shareholders’ interest by undermining the conclusion of specific negotiations designed to ensure the issuer’s long term financial recovery. (Note that this does not allow an issuer to delay public disclosure of the fact
that it is in financial difficulty or of its worsening financial condition but is limited to the fact or substance of the negotiations to deal with such a situation).

- with regard to dual board structures only, decisions taken or contracts made by the issuer’s management body which need approval of one of the issuer’s other bodies to become effective, where the organisation of the issuer requires separation between these bodies, provided that a public disclosure of information before approval together with the simultaneous announcement that this approval is still pending would jeopardise the public’s correct assessment of the information (as UK companies typically have a unitary board structure, this limb is of little use in the UK).

In summary, and as a matter of good practice, an issuer considering delaying disclosure, should:

- satisfy itself that the negotiations or impending developments would be likely to be prejudiced by early disclosure;
- satisfy itself that non-disclosure would not be likely to mislead the market;
- confirm that recipients of the inside information owe a duty of confidentiality to the issuer;
- monitor leaks and other changes in circumstances to determine whether an obligation to make an announcement has been triggered; and
- prepare a holding announcement for immediate release in the event of an actual or likely breach of confidence.

iii. Selective Disclosure

The Disclosure Rules allow selective disclosure of inside information only where the recipient owes a duty of confidentiality to the company and requires the information to carry out duties for the company. Under the Disclosure Rules, unless a company is delaying disclosure in accordance with DR 2.5.1R, it must ensure that no inside information is released and if it is released to a third party in the normal exercise of his employment, profession or duties, the company must announce that information via a RIS either simultaneously where the disclosure was intentional or as soon as possible where the disclosure was unintentional.

Where a company is permitted to delay disclosure under DR 2.5.1R it may selectively disclose the inside information to persons owing a duty of confidentiality, but selective disclosure may only be made to another person if it is in the normal course of exercise
of his employment, profession or duties (in other words, selective disclosure requires both a duty of confidentiality and a good reason for the person to receive the information).

Depending on the circumstances, under DR 2.5.6G, an issuer may be justified in disclosing inside information to the following persons:

- its employees who require the information to perform their functions;
- its advisers and advisers of any other persons involved in the matter in question;
- persons with whom the company is negotiating, or intends to negotiate, any commercial financial or investment transaction;
- employee representatives or trades union acting on their behalf;
- any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority;
- its major shareholders and lenders;
- credit rating agencies.

Note that the above list of persons is not exhaustive. Selective disclosure to any of the above persons is not automatically justified in every circumstance and issuers should bear in mind that the wider the group of recipients of inside information, the greater the likelihood of a leak which would then trigger an announcement.

iv. Dealing with Analysts

In its newsletter List!\(^{47}\), the FSA sets out informal advice on good practice when dealing with analysts, which largely replicates the guidance on dealing with analysts in the old ‘Price Sensitive Information Guide’. This guidance includes the following:

- issuers should have a clear policy about the extent to which they should answer analysts’ questions;
- issuers should not answer analysts’ questions where individually or cumulatively the answers would provide inside 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 draw to their attention;
- in most circumstances an issuer is not obliged to make an announcement correcting public forecasts by analysts. The knowledge that an analyst’s forecast is materially inaccurate is not likely to amount to inside information and even if it does amount to inside information, it is likely that issuers will be able to delay disclosure of such information. However, an issuer should consider

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making an announcement to correct significant errors that come to its attention, which in its view have led to a widespread and serious misapprehension in the market. Note that knowledge that a forecast is inaccurate is more likely to amount to inside information if an issuer is only covered by a small number of analysts;

- if an analyst sends an issuer a draft report for its comments, the issuer can choose whether to respond. Issuers should not consider themselves obliged to correct incorrect statements or assumptions and issuers are free to decline to comment on any aspect of a draft report from an analyst. However, the FSA does not prohibit issuers from correcting analysts’ reports and sometimes it may be necessary to comment as to do otherwise would be misleading. In commenting on a draft report an issuer should take care not to breach the Disclosure Rules;

- issuers should consider establishing internal procedures to avoid mistakenly providing inside information in meetings with analysts. These procedures could, for example, include ensuring that more than one representative of the issuer is present during these meetings and that accurate records of all discussions are kept; or providing access to non-participating audience through telephone lines; and

- employees meeting analysts during visits should be briefed on the extent and nature of information that they can communicate.

v. Dealing with Journalists and Market Rumours

- Embargoes and the “Friday Night Drop”

The FSA advises issuers not to provide inside information to journalists or others under an embargo that seeks to prevent them using the information until it has been formally announced as this essentially amounts to selective disclosure. Although the Disclosure Rules do allow selective disclosure to persons owing a duty of confidentiality to the issuer, this does not contemplate inside information being given to journalists. The FSA has emphasised that in disclosing information to third parties under an embargo, an issuer risks losing control over the information as soon as the disclosure is made.

The practice of delaying disclosure of inside information until Friday evening when most RISs have closed for business (the so-called “Friday night drop”) has also been condemned by the FSA. The FSA has emphasised that this practice is not allowed under the Disclosure Rules – an issuer may only delay the
disclosure of inside information where it is able to ensure the confidentiality of the information and this is unlikely to be the case where inside information is disclosed to the press.

- **Rumours**

Where there is press speculation or market rumour concerning an issuer, the issuer should assess whether its general obligation to make an announcement has arisen under DR 2.2.1R. To do this the issuer needs to assess carefully whether the speculation or rumour has given rise to a situation where the issuer has inside information.

If the press speculation or market rumour is largely accurate and the information underlying the rumour is inside information then it is likely that the issuer can no longer delay disclosure under DR 2.5.1R as it can no longer ensure confidentiality of the inside information and it should announce the inside information as soon as possible (DR 2.7.2G).

Conversely, the knowledge that the press speculation or market rumour is false is not likely to amount to inside information (although the FSA has informally acknowledged in its newsletter that there is a possibility that the issuer’s knowledge that a particular piece of information or story is false could, in very limited circumstances, amount to inside information) and even if it does, the FSA expects in most cases that an issuer would be able to delay disclosure (often indefinitely) in accordance with DR 2.5.1R (DR 2.7.3G).

FSA informal advice states that while the FSA does not usually require an issuer to make a negative statement denying a wholly unfounded rumour, if the issuer does decide to make such a denial it should consider doing so by making a formal announcement and where a denial is likely to affect the share price, then a formal announcement would be best practice. The FSA also suggests that an issuer should announce a negative statement, in circumstances where it is concerned that reaction to a wholly unfounded rumour is resulting in a disorderly market.

The FSA is, of course, likely to contact an issuer or its advisers if there are rumours relating to it in the media and will expect a full justification for the issuer’s proposed course of action and confirmation of the issuer’s true position so that it can monitor developments properly.

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Control of Inside Information and Insider Lists

The Disclosure Rules require issuers to have a framework for the control of inside information and:

- to establish effective arrangements to deny access to inside information to persons other than those who require it for the exercise of their functions within the issuer;
- to have in place measures to enable public disclosure to be made via a RIS as soon as possible if the company cannot ensure the confidentiality of the inside information;
- as mentioned above, where an issuer is delaying disclosure under DR 2.5.1R it should prepare a holding announcement (in accordance with DR 2.2.9G(2)) to be released if and when any actual or likely breach of confidence occurs;*
- to take the necessary measures to ensure that employees with access to inside information acknowledge the legal and regulatory duties entailed and are aware of the sanctions for misusing or improperly circulating information.

Whilst guidance under the old regime certainly encouraged listed companies to adopt formal policies for handling price sensitive information, the emphasis under the new rules on procedures and the careful monitoring by the directors of changes in circumstances make it even more important that an issuer has a workable policy on identifying, controlling and disclosing inside information and monitoring and addressing market rumour.

Insider Lists (DR 2.8)

The Disclosure Rules require issuers to compile lists of persons working for them (under a contract of employment or otherwise) with access to inside information relating, directly or indirectly, to the issuer on a regular or occasional basis. Issuers are also required to ensure that persons acting on their behalf or for their account (for example, advisers) compile such lists. Specifically, an issuer should maintain a list of:

- its own employees with access to inside information; and
- the issuer’s principal contacts at any other firm or company acting on its behalf or on its account with whom it has had direct contact and who also have access to inside information about it. (Persons need to be both acting for the issuer and have access to inside information to be included on the list – this will therefore include persons working for the issuer’s

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*This is a new obligation to ensure that any announcement can be used as soon as there is a breach of confidentiality.
agents and advisers such as deal teams and client-facing staff who have access to inside information, but not, for example, staff engaged in a "control room" function).

Insider lists must contain the identity of each person with access to inside information and the reason why such person is on the insider list (note that this does not require the issuer to give a detailed description of the reason why the person has access to the relevant inside information. All that is required is a statement that the person is on the list because he has access to the inside information in question, possibly including categories of the types of information to which each person has access).

The FSA is not prescriptive on how the lists should be maintained and has said that it is acceptable to keep the required information in electronic form. Insider lists must be updated promptly when there is a change to the reason why a person is already on the list, when any person who is not already on the list is provided with access to inside information and to indicate the date on which a person already on the list ceases to have access to inside information. Where requested an issuer must provide an insider list to the FSA as soon as possible and so an issuer must therefore ensure that it has procedures in place to produce insider lists at short notice.

Insider lists need to be kept for five years from the date on which they are drawn up or updated.

vii. Disclosure of Dealings by “Persons Discharging Managerial Responsibilities”

The Disclosure Rules (DR 2.1.2R) require those exercising managerial responsibilities and their connected persons to disclose to the issuer transactions conducted on their own account in the shares of the issuer, or derivatives or any other financial instrument(s) relating to those shares.

For these purposes, “persons discharging managerial responsibilities” or “PDMRs” will comprise:

- the directors of the issuer; and
- senior executives of the issuer who are not directors but who have regular access to inside information relating directly or indirectly to the issuer and the power to make managerial decisions affecting the future development and business prospects of the issuer (s96B(1) of FSMA).

50 DR 3.1.2R does not define the meaning of “transactions conducted on their own account”, however the FSA has said that it would expect the grant and exercise of share options to be included in this
Their connected persons for these purposes include:

- the spouse, child or step-child of a director or other PDMR;
- a body corporate with which the director or other PDMR is “associated” (that is, a body corporate where the director or other PDMR and persons connected with him together control, or can exercise, more than 20% of the voting power in general meeting (excluding votes attached to treasury shares) or are interested in at least 20% (in nominal value) of the shares (excluding treasury shares) comprised in the equity share capital);
- the trustee of a trust (excluding an employee’s share scheme or a pension scheme) of which the beneficiaries or potential beneficiaries include the director or other PDMR, his spouse or any of his children or step-children aged under 18 years, or a body corporate with which he is associated;
- any partner of the director or other PDMR, or a partner of any person who is connected with the director or other PDMR;
- a relative of a director or other PDMR within an issuer who at the date of the transaction in question has shared the same household as that person for at least 12 months (note that “relative” is not defined for these purposes);
- a body corporate in which a director or other PDMR within an issuer or any person connected with him by virtue of the above paragraphs, is a director or other senior executive who has the power to make management decisions affecting the future development and business prospects of that body corporate (s96B(2) of FSMA).

The definition of connected “bodies corporate” referred to in the last bullet above was met with concern as it suggests that listed companies are connected persons of each other where they share the same director. However, to alleviate this concern, the FSA has provided guidance\(^5\) offering a much narrower interpretation to that definition – in deciding whether a body corporate is connected to a PDMR, the FSA advises that issuers should consider the level of control that the PDMR or their connected persons has within that body corporate. The person must have the power to control that corporate body rather than merely being able to exert influence over it. The FSA has clarified that it only expects an issuer to announce dealings in its shares, derivatives or other financial instruments by a corporate body, where a PDMR at an issuer or one of their connected persons is the sole director of a corporate body; and/or is a director or senior executive of a corporate body that has the power to control the corporate body’s management decisions affecting the corporate body’s future development and business prospects.

\(^5\) List! No. 9 (June 2005)
Note that these disclosure obligations supplement the disclosure requirements set out in the Companies Act 1985, which will continue to apply as normal.

C. SPECIFIC DISCLOSURE OBLIGATIONS

In addition to the general obligation of disclosure under the Disclosure Rules, issuers are subject to an obligation under the Listing Rules (Chapter 9), to announce without delay any of the following events or facts:

i. any change of name of the Company (LR 9.6.16R);

ii. any proposed change in its capital structure (including the structure of its debt) (LR 9.6.4(1)R);

iii. any change in its accounting reference date (and if the change in the accounting reference date leads to an extension of the accounting period to more than 14 months, the issuer will be required to produce a second interim report in accordance with LR 9.6.21R) (LR 9.6.20R to LR 9.6.22G);

iv. any change in the rights attaching to its listed securities (LR 9.6.4(2)R);

v. any redemption of its listed securities (LR 9.6.4(3)R);

vi. the basis of allotment of listed securities offered generally to the public for cash or by way of an open offer to its shareholders (LR 9.6.5R);

vii. any extension of time granted for the currency of temporary documents of title (LR 9.6.4(4)R);

viii. the effect of any issue of further securities on the terms of the exercise of rights under options, warrants and convertible securities (LR 9.6.4(5)R);

ix. the results of any new issue of listed shares or other equity securities or of a public offering of shares or other equity securities (LR 9.6.4(6)R). Where the securities are subject to an underwriting agreement, the issuer may, at its discretion, delay notifying a RIS for up to 2 business days until the obligation by the underwriter to take or procure others to take securities is finally determined or lapses. In the case of an issue or offer of securities which is not underwritten, notification of the result must be made as soon as it is known;

x. any information disclosed to it by shareholders under sections 198 to 208 of the Companies Act 1985 (or obtained by it under section 212 of the Companies Act 1985) together with the dates on which the transaction was effected, and the date on which the Company was notified of it, although this requirement will be deemed to have been discharged if the relevant interest has been notified to a RIS. These provisions relate to the disclosure by holders of interests in 3% or more of the issuers’ share capital of their interests. An overseas issuer with a
primary listing is required to notify a RIS as soon as possible of “equivalent” information whenever it becomes aware of such information (LR 9.6.7R to LR 9.6.10G).

xi. dealings in securities by directors and persons discharging managerial responsibilities (and their connected person) (DR 3.1.2R and DR 3.1.4R)

xii. the appointment of a new director, including details of the status of the new director, any particular executive responsibilities or functions assumed by the director, and the date of appointment (LR 9.6.11R);

xiii. the removal or resignation of a director, and any important changes in the functions or executive responsibilities of a director (LR 9.6.11R);

xiv. any lock up arrangements not already disclosed, changes to any lock up arrangements previously disclosed and any disposals under exemptions permitted thereunder (LR 9.6.16R and LR 9.6.17R); and

xv. all shareholder resolutions passed (other than ordinary business at an AGM) (LR 9.6.18R).

In addition, if the information discloses dealings by a director during a close period (as defined in the “Model Code”) the issuer must state the exceptional circumstances giving rise to the director’s ability to deal during the close period (LR 9.2.10R).

The issuer must announce the following information in respect of any new director appointed to its board, unless such details have already been disclosed in a prospectus or other circular published by the issuer (LR 9.6.13R):

i. details of 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;

ii. any unspent convictions in relation to indictable offences; details of any receiverships, compulsory liquidation, creditor’s voluntary liquidations, administrations, 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 an executive director at the time of or within the 12 months preceding such event;

iii. details of 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;

iv. details of 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 month preceding such event; and
v. details of any public criticisms of such person by statutory or regulatory authorities (including recognised 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.

Any changes in this information in respect of current directors must also be announced (LR 9.6.14R).

D. ANNUAL INFORMATION UPDATE

The Prospectus Rules (PR 5.2) contain a continuing obligation which requires issuers whose securities are admitted to trading on a regulated market to at least annually prepare a document (an annual information update) that contains or refers to all regulated information that they have published or made available to the public within and outside the EU over the preceding 12 months.

The annual information update must be filed with the FSA by notification to a RIS within 20 working days of the date on which the issuer files its annual accounts with the FSA.

The annual information update should state:

- where the actual information may be obtained
- a short description of the nature of the information.
- the date of filing or publication of the information.
- that some information may be out of date (if that is the case).

Although described as an “information update”, the Prospectus Rules do not oblige listed companies to update the information previously published and this “annual information update” may simply be a composite list of the information published in the preceding 12 months.

E. OTHER CONTINUING OBLIGATIONS

i. Equality of treatment (LR 9.3.1R and LR 9.3.2R)

As reinforced by listing principle 5, the issuer must ensure equality of treatment for all holders of the issuer’s listed securities who are in the same position. This includes the posting of all circulars to overseas holders.

ii. Registrar (LR 9.2.4R)

The Company must appoint a registrar in the United Kingdom.
iii. **Admitted to Trading** (LR 9.2.1R and LR 9.2.2R)

A listed company must ensure that its securities are admitted to trading on, for example, the main market of the London Stock Exchange, at all times, and must inform the Financial Services Authority as soon as possible if trading in its securities has been cancelled or suspended.

iv. **Shares in Public Hands** (LR 9.2.15R to LR 9.2.17G)

A listed company must ensure that the proportion of any class of its listed securities in the hands of the public does not fall below 25% of the total issued shares of that class (or, where applicable, such lower percentage as the FSA may have agreed). For these purposes, shares in “public hands” do not include shares held by directors, their connected persons, persons with the contractual right to nominate a director, trustees of an employee share scheme and any person (or persons in the same group) with an interest in 5% or more of the shares of the relevant class.

An issuer that no longer complies with this requirement must notify the FSA as soon possible, and the FSA may cancel the listing of its shares (although it may allow a reasonable time to restore the required percentage, unless this is precluded by the need to maintain the smooth operation of the market or to protect investors).

v. **Settlement** (LR 9.2.3R)

The issuer must ensure that its shares are eligible for electronic settlement at all times.

vi. **Further Issues**

Where shares of the same class as the listed securities are allotted, an application for admission to listing of such shares must be made as soon as possible (and in any event within one month of the allotment).

vii. **Amendments to Constitution**

An issuer must lodge two copies of any proposed amendments to its constitution with the FSA by no later than when it sends out the notice convening the meeting to decide on the amendments.

viii. **Compliance with the Model Code and Disclosure Rules** (LR 9.2.5G to LR 9.2.9G)

The issuer must require all persons discharging managerial responsibilities and employees of the issuer or its group with access to inside information to comply with the Model Code and take all proper and reasonable steps to secure compliance with its terms. The issuer may impose more rigorous dealing obligations than those required by the Model Code.

The issuer is also required to comply with the Disclosure Rules.
ix. Discounted Option Arrangements (LR 9.4.4R and LR 9.4.5R)

Directors or employees of the listed company or any subsidiary may not be granted (without prior approval by shareholders) options, warrants or other rights to subscribe for shares with an exercise price of a discount to market value (although this prohibition does not apply to options or warrants or other rights to subscribe for shares granted pursuant to an employee share scheme if participation is offered on similar terms to all or substantially all employees).

x. Pre-Emption Rights (LR 9.3.11R and LR 9.3.12R)

Issuers proposing to issue equity shares for cash (or to sell treasury shares for cash) must do so pre-emptively unless:

* the proposed issue is within the terms of a general disapplication of statutory pre-emption rights; or
* the issuer is selling treasury shares for cash to an employee share scheme; or
* the issuer is undertaking a rights issue or open offer and the non-pre-emptive element relates to fractional entitlements or the exclusion of equity shares from the pre-emptive offer which the issuer considers necessary or expedient on account of the laws or regulatory requirements of another jurisdiction.

Note that this requirement to offer new shares on a pre-emptive basis does not apply to overseas companies.

xi. Communication with shareholders (LR 9.3.3R)

The issuer must ensure that certain prescribed information is made available to its shareholders in all countries in which the issuer’s securities are listed. In particular, the Company must ensure that:

* members are informed of the holding of meetings which they are entitled to attend;
* members are able to exercise their rights to vote, and proxy forms are sent to members;
* information is distributed relating to dividends, interest, and the issue and redemption of securities.

xii. Sanctions for Default of “212 Notices” (LR 9.3.9R)

The Listing Rules prescribe certain constraints on an issuer’s ability to impose sanctions on a shareholder who is in default in complying with a notice served by the issuer under section 212 of the Companies Act 1985\textsuperscript{52}.

\textsuperscript{52} These notices require disclosure of interests in shares.
These provide (amongst other things) that:

- sanctions may not take effect earlier than 14 days after service of the notice;
- the only sanction that may be imposed in respect of a shareholding of less than 0.25% is a prohibition against attending meetings and voting; and
- in respect of shareholdings above that level, sanctions may include prohibitions against attending meetings and voting, withholding payment of dividends and placing restrictions on transfers (other than to sales to genuine unconnected third parties).

This does not, of course, apply to overseas issuers.

xiii. Contact Details (LR 9.2.11R and LR 9.2.12G)

Each issuer must ensure that the FSA is provided with up-to-date contact details of at least one appropriate contact person in relation to the Issuer’s compliance with the Listing Rules and Disclosure Rules. The relevant contact will be expected to be knowledgeable about the issuer and the Listing Rules applicable, capable of ensuring that appropriate action is taken on a timely basis and contactable on business days between 7.00 a.m. and 7.00 p.m.

The appropriate form for notifying the FSA of contact details is available on the FSA’s website at:
www.fsa.gov.uk/pubs/forms/LR_contact_details.pdf

xiv. Employee Share Schemes and Long-Term Incentive Plans (LR 9.4.1R to LR 9.4.3R)

UK incorporated issuers (and any of their major subsidiaries (including overseas subsidiaries)) must ensure that employee share schemes or long-term incentive schemes for directors are approved by shareholders.

This requirement for shareholder approval does not apply to long-term incentive schemes which either:

- offer participation on similar terms to all or substantially all employees; or
- constitutes an arrangement where the only participant is a director and the arrangement is established specifically to facilitate (in unusual circumstances) his recruitment or retention.

xv. Reporting on financial information (LR 9.7)

The company must notify a RIS immediately after board approval of the following matters, relating to its results and dividends:
• a preliminary statement of the annual results which must have been agreed with
  the company’s auditors (which must, in any event, be by no later than 120 days
  after the end of the period to which it relates);
• the announcement of the half-yearly results (which must, in any event, be by no
  later than 90 days after the end of the period to which it relates); and
• any decision to pay or make any dividend or other distribution on listed equity
  securities or to withhold any dividend or interest payment on listed securities.
  The exact net amount payable per share, the payment date and record date
  (where applicable) must be given and, where relevant, details of any foreign
  income dividend election.

The Listing Rules set out specific requirements as to the contents of such
announcements. Figures must be presented in a manner consistent with that to be
adopted in the annual report and accounts.

xvi. Annual Report and Accounts (LR 9.8)

The issuer must issue its annual report and accounts as soon as possible after the
accounts have been approved and in any event within six months of the end of the
financial period to which they relate. The annual report and accounts must be
prepared in accordance with an issuer’s national accounting standards or IAS. Directors
of listed companies should also be aware of the recommendations of the Combined
Code which affect the presentation and content of a company’s published financial
information and include recommendations for the directors to explain their
responsibility for preparing the accounts and the presentation of a balanced and
understandable assessment of the company’s position.

The matters to be specified in the annual report and accounts include:
• an explanation in the event of trading results shown by the accounts for the
  period under review differing by ten per cent. or more from any published
  forecast or estimate made by the company;
• a statement of the amount of interest capitalised by the group during the period;
• details of any arrangement under which a director has waived or agreed to
  waive emoluments;
• details of any arrangement under which a shareholder has waived or agreed to
  waive any dividends;
• particulars of any issue of shares for cash made otherwise than pro rata to the
  company’s existing shareholders and which was not specifically authorised by
  the company’s shareholders; similar information must be given for any unlisted
  major subsidiary of the company;
particulars of any contract of significance subsisting during the period under review to which any member of the group is a party and in which a director is or was materially interested;

particulars of any contract of significance between any member of the issuer’s group and a controlling shareholder (being a person or persons acting jointly by agreement, whether formal or otherwise, who is entitled to exercise, or controls the exercise of, 30 per cent. or more of the company’s voting rights or who is able to control the appointment of directors who themselves are able to exercise a majority of the votes at board meetings) subsisting during the period under review;

in the case of an issuer who is a subsidiary, details of any participation in a placing by its parent;

particulars of any contract for the provision of services to any member of the group by a controlling shareholder subsisting during the period under review;

details of small transactions with related parties;

details of long-term incentive schemes set up for individual directors in order to facilitate, in unusual circumstances, their recruitment or retention;

in the case of a UK issuer a statement of the issuer’s compliance with the Combined Code, together with an explanation of the details and reason for any non-compliance;

in the case of an overseas issuer, details of (i) whether or not the issuer complies with the Combined Code or the corporate governance regime of its country of incorporation, (ii) the significant ways in which its actual corporate governance practice differs from the requirements set out in the Combined Code and (iii) the unexpired term of the service contract of any director proposed for an election or re-election at the forthcoming annual general meeting and, if any director election or re-election does not have a service contract, a statement to that effect;

an auditor’s report.

Note that there are additional content requirements for issuers incorporated in the UK.

xvii. Half-Yearly Report (LR 9.9)

The issuer must prepare a group report on its activities and profit or loss for the first six months of each financial year. This half-yearly report must be published as soon as possible and, in any event, within 90 days of the end of the period to which it relates. The accounting policies and presentation applied to interim figures must be consistent with those applied in the latest published annual accounts, save where such policies
and presentations are to be changed in the subsequent annual financial statements and the changes and the reasons therefor are disclosed in the half-yearly report; or the FSA otherwise agrees. An overseas company incorporated in a non-EEA state that is required to publish a half-yearly report in its country of incorporation may seek authorisation from the FSA to publish that report instead of the report required by the LR 9.9.

There are detailed requirements in the Listing Rules as to the contents of the half-yearly report and the announcement of half-yearly results. In both cases, certain figures (in tabular format) are required and additionally, in the case of the half-yearly report, an explanatory statement relating to the Company’s activities and profit or loss must be included. This explanatory statement must include any significant information enabling investors to make an informed assessment of the trend of the Company’s activities and profit or loss and must indicate any special factor which has influenced those activities and the profit or loss during the period in question together with relevant comparisons with the previous financial year and, to the extent possible, current prospects for the Company. If the information included in a half-yearly report has not been audited, that fact must be stated. If the information in that report has been audited or reviewed by auditors, the report of the auditors must be reproduced in full.

F. TRANSACTIONS

i. Class Tests

As was the case under the previous regime, the Listing Rules contain detailed requirements as to the provision of information and the obtaining of shareholders’ consent when the issuer proposes to enter into certain transactions. The level of disclosure required, and the requirement for shareholder approval, will depend on the size of the transaction in relation to the size of the listed company, and the identity of the parties to the transaction. All transactions of the listed company and its subsidiary undertakings are included, other than transactions of a revenue nature, or where finance is being raised by an issue of securities not involving the acquisition or disposal of any fixed assets.

The specific requirements are largely unchanged under the new rules (other than the deletion of the turnover test) and, as before, will depend upon the percentage ratios of the acquisition or disposal compared to the Company on a number of bases, encompassing asset value, profits, consideration and market capitalisation. Further details of the applicable class tests are set out in Appendix VI. In addition, industry specific tests are encouraged, where relevant, to support these bases. The acquisition or disposal will be compared on all relevant grounds, and will be classified as Class 3, Class 2, Class 1 or as a Reverse Takeover, where the percentage ratios are less than
5%, less than 25%, less than 100% or more than 100% respectively. The FSA can aggregate two or more transactions over a period of 12 months. The latest transaction will then be treated as incorporating the earlier aggregated transactions for the purposes of determining the level of disclosure and consent required.

In brief, Class 3 transactions require notification only of the terms to a Regulatory Information Service; Class 2 transactions require more detailed particulars to be included in the press announcement; a Class 1 transaction requires an explanatory circular to be dispatched to shareholders, and must be conditional upon approval of members being obtained53. On a reverse takeover, in addition to the Class 1 requirements, the company’s listing will be suspended pending the publication of the relevant circular and publication of listing particulars or a prospectus relating to the company which will be treated by the FSA as a new applicant for listing.

ii. Related Party Transactions

Transactions between the company and certain categories of related parties generally require shareholder approval before implementation54. The categories of related parties include:

- a substantial shareholder, entitled at any time within the 12 months prior to the transaction to control 10% or more of the voting rights in the Company;
- any person who is or was within the 12 months prior to the transaction a director or shadow director of the Company or any connected company;
- a 50/50 joint venture partner;
- a person exercising significant influence; and
- any associate of the above.

iii. Purchase of own securities (Chapter 12)

Any decision by the board of directors to submit to shareholders a proposal for the company to be authorised to purchase its own equity shares (whether as a market purchase or an off market purchase and whether the proposal relates to specific purchases or to a general authorisation to make purchases) other than the renewal of an existing authority must be notified to a RIS without delay, as must the outcome of the shareholders’ meeting. A circular must be sent to shareholders seeking their

53 In the case of a Class 1 disposal by an Issuer in severe financial difficulty, the FSA may modify the requirements to prepare a circular and obtain shareholder approval if the issuer in question can demonstrate that it is in severe financial difficulty and satisfies certain conditions, as set out in LR 10.8.2G to LR 10.8.6G. An application for any such modification should be made to the FSA as early as possible and, in any event, at least five clear business days before the terms of the disposal are agreed.

54 Very small transactions (i.e., ones with percentage ratios of less than 0.25%) and transactions of a revenue nature in the ordinary course of business are carved out. The transactions referred to in paragraphs 2 to 10 of Annex 1 to Chapter 11 are also carved out from the related party requirements, as long as they do not have any unusual features (LR 11.1.4G).
authority for the purchase by the company of its own shares. LR 13.7 sets out specific requirements as to the content of such circular (overseas issuers should contact the FSA to agree the content of the circular). There are also special procedural requirements set out in Chapter 12 as to how the company may make the purchase of its own shares (for example, buy-backs of more than 15% must generally be undertaken by way of a tender offer to all shareholders).

The issuer must notify a RIS of its intention to make a proposal to purchase any of its listed securities other than equity shares (and pending such notification the company should ensure that no dealings take place on its behalf in such securities) and details of purchases of a certain size once made.

The Market Abuse Directive has created a new safe harbour for share buy-backs, and this safe harbour is more restrictive than the provisions of Chapter 12. In accordance with FSA guidance, the Listing Rules have broadly been drafted to allow issuers to choose whether to comply with the safe harbour or continue as they have in the past.

To fall within the new safe harbour, issuers intending to repurchase shares under a general shareholder authority for on-market purchases in the UK must comply with the following:

- the sole purposes of buy-back programme must be to reduce the capital of an issuer (in value or in number of shares) or to meet obligations arising from (i) debt financial instruments exchangeable into equity instruments or (ii) employee share option programmes or other allocations of shares to employees of the issuer or of an associate company;
- the buy-back programme must comply with the conditions laid down in section 66 of the Companies Act 1985;
- prior to the start of trading, details of the programme approved under section 166 of the Companies Act 1985 must be adequately disclosed to the public in member states in which the issuer requests admission of its shares to trading on a regulated market\(^{55}\). The minimum details required to be disclosed are the maximum consideration, the maximum number of shares to be acquired and the duration of the period through which authorisation of the programme has been given;
- the issuer must have in place a mechanism ensuring that it records in relation to each transaction of the buy-back programme the names and numbers of the instruments bought or sold, the date and times of the transactions, transaction prices and means of identifying the investment firms concerned;

\(^{55}\) In the UK, the FSA accepts disclosure through a RIS.
• the issuer must publicly disclose details of all transactions referred to above no later than the end of the seventh daily market session following the date of execution of such transactions;

• the issuer must not purchase shares at a price higher than the higher of the price of the last independent trade and the highest current independent bid on the trading venue where the purchase is carried out; and

• the issuer must not purchase more than 25% of the average daily volume of the shares in any one day of the regulated market on which the purchase is carried out except where the issuer informs the FSA of its intention, discloses that it will deviate from the 25% limits and the volume of the buy back does not exceed 50% of the average daily volume.

Issuers are also restricted from selling their own shares during the buy-back period or repurchasing their own shares during either a close period, or a period during which the issuer has decided to delay the disclosure of inside information

iv. Break fees

A payment or break fee payable to a third party if a proposed transaction does not complete will be treated as a Class 1 transaction (therefore requiring the prior approval of shareholders) if the value of the payment or fee exceeds 1% of the offer value (if the listed company is being acquired) and in any other case 1% of the market capitalisation of the listed company.

G. CANCELLATION OF LISTING (LR 5.2.5R to LR 5.2.7R)

Unlike the old Listing Rules, under the new regime, an issuer wishing to cancel the listing of any of its equity securities which have a primary listing on the Official List must, subject to certain limited exceptions, obtain the consent of not less than 75% of the holders of the securities voting on a resolution to approve the cancellation. This requirement does not apply:

i. if the securities in question are admitted to another regulated market in the EEA when the de-listing takes effect (AIM is no longer a regulated market, and so shareholder approval will be required in the case of an issuer wishing to move from the Official List to AIM); or

ii. where the issuer is in financial difficulties and announces a restructuring proposal without which there is no reasonable prospect of avoiding formal insolvency proceedings, and where the continued listing of the issuer would jeopardise the successful completion of the proposal; or
iii. when, in the case of a takeover offer, the offeror has acquired (or agreed to acquire) 75% of the voting rights of the issuer and the offeror stated in the offer document (or subsequent circular) that a notice period of not less than 20 business days would be given prior to cancellation. This 20 business day notice period will commence either on the offeror attaining the required 75% or on the first date of issue of compulsory acquisition notices under section 429 of the Companies Act 1985\textsuperscript{56}, and is intended to give the holders of the remaining securities time to trade out their positions.

\textsuperscript{56} This gives an offeror the right to squeeze out a dissenting minority.
CHAPTER 9

CONTINUING OBLIGATIONS FOR AIM COMPANIES

Whilst nowhere near as detailed as those applicable to companies listed on the Official List, the continuing obligations with which an AIM company is required to comply are derived from broadly the same principles as their Official List counterparts.

A. GENERAL OBLIGATION OF DISCLOSURE

Under AIM Rule 11, an AIM company must notify a Regulatory Information Service without delay of any new developments which are not public knowledge concerning a change in its financial condition, its sphere of activity, the performance of its business or its expectation of its performance, which, if made public, would be likely to lead to a substantial movement in the price of its AIM securities.

The AIM company must take care that any information it notifies is not misleading, false or deceptive and does not omit anything likely to affect the import of such information and must notify the information no later than it is published elsewhere.

B. SPECIFIC DISCLOSURE OBLIGATIONS

i. Miscellaneous information (AR 17)

A RIS must be notified without delay of:

- any deals by directors;
- any changes to the holding of a significant shareholder (3% holder) that increases or decreases such holding through a single percentage;
- the resignation, dismissal or appointment of any director;
- any change in its accounting reference date;
- any material change between its actual trading performance or financial condition and any profit forecast, estimate or projection included in its admission document or otherwise made public on its behalf;
- any decision to make any payment in respect of its AIM securities;
- the reason for the application for admission or cancellation of any AIM securities;
- the resignation, dismissal or appointment of its nominated adviser or broker;
- any change in the AIM company’s legal name or registered office; and
- the occurrence and number of shares taken in to and out of treasury.
ii. **Half yearly reports (AR 18)**

An AIM company must prepare a half-yearly report in respect of the six month period from the end of the financial period for which financial information has been disclosed in its admission document and at least every subsequent six months thereafter (apart from the final period of six months preceding its accounting reference date for its annual audited accounts). All such reports must be notified to a RIS without delay and in any event not later than three months after the end of the relevant period. The information contained in a half-yearly report must include at least a balance sheet, income statement and cash flow statement and must contain comparative figures for the corresponding period in the preceding financial year. The report must also be presented and prepared in a form consistent with that which will be adopted in the company's annual accounts, having regard to the applicable accounting standards. The Guidance Notes in the AIM Rules state that where the half-yearly report has been audited it must contain a statement to this effect.

iii. **Annual accounts (AR 19)**

An AIM company must publish annual audited accounts prepared in accordance with US or UK GAAP or IAS. These accounts must be sent to the holders of its AIM securities without delay and in any event not later than six months after the end of the financial period to which they relate. Note that the London Stock Exchange intends to make IAS mandatory for all AIM companies for financial years commencing on or after 1 January 2007.

These accounts must disclose any transaction with a related party, whether or not previously disclosed under these rules, where any of the class tests (see below) exceed 0.25% and must specify the identity of the related party and the consideration for the transaction.

iv. **Publication of documents sent to shareholders (AR 20)**

Any document provided by an AIM company to its shareholders must be made available to the public at the same time for at least one month, free of charge, at an address notified to a RIS.

C. **RESTRICTIONS ON DEALS**

Under AR 21, an AIM company must ensure that its directors and applicable employees (who, for these purposes, are defined as employees which are likely to be in possession of unpublished price-sensitive information) do not deal in any of its AIM securities during the period of two months preceding the publication of annual results
and half yearly report and, if it reports on a quarterly basis, one month prior to the notification of its quarterly results. This rule also restricts the sale or redemption of securities held as treasury shares during such a period.

D. CORPORATE TRANSACTIONS

i. Substantial Transactions (AR 12)

An AIM company must notify a RIS without delay as soon as the terms of any substantial transaction are agreed. A substantial transaction is one that exceeds 10% in any of the class tests specified in Schedule Three to the AIM rules. As is the case on the Official list, each involves a comparison between the size of the transaction and the AIM company’s.

ii. Related Party Transactions (AR 13)

This rule applies to any transaction whatsoever with a related party which exceeds 5% in any of the class tests specified under ‘Substantial Transactions’ above. An AIM company must notify a RIS without delay as soon as the terms of a transaction with a related party are agreed. The announcement is required to include the details specified by Schedule 4 to the AIM Rules and a statement that with the exception of any director who is involved in the transaction as a related party, its directors consider, having consulted with its nominated adviser, that the terms of the transaction are fair and reasonable insofar as the holders of its AIM securities are concerned.

iii. Reverse Takeovers (AR 14)

A reverse takeover is an acquisition or acquisitions in a 12 month period that for an AIM company would:

- exceed 100% in any of the class tests;
- result in a fundamental change in its business, board or voting control; or
- in the case of an investing company, depart substantially from the investment strategy stated in its admission document, pre-admission document or circular.

Any agreement that would effect a reverse takeover must be:

- conditional on the consent of the holders of its AIM securities being given in general meeting;
- notified to a RIS without delay disclosing the information specified in Schedule 4 of the AIM rules and insofar as it is with a related party, the additional information stated above under ‘Related Party Transactions’; and

57 There are five percentage ratio tests, based on gross assets, profits, turnover, consideration/market capitalisation and (in the case of an acquisition of a company or business) gross capital.
accompanied by the publication of an admission document in respect of the proposed enlarged entity and convening the general meeting.

Where shareholder approval is given for the reverse takeover, trading in the AIM securities of the AIM company will be cancelled. If the enlarged entity seeks admission, it must make an application in the same manner as any other applicant applying for admission of its securities for the first time.

iv. Disposals resulting in a Fundamental Change of Business (AR 15)

Any disposal by an AIM company which, when aggregated with any other disposal or disposals over the previous 12 months, exceeds 75% in any of the class tests, is deemed to be a disposal resulting in a fundamental change of business and must be:

- conditional on the consent of its shareholders being given in general meeting;
- notified to a RIS without delay disclosing the information specified by Schedule Four of the AIM Rules (see below) and insofar as it is with a related party, the additional information stated under ‘Related Party Transactions’ above; and
- accompanied by the publication of a circular containing the information specified above and convening the general meeting.

Where the effect of the proposed disposal is to divest the AIM company of all, or substantially all, of its trading business activities the AIM company will, upon disposal, be treated as an investing company from the date the shareholder consent is given under AR 15 and the notification and circular containing the information specified by Schedule 4 to the AIM Rules convening the general meeting must also state its investing strategy going forward.

The AIM company will then have to make an acquisition or acquisitions which constitute a reverse takeover under AR 14 within twelve months of having received the consent of its shareholders.

E. CONTENTS OF ANNOUNCEMENT (Schedule 4)

The details that must be announced pursuant to AIM Rules 12, 13, 14 and 15 in the event of any of the transactions referred to above are as follows:

- Particulars of the transaction, including the name of any company or business, where relevant.
- A description of the business carried on by, or using, the assets which are the subject of the transaction.
- The profits attributable to those assets.
- The value of those assets.
- The full consideration and how it is being satisfied.
• The effect on the AIM company.
• Details of any service contracts of its proposed directors.
• In the case of a disposal, the application of the sale proceeds.
• In the case of a disposal, if shares or other securities are to form part of the consideration received, a statement whether such securities are to be sold or retained.
• Any other information necessary to enable investors to evaluate the effect of the transaction upon the AIM company.
APPENDICES
APPENDIX I:

IS A PROSPECTUS REQUIRED?

1. "Securities" for these purposes include most transferable securities. Note that for the purpose of the "offer to the public" determination only, offers with a total consideration of less than £2.5 million are carved out.
2. This includes offers to "qualified investors" and/or less than 100 persons per Member State.
3. This includes bonus issues, shares issued in connection with a takeover/merger (where an equivalent document is available) on the Official List and shares issued to employees.
4. These include the issue of less than 10% over 12 months, shares issued to employees and shares issued in connection with a takeover/merger where an equivalent document is available.
APPENDIX II:

DETERMINING AN ISSUER’S HOME MEMBER STATE

Is the proposed issue of equity securities (including convertibles) or "low denomination debt"?

"Low denomination debt" for these purposes comprises non-equity securities with a denomination under €1,000 or near equivalent in another currency.

Yes

Is the proposed issuer incorporated in the EEA?

Yes

Home member state will be state in which issuer has its registered office

No

No

Issuer (or offeror or person asking for admission) can choose home member state from:

- member state in which it has its registered office (if applicable); or
- member state in which securities were or are to be admitted to trading on a regulated market; or
- member state in which securities are "offered to the public" (see Chapter 7 for details).

Issuer (or offeror or person asking for admission) can choose home member state from:

- member state where securities are intended to be offered to the public (see Chapter 7 for details) for the first time after 31 December 2003; or
- member state where the application for admission to trading on a regulated market is made.
APPENDIX III:

CONTENT REQUIREMENTS FOR PROSPECTUS

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**ANNEX I**
Minimum Disclosure Requirements for the Share Registration Document (schedule)

1. **PERSONS RESPONSIBLE**

1.1 All persons responsible for the information given in the Registration Document and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer’s administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.  

   Mandatory

1.2 A declaration by those responsible for the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the registration document is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, a declaration by those responsible for certain parts of the registration document that, having taken all reasonable care to ensure that such is the case, the information contained in the part of the registration document for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.  

   Mandatory
2. STATUTORY AUDITORS

2.1 Names and addresses of the issuer’s auditors for the period covered by the historical financial information (together with their membership in a professional body).

Mandatory

2.2 If auditors have resigned, been removed or not been re-appointed during the period covered by the historical financial information, indicate details if material.

Mandatory

3. SELECTED FINANCIAL INFORMATION

3.1 Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information.

Carved Out

The selected historical financial information must provide the key figures that summarise the financial condition of the issuer.

Carved Out

3.2 If selected financial information for interim periods is provided, comparative data from the same period in the prior financial year must also be provided, except that the requirement for comparative balance sheet information is satisfied by presenting the year end balance sheet information.

Carved Out

4. RISK FACTORS

Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed “Risk Factors”.

Mandatory
5. INFORMATION ABOUT THE ISSUER

5.1 History and Development of the Issuer

5.1.1 the legal and commercial name of the issuer;

5.1.2 the place of registration of the issuer and its registration number;

5.1.3 the date of incorporation and the length of life of the issuer, except where indefinite;

5.1.4 the domicile and legal form of the issuer, the legislation under which the issuer operates, its country of incorporation, and the address and telephone number of its registered office (or principal place of business if different from its registered office);

5.1.5 the important events in the development of the issuer’s business.

5.2 Investments

5.2.1 A description, (including the amount) of the issuer’s principal investments for each financial year for the period covered by the historical financial information up to the date of the registration document;

5.2.2 A description of the issuer’s principal investments that are in progress, including the geographic distribution of these investments (at home and abroad) and the method of financing (internal or external);

5.2.3 Information concerning the issuer’s principal future investments on which its management bodies have already made firm commitments.
<table>
<thead>
<tr>
<th>Item</th>
<th>Prospectus Requirement for Equity Issue</th>
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<tr>
<td>6.</td>
<td><strong>BUSINESS OVERVIEW</strong></td>
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<tr>
<td>6.1</td>
<td>Principal Activities</td>
</tr>
<tr>
<td>6.1.1</td>
<td>A description of, and key factors relating to, the nature of the issuer’s operations and its principal activities, stating the main categories of products sold and/or services performed for each financial year for the period covered by the historical financial information; and</td>
</tr>
<tr>
<td>6.1.2</td>
<td>An indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, give the status of development.</td>
</tr>
<tr>
<td>6.2</td>
<td>Principal Markets</td>
</tr>
<tr>
<td></td>
<td>A description of the principal markets in which the issuer competes, including a breakdown of total revenues by category of activity and geographic market for each financial year for the period covered by the historical financial information.</td>
</tr>
<tr>
<td>6.3</td>
<td>Where the information given pursuant to items 6.1 and 6.2 has been influenced by exceptional factors, mention that fact.</td>
</tr>
<tr>
<td>6.4</td>
<td>If material to the issuer’s business or profitability, a summary information regarding the extent to which/h the issuer is dependent, on patents or licences, industrial, commercial or financial contracts or new manufacturing processes.</td>
</tr>
<tr>
<td>Item</td>
<td>Prospectus Requirement for Equity Issue</td>
</tr>
<tr>
<td>------</td>
<td>--------------------------------------</td>
</tr>
<tr>
<td>6.5</td>
<td>The basis for any statements made by the issuer regarding its competitive position.</td>
</tr>
<tr>
<td>7.</td>
<td><strong>ORGANIZATIONAL STRUCTURE</strong></td>
</tr>
<tr>
<td>7.1</td>
<td>If the issuer is part of a group, a brief description of the group and the issuer’s position within the group.</td>
</tr>
<tr>
<td>7.2</td>
<td>A list of the issuer’s significant subsidiaries, including name, country of incorporation or residence, proportion of ownership interest and, if different, proportion of voting power held.</td>
</tr>
<tr>
<td>8.</td>
<td><strong>PROPERTY, PLANTS AND EQUIPMENT</strong></td>
</tr>
<tr>
<td>8.1</td>
<td>Information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon.</td>
</tr>
<tr>
<td>8.2</td>
<td>A description of any environmental issues that may affect the issuer’s utilisation of the tangible fixed assets.</td>
</tr>
<tr>
<td>9.</td>
<td><strong>OPERATING AND FINANCIAL REVIEW</strong></td>
</tr>
<tr>
<td>9.1</td>
<td>Financial Condition</td>
</tr>
</tbody>
</table>

To the extent not covered elsewhere in the registration document, provide a description of the issuer’s financial condition, changes in financial condition and results of operations for each year and interim period, for which historical financial information is required, including the causes of material changes from year to year in the financial information to the extent necessary for an understanding of the issuer’s business as a whole.
<table>
<thead>
<tr>
<th>Item</th>
<th>Prospectus Requirement for Equity Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.2</td>
<td>Operating Results</td>
</tr>
<tr>
<td>9.2.1</td>
<td>Information regarding significant factors, including unusual or infrequent events or new developments, materially affecting the issuer's income from operations, indicating the extent to which income was so affected. Carved out</td>
</tr>
<tr>
<td>9.2.2</td>
<td>Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes. Carved out</td>
</tr>
<tr>
<td>9.2.3</td>
<td>Information regarding any governmental, economic, fiscal, monetary or political policies or factors that have materially affected, or could materially affect, directly or indirectly, the issuer's operations. Carved out</td>
</tr>
<tr>
<td>10.</td>
<td>CAPITAL RESOURCES</td>
</tr>
<tr>
<td>10.1</td>
<td>Information concerning the issuer's capital resources (both short and long term); Carved out</td>
</tr>
<tr>
<td>10.2</td>
<td>An explanation of the sources and amounts of and a narrative description of the issuer's cash flows; Carved out</td>
</tr>
<tr>
<td>10.3</td>
<td>Information on the borrowing requirements and funding structure of the issuer; Carved out</td>
</tr>
<tr>
<td>10.4</td>
<td>Information regarding any restrictions on the use of capital resources that have materially affected, or could materially affect, directly or indirectly, the issuer's operations. Carved out</td>
</tr>
<tr>
<td>10.5</td>
<td>Information regarding the anticipated sources of funds needed to fulfil commitments referred to in items 5.2.3 and 8.1. Carved out</td>
</tr>
<tr>
<td>Item</td>
<td>Prospectus Requirement for Equity Issue</td>
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<tr>
<td>------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td>11.</td>
<td><strong>RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES</strong>&lt;br&gt;Where material, provide a description of the issuer’s research and development policies for each financial year for the period covered by the historical financial information, including the amount spent on issuer-sponsored research and development activities.</td>
</tr>
<tr>
<td>12.</td>
<td><strong>TREND INFORMATION</strong>&lt;br&gt;12.1 The most significant recent trends in production, sales and inventory, and costs and selling prices since the end of the last financial year to the date of the registration document.</td>
</tr>
<tr>
<td></td>
<td>12.2 Information on any known trends, uncertainties, demands, commitments or events that are reasonably likely to have a material effect on the issuer’s prospects for at least the current financial year.</td>
</tr>
<tr>
<td>13.</td>
<td><strong>PROFIT FORECASTS OR ESTIMATES</strong>&lt;br&gt;If an issuer chooses to include a profit forecast or a profit estimate the registration document must contain the information set out in items 13.1 and 13.2:</td>
</tr>
<tr>
<td>13.1</td>
<td>A statement setting out the principal assumptions upon which the issuer has based its forecast, or estimate.</td>
</tr>
<tr>
<td></td>
<td>There must be a clear distinction between assumptions about factors which the members of the administrative, management or supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management or supervisory bodies; the assumptions must be readily understandable by investors, be specific and precise and not relate to the general accuracy of the</td>
</tr>
</tbody>
</table>
estimates underlying the forecast.

13.2 A report prepared by independent accountants or auditors stating that in the opinion of the independent accountants or auditors the forecast or estimate has been properly compiled on the basis stated and that the basis of accounting used for the profit forecast or estimate is consistent with the accounting policies of the issuer.

13.3 The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.

13.4 If a profit forecast in a prospectus has been published which is still outstanding, then provide a statement setting out whether or not that forecast is still correct as at the time of the registration document, and an explanation of why such forecast is no longer valid if that is the case.

14. ADMINISTRATIVE, MANAGEMENT, AND SUPERVisory BODIES AND SENIOR MANAGEMENT

14.1 Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer:

a) members of the administrative, management or supervisory bodies;

b) partners with unlimited liability, in the case of a limited partnership with a share capital;

c) founders, if the issuer has been established for fewer than five years; and

d) any senior manager who is relevant to establishing that the issuer has the appropriate expertise and
experience for the management of the issuer's business. The nature of any family relationship between any of those persons.

In the case of each member of the administrative, management or supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person’s relevant management expertise and experience and the following information:

(a) the names of all companies and partnerships of which such person has been a member of the administrative, management or supervisory bodies or partner at any time in the previous five years, indicating whether or not the individual is still a member of the administrative, management or supervisory bodies or partner. It is not necessary to list all the subsidiaries of an issuer of which the person is also a member of the administrative, management or supervisory bodies;

(b) any convictions in relation to fraudulent offences for at least the previous five years;

(c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years;

(d) details of any official public incrimination and/or sanctions 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 member of the administrative, management or supervisory bodies of an issuer or from acting in the management or conduct of the affairs of any issuer for at least the previous five years.
<table>
<thead>
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<tr>
<td></td>
<td>If there is no such information to be disclosed, a statement to that effect is to be made.</td>
<td>Carved out</td>
</tr>
<tr>
<td>14.2</td>
<td>Administrative, Management, and Supervisory bodies and Senior Management conflicts of interests</td>
<td>Carved out</td>
</tr>
<tr>
<td></td>
<td>Potential conflicts of interests between any duties to the issuer, of the persons referred to in item 14.1., and their private interests and or other duties must be clearly stated. In the event that there are no such conflicts, a statement to that effect must be made.</td>
<td>Carved out</td>
</tr>
<tr>
<td></td>
<td>Any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any person referred to in item 14.1 was selected as a member of the administrative, management or supervisory bodies or member of senior management.</td>
<td>Carved out</td>
</tr>
<tr>
<td></td>
<td>Details of any restrictions agreed by the persons referred to in item 14.1 on the disposal within a certain period of time of their holdings in the issuer’s securities.</td>
<td>Carved out</td>
</tr>
<tr>
<td>15.</td>
<td>REMUNERATION AND BENEFITS</td>
<td>Carved out</td>
</tr>
<tr>
<td>15.1</td>
<td>In relation to the last full financial year for those persons referred to in points (a) and (d) of the first subparagraph of item 14.1:</td>
<td>Carved out</td>
</tr>
<tr>
<td>15.2</td>
<td>The amount of remuneration paid (including any contingent or deferred compensation), and benefits in kind granted to such persons by the issuer and its subsidiaries for services in all capacities to the issuer and its subsidiaries by any person.</td>
<td>Carved out</td>
</tr>
<tr>
<td></td>
<td>That information must be provided on an individual basis unless individual disclosure is not required in the issuer’s home country and is not otherwise publicly disclosed by the issuer.</td>
<td>Carved out</td>
</tr>
<tr>
<td></td>
<td>The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.</td>
<td>Carved out</td>
</tr>
</tbody>
</table>
16. **BOARD PRACTICES**

In relation to the issuer’s last completed financial year, and unless otherwise specified, with respect to those persons referred to in point (a) of the first subparagraph of 14.1:

16.1 Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.

16.2 Information about members of the administrative, management or supervisory bodies’ service contracts with the issuer or any of its subsidiaries providing for benefits upon termination of employment, or an appropriate negative statement.

16.3 Information about the issuer’s audit committee and remuneration committee, including the names of committee members and a summary of the terms of reference under which the committee operates.

16.4 A statement as to whether or not the issuer complies with its country’s of incorporation corporate governance regime(s). In the event that the issuer does not comply with such a regime, a statement to that effect must be included together with an explanation regarding why the issuer does not comply with such regime.

17. **EMPLOYEES**

17.1 Either the number of employees at the end of the period or the average for each financial year for the period covered by the historical financial information up to the date of the registration document (and changes in such numbers, if material) and, if possible and material, a breakdown of persons employed by main category of activity and geographic location. If the issuer employs a significant number of temporary employees, include disclosure of the number of temporary employees on average during the most recent financial year.
17.2 Shareholdings and stock options
With respect to each person referred to in points (a) and (d) of the first subparagraph of item 14.1, provide information as to their share ownership and any options over such shares in the issuer as of the most recent practicable date.

17.3 Description of any arrangements for involving the employees in the capital of the issuer.

18. MAJOR SHAREHOLDERS
18.1 In so far as is known to the issuer, the name of any person other than a member of the administrative, management or supervisory bodies who, directly or indirectly, has an interest in the issuer's capital or voting rights which is notifiable under the issuer's national law, together with the amount of each such person's interest or, if there are no such persons, an appropriate negative statement.

18.2 Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.

18.3 To the extent known to the issuer, state whether the issuer is directly or indirectly owned or controlled and by whom and describe the nature of such control and describe the measures in place to ensure that such control is not abused.

18.4 A description of any arrangements, known to the issuer, the operation of which may at a subsequent date result in a change in control of the issuer.
19. RELATED PARTY TRANSACTIONS

Details of related party transactions (which for these purposes are those set out in the Standards adopted according to the Regulation (EC) No 1606/2002), that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document, must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002 if applicable.

If such standards do not apply to the issuer the following information must be disclosed:

a) the nature and extent of any transactions which are – as a single transaction or in their entirety – material to the issuer. Where such related party transactions are not concluded at arm’s length provide an explanation of why these transactions were not concluded at arms length. In the case of outstanding loans including guarantees of any kind indicate the amount outstanding.

b) the amount or the percentage to which related party transactions form part of the turnover of the issuer.

Mandatory

20. FINANCIAL INFORMATION CONCERNING THE ISSUER’S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES

Mandatory

20.1 Historical Financial Information

Audited historical financial information covering the latest 3 financial years (or such shorter period that the issuer has been in operation), and the audit report in respect of each year. Such financial information must be prepared according to Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards for issuers from the Community.

Mandatory (NB: No requirement to include IAS compliant financial information in
For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country’s national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.

The last two years audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer’s next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements.

If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under the Regulation (EC) No 1606/2002, or if not applicable to a Member State national accounting standards where the issuer is an issuer from the Community. For third country issuers, such financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country’s national accounting standards equivalent to these standards. If such financial information is not equivalent to these standards, it must be presented in the form of restated financial statements.
<table>
<thead>
<tr>
<th>Item</th>
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<th>AIM Admission Requirement</th>
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<tbody>
<tr>
<td></td>
<td>issuers, the historical financial information must be prepared according to the international accounting standards adopted pursuant to the procedure of Article 3 of Regulation (EC) No 1606/2002 or to a third country’s national accounting standards equivalent to these standards. This historical financial information must be audited. If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:</td>
<td>information in respect of periods commencing prior to 1 January 2007 Mandatory (NB: No requirement to include IAS compliant financial information in respect of periods commencing prior to 1 January 2007)</td>
</tr>
<tr>
<td>(a)</td>
<td>balance sheet;</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>income statement;</td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>a statement showing either all changes in equity or changes in equity other than those arising from capital transactions with owners and distributions to owners;</td>
<td></td>
</tr>
<tr>
<td>(d)</td>
<td>cash flow statement;</td>
<td></td>
</tr>
<tr>
<td>(e)</td>
<td>accounting policies and explanatory notes.</td>
<td></td>
</tr>
</tbody>
</table>

The historical annual financial information must be independently audited or reported on as to whether or not, for the purposes of the registration document, it gives a true and fair view, in accordance with auditing standards.
<table>
<thead>
<tr>
<th>Item</th>
<th>Prospectus Requirement for Equity Issue</th>
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<tbody>
<tr>
<td></td>
<td>AIM Admission Document Requirement</td>
</tr>
</tbody>
</table>

Applicable in a Member State or an equivalent standard.

20.2 Pro forma financial information

In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported.

This requirement will normally be satisfied by the inclusion of pro forma financial information.

This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.

Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.

20.3 Financial statement

If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.

20.4 Auditing of historical annual financial information

20.4.1 A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.

20.4.2 Indication of other information in the registration document which has been audited by the auditors.

20.4.3 Where financial data in the registration document is not extracted from the issuer's audited financial statements.
Item Prospectus Requirement for Equity Issue

AIM Admission Document Requirement

state the source of the data and state that the data is unaudited.

20.5 Age of latest financial information

20.5.1 The last year of audited financial information may not be older than one of the following:

Mandatory

(a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;

(b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.

20.6 Interim and other financial information

Mandatory

20.6.1 If the issuer has published quarterly or half yearly financial information since the date of its last audited financial statements, these must be included in the registration document. If the quarterly or half yearly financial information has been reviewed or audited, the audit or review report must also be included. If the quarterly or half yearly financial information is unaudited or has not been reviewed state that fact.

Mandatory

20.6.2 If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance sheet information may be satisfied by presenting the years end balance sheet.

20.7 Dividend policy
A description of the issuer's policy on dividend distributions and any restrictions thereon.

20.7.1 The amount of the dividend per share for each financial year for the period covered by the historical financial information adjusted, where the number of shares in the issuer has changed, to make it comparable.

20.8 Legal and arbitration proceedings

Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past significant effects on the issuer and/or group’s financial position or profitability, or provide an appropriate negative statement.

20.9 Significant change in the issuer’s financial or trading position

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 information or interim financial information have been published, or provide an appropriate negative statement.

21. ADDITIONAL INFORMATION

21.1 Share Capital

The following information as of the date of the most recent balance sheet included in the historical financial information:

21.1.1 The amount of issued capital, and for each class of share capital:

(a) the number of shares authorised;
Item Prospectus Requirement for Equity Issue

(b) the number of shares issued and fully paid and issued but not fully paid;

c) the par value per share, or that the shares have no par value; and

d) a reconciliation of the number of shares outstanding at the beginning and end of the year. If more than 10% of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.

21.1.2 If there are shares not representing capital, state the number and main characteristics of such shares.

21.1.3 The number, book value and face value of shares in the issuer held by or on behalf of the issuer itself or by subsidiaries of the issuer.

21.1.4 The amount of any convertible securities, exchangeable securities or securities with warrants, with an indication of the conditions governing and the procedures for conversion, exchange or subscription.

21.1.5 Information about and terms of any acquisition rights and or obligations over authorised but unissued capital or an undertaking to increase the capital.

21.1.6 Information about any capital of any member of the group which is under option or agreed conditionally or unconditionally to be put under option and details of such options including those persons to whom such options relate.

21.1.7 A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.

21.2 Memorandum and Articles of Association

21.2.1 A description of the issuer’s objects and purposes and where they can be found in the memorandum and articles.
<table>
<thead>
<tr>
<th>Item</th>
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<tbody>
<tr>
<td>21.2.2</td>
<td>A summary of any provisions of the issuer’s articles of association, statutes, charter or bylaws with respect to the members of the administrative, management and supervisory bodies.</td>
</tr>
<tr>
<td>21.2.3</td>
<td>A description of the rights, preferences and restrictions attaching to each class of the existing shares.</td>
</tr>
<tr>
<td>21.2.4</td>
<td>A description of what action is necessary to change the rights of holders of the shares, indicating where the conditions are more significant than is required by law.</td>
</tr>
<tr>
<td>21.2.5</td>
<td>A description of the conditions governing the manner in which annual general meetings and extraordinary general meetings of shareholders are called including the conditions of admission.</td>
</tr>
<tr>
<td>21.2.6</td>
<td>A brief description of any provision of the issuer’s articles of association, statutes, charter or bylaws that would have an effect of delaying, deferring or preventing a change in control of the issuer.</td>
</tr>
<tr>
<td>21.2.7</td>
<td>An indication of the articles of association, statutes, charter or bylaw provisions, if any, governing the ownership threshold above which shareholder ownership must be disclosed.</td>
</tr>
<tr>
<td>21.2.8</td>
<td>A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaw governing changes in the capital, where such conditions are more stringent than is required by law.</td>
</tr>
</tbody>
</table>

22. MATERIAL CONTRACTS

A summary of each material contract, other than contracts entered into in the ordinary course of business, to which the issuer or any member of the group is a party, for the two years immediately preceding publication of the registration document.
23. THIRD PARTY INFORMATION AND STATEMENT BY EXPERTS AND DECLARATIONS OF ANY INTEREST

23.1 Where a statement or report attributed to a person as an expert is included in the Registration Document, provide such person’s name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer’s request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Registration Document.

23.2 Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.

24. DOCUMENTS ON DISPLAY

A statement that for the life of the registration document the following documents (or copies thereof), where applicable, may be inspected:

(a) the memorandum and articles of association of the issuer;
(b) all reports, letters, and other documents, historical financial information, valuations and statements prepared by any expert at the issuer’s request any part of which is included or referred to in the registration document;
(c) the historical financial information of the issuer or, in the case of a group, the historical financial information for the issuer and its subsidiary undertakings for each of the two financial years preceding the publication of the registration document.
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</tr>
</thead>
</table>

An indication of where the documents on display may be inspected, by physical or electronic means.

25. INFORMATION ON HOLDINGS

25.1 Information relating to the undertakings in which the issuer holds a proportion of the capital likely to have a significant effect on the assessment of its own assets and liabilities, financial position or profits and losses.
Pro forma financial information building block

1. The pro forma information must include a description of the transaction, the businesses or entities involved and the period to which it refers, and must clearly state the following:
   (a) the purpose to which it has been prepared;
   (b) the fact that it has been prepared for illustrative purposes only;
   (c) the fact that because of its nature, the pro forma financial information addresses a hypothetical situation and, therefore, does not represent the company’s actual financial position or results.

2. In order to present pro forma financial information, a balance sheet and profit and loss account, and accompanying explanatory notes, depending on the circumstances may be included.

3. Pro forma financial information must normally be presented in columnar format, composed of:
   (a) the historical unadjusted information;
   (b) the pro forma adjustments; and
   (c) the resulting pro forma financial information in the final column.

   The sources of the pro forma financial information have to be stated and, if applicable, the financial statements of the acquired businesses or entities must be included in the prospectus.
4. The pro forma information must be prepared in a manner consistent with the accounting policies adopted by the issuer in its last or next financial statements and shall identify the following:

(a) the basis upon which it is prepared;
(b) the source of each item of information and adjustment.

5. Pro forma information may only be published in respect of

(a) the current financial period;
(b) the most recently completed financial period; and/or
(c) the most recent interim period for which relevant unadjusted information has been or will be published or is being published in the same document.

6. Pro forma adjustments related to the pro forma financial information must be:

(a) clearly shown and explained;
(b) directly attributable to the transaction;
(c) factually supportable.

In addition, in respect of a pro forma profit and loss or cash flow statement, they must be clearly identified as to those expected to have a continuing impact on the issuer and those which are not.
7. The report prepared by the independent accountants or auditors must state that in their opinion:

(a) the pro forma financial information has been properly compiled on the basis stated;

(b) that basis is consistent with the accounting policies of the issuer.
**Item** | **Prospectus Requirement for Equity Issue** |
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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>ANNEX III</strong></td>
<td><strong>Minimum Disclosure Requirements for the Share Securities Note (schedule)</strong></td>
</tr>
<tr>
<td><strong>1. PERSONS RESPONSIBLE</strong></td>
<td></td>
</tr>
<tr>
<td><strong>1.1</strong> All persons responsible for the information given in the prospectus and, as the case may be, for certain parts of it, with, in the latter case, an indication of such parts. In the case of natural persons including members of the issuer’s administrative, management or supervisory bodies indicate the name and function of the person; in case of legal persons indicate the name and registered office.</td>
<td><strong>Mandatory</strong></td>
</tr>
<tr>
<td><strong>1.2</strong> A declaration by those responsible for the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the prospectus is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import. As the case may be, declaration by those responsible for certain parts of the prospectus that, having taken all reasonable care to ensure that such is the case the information contained in the part of the prospectus for which they are responsible is, to the best of their knowledge, in accordance with the facts and contains no omission likely to affect its import.</td>
<td><strong>Mandatory</strong></td>
</tr>
<tr>
<td><strong>2. RISK FACTORS</strong></td>
<td></td>
</tr>
<tr>
<td>Prominent disclosure of risk factors that are material to the securities being offered and/or admitted to trading in order to assess the market risk associated with these securities in a section headed “Risk Factors”.</td>
<td><strong>Mandatory</strong></td>
</tr>
<tr>
<td><strong>3. KEY INFORMATION</strong></td>
<td></td>
</tr>
</tbody>
</table>
| **3.1** Working capital Statement | Carved out (NB:)

Statement by the issuer that, in its opinion, the working capital is sufficient for the issuer’s present requirements
or, if not, how it proposes to provide the additional working capital needed.

3.2 Capitalization and indebtedness

A statement of capitalization and indebtedness (distinguishing between guaranteed and unguaranteed, secured and unsecured indebtedness) as of a date no earlier than 90 days prior to the date of the document. Indebtedness also includes indirect and contingent indebtedness.

3.3 Interest of natural and legal persons involved in the issue/offer

A description of any interest, including conflicting ones that is material to the issue/offer, detailing the persons involved and the nature of the interest.

3.4 Reasons for the offer and use of proceeds

Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.
4. INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ ADMITTED TO TRADING

4.1 A description of the type and the class of the securities being offered and/or admitted to trading, including the ISIN (International Security Identification Number) or other such security identification code.

4.2 Legislation under which the securities have been created.

4.3 An indication whether the securities are in registered form or bearer form and whether the securities are in certificated form or book-entry form. In the latter case, name and address of the entity in charge of keeping the records.

4.4 Currency of the securities issue.

4.5 A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.

- Dividend rights:
  - Fixed date(s) on which the entitlement arises,
  - Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates,
  - Dividend restrictions and procedures for non-resident holders,
  - Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments.

- Voting rights.
• Pre-emption rights in offers for subscription of securities of the same class.
• Right to share in the issuer’s profits.
• Rights to share in any surplus in the event of liquidation.
• Redemption provisions.
• Conversion provisions.

4.6 In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued. **Mandatory**

4.7 In the case of new issues, the expected issue date of the securities. **Mandatory**

4.8 A description of any restrictions on the free transferability of the securities. **Mandatory**

4.9 An indication of the existence of any mandatory takeover bids and/or squeeze-out and sell-out rules in relation to the securities. **Mandatory**

4.10 An indication of public takeover bids by third parties in respect of the issuer’s equity, which have occurred during the last financial year and the current financial year. The price or exchange terms attaching to such offers and the outcome thereof must be stated. **Mandatory**

4.11 In respect of the country of registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought:

• Information on taxes on the income from the securities withheld at source,
• Indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.
5. TERMS AND CONDITIONS OF THE OFFER

5.1 Conditions, offer statistics, expected timetable and action required to apply for the offer

5.1.1 Conditions to which the offer is subject.

5.1.2 Total amount of the issue/offer, distinguishing the securities offered for sale and those offered for subscription; if the amount is not fixed, description of the arrangements and time for announcing to the public the definitive amount of the offer.

5.1.3 The time period, including any possible amendments, during which the offer will be open and description of the application process.

5.1.4 An indication of when, and under which circumstances, the offer may be revoked or suspended and whether revocation can occur after dealing has begun.

5.1.5 A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.

5.1.6 Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).

5.1.7 An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.

5.1.8 Method and time limits for paying up the securities and for delivery of the securities.

5.1.9 A full description of the manner and date in which results of the offer are to be made public.
<table>
<thead>
<tr>
<th>Item</th>
<th>Prospectus Requirement for Equity Issue</th>
<th>AIM Admission Document Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1.10</td>
<td>The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.2</td>
<td>Plan of distribution and allotment</td>
<td></td>
</tr>
<tr>
<td>5.2.1</td>
<td>The various categories of potential investors to which the securities are offered. If the offer is being made simultaneously in the markets of two or more countries and if a tranche has been or is being reserved for certain of these, indicate any such tranche.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.2.2</td>
<td>To the extent known to the issuer, an indication of whether major shareholders or members of the issuer’s management, supervisory or administrative bodies intended to subscribe in the offer, or whether any person intends to subscribe for more than five per cent of the offer.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.2.3</td>
<td>Pre-allotment Disclosure:</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) The division into tranches of the offer including the institutional, retail and issuer’s employee tranches and any other tranches;</td>
<td>Carved out</td>
</tr>
<tr>
<td></td>
<td>(b) The conditions under which the claw-back may be used, the maximum size of such claw back and any applicable minimum percentages for individual tranches;</td>
<td>Carved out</td>
</tr>
<tr>
<td></td>
<td>(c) The allotment method or methods to be used for the retail and issuer’s employee tranche in the event of an over-subscription of these tranches;</td>
<td>Carved out</td>
</tr>
<tr>
<td>Item</td>
<td>Prospectus Requirement for Equity Issue</td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>---------------------------------------</td>
<td></td>
</tr>
<tr>
<td>(d)</td>
<td>A description of any pre-determined preferential treatment to be accorded to certain classes of investors or certain affinity groups (including friends and family programmes) in the allotment, the percentage of the offer reserved for such preferential treatment and the criteria for inclusion in such classes or groups.</td>
<td></td>
</tr>
<tr>
<td>(e)</td>
<td>Whether the treatment of subscriptions or bids to subscribe in the allotment may be determined on the basis of which firm they are made through or by;</td>
<td></td>
</tr>
<tr>
<td>(f)</td>
<td>A target minimum individual allotment if any within the retail tranche;</td>
<td></td>
</tr>
<tr>
<td>(g)</td>
<td>The conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest;</td>
<td></td>
</tr>
<tr>
<td>(h)</td>
<td>Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.</td>
<td></td>
</tr>
<tr>
<td>5.2.4</td>
<td>Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.</td>
<td></td>
</tr>
<tr>
<td>5.2.5</td>
<td>Over-allotment and 'green shoe':</td>
<td></td>
</tr>
<tr>
<td>(a)</td>
<td>The existence and size of any over-allotment facility and/or 'green shoe'.</td>
<td></td>
</tr>
<tr>
<td>(b)</td>
<td>The existence period of the over-allotment facility and/or 'green shoe'.</td>
<td></td>
</tr>
<tr>
<td>(c)</td>
<td>Any conditions for the use of the over-allotment facility or exercise of the 'green shoe'.</td>
<td></td>
</tr>
<tr>
<td>5.3</td>
<td>Pricing</td>
<td></td>
</tr>
<tr>
<td>5.3.1</td>
<td>An indication of the price at which the securities will be offered. If the price is not known or if there is no</td>
<td></td>
</tr>
<tr>
<td>Item</td>
<td>Prospectus Requirement for Equity Issue</td>
<td>AIM Admission Document Requirement</td>
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<tr>
<td>------</td>
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</tr>
<tr>
<td></td>
<td>established and/or liquid market for the securities, indicate the method for determining the offer price, including a statement as to who has set the criteria or is formally responsible for the determination. Indication of the amount of any expenses and taxes specifically charged to the subscriber or purchaser.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.3.2</td>
<td>Process for the disclosure of the offer price.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.3.3</td>
<td>If the issuer’s equity holders have pre-emptive purchase rights and this right is restricted or withdrawn, indication of the basis for the issue price if the issue is for cash, together with the reasons for and beneficiaries of such restriction or withdrawal.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.3.4</td>
<td>Where there is or could be a material disparity between the public offer price and the effective cash cost to members of the administrative, management or supervisory bodies or senior management, or affiliated persons, of securities acquired by them in transactions during the past year, or which they have the right to acquire, include a comparison of the public contribution in the proposed public offer and the effective cash contributions of such persons.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.4</td>
<td>Placing and Underwriting</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.4.1</td>
<td>Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extend known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.4.2</td>
<td>Name and address of any paying agents and depository agents in each country.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.4.3</td>
<td>Name and address of the entities agreeing to underwrite the issue on a firm commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under “best efforts” arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall</td>
<td>Carved out</td>
</tr>
<tr>
<td>Item</td>
<td>Prospectus Requirement for Equity Issue</td>
<td>AIM Admission Document Requirement</td>
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<tr>
<td>------</td>
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</tr>
<tr>
<td></td>
<td>amount of the underwriting commission and of the placing commission.</td>
<td>Carved out</td>
</tr>
<tr>
<td>5.4.4</td>
<td>When the underwriting agreement has been or will be reached.</td>
<td>Carved out</td>
</tr>
<tr>
<td>6.</td>
<td><strong>ADMISSION TO TRADING AND DEALING ARRANGEMENTS</strong></td>
<td>Carved out</td>
</tr>
<tr>
<td>6.1</td>
<td>An indication as to whether the securities offered are or will be the object of an application for admission to trading, with a view to their distribution in a regulated market or other equivalent markets with indication of the markets in question. This circumstance must be mentioned, without creating the impression that the admission to trading will necessarily be approved. If known, the earliest dates on which the securities will be admitted to trading.</td>
<td>Carved out</td>
</tr>
<tr>
<td>6.2</td>
<td>All the regulated markets or equivalent markets on which, to the knowledge of the issuer, securities of the same class of the securities to be offered or admitted to trading are already admitted to trading.</td>
<td>Carved out</td>
</tr>
<tr>
<td>6.3</td>
<td>If simultaneously or almost simultaneously with the creation of the securities for which admission to a regulated market is being sought securities of the same class are subscribed for or placed privately or if securities of other classes are created for public or private placing, give details of the nature of such operations and of the number and characteristics of the securities to which they relate.</td>
<td>Carved out</td>
</tr>
<tr>
<td>6.4</td>
<td>Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and description of the main terms of their commitment.</td>
<td>Carved out</td>
</tr>
<tr>
<td>6.5</td>
<td>Stabilization: where an issuer or a selling shareholder has granted an over-allotment option or it is otherwise proposed that price stabilizing activities may be entered into in connection with an offer:</td>
<td>Carved out</td>
</tr>
<tr>
<td>6.5.1</td>
<td>The fact that stabilization may be undertaken, that there is no assurance that it will be undertaken and that it may be stopped at any time;</td>
<td>Carved out</td>
</tr>
<tr>
<td>Item</td>
<td>Prospectus Requirement for Equity Issue</td>
<td>AIM Admission Document Requirement</td>
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<tr>
<td>------</td>
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</tr>
<tr>
<td>6.5.2</td>
<td>The beginning and the end of the period during which stabilization may occur;</td>
<td>Carved out</td>
</tr>
<tr>
<td>6.5.3</td>
<td>The identity of the stabilization manager for each relevant jurisdiction unless this is not known at the time of publication;</td>
<td>Carved out</td>
</tr>
<tr>
<td>6.5.4</td>
<td>The fact that stabilization transactions may result in a market price that is higher than would otherwise prevail.</td>
<td>Carved out</td>
</tr>
<tr>
<td>7.</td>
<td>SELLING SECURITIES HOLDERS</td>
<td></td>
</tr>
<tr>
<td>7.1</td>
<td>Name and business address of the person or entity offering to sell the securities, the nature of any position office or other material relationship that the selling persons has had within the past three years with the issuer or any of its predecessors or affiliates.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>7.2</td>
<td>The number and class of securities being offered by each of the selling security holders.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>7.3</td>
<td>Lock-up agreements</td>
<td>Mandatory</td>
</tr>
<tr>
<td></td>
<td>The parties involved.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Content and exceptions of the agreement.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Indication of the period of the lock up.</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>EXPENSE OF THE ISSUE/OFFER</td>
<td></td>
</tr>
<tr>
<td>8.1</td>
<td>The total net proceeds and an estimate of the total expenses of the issue/offer.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>9.</td>
<td>DILUTION</td>
<td></td>
</tr>
<tr>
<td>9.1</td>
<td>The amount and percentage of immediate dilution resulting from the offer.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>Item</td>
<td>Prospectus Requirement for Equity Issue</td>
<td>AIM Admission Document Requirement</td>
</tr>
<tr>
<td>------</td>
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<td>------------------------------------</td>
</tr>
<tr>
<td>9.2</td>
<td>In the case of a subscription offer to existing equity holders, the amount and percentage of immediate dilution if they do not subscribe to the new offer.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>10.</td>
<td>ADDITIONAL INFORMATION</td>
<td></td>
</tr>
<tr>
<td>10.1</td>
<td>If advisors connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisors have acted.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>10.2</td>
<td>An indication of other information in the Securities Note which has been audited or reviewed by statutory auditors and where auditors have produced a report. Reproduction of the report or, with permission of the competent authority, a summary of the report.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>10.3</td>
<td>Where a statement or report attributed to a person as an expert is included in the Securities Note, provide such persons’ name, business address, qualifications and material interest if any in the issuer. If the report has been produced at the issuer’s request a statement to the effect that such statement or report is included, in the form and context in which it is included, with the consent of the person who has authorised the contents of that part of the Securities Note.</td>
<td>Mandatory</td>
</tr>
<tr>
<td>10.4</td>
<td>Where information has been sourced from a third party, provide a confirmation that this information has been accurately reproduced and that as far as the issuer is aware and is able to ascertain from information published by that third party, no facts have been omitted which would render the reproduced information inaccurate or misleading. In addition, identify the source(s) of the information.</td>
<td>Mandatory</td>
</tr>
</tbody>
</table>
APPENDIX IV:

FINANCIAL INFORMATION REQUIRED

- Historic financial information:
  - Period covered?
    3 years (or, if less, period since incorporation) (cf. eligibility requirements for Official List)
  - Age of last audited accounts?
    Not more than:
    - 9 months old if no interims included,
    - 15 months old if unaudited interims included,
    - 18 months old if audited interims included.
  - Applicable accounting standards?
    If EEA issuer, IAS or, if not applicable to a member state, the relevant national accounting standards.
    If non-EEA issuer, IAS or “equivalent standards”.
  - Obligation to restate prior periods to IAS?
    The last 2 years must be presented on a consistent basis with the next year’s accounts. Listed EEA issuers are required to report to IAS, so in most cases, information in respect of the last 2 years will need to be prepared or restated to IAS.
    Transitional provisions (under art. 35 Prospectus Regulation) provide that no issuer is required to restate financial information to IAS in respect of periods prior to 1 January 2004 (and issuers admitted to trading on a regulated market as at 1 July 2005 are not required to restate information to IAS until they have published their first set of IAS accounts under the IAS Regulations). Additional transitional provisions apply for non-EEA issuers admitted to trading on a regulated market.
  - What about AIM companies?
    Historic financial information in admission documents for periods prior to 1 January 2007 may be presented in accordance with UK GAAP rather than IAS.
IAS reporting is not mandatory for AIM companies until 1 January 2007, and so even financial information included in a prospectus issued by an AIM company will not necessarily need to be restated (as the issuer’s next accounts will not necessarily be prepared to IAS).

- **True and fair?**
  The historic financial information must be independently audited or reported on, as to whether it gives a true and fair view.

**Pro forma:**
- **Required?**
  Required in the case of a “significant gross change”.
- **Presentation requirements?**
  As set out in Annex II.

**Interims:**
- **Required?**
  If issuer has published quarterly or half yearly accounts since its last year end, these must be included.
  If annual accounts more than 9 months old, interims covering at least the first 6 months of the current year must be included, and if more than 15 months old, these must be audited.
APPENDIX V:

KEY DIFFERENCES BETWEEN REQUIREMENTS FOR THE OFFICIAL LIST AND AIM

OFFICIAL LIST

- Minimum 25% shares to be held in public hands in one or more EEA states
- Normally 3 year trading record and audited accounts required
- Offering document on IPO approved by the FSA or competent authority in issuer’s home member state, where not the UK
- Sponsor required for IPO and certain transactions
- Prior shareholder approval required for substantial acquisitions and disposals
- Minimum market capitalisation requirement (£700,000)
- Modifications to the requirement for accounts covering three years for scientific research companies and mineral companies
- Generally required to comply with IAS in respect of financial periods after 1 January 2005

AIM

- No requirement for shares to be held in public hands
- No trading record requirement
- Offering document on IPO does not generally require the approval of the regulators, unless IPO is being undertaken in conjunction with an “offer to the public”
- Nominated adviser required at all times
- No prior shareholder approval required (other than for reverse takeovers)
- No minimum market capitalisation required
- IAS reporting not mandatory until 1 January 2007

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58 For these purposes, shares held by persons in non-EEA states will only be taken into account if the shares are listed in the non-EEA state in question. Furthermore, shares held by directors, their connected persons, persons with the contractual right to nominate a director, trustees of an employee share scheme and any person or persons in the same group with an interest in 5% or more of the shares of the relevant class, will not be held “in public hands” for these purposes.

59 See Chapter 7 for further details on what constitutes an “offer to the public” for these purposes.

60 Scientific research companies and mineral companies may be eligible for listing even without accounts covering a three year period provided certain other conditions are met. Please see Chapter 1 for further details.

61 Non-EEA issuers will be required to comply with national accounting standards or IAS.
APPENDIX VI:

APPLICABLE CLASS TESTS FOR OFFICIAL LIST & AIM

The Class Tests

i the Gross Assets test is calculated by dividing the gross assets the subject of the transaction by the gross assets of the listed company and multiplying the result by 100.

ii the Profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the listed company and multiplying the result by 100.

iii the Consideration test is calculated by dividing the consideration payable to the vendors by the market value of all the ordinary shares of the listed company in issue (excluding treasury shares) (by reference to the closing price of such shares on the last business day before the announcement) and multiplying the result by 100.

iv the Gross Capital test is calculated by dividing the gross capital of the company or business being acquired by the gross capital of the listed company and multiplying the result by 100.

v for AIM companies only, the Turnover test is calculated by dividing the turnover attributable to the subject of the transaction by the turnover of the AIM company and multiplying the result by 100.

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62 Note that LR10.7 sets out modifications to the class tests for property companies, mineral companies and scientific research based companies.

63 The definition of “gross assets” in the Listing Rules and the AIM Rules are nearly identical although note that if there is an acquisition of assets other than an interest in an undertaking, the “assets the subject of the transaction” means the greater of the consideration or the book value of those assets under the Listing Rules whereas under the AIM Rules it simply refers to the book value of the assets.

64 The definition of “profits” under the Listing Rules means profits after deducting all charges except taxation while under the AIM Rules means profits before taxation and extraordinary items.
## Requirements

In the following table the percentages in the “Class Test Results” column means the highest percentage derived from applying the above class tests to the relevant transaction.

<table>
<thead>
<tr>
<th>Class Test Result</th>
<th>Listing Rules</th>
<th>AIM Rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>&gt; 0.25%, &lt;5% (related party only)</td>
<td>inform FSA in writing in advance; independent adviser to confirm in writing that terms are fair and reasonable; undertake to notify in the accounts</td>
<td>N/A</td>
</tr>
<tr>
<td>&gt; 5% (related party only)</td>
<td>notify shareholders as if class transaction (see below); seek shareholder approval; ensure related party does not vote on resolution;</td>
<td>disclose information set out in schedule 4 of AIM Rules; statement from directors that, having consulted with its nominated adviser, the terms are fair and reasonable</td>
</tr>
<tr>
<td>&lt;5%</td>
<td>Class 3: notify a RIS if acquisition with details set out in 10.3.1R(2); if not acquisition, only notify if it releases details to the public</td>
<td>N/A</td>
</tr>
<tr>
<td>&gt;10%</td>
<td>see below</td>
<td>disclose information under Schedule 4; no shareholder approval (AR 12)</td>
</tr>
<tr>
<td>&gt;5%, &lt;25%</td>
<td>Class 2: notify RIS with details in LR 10.4.1</td>
<td>N/A</td>
</tr>
<tr>
<td>&gt;25%, &lt;100%</td>
<td>Class 1: notify RIS as if class 2; send explanatory circular to shareholders and obtain approval</td>
<td>N/A</td>
</tr>
<tr>
<td>&gt;100%</td>
<td>Reverse Takeover: comply with class 1 requirements; on completion, listing will be cancelled and must make application for listing as a new applicant</td>
<td>Reverse Takeover: send circular to shareholders and obtain approval</td>
</tr>
</tbody>
</table>
Glossary

In this Guide, the following definitions shall apply, except where the context otherwise requires:

AIM the market of that name operated by the London Stock Exchange

AIM Rules the rules for companies whose securities are traded on AIM and their nominated advisers, published by the London stock Exchange, and references to “AR” shall be references to the AIM Rules

CESR The Committee of European Securities Regulators

CESR Recommendations The CESR’s recommendations for the consistent implementation of the European Commission’s Regulation on Prospectuses no 809/2004, issued in February 2005

Combined Code the corporate governance code issued by the Financial Reporting Council

Disclosure Rules the Disclosure Rules relating to the disclosure of information in respect of financial instruments which have been admitted to trading on a regulated market, or for which a request for admission to trading on such a market has been made, issued by the FSA pursuant to the Market Abuse Directive (Disclosure Rules) Instrument 2005 and references to “DR” shall be references to the Disclosure Rules

EEA the European Economic Area, comprising those states which are, from time to time, contracting parties to the agreement on the European Economic Area signed at Oporto on 2 May 1992, and, as at 1 September 2005, the following states form the EEA:

Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden and the UK

References to an “EEA state” or a “member state” shall be to a member of the EEA

EEA issuer an issuer incorporated in an EEA state

FSA the Financial Services Authority which, acting as the competent authority for listing, is referred to as the UK Listing Authority

FSMA the Financial Services and Markets Act 2000, as amended
IAS Regulations

EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 as adopted from time to time by the European Commission in accordance with that Regulation

International Accounting Standards

or IAS

international accounting standards within the meaning of the IAS Regulations

Investment Services Directive

the Council Directive of 10 May 1993 on investment services in the securities field (No 93/22/EEC#)

issuer

a legal person who issues, or proposes to issue, the securities in question

Listing Rules or new Listing Rules

the rules relating to the admission to the Official List issued by the FSA pursuant to the Listing Rules Instrument 2005, and references to “LR” shall be references to the Listing Rules

London Stock Exchange

London Stock Exchange plc

Model Code

the model code on directors dealings set out in LR 9 Annex 1 of the Listing Rules

non-EEA issuer

an issuer incorporated in a country that is not an EEA state

Official List

the Official List maintained by the FSA

old Listing Rules

the listing rules relating to the admission to the Official List in force as at 30 June 2005

POS Regulations

the Public Offers of Securities Regulations 1995 (SI 1995 No 1537) in the form that was in force immediately prior to their repeal

Prospectus Directive

the Directive of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (No 2003/71/EC#)

Prospectus Regulation

Regulation number 809/2004 of the European Commission

Prospectus Rules

the rules relating to transferable securities issued by the FSA pursuant to the Prospectus Rules Instrument 2005 and references to “PR” shall be references to the Prospectus Rules

regulated market

(a) (as defined in article 1 of the Investment Services Directive) a market for which the instruments listed in Section B of the Annex to the Investment Services Directive which:

(i) appears on the list of such markets drawn up by the market’s home state as required by article 16 of the Investment Services Directive;
(ii) functions regularly;

(iii) is characterised by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market; and

(iv) requires compliance with all the reporting and transparency requirements laid down by articles 20 and 21 of the Investment Services Directive; and

(b) a market notified under article 16 of the Investment Services Directive, as included in point 30b of Annex IX to the Agreement of the European Economic Area, to the Standing Committee of the EFTA States as defined in that agreement.

A list of regulated markets is available at: http://europa.eu.int/comm/internal_market/securities/isd/index_en.htm

RIS  a Regulatory Information Service


Treasury  Her Majesty's Treasury, a UK government department designated:

(a) for the purposes of section 2(2) of the European Communities Act 1972

(b) in relation to listing of securities on a stock exchange and information concerning listed securities and also in relation to measures relating to prospectuses on offers of transferable securities to the public

UK  the United Kingdom of Great Britain and Northern Ireland