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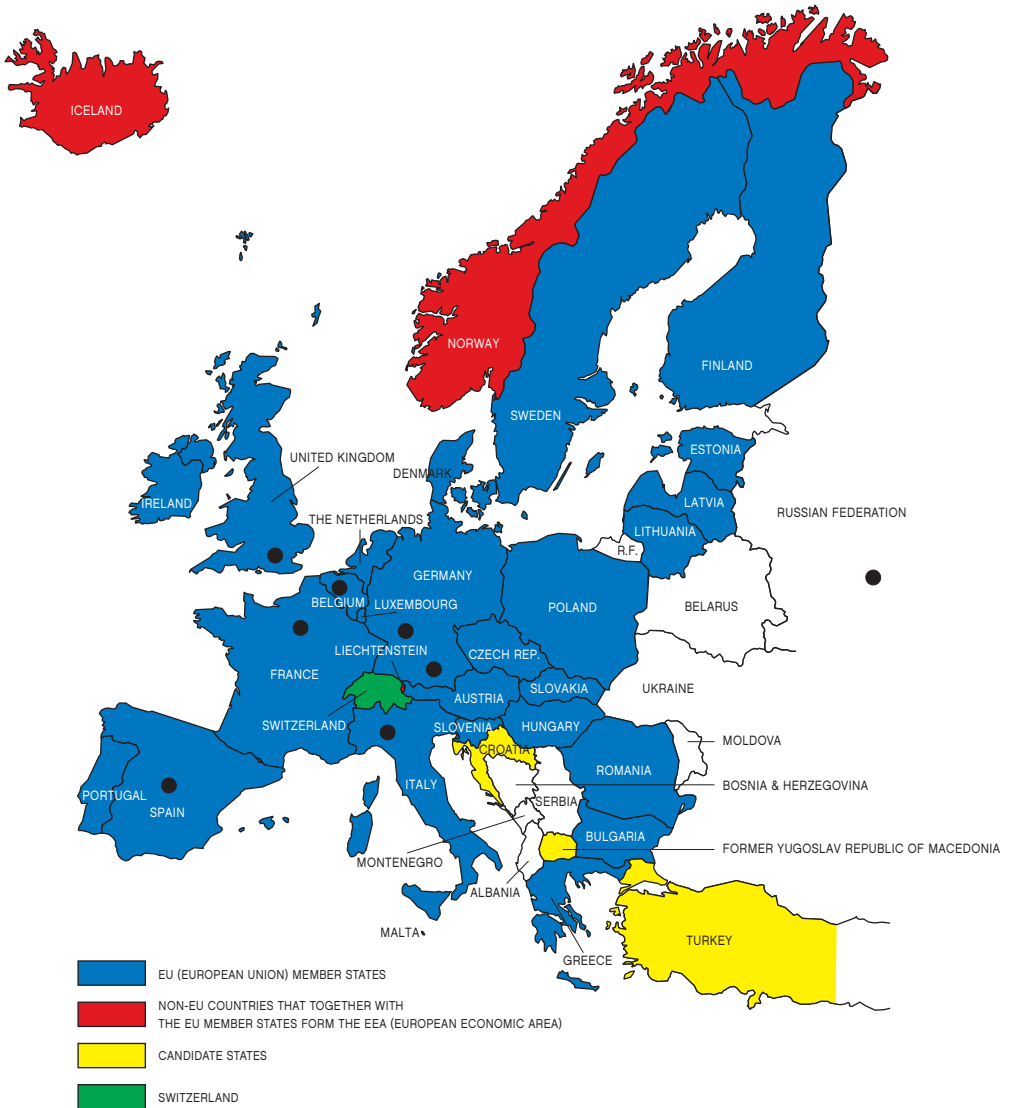
A silhouette of a map of Europe is centered on the page. Behind the map, a bright light source creates a starburst effect with numerous rays of light radiating outwards, filling the background with a blue glow.

THE MAIN MARKET & AIM

**A guide to listing equity securities
on the London markets and
the continuing obligations
of listed companies**

Giles Elliott, Vica Irani and Sebastian Orton

Third Edition



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October 2009

About This Guide

In line with its Financial Services Action Plan adopted in 1999, the European Union continues to take significant steps towards harmonising the regulatory framework for raising capital within the EEA. The Prospectus Directive has been a key part of this process, with the aim of creating common standards for the issue of equity and other securities in the EEA. Much guidance has been given by regulators in relation to the interpretation and application of the requirements of the Prospectus Directive since its implementation in July 2005. In addition, there have been significant amendments to the rules of certain equity markets, such as AIM, which do not fall within the ambit of the Prospectus Directive for most IPOs (albeit that the AIM Rules use the Prospectus Directive requirements as a starting point in terms of the content requirements of any AIM admission document).

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 and the regulatory guidance given on such rules since such date. 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 Disclosure Rules and Transparency Rules in force following implementation of the Transparency Directive in 2007, the Statutory Audit and Company Reporting Directives in 2008 and other continuing obligations applicable to a listed company and also highlights the rules governing further secondary offerings and acquisitions.

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CHAPTER 1

ELIGIBILITY FOR LISTING ON THE MAIN MARKET

INTRODUCTION

The Prospectus Directive is a “maximum harmonisation” directive, which means that individual states are unable to impose additional “super-equivalent” requirements¹ 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 market².

In advance of implementing the Prospectus Directive, the Financial Services Authority (“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 judgment 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 (now widely known as the “Main Market”) 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 were retained and continue to apply.

Although the retention of the super-equivalent eligibility requirements has been regarded as a positive move by the market, there have been some concerns raised by several market participants regarding a lack of clarity and some confusion resulting from the different listing routes offered by the FSA, such as primary listing, secondary listing and global depository receipts, as well as the existence of other markets such as AIM and PLUS. As part of a consultation paper published on 1 December 2008³, the FSA proposed to amend the listing regime to:

- clarify the listings to which super-equivalent and minimum-harmonisation requirements apply by re-labelling the relevant segments as “Premium” and “Standard” listings;

1 “Super-equivalent” requirements are those more onerous than the requirements contained in the relevant European directive.

2 As discussed further in Chapter 5, AIM is not a “regulated market” for the purposes of the Prospectus Directive.

3 FSA Consultation Paper CP08/21 – Consultation on amendments to the Listing Rules and feedback on DP08/1 (a review of the structure of the listing regime).

- allow UK companies to apply for a Standard listing and make it easier for companies to migrate between types of listings (without first cancelling their current listings); and
- clarify corporate governance disclosure requirements and introduce a new pre-emption rights disclosure regime for overseas companies with a Premium listing.

On 25 September 2009, the FSA announced the final changes to the Listing Rules implementing the above proposals. One almost immediate change is that from 6 October 2009, a UK company will be able to apply for a secondary listing of its equity securities under the provisions of LR 14, which previously was reserved for overseas companies only. This offers UK companies the opportunity to elect to list their securities on the Main Market but on the basis of the minimum harmonisation requirements of the prospectus directive rather than having to satisfy the super-equivalent criteria for companies seeking a primary listing.

The re-labelling of “primary” listings as “Premium” listings and “secondary” listings as “Standard” listings will take effect, together with the other rule changes, on 6 April 2010. In so doing, the FSA intends to clarify the routes by which companies can obtain a listing in London and improve transparency for investors about the standards that apply to each type of listing. In addition, the amendments will:

- require overseas companies that have a Premium listing to “comply or explain” against the requirements of the Combined Code;
- require overseas companies that have a Standard listing to comply with the EU Company Reporting Directive; and
- clarify and simplify the process for companies wishing to transfer their equity listings from one segment to another.

The current eligibility criteria are contained in Chapters 2 and 6 of the Listing Rules. The requirements in Chapter 2 apply in respect of the listing of all securities and will continue to do so after 6 April 2010, with those in Chapter 6 applying only to primary listings of equity securities (and these will continue to apply to Premium listings from 6 April 2010).

Where this Guide refers to the rules relating to issuers with a listing on the Main Market, unless otherwise stated, these are references to the rules relating to issuers seeking, or having, a primary, or soon to be Premium, listing rather than the lighter regulations imposed upon those seeking a secondary, or soon to be Standard, listing.

A. GENERAL REQUIREMENTS FOR ALL SECURITIES

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

i. Incorporation and 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 constitution⁴. 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, such as to facilitate future offers of shares to the public).

In addition, the securities to be listed must conform to 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 (LR 2.2.3)

There is a distinction between admission to listing on the Main Market and admission to trading, 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)

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 793 of the Companies Act 2006) (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 a transfer of its shares if the FSA is satisfied that this power would not disturb the market in those shares.

Unlike 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). The FSA has indicated that it would, in very limited circumstances, be willing to agree to certain restrictions on transferability. For example, the FSA has on various occasions in the past few

⁴ This requirement does not apply to a "public sector issuer" (for example, a state, local authority or statutory body).

years permitted investment entities to include transfer restrictions in their articles to avoid falling within the ambit of onerous overseas legislative requirements (however, it has required these restrictions to be carefully drafted and to specify the relevant legislative provisions in question—broad discretionary powers have not been permitted⁵). The other notable transfer restrictions permitted relate to protecting the public interest, such as in the context of defence-related assets.

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 securities⁶. 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 list only 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 a regulated market (such as the Main Market) 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 that 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 be eligible for admission to listing only 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.

⁵ *List!* Issue No. 16 (July 2007).

⁶ 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)

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 prospectus⁷. The accounts must have been independently audited in accordance with the auditing standards applicable in a European Economic Area (“EEA”) State or an equivalent standard and reported on by such auditors without modification.

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

An applicant must demonstrate that at least 75 percent of its business is supported by a 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 activity⁸ (a “main activity” equating to 75 percent of its business).

FSA guidance indicates that in determining what amounts to 75 percent 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:

- 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 that 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 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

⁷ This requirement does not apply to scientific research based companies or mineral companies. See paragraph C of Chapter 1 for further details.

⁸ These requirements do not apply to scientific research based companies or mineral companies. See paragraph C of Chapter 1 for further details.

- it has significant levels of research and development expenditure or significant levels of capital expenditure.

Where an issuer has made one or a series of acquisitions during its three-year historic revenue-earning record period, pre-acquisition financial information may need to be provided to satisfy the Listing Rules. In determining how the “75 percent test” should be applied in such situations, the FSA has advised⁹ that:

- the size of the acquired entity should be compared against the size of the group as a whole (*i.e.*, as enlarged by the acquisition) and not against the “un-enlarged” group. In situations where multiple acquisitions have taken place, acquisitions must be aggregated in determining compliance with the 75 percent threshold;
- in comparing the relative sizes of any two entities, the methodology set out in the Annex to Chapter 10 of the Listing Rules should be used, although the FSA is open to discussing the appropriateness of different class tests;
- as the “75 percent test” should be applied to the entity that is to be listed as at the date of admission, the class tests for the acquired entity against the enlarged group should be applied at this time. However, the FSA recognises that audited financial information may not be available for both entities at this point and is willing to discuss the most appropriate financial information to be used; and
- should any pre-acquisition financial information be required for any “acquired entity”, it should be ensured that at least three years’ financials are included for that entity. Furthermore, the Generally Accepted Accounting Principles (“GAAP”) applied to those accounts should be consistent with those of the group as a whole.

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 12 months from the date of publication of the prospectus¹⁰. 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. 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. While the FSA has not been able to alter the requirements of the Prospectus Directive, it has, for the purposes of

⁹ FSA Consultation Paper CP08/21 – Consultation on amendments to the Listing Rules and feedback on DP08/1 (a review of the structure of the listing regime).

¹⁰ 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.

determining eligibility for listing, set out an alternative for regulated issuers that 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 12 months without needing to raise further capital.

iv. **Shares in Public Hands** (LR 6.1.19 and 6.1.20)

Twenty-five percent of the shares¹¹ 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 state¹²). 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 percent or more of the shares of the relevant class will not be held in public hands for these purposes.

Corporate shareholders, particularly fund managers, in new applicant issuers should be wary of the application of LR 6.1.19(4)(e) to shareholdings held by different funds or entities within their corporate group. A strict reading of the rule would require shares held by different funds within the same group to be aggregated (and therefore, if these exceed 5 percent, to be disregarded for the purpose of considering whether enough shares are in public hands). However, the FSA has clarified that the regulatory purpose behind this rule is to ensure sufficient liquidity in the secondary market. In certain circumstances, therefore, it will be possible and appropriate to disaggregate holdings within a corporate group. It is the responsibility of the issuer’s sponsor to consider whether the shareholdings are to be disaggregated, and in determining this, the sponsor should have regard to whether or not the different fund managers make their investment decisions independently of one another and in doing so are unfettered by the ultimate corporate shareholder. Where it can be evidenced that there are systems and controls in place to ensure this, the shareholdings may be disaggregated even if the ultimate shareholder for all the fund managers is the same person/entity.

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 percent of the issued equity share capital of the applicant¹³ as at the time of issue of the warrants or options (excluding rights under employee share schemes).

¹¹ Excluding treasury shares.

¹² Although technically only shares in public hands in one or more EEA States count towards the 25 percent threshold, the FSA does have the discretion (under LR 6.1.20G) to include shares held outside the EEA. The FSA has confirmed in Issue No. 11 of *List!* (September 2005) that it would try to adopt a flexible approach when exercising this discretion and would expect an issuer to demonstrate that the market would operate properly with a percentage lower than 25 percent held in public hands in EEA States (for example, in circumstances where, although a significant proportion of the public-hands element is held outside the EEA, all trades will take place in London). Conversely, the FSA has also emphasised its reluctance to permit the overall number of shares in public hands to fall below 25 percent other than in the context of the largest issuers.

¹³ Excluding treasury shares.

vi. **Settlement** (LR 6.1.23)

To be listed, securities must be eligible for electronic settlement. Although there is no specific dispensation for issuers that may be subject to overseas regulation prohibiting the electronic settlement of its securities, the FSA will consider dispensations to this on a case-by-case basis.

C. SPECIALIST ISSUERS OF SECURITIES

Other than with respect to investment entities and venture capital trusts, the Listing Rules include specific modifications to the eligibility criteria only for mineral companies and scientific research based 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 Recommendations¹⁴ 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 “mineral company” in the 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 nonmetallic ores, mineral oils, natural gases, hydrocarbons and solid fuel).

A mineral company does not need audited accounts covering at least three years, 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 percent of its business is supported by a three-year revenue-earning track record. However, to the extent that a mineral company has accounts, the accounts must comply with the general criteria set out in 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 Main Market 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).

¹⁴ The Committee of European Securities Regulators’ recommendations for the consistent implementation of the European Commission’s Regulation on Prospectuses No. 809/2004, issued in February 2005.

In addition, the CESR Recommendations require certain additional disclosures, and in certain cases 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 percent 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 be unqualified.

However, while there is no longer a requirement, for example, to have a technical expert's report, there are additional eligibility requirements for scientific research based companies such that the company must:

- demonstrate its ability to attract funds from sophisticated investors;
- intend to raise at least £10 million pursuant to a marketing at the time of listing;
- have a capitalisation at the time of listing of at least £20 million (based on the issue price and excluding the value of any securities that have been issued in the six months prior to listing);
- have as its primary reason for listing the raising of finance to bring identified products to the stage where they can generate significant revenues; and
- 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 or significant testing of the effectiveness of its products.

Therefore, whilst the Listing Rules offer a concessionary route for scientific research based companies that do not have a three-year track record, any applicant relying on this route must be able to satisfy all of the conditions of LR 6.1.12. Any waiver of these conditions would be viewed by the FSA as an effective waiver of the requirement of a three-year track record, which as a fundamental eligibility condition would very rarely be allowed by the FSA.

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 whose development may have a material effect on the future prospects of the issuer (see Chapter 3 for further details).

iii. Investment Entities

The Listing Rules, as they apply to investment entities, have in recent years been subject to significant review and change by the FSA. The FSA's key aim from the outset of the consultation process was to provide a more flexible, durable and principle-based approach that would permit a wider range of investment strategies, including those used by some hedge funds, to list for the first time. The FSA's review, which began in March 2006, has since resulted in a two-stage implementation of changes to the Listing Rules for investment entities. An "interim" regime was implemented on 28 September 2007, with a "final" regime of further changes introduced on 8 March 2008.

Changes introduced in September 2007

The most noticeable change implemented under the interim regime was the introduction of a totally revised structure to Chapters 15 and 16 of the Listing Rules. Chapter 15, which had previously set out the listing requirements for all investment entities, was renamed, shortened and refocused on "closed-ended investment funds". Chapter 15 now presents a single platform for all listed closed-ended vehicles, which includes investment trusts, investment companies, venture capital trusts and property investment companies. The interim regime also saw the inclusion of a new Chapter 16 to deal with all rules regarding open-ended investment funds. This change reflected the fact that open-ended funds were already significantly regulated elsewhere, and it was therefore more appropriate to impose fewer regulatory requirements within the Listing Rules than for closed-ended vehicles.

The other substantive changes that took effect in September 2007 include:

- Investment policies – the FSA clarified the purpose and nature of the investment policy under the Listing Rules by requiring investment entities to have a published investment policy (LR 15.2.7). In November 2007, the FSA gave more specific direction¹⁵ on the content requirements of an investment policy setting out that, at a minimum, the policy should address:
 - *Asset allocation* – the policy needs to specifically address how funds available to the investment entity are to be invested, including a high-level description of the target asset classes and any identifiable subclasses.
 - *Risk diversification* – the policy should include firmly stated maximum exposures that are clear as to when they apply and why the board deems them to be appropriate, taking into account the fund's investment strategy and objectives.
 - *Gearing* – a maximum gearing should be established, giving reasons that tie into the issuer's risk-management policies.

¹⁵ *List!* Issue No. 17 (November 2007).

The FSA has also stated that in many circumstances it might be appropriate for an investment policy to address an investment entity's specific objectives, targets or benchmarks, as well as the geographical scope, legal form and currency of the instruments it plans to hold, and give reasons for holding any uninvested cash. The FSA has emphasised that an investment policy should be precise and clear and should keep difficult-to-understand legalese or technical jargon to a minimum.

In a further change to the rules, should any nonmaterial changes need to be made to an investment policy, prior shareholder consent will not be required. In determining materiality, the FSA has advised that it will interpret any investment activity that goes beyond the limits in place under the old Listing Rules to be a material change of the existing investment policy and will therefore require shareholder approval.

- Controlling positions – the prohibition on taking controlling positions has been removed.
- Further deregulation – the regime for property-focused funds and overseas collective investment schemes is now subject to less onerous restrictions, and open-ended funds no longer have to comply with super-equivalent rules.
- 20 percent rule – the rigid diversification limits under the old Listing Rules that prevented more than 20 percent of the assets of a company from being lent to or invested in one company or group have been removed.
- Distributions – the interim regime has removed restrictions on making distributions.

Further changes introduced in March 2008

In March 2008, the FSA implemented its final set of changes to the Listing Rules for investment entities. These aimed to finalise the creation of a unitary listing regime for all listed closed-ended funds, irrespective of domicile. Prior to the implementation of the new rules, overseas investment entities were still able to list under the directive-minimum requirements set out in Chapter 14 of the Listing Rules (the secondary-listing route). This option has now been removed, and all investment entities are required to seek a listing under either Chapter 15 or Chapter 16 (even if they already have a primary listing on another exchange). Overseas investment entities that already had a secondary listing under Chapter 14 have been permitted to either remain listed under these provisions or elect to comply with Chapter 15 or 16 through a simple application to the FSA. Following the prohibition on investment entities listing under Chapter 14, a number of investment entities tried to circumvent this by listing depositary receipts over an investment fund's shares under the provisions of Chapter 18. In response, on 6 May 2008, the FSA added a new LR 18.2.10A, which prohibits the listing of certificates representing equity securities of an investment entity unless the underlying equity

securities are already listed or are the subject of an application for listing at the same time.

Other substantive changes to the Listing Rules that took effect as part of the final regime include:

- Feeder funds – feeder funds can now apply for a listing.
- Experience – the FSA included a provision in the interim regime requiring investment managers to have “sufficient and appropriate experience”, but changes under the final regime mean that investment entities are no longer required to have sufficient experience available to them, although guidance emphasises that boards are responsible for ensuring that the directors and investment managers have sufficient and appropriate expertise.
- Board independence – the provisions are now more principles-based and also permit more than one manager representative to sit on the board of a listed closed-ended investment fund.
- Quarterly portfolio disclosure – the quarterly disclosure requirements have been removed and not replaced, but the FSA has given direction that it will keep this topic under review. It should be noted that periodic disclosures under the Disclosure Rules and Transparency Rules continue to apply.
- Related parties – the FSA has included an exemption to facilitate co-investment by listed investment entities and transactions with other clients of the investment manager.

The Specialist Fund Market

Complementary to the FSA's implementation of the “final” regime for investment entities, the London Stock Exchange launched the Specialist Fund Market (“SFM”) in November 2007 to provide a separate clearly labelled market tailored for highly specialised investment entities such as single-strategy hedge funds, private equity funds and feeder funds. The SFM aims to bridge the gap between the Main Market regime and AIM. It is a regulated market, so unlike AIM, admission to it does require a prospectus, but the full Listing Rules do not apply.

iv. Other Cases

Other types of companies, including “innovative” or “high-growth” companies that 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 investors¹⁶. Factors that the FSA will take into consideration include a 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

¹⁶ Note that the CESR Recommendations contain additional requirements for “start-up” companies that may also need to be complied with.

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 whether 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).

It is likely to be difficult to establish an overriding reason which will satisfy the FSA that a listing is appropriate.

v. Property Companies and Shipping Companies

Although the Listing Rules do not contain any specific requirements for property or shipping companies, the CESR Recommendations do contain additional content requirements for prospectuses issued by property and shipping companies (including 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 Main Market are required to comply with the Listing Rules in full to the extent that they are permitted to do so. Overseas companies are currently exempt from the requirement to replicate the UK company law pre-emption rights, although the FSA is expected to publish a consultation paper shortly, addressing whether this exemption for overseas companies should be removed, and instead of “complying or explaining” against the UK’s Combined Code, these companies are required to state their compliance with their domestic corporate governance regime and explain the way in which their actual practices differ from the Combined Code¹⁷. 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.

E. HIGH-RISK ISSUERS

In recent years, the FSA has noted that an increased number of “high-risk issuers” have sought to obtain a primary listing on the London Stock Exchange’s Main Market. Generally, these entities have been based in rapidly developing emerging economies

¹⁷ From 6 April 2010, overseas companies with a Premium listing will be required to “comply or explain” against the Combined Code.

that expose investors to greater legal, political, regulatory and economic risks. The FSA and the London Stock Exchange have generally welcomed applications from companies in such locations but have remained vigilant to the fact that emerging markets can often present investors with a risk environment that is difficult to properly evaluate or quantify. In particular, there have been instances where an issuer has been at risk of engaging in an activity as part of its business model that was illegal, or where the management or founders of an issuer had criminal associations. There have also been situations where it was possible that a significant part of the issuer's assets might be confiscated or become worthless shortly after admission. The FSA has become increasingly aware that Part VI of FSMA imposes on it the obligation to consider whether an application for listing has the potential to cause detriment to investors. As a result, it has emphasised¹⁸ that, where it deems it necessary, it will be prepared to make specific enquiries of issuers and their advisers that would not normally be made, to ensure adequate disclosure on specific matters (see Chapter 2).

¹⁸ *List!* Issue No. 18 (March 2008).

CHAPTER 2

THE LISTING PROCESS AND DOCUMENTATION REQUIRED FOR AN IPO ON THE MAIN MARKET

A. THE PROSPECTUS

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

Under the Prospectus Rules (PR 1.2.1) and section 85 of the Financial Services and Markets Act 2000 (“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 Main Market is a regulated market for these purposes¹⁹).

“Transferable securities” for these purposes encompass most transferable securities and include shares, securities equivalent to shares in companies, bonds and other forms of securitised debt and any other securities that are negotiable on the capital market. 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 €2.5 million²⁰, are excluded from the scope of the Prospectus Directive²¹. 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 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

19 AIM ceased to be a “regulated market” in October 2004 and is a “prescribed market”. Regulated markets in the UK are the Domestic Equity Market, the European Equity Market, the Gilt-Edged and Sterling Bond Market, the International Retail Service, the International Order Book, the Dutch Trading Service, the International Bulletin Board and the Specialist Fund Market (all of which are operated by the London Stock Exchange), along with Plus, LIFFE, virt-x and EDX.

20 The CESR “Q & A” published on 17 December 2008 clarified that this €2.5 million limit should be calculated over a period of 12 months on an EEA-wide and not a country-by-country basis, and it applies separately to offers of different kinds of security within a 12-month period. For example, if an issuer in the same 12-month period offers shares with a total consideration of €2 million and debt securities with a total consideration of €2 million, both offers will fall within the exclusion.

21 The full list of securities excluded from the scope of the Prospectus Directive is set out in Schedule 11A of FSMA and Article 1(2) of the Prospectus Directive.

typically relevant only in determining whether an offer is being made to the public and thus apply primarily to issues of securities by companies not listed on regulated markets (for example, AIM companies) or further issues of securities by companies already listed on the Main Market. A prospectus will generally be required on every primary listing of equity securities on the Main Market.

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 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, losses and prospects of the issuer; and the rights attaching to the securities in question (PR 2.1.1 and section 87A of FSMA). Further details of the content requirements applicable to a prospectus are set out in Chapter 3 of this Guide.

Under Chapter 4 of the 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 FSMA) that do not require the publication of a prospectus. In order to preserve the flexibility of its debt capital markets, the London Stock Exchange 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 apply only 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 issued only 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 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 information equivalent 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 must be substantially complete and annotated in the margin to indicate compliance with the relevant requirements of the Prospectus Rules²². Under section 87A(1) of 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 FSMA.

Under the Prospectus Directive (as implemented by section 87C of 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 begins to run only upon submission of the complete information, so ensuring submission of a complete “first draft” to the FSA is 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 (PR 3.2.3R). A prospectus may be made available to the public through:

- its publication in a national newspaper;
- 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;
- in electronic form on the web site of the issuer and, if applicable, the placing agent; or
- on the web site of the London Stock Exchange²³.

iii. **Passporting, Overseas Issuers and “Home Member State”**

The Prospectus Rules provide 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 these passporting provisions 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.

²² In its UKLA Publications Factsheet (Issue No. 1, published in January 2006), the FSA confirmed that it would generally seek to return comments on first drafts of a prospectus for an IPO within 10 clear business days of allocation to a reader and, in the case of further drafts, within five clear business days of receipt.

²³ The FSA maintains a list of approved prospectuses on its web site.

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 office²⁴. 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 2003²⁵ 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 2003²⁶ (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 UK²⁷. Even if the overseas issuer’s primary listing is being sought in the UK, its home state’s regulator, rather than the FSA, will generally be charged with vetting the prospectus.

However, in the context of a Main Market 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 admission to the Main Market.

Whilst the Prospectus Directive has harmonised the European regulatory regime for raising capital, it does not seek to govern or administer the Main Market’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 Main Market, nor that the application for a primary listing will be approved by the FSA. Accordingly, the FSA should be consulted at an early stage where an issuer seeking a listing on the Main Market has a home member state that is not the UK.

iv. High-Risk Issuers

Issuers and their sponsors should be aware of the FSA’s recent guidance²⁸ on the extra scrutiny it is prepared to place on listing applications from what it views

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

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

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

27 The Prospectus Directive does allow for a competent authority to transfer the function of approving a prospectus to another member state, although in our experience, this is extremely rare. Please see Chapter 4 for further details.

28 *List!* Issue No. 20 (January 2009).

to be “high-risk issuers”. In recent years, the FSA has seen a significant rise in the number of listing applications from issuers based in emerging markets, and there have been concerns regarding the risks to which this might expose investors. Specifically, Part VI of FSMA imposes an obligation on the FSA to consider whether an application for listing has the potential to cause detriment to investors. To ensure that the FSA can make a fully informed decision on whether or not the circumstances of a particular issuer would pose a risk of causing detriment to investors, the approach it has taken in the past (and is likely to continue to take) is to make specific enquiries of an issuer and its advisers, representing a departure from its normal approach to document vetting. In doing this, the FSA’s aim is to ensure that it is comfortable with the rigour of the due diligence work carried out by the sponsor. It has asked, for example, for sight of the reports or expert opinions upon which a sponsor’s view has been based, and it has sought detailed confirmation of the level at which the issue has been considered or signed off in a sponsor firm and the type of information those making the decision had access to. It is clear that, going forward, the onus will be on sponsors to ensure that they have made detailed investigations into “high-risk issuers” before any listing applications are made. Issuers and their sponsors are advised to contact the FSA at the earliest possible stage in the listing process to discuss any potentially complex issues.

B. SPONSOR

i. Requirement for a Sponsor (LR 8.2.1R)

Any company seeking a primary listing on the Main Market 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 process²⁹. The FSA views the sponsor as playing “an important role in helping to ensure that issuers meet the required standards” and has been devoting extra resources to monitoring and supervising sponsors more closely.

ii. Contents of the Sponsor’s Declaration

A declaration from the sponsor is required to be submitted to the FSA with any application for listing, confirming that the sponsor has:

- acted with due care and skill in relation to the performance of “sponsor services”³⁰;
- taken reasonable steps to satisfy itself that the directors of the issuer understand the nature and extent of their responsibilities and obligations under the Listing Rules and the Disclosure Rules and Transparency Rules (the “DTR”);

29 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.

30 A “sponsor service” is “a service relating to a matter referred to in LR 8.2 (which sets out the circumstances in which a sponsor must be approved or its guidance obtained) or is requested or appointed to provide and that is for the purpose of the sponsor complying with LR 8.3.1 or L.R. 8.4.” This definition also includes preparatory work that a sponsor may undertake before deciding whether to act as sponsor for a company or in relation to a transaction.

- 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 the Listing Rules³¹. In a recent publication³², the FSA clarified that the sponsor's role in an issuer's working capital exercise must be well defined. The sponsor must be able to assure the FSA that the issuer's directors have fulfilled their responsibilities under the Listing Rules and should be prepared to review and challenge the work of the directors and reporting accountants;
 - the directors of the issuer have established procedures that enable the issuer to comply with the Listing Rules and the DTR on an ongoing basis; and
 - the directors of the issuer have established procedures that 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. Whistle-Blowing (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 the DTR. This potentially 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 the DTR, but the sponsor's whistle-blowing obligation may discourage issuers from full disclosure with the sponsor.

Recent changes to the sponsor regime

In March 2008, the FSA began a targeted review of the sponsor regime, which proposed making various significant changes to Chapter 8 of the Listing Rules to modernise and clarify the roles of sponsors. As a result of this review, key revisions to Chapter 8 were introduced in February 2009, which include:

³¹ LR 6.1.16R.

³² *List!* Issue No. 20 (January 2009).

- Principles for sponsors – LR 8.3 has been amended to clarify the application of the principles for sponsors. These principles require a sponsor to provide advice with due care and skill; to ensure directors understand their obligations under the Listing Rules and the DTR; to deal with the FSA in an open and co-operative manner to provide the FSA with all relevant information and to ensure sponsor independence.
- Sponsor competence – sponsors no longer have to prove they have employees with suitable experience. New, less prescriptive guidance in LR 8.6.9A and LR 8.6.12 focuses on the competence of the firm as a whole and on the sponsor's having appropriate systems and controls.
- Sponsor independence – represents a drive towards more principles-based regulation. LR 8.3.7A through LR 8.3.12 set out new principles for identifying and managing conflicts of interest.
- Annual review – the requirement for a sponsor to submit an annual review to the FSA has been removed, replaced by the less prescriptive concept of a regular review (LR 8.6.17), for which it must create and retain certain records for a period of six years (LR 8.6.18).

C. ANCILLARY DOCUMENTATION

An application for admission to listing requires the submission of a number of ancillary schedules and documents (most of which are available on the FSA's web site). 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 in connection with 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 Main Market;
- the approved prospectus;
- any approved supplementary prospectus; and
- a copy of the issuer's board resolution allotting the securities (or, if this deadline cannot 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; and
- 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; and
- if the FSA so requests, certain other documents relating to the issuer and its shares (LR 3.3.7R).

CHAPTER 3

FORMAT 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 prospectus³³ 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 undoubtedly prevails in most typical IPOs and secondary offerings, the three-part format provides 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 that 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;

³³ 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).

- ii. a summary (of no more than 2,500 words³⁴ containing a prescribed “health warning”) that briefly and in nontechnical 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) set out the minimum information to be included in a prospectus and adopt 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 FSMA. Issuers must comply with both a general duty of disclosure and 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 Recommendations³⁵, 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 section 87A of FSMA, a prospectus must contain all such information presented in an easily analysable and comprehensible form that, 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.

ii. Specific Disclosure Requirements

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

³⁴ 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”.

³⁵ These are recommendations made by the CESR to the European Commission containing detailed guidance on the interpretation of the Prospectus Regulation.

- **Registration document** (Annex I):

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

The language of the required responsibility statement 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*”. Note that the rules do not permit the use of “split responsibility statements”; those responsible must take responsibility for the entire document and any translations thereof.

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

Disclosure of applicable risk factors is mandatory and, arguably, the typical introductory “health warning” regarding the nonexhaustive nature of the risks identified has been rendered less effective as a result.

- *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.

- *Organisational structure (item 7)*

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.

- *Operating and financial review (item 9)*

Equity prospectuses must include an operating and financial review. OFR sections in prospectuses will generally resemble the US style “MD&A” section³⁶ typically found in offering documents for global offers or offerings with a US component.

³⁶ Management’s discussion and analysis of financial condition and results of operations.

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 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.
- o *Capital resources (item 10)*

In addition to the working capital statement that will generally be required under Annex III, an issuer is required to include a discussion of its short- and long-term capital resources, cash flows 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-to-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 occurred, 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 it 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.

- o *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.

- o *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 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)*

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 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 required in relation to directors (for example, their current and previous directorships, convictions, declared or pending bankruptcies and public criticisms within the last five years)³⁷ are also required for senior managers, its founders (where the issuer has been established for less than five years) 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.

Potential conflicts of interest 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 required to be disclosed in relation to senior managers as well, and the rules require the information to be provided on an individual-by-individual basis. The total amount set aside or accrued to provide pension, retirement or similar benefits must also be disclosed.

- *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

³⁷ *List!* Issue No. 19 (October 2008).

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)*

Shareholders with a notifiable interest under the DTR (see Chapter 8 for further details) 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 that may result in a change of control must also be disclosed.

Where an issuer is not admitted to trading on an EU-regulated market and the Transparency Directive does not apply, the information to be included under item 18 is that which is notifiable according to the law of the issuer's country of incorporation. Where the law of the issuer's country of incorporation does not require any information to be notified, the issuer should include a negative statement in the prospectus to that effect.

- *Related-party transactions (item 19)*

The CESR Recommendations suggest that the International Financial Reporting Standards 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 three financial years (including pro forma financial information) (item 20)*

- Three-year historic financials and audit reports that are prepared in accordance with:
 - a) in the case of an EEA issuer, the International Accounting Standards ("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 that are "equivalent" to IAS³⁸.
- 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

38 CESR advises on "equivalence" for these purposes.

the preparation of the issuer's next set of financial statements³⁹, which will be IAS for an EEA issuer admitted to a regulated market.

- If an issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical information shall cover at least 36 months, or the entire period for which the issuer has been in operation, whichever is the shorter.
- Pro forma financial information in the event of a "significant gross change"⁴⁰. If applicable, this requirement will usually be satisfied by the inclusion of pro forma information, prepared in accordance with Annex II and by the reporting accountants⁴¹.
- Interim financial information will be required if more than nine months have elapsed since the issuer's financial year-end; 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.
- Where an issuer has been in operation for less than one financial year, it would need to include historical financial information to cover this shorter period. Audited financial information prepared by the issuer for that shorter period is considered sufficient. The FSA does not expect such issuers to use IAS 34 (Interim Financial Reporting) when preparing the financial information.

- o *Legal and arbitration proceedings (item 20.8)*

The disclosure requirement includes governmental proceedings in addition to legal and arbitration proceedings.

- o *Additional Information, Material Contracts and Information on Holdings (items 21, 22 and 25)*

The prospectus will need to include information on the issuer's share capital and constitution, material contracts and subsidiary undertakings.

- o *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.

39 This will be of particular relevance in the context of an IPO. Often, prior to listing, an issuer's accounts will have been prepared in accordance with national GAAP, but following admission, the issuer will be obliged to adhere to IAS or an "equivalent" standard.

40 A "significant gross change" is a variation of more than 25 percent, relative to one or more of the indicators of size, that has not already been fully reflected (*i.e.*, for the entire 12-month period) in the historical financial information of the most recent financial period.

41 Note that pro forma information included on a "voluntary" basis in documents relating to equity securities must still comply with Annex II and be reported on. Where pro forma information is included on a "voluntary" basis in documents relating to nonequity securities, there is no requirement for it to be reported on.

In addition, 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.

- *Documents on Display (item 24)*

The issuer's memorandum and articles of association, any expert valuation reports referred to in the prospectus and the historical financial information must be available for 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 from 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 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. While this suggests that issuers may be able to qualify their working capital statement, note that, as set out in Chapter 1 of this Guide, issuers seeking a primary listing of equity securities on the Main Market 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. In the context of a fundraising, this means that only underwritten funds can be included. Where a fundraising has not been underwritten, the FSA has clarified that minimum subscription proceeds may be taken into account only where it is an explicit condition of the offer that minimum net proceeds are raised and that if the condition is not met, the offer will lapse and the proceeds will be returned to investors. 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 that issuers are expected to undertake in relation to their working capital position to minimise the risk of the basis of the working capital statement subsequently being called into question and reiterate the need for a thorough working capital exercise conducted by the issuer and its advisers. The FSA has taken the opportunity⁴², in light of recent market conditions, to remind issuers and their advisers of the importance of thorough due diligence in preparing the working capital statement. In particular, it has been highlighted that the sponsor’s role in an issuer’s working capital exercise must be well defined. While the issuer and its directors bear overall responsibility for the working capital statement, it is the sponsor that must confirm that it has come to a reasonable opinion, after having made due and careful enquiry, that the directors of the issuer have a reasonable basis on which to make the working capital statement. Specifically, a sponsor should be prepared to review and challenge the work done by the issuer and reporting accountant to ensure that the working capital position presented is the most appropriate in the circumstances. In determining how sponsors should address working capital, they are advised to be aware of the inherent unpredictability of the current business environment and that their assessments of forecasts, assumptions, sensitivities and bank facilities should reflect this. In particular, sponsors need to consider whether they should re-evaluate their systems and controls over working capital, and suggestions include:

- increased training for staff; and
- clear and effective communication with the issuer.

The binary approach taken by the rules and CESR Recommendations has given rise to a number of difficulties in the context of prospectuses published in connection with hostile takeovers, where the issuer has limited access to information on the offeree and is therefore unable to undertake

42 *List!* Issue No. 20 (January 2009).

the normal procedures to support a clean working capital confirmation. The FSA has clarified⁴³ that it intends to take a purposive approach to the application of rules in these circumstances, to allow an offeror either to include a clean or qualified working capital statement, complying with the CESR guidance, or to state that the offeror is not able to undertake appropriate procedures to support a working capital statement when taking into account the acquisition. The reason for this must be given (e.g., the offeror does not have access to nonpublic information on the offeree allowing these procedures to be undertaken), and the offeror would then be required to give a 12-month working capital statement on the offeror on an unenlarged-group basis, making it clear that the acquisition has not been taken into account. A supplementary prospectus would be required if, before the close of the offer, the offeror were to be granted sufficient access to enable a working capital statement to be given⁴⁴.

In relation to reverse takeover situations, the FSA has also clarified that while the rules set out by the Prospectus Directive and the CESR Recommendations require working capital statements to address “Group” requirements (i.e., the group as enlarged by the transaction), it is important for the statement to cover all possible funding scenarios. This means the working capital requirements of the Group, on the basis that the transaction does not proceed, also need to be considered.

- *Capitalisation and indebtedness (item 3.2)*

The CESR Recommendations include a template for disclosure that 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 more than 90 days old. It will not be deemed sufficient for an issuer to merely make a statement regarding significant changes to the capitalisation statement that occur within the 90-day limit; an issuer must actually reflect any significant change within its statement. The indebtedness statement must also be no more than 90 days old, but it is not required to be sourced from published financials.

Any statement of indebtedness should include both indirect indebtedness and contingent indebtedness. Following confusion as to interpretation of these terms, the CESR has clarified their meaning⁴⁵:

- *Indirect indebtedness*: indirect indebtedness is any obligation that has not been directly incurred by the issuer, which is considered on a consolidated basis, but which may fall on the issuer to meet in certain circumstances: for instance, a guarantee to honour a loan advanced by a

43 *List!* Issue No. 12 (March 2006).

44 Listed offerors conducting a hostile Class 1 acquisition will also need to bear in mind the disclosure requirements contained in LR 13.4.3 and provide this information within 28 days of the offer becoming wholly unconditional.

45 CESR “Q & A” published on 17 December 2008.

bank to an entity (that is not in the issuer's group) if this entity defaults on repayments due on the loan.

- *Contingent indebtedness*: “contingent indebtedness” is the maximum total amount payable in relation to any obligation which, although incurred by the issuer, has yet to have its final amount assessed with certainty, irrespective of the likely actual amount payable under that obligation at any one moment in time: for instance, the total VAT liability due on goods in a bonded warehouse where the actual amount payable to the tax authorities in any given financial period will depend not on the actual goods bought by the issuer and deposited in the warehouse but on the level of those goods actually sold on to customers.

- o *Interest of persons involved in the issue/offer (item 3.3)*

This requires disclosure of any interests (including conflicting interests) that are material to the offer, with details of the persons involved and the nature of the interest in question.

- o *Reasons for the offer and use of proceeds (item 3.4)*

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.

- o *The securities to be offered/admitted to trading (item 4)*

This requires a description of the securities and related matters, including:

- the International Security Identification Number (“ISIN”);
- the 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; and
- details of any public takeover bids that have occurred during the last or current financial year.

- o *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.

- o *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-in arrangements) will need to be disclosed.

- *Expenses of the offer (item 8)*

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 are 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 Main Market, 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 mineral companies 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, for issuers that have been mineral companies for less than the three preceding years or have been mineral companies for more than three years but have not been extracting minerals on a commercial basis for the three preceding years, the prospectus is expected to include the following:

- 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 cash flow 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). The FSA has indicated that given the importance of this disclosure to mineral-company investors and section 87A of FSMA, it would generally expect to see such reports dated no more than six months prior to the date of the prospectus, especially in the case of IPOs⁴⁶.
- o *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.

⁴⁶ In exceptional circumstances, the UKLA may consider an expert report that is between six and 12 months old, but in such a case, the UKLA should be consulted at an early stage.

- *Start-up companies*

The CESR Recommendations define “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 that 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 that 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*

Pursuant to the CESR Recommendations, property-company prospectuses must include a valuation report that should:

- be prepared by an independent expert;
- give the date or dates of inspection of the property;
- provide all relevant details of material properties necessary for the valuation;
- 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);
- include a summary of freehold and leasehold properties and the aggregate of their valuations; and

- include an explanation of the differences between 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.

In order to comply with the CESR Recommendations, the FSA expects any valuation report for a property company to be in accordance with either (1) the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors; or (2) the International Valuation Standards (7th edition) issued by the International Valuation Standards Council.

- o *Shipping companies*

The prospectus of a shipping company should refer to:

- the name of any ship management company or group (if other than the issuer) that 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;
- all relevant information regarding each material vessel that is managed, leased or owned directly or indirectly by the issuer; and
- 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 revaluation 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 vessels.

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

Omission of information from a prospectus is allowed where the FSA considers that the disclosure of such information would be contrary to the public interest or seriously detrimental to the issuer or that 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 information equivalent to the required information (PR 2.5.1R).

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

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) or another competent authority that was the "home competent authority" at the time of approval

or filing. 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). Cross-references can also be made between information in the registration document and securities notes where there are duplicated items, provided a cross-reference list can be provided.

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

Under CESR guidance, information from a prior, no longer valid, base prospectus can be incorporated into a new base prospectus, provided the requirements in Article 28 are followed.

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 need not be in the same language as the prospectus, provided that the language of the incorporated document complies with the language rules of the Directive. Should an issuer wish to passport a prospectus containing incorporated documents drawn up in a language different from that of the prospectus, it can do so only where the different language is accepted by the host competent authorities. 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”.

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

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 applicable for determining 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 two 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 (section 87Q of FSMA)⁴⁷.

The 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 (section 87G of FSMA). An issuer should draw up and file with the competent authority a supplementary prospectus as soon as practicable after a significant new factor occurs or a material mistake or inaccuracy is discovered.

The CESR considers that there is no systematic requirement to supplement a prospectus when interim financial statements are produced. However, it will depend on the circumstances of the case and in particular the relevance of the information included in the interim financial statements (such as any significant deviation in relation to previous financial information). This is potentially relevant now, given the difficult economic climate and the scope for significant changes in financial information. CESR recommends that in case of doubt, issuers should produce a supplement.

An investor who has agreed to buy or subscribe for securities on the basis of the original prospectus may withdraw its acceptance within two working days of the publication of the supplementary prospectus (section 87Q of FSMA). Such a right and the actual period for which it extends should be mentioned in the supplementary prospectus.

C. ADVERTISEMENTS (PR 3.3.2R)

The Prospectus Rules contain certain requirements for advertisements⁴⁸ relating to a public offer or application for admission to trading⁴⁹. Any such advertisement must be consistent with the prospectus, must not be inaccurate or misleading, must state that the prospectus has been or will be published (and indicate where it is or will be available) and must 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.

⁴⁷ A statement of who has set the criteria or is formally responsible for the determination is also required.

⁴⁸ The Prospectus Rules requirements are in addition to the UK's "financial promotion" regime pursuant to FSMA, and any applicable "financial promotion" restrictions must also be adhered to.

⁴⁹ Issuers should bear in mind that these could extend to "draft" or "pathfinder" versions of a prospectus that may be circulated on a very restricted basis prior to publication of the final 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, amongst 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; and
- 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;
- ii. all persons who have authorised themselves to be named and are named in the prospectus as directors; and
- iii. all persons who have agreed to become directors 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"*.

Note that "split responsibility statements" on takeovers are not permitted; where a prospectus is published (see Chapter 7 for further details), directors are required to take responsibility for information on both offeror and target.

If a prospectus is published that 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 (section 90 of FSMA). The one area where the Prospectus Directive does attempt to harmonise liability is 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 3.1.10R). Under section 87 of 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 nonapplicable 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. a request for omission of information from the prospectus (if relevant);
- vii. contact details of individuals able to answer queries from the FSA; and
- viii. any other information the FSA may require.

The completed *Form A*, the 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 that has not previously had a prospectus approved by the FSA or 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 required approval date.

B. PUBLICATION REQUIREMENTS

Once a prospectus has been approved by the FSA, it must be filed and made available to the public as soon as practicable, and in any case, at a reasonable time in advance of (and at the latest, the beginning of) the offer or admission to trading of the securities involved. In the case of a public offer of a class of shares not already admitted to trading but in respect of which an application for admission to trading has been made, it must be filed and made available to the public at least six business days prior to the end of the offer (PR 3.2.2R and 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 web site of the issuer and, if applicable, the placing agent; or
- iv. on the web site of the London Stock Exchange.

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, 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 debt⁵⁰ 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
- ii. the member state in which they make their first application for admission to trading on a regulated market in the EEA,

⁵⁰ "Low-denomination debt" for these purposes comprises nonequity securities with a denomination under €1,000 or a near equivalent in another currency.

at the election of the issuer, offeror or person asking for admission, although an election by either of the latter two can effectively be overridden by the issuer. 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 that 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 cannot subsequently be changed by the issuer. 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 was implemented in member states on 20 January 2007⁵¹.

Both EEA and non-EEA issuers of debt with a denomination equal to, or greater than, €1,000 (or a 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 competent authorities in question (the transferor and transferee) must agree to the transfer. The FSA has indicated that it would agree to a transfer only if, in all the circumstances, it considers such transfer to be in the best interests of investors.

⁵¹ 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.

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 10 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, but in our experience, a transfer from one competent authority to another is extremely rare. The FSA has stated that it is likely to look more favourably upon a transfer request where the issuer can demonstrate that it does not have any of its securities listed in the UK, is not making the offer in the UK and has most of its shareholders outside the UK. However, in circumstances where the FSA has a clear regulatory interest, such as an issuer listed in the UK with a large UK shareholder base, it is less likely to agree to a transfer.

E. PASSPORTING

The Prospectus Rules provide the ability to “passport” prospectuses on a pan-European basis, making it easier for issuers to raise capital across Europe.

i. “Passport” from the UK

Any issuer wishing to “passport” a prospectus approved in the UK by the FSA 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; and
- 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

Any issuer wishing to “passport” a prospectus approved in another member state 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 requirements:

- prepare a prospectus and have it approved by the competent authority of its home member state in accordance with the rules of that competent authority; and
- the competent authority of the home member state should 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 web site.

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 should 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 Prospectus Rules 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 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

AIM is not a “regulated market”, and unlike the Main Market, 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 number of the shares of the company should be in public hands, and there is no minimum market capitalisation. The overriding requirement for a company seeking admission to AIM is that it be “appropriate” for the market. This judgment is made by the company’s nominated adviser (see Chapter 6 for further details of the role and responsibilities of the nominated adviser).

There are also some specific conditions that need to be satisfied in order to facilitate the admission of an issuer to trading on AIM:

i. Nominated Adviser and Broker (AR 1 and 35)

An AIM company must appoint and retain a nominated adviser and broker at all times. In February 2007, the London Stock Exchange introduced AIM Rules for Nominated Advisers with which all nominated advisers must comply. These Rules codify nominated advisers’ responsibilities on admission, on taking on a new nominated adviser role in relation to an existing AIM company and on an ongoing basis (see Chapter 6 for further details).

ii. 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.

iii. Lock-Ins for New Businesses (AR 7)

Where the issuer’s main activity is a business that 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.

iv. Investing Companies (AR 8 and the AIM Note for Investing Companies)

Responding to concerns regarding the range of companies (in particular, closed-ended funds) that have been admitted to AIM, in December 2008 the London

Stock Exchange published AIM Notice 30, which consulted on proposed changes to the AIM Rules and a new AIM Note for Investing Companies with the intention of specifically tailoring the AIM Rules and the regulatory framework applicable to investing companies.

The revised AIM Rules (which incorporate the new AIM Note for Investing Companies), which became effective on 1 June 2009, provide that:

- an investing company must have a precise and detailed investing policy (as opposed to the previous requirement simply to have an investment strategy) so that the company's parameters for investment are clear to investors. The "investing policy" must comply with certain minimum requirements;
- an investing company must raise at least £3 million in cash via an equity fund-raising on or immediately before admission;
- the prior consent of the investing company's shareholders in general meeting is required for any material change to its investing policy; and
- where an investing company has not substantially implemented its investing policy⁵² within 18 months of admission, it should seek the consent of its shareholders for its investing policy on an annual basis.

The AIM Note for Investing Companies clarifies the types of investing companies that the London Stock Exchange considers appropriate for admission to AIM. Broadly, investing companies seeking admission should have straightforward structures, securities and investing policies. Typically, the London Stock Exchange would expect an investing company to be a closed-ended entity of a nature similar to that of a UK public limited company, thus not requiring a restricted investor base. In addition, the Exchange has introduced provisions regarding the need for independence between the board, the nominated adviser and any investment manager, to ensure that both the investment manager and the board are appropriate for AIM and have sufficient experience.

Furthermore, an investment manager and its key employees who are responsible for making investment decisions in relation to the investing company will be considered directors for the purposes of AIM Rules 7 (lock-ins), 13 (related-party transactions), 21 (restrictions on deals) and 17 (disclosure of deals).

There are also new specific disclosure requirements for investment managers of externally managed investing companies that both reflect the key role that managers perform and also recognise that the managers are currently not directly covered by the AIM Rules.

Certain transitional provisions apply to investing companies that were admitted to AIM prior to 1 June 2009.

⁵² In its guidance, the London Stock Exchange has stated that it would require a substantial portion (usually 75 per cent) of all funds available to the investing company to have been invested.

v. Special Conditions (AR 9)

The London Stock Exchange has a residual ability to require compliance with special conditions as a prerequisite to admission, although in practice this power is rarely used.

vi. 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 that are treated as “Category 3” issuers for the purpose of US securities laws) which may need to adhere to US regulations imposing restrictions on transfer and also enables companies to manage their shareholder bases 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 Main Market issuers is not subject to this carve-out.

vii. 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 that are treated as “Category 3” issuers for the purpose of US securities laws)).

viii. Resource Companies (AIM Guidance Note for Mineral, Oil and Gas Companies: March 2006)

In response to a growing perception in the market that some resource companies being admitted to trading on AIM were too speculative, in March 2006, the London Stock Exchange issued guidance setting out its minimum expectations for resource companies. This guidance includes recommendations that, for each admission of a resource company, a competent person’s report should be prepared on the assets and liabilities of the company, should be up to date (*i.e.*, no more than six months prior to the date of the admission document) and should be issued by a suitably qualified person. It also recommends that nominated advisers should conduct full due diligence on the company and its assets prior to admission, including undertaking site visits and, where the assets are outside the UK, obtaining legal opinions as to the title to and ownership of the relevant assets.

The London Stock Exchange has confirmed that this guidance note forms part of the AIM Rules.

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 rules introduced by the Prospectus Directive in July 2005 and, in particular, the requirement for all prospectuses to be approved by the FSA were viewed by AIM as potentially undermining one of its key competitive advantages: the ability for issuers and their advisers to control their own documents and, consequently, their own fundraising timetables. As a way of partially mitigating these concerns, in October 2004 AIM ceased to be a “regulated market”, becoming an “exchange-regulated market” instead.

As a result of the “de-regulation” of AIM’s status, an AIM IPO or offering will require an FSA-approved prospectus only 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 purposes⁵³ and, under the AIM Rules (AR 3), would typically require the publication of an “AIM admission document” instead. The minimum content requirements for an admission document are drafted by reference to the specific requirements of Annexes I to III of the Prospectus Rules, although certain of the more onerous disclosure requirements have been carved out or left to the nominated adviser’s discretion.

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;

⁵³ Please see Chapter 7 for details of the definition of “offer to the public” and an analysis of the applicable exemptions.

- v. administrative, management, and supervisory bodies and senior management⁵⁴;
- vi. remuneration and benefits;
- vii. working capital⁵⁵;
- 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 need to report on the basis of IAS in respect of financial years commencing on or after 1 January 2007. Under Schedule 2 of the AIM Rules, 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; and
- ii. shareholdings and share options of non-board members of senior management.

In addition to the content requirements derived from the Prospectus Rules, the additional requirements of Schedule 2 to the AIM Rules must be adhered to⁵⁶, and as mentioned in Chapter 5, a competent person’s report will also generally be required in the context of a resource company seeking admission to AIM.

In addition to the specific disclosure requirements, an issuer must also satisfy a general duty to disclose in an AIM admission document any other information it considers necessary to enable investors to form a full understanding of (i) the assets and liabilities, financial position, profits and losses, prospects of the applicant and its securities; (ii) the rights attaching to those securities; and (iii) any other matter contained in the admission document.

In view of an issuer’s 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.

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

55 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.

56 These include a clean working capital statement, disclosures on directors, disclosure of any promoters, the investing policy for an investing company, lock-in arrangements and the requisite health warning.

B. THE NOMINATED ADVISER

Each issuer must appoint, and 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 that are qualified to act as nomads. The nomad is responsible to the London Stock Exchange for assessing whether an issuer is appropriate for admission to AIM, for advising an issuer on the admission process and for providing guidance on its continuing obligations under the AIM Rules. In March 2007, the London Stock Exchange issued a new rule book for nominated advisers (the “Nomad Rules”), which sets out the eligibility criteria for becoming a nomad and nomads’ responsibilities. Ultimately, the judgment as to whether or not a company is appropriate to be admitted to AIM rests with the nomad and not the London Stock Exchange.

In addition to assessing the appropriateness of applicants for AIM, a nomad is also obliged to comply with the Nomad Rules, the AIM Rules and any notices issued by the London Stock Exchange and to act with due skill and care at all times. The nomad is responsible to the London Stock Exchange for advising an AIM company on its responsibilities under the AIM Rules, both in respect of its initial IPO⁵⁷ and its continuing obligations. It must be available to advise and guide the AIM company at all times and must allocate at least two appropriately qualified staff to be responsible for each AIM issuer for which it acts. The Nomad Rules comprise certain “principles” that must be satisfied in all cases and, in respect of each principle, a nonexhaustive list of actions that the London Stock Exchange would normally expect a nomad to undertake in satisfying that principle⁵⁸.

Nomads’ responsibilities, which are owed principally to the London Stock Exchange, broadly fall into three main categories: those that arise in the context of an issuer’s admission to AIM⁵⁹ (“Admission Responsibilities”), those that apply following the IPO (“Ongoing Responsibilities”) and those that arise upon a nomad’s engagement as nomad to an existing AIM company (“Engagement Responsibilities”).

i. Admission Responsibilities

There are five principles with which a nomad must comply in meeting its responsibilities in respect of an issuer’s admission to AIM:

AR1 In assessing the appropriateness of an applicant and its securities for AIM, a nomad should achieve a sound understanding of the applicant and its business.

In meeting this, the nomad should usually:

- ensure that it has, or has access to, appropriate knowledge of the applicant’s area of business (taking into account its country of incorporation and

⁵⁷ This would include a “reverse takeover”.

⁵⁸ The nomad could substitute other actions and may well decide that a particular action listed is not appropriate, but it is recommended that the reasons for such decisions be recorded so that it can show that it has acted with due skill and care at all times.

⁵⁹ This includes a reverse takeover. Note also that the London Stock Exchange expects the nomad to undertake a similar level of work on the admission of a quoted applicant (which would not ordinarily have to produce an admission document).

operation) using in-house specialists or external experts where necessary to achieve this;

- consider the applicant's sector, proposition, business plan or similar historical financial information, and other corporate information, including the due diligence performed further (see AR3 below);
- consider any issues relating to the applicant's country of incorporation and operation and any other issues that might affect its appropriateness;
- undertake a visit to the applicant's material site(s) of operation and meet the directors and key managers. The necessity of meeting any other relevant material stakeholders (e.g., key shareholders) should also be considered; and
- consider appointing its own legal advisers who are independent from the applicant to assist in the nomad's understanding of the applicant and to provide advice to the nomad that is independent of the applicant.

Although it is not specifically required under AR1, the London Stock Exchange has said that it expects a nomad to provide advice to the company on the appointment of advisers.

AR2 In assessing the appropriateness of an applicant and its securities for AIM, a nomad should (i) investigate and consider the suitability of each director and proposed director of the applicant; and (ii) consider the efficacy of the board as a whole for the company's needs, in each case having in mind that the company will be admitted to trading on a UK public market.

In meeting this, the nomad should usually:

- issue and review directors' questionnaires and review directors' CVs. In the case of directors who are not UK-based, appropriate investigations should be undertaken;
- test the information revealed by the questionnaires and CVs, such as by conducting press searches, obtaining Companies House checks, taking up references and, where appropriate, obtaining third-party checks⁶⁰;
- extend these investigations and considerations as appropriate to key managers and consultants who are discussed in the admission document;
- consider undertaking such investigations in relation to substantial shareholders at admission as appropriate, especially where there is uncertainty as to their identity or where they are not established institutions, in particular to enquire about the existence of persons exerting control over the applicant;

60 Third-party checks on directors are not expected by the London Stock Exchange in all cases—the London Stock Exchange has said that circumstances where these checks may be required include where information on directors is not easily obtainable, where the reliability of the information obtained is questionable or where specific concerns have been raised about a director.

- analyse any issues arising from these investigations, in particular as to how they could affect the applicant's appropriateness to be admitted to AIM and be publicly traded;
- consider each director's suitability and experience in relation to their (proposed) company role and consider whether each (proposed) director is suitable to be a director of a UK public company (i.e., the exchange considers that nomads should advise the company on the appropriateness of the directors);
- consider the board of directors as a whole in relation to the applicant's needs, given its type, size and expected profile and the fact that the applicant will be admitted to a UK-based, English-language public market; and
- consider, with the directors of an applicant, the adoption of appropriate corporate governance measures.

AR3 The nomad should oversee the due diligence process, satisfying itself that it is appropriate to the applicant and transaction and that any material issues arising from it are dealt with or otherwise do not affect the appropriateness of the applicant for AIM.

In meeting this, the nomad should usually:

- be satisfied that appropriate financial and legal due diligence is undertaken by an appropriate professional firm(s);
- be satisfied that appropriate reviews of working capital and financial reporting systems and controls are undertaken (usually including reports or letters from accountants to the applicant);
- consider whether commercial, specialist (e.g., intellectual property) and/or technical due diligence is required and be satisfied that it is undertaken where required;
- agree the scope of all such due diligence and reports (including, in relation to the working capital report, assumptions and sensitivities); and
- review and assess the above due diligence, reports and adviser comfort letters, considering any material issues, recommended actions or adverse analysis raised, and be satisfied that appropriate actions have been undertaken to resolve such matters or otherwise be satisfied that such matters do not affect the appropriateness of the applicant for AIM.

AR4 The nomad should oversee and be actively involved in the preparation of the admission document, satisfying itself (in order to be able to give the nomad's declaration) that it has been prepared in compliance with the AIM Rules for Companies with due verification having been undertaken.

In meeting this, the nomad should usually:

- oversee and be actively involved in the drafting of the sections of the admission document that relate to the business of the applicant⁶¹ and be satisfied that they take into account matters raised by due diligence;
- be satisfied that the financial and additional-information sections have been appropriately prepared;
- consider whether any specialist third-party reports are required (e.g., for companies in particular sectors such as property or biotechnology);
- be satisfied that appropriate verification of the admission document and any related notifications has taken place; and
- be satisfied (in the terms of the nomad's declaration (see below)) that the admission document complies with the AIM Rules, liaising with the AIM team of the London Stock Exchange.

AR5 The nomad should satisfy itself that the applicant has in place sufficient systems, procedures and controls in order to comply with the AIM Rules and should satisfy itself that the applicant understands its obligations under the AIM Rules.

In meeting this, the nomad should usually:

- be satisfied that procedures within the company have been established to facilitate compliance with the AIM Rules, e.g., release of unpublished price-sensitive information, required notifications (Rule 17, AIM Rules) and regulation of close periods; and
- be satisfied that the directors have been advised of their and the company's continuing responsibilities and obligations under the AIM Rules and that the directors are aware of when they should be consulting with or seeking the advice of the nomad (the nomad should be involved in the provision of this advice to the directors so that they are aware of the practical consequences of the requirements of the AIM Rules).

The London Stock Exchange has also said that the nomad should be satisfied that there are appropriate procedures in place within the company to enable the relevant people within the company to have a clear understanding of the circumstances in which it should seek the advice of its nomad.

In addition to complying with the principles described above, the nomad must also give a declaration to the London Stock Exchange (known as a "nomad declaration") confirming that:

- to the best of its knowledge and belief, having made due and careful enquiry and considered all relevant matters under the AIM Rules:

⁶¹ These sections would usually comprise the key-information and Part 1 sections (Part 1 tends to describe, amongst other things, the business of the company, its prospects and its reasons for wanting to join AIM) and the risk factors (although this section does not require the nomad to "lead" the drafting, the Exchange regards the nomad as the key adviser on the document).

- the admission document complies with Schedule 2 of the AIM Rules (see above for details); or
- where the applicant is a quoted applicant (see below), the requirements of Schedule 1 (and its supplement) to the AIM Rules have been complied with;
- it is satisfied that the applicant company and its shares are appropriate to be admitted to AIM, having made due and careful enquiry and considered all relevant matters set out in the AIM Rules and the Nomad Rules;
- the directors of the AIM company have received advice and guidance (from its nomad and other professional advisers) as to the issuer's responsibilities and obligations under the AIM Rules in order to facilitate due compliance by the company on an ongoing basis; and
- it will comply with the AIM Rules and Nomad Rules applicable to it in its role as nomad.

The nomad will typically receive comfort letters from the issuer and its advisers in order to support its declaration, and in our experience, some nomads are now requesting comfort letters from their own lawyers as well.

ii. Ongoing Responsibilities

Nomads must satisfy the following principles on a continuing basis:

OR1 The nomad should maintain regular contact with an AIM company for which it acts, in particular so that it can assess whether (i) the nomad is being kept up to date with developments at the AIM company; and (ii) the AIM company continues to understand its obligations under the AIM Rules.

In meeting this, the nomad should usually:

- maintain regular contact with the AIM company, in particular to be satisfied that the nomad is kept up to date so that it can advise the company on its obligations under the AIM Rules (especially the requirements of Rule 11 of the AIM Rules and to identify breaches of the AIM Rules (e.g., in relation to Rule 17 disclosures)); and
- assess whether the AIM company continues to understand its obligations under the AIM Rules, such as by having discussions with the directors where appropriate, and satisfy itself that any procedures required pursuant to AR5 (see above) continue to be effective.

OR2 The nomad should undertake a prior review of relevant notifications made by an AIM company with a view to ensuring compliance with the AIM Rules.

In meeting this, the nomad should usually:

- review in advance (although without prejudice to the requirement of Rule 10 of the AIM Rules to release information without delay) all notifications to be made

by an AIM company for which it acts to ensure as far as reasonably possible that they comply with the AIM Rules. Where the nomad reasonably believes a company's directors have appropriate knowledge and experience of the AIM Rules, review of routine announcements may not be necessary; and

- include the nomad's name and a contact name on all such announcements that a nomad reviews, other than routine announcements.

OR3 The nomad should monitor (or have in place procedures with third parties for monitoring) the trading activity in securities of an AIM company for which it acts, especially when there is unpublished price-sensitive information in relation to the AIM company.

In meeting this, the nomad should usually:

- use suitable alerts or other triggers to alert the nomad to substantial price or trading movements. This can be satisfied via the broker;
- contact an AIM company where appropriate if there is a substantial movement to ascertain whether an announcement or other action is required, liaising with the London Stock Exchange where appropriate; and
- consider the necessity for arranging relevant press monitoring, particularly when there is material unpublished price-sensitive information in existence.

OR4 The nomad should advise the AIM company on any changes to the board of directors the AIM company proposes to make, including (i) investigating and considering the suitability of proposed new directors; and (ii) considering the effect any changes could have on the efficacy of the board as a whole for the company's needs, in each case having in mind that the company is admitted to trading on a UK public market.

In satisfying this, the London Stock Exchange would usually expect the nomad to:

- be satisfied that the AIM company knows to liaise with the nomad at the earliest opportunity about proposed changes to the board, in order to allow the nomad appropriate time to comply with OR4;
- in relation to new directors, consider the requirements of AR2 (see above) and take the appropriate actions, including issuing and reviewing directors' questionnaires, reviewing the directors' CVs and testing such information;
- consider whether such proposed directors are suitable to be directors of a UK public company and consider the effect of the appointment on the efficacy of the board as a whole for the company's needs; and
- in relation to the removal of directors, consider how this affects the efficacy of the board as a whole for the company's needs, make any recommendations it thinks fit to the AIM company and consider whether this in turn affects the AIM company's appropriateness for AIM.

iii. Engagement Responsibilities

When a nomad is being appointed by an existing AIM company, it must comply with the following:

ER1 In assessing the appropriateness of an AIM company and its securities for AIM when taking on an existing AIM company, a nomad should achieve a sound understanding of the AIM company and its business.

In satisfying this, the nomad should usually:

- gain knowledge of any major developments relating to the company since admission and consider their effect on the appropriateness of the AIM company; and
- consider contacting the outgoing nomad to discuss its experiences with the AIM company. An outgoing nomad should be constructive and open (to the extent possible) with a new nomad that contacts it for such discussion. Clearly there are obvious potential client confidentiality issues for the outgoing nomad to consider. These are acknowledged by the London Stock Exchange, which suggests that confidentiality agreements with clients should be amended going forward to allow these discussions to take place.

ER2 In assessing the appropriateness of an existing AIM company and its securities for AIM, a nomad should (i) investigate and consider the suitability of each director and proposed director of the AIM company; and (ii) consider the efficacy of the board as a whole for the company's needs, in each case having in mind that the company is admitted to trading on a UK public market.

ER3 The nomad should satisfy itself that the AIM company has in place sufficient systems, procedures and controls in order to comply with the AIM Rules and should satisfy itself that the AIM company and its directors understand their obligations under the AIM Rules.

iv. Other Ongoing Responsibilities

A nomad has an obligation to provide the London Stock Exchange with such information as it may reasonably require, as well as having to comply with other liaison obligations (Nomad Rule 19). In particular, a nomad should inform the London Stock Exchange as soon as practicable if it believes that it, or an AIM company, has breached the AIM Rules or the Nomad Rules. While some nomads have felt that a requirement to inform the London Stock Exchange of any breach is inappropriate (and may damage client relationships), the London Stock Exchange has said that it considers that nomads have regulatory responsibilities to the London Stock Exchange which may take priority over those that they owe to their AIM companies.

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 (known as a “pre-admission announcement”), the information specified by Schedule 1 of the AIM Rules (AR2). 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 percent 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 London Stock Exchange:

- an electronic version of its admission document;
- a completed application form; and
- a declaration in the prescribed form under Schedule 2 of the Nomad Rules from the nominated adviser (as described in paragraph B above).

iii. AIM Fee

Fees are now payable on the basis of a post-admission invoice, rather than submitted three days before admission (AR 37).

D. FAST TRACK TO AIM

There is a fast-track admission route to AIM for certain existing quoted companies. The rules permit companies that are already listed on the Australian Securities Exchange, Euronext, the Deutsche Börse, the JSE Securities Exchange South Africa, NASDAQ, the New York Stock Exchange, the Stockholmsbörsen, the SIX Swiss Exchange, the Toronto Stock Exchange or the UK’s Main Market (referred to as “designated markets”, a current list of which can be found on the London Stock Exchange web site) and that have been trading on a designated market for at least 18 months to use their existing annual reports 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 take the place of the admission document and are 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, following due and careful enquiry, it has adhered to any legal and regulatory requirements involved in having a listing on the relevant designated market;
- a web site address where the company's latest published report and accounts, recent public documents and announcements it has made public over the last two years and details of the rights attaching to its securities can be viewed (and where more than nine months have elapsed since the financial year-end to which its most recent annual accounts relate, interim results covering no less than the six months from the year-end will also be required to be available on a web site)⁶²;
- details of its intended strategy following admission;
- a description of any significant change in the financial or trading position of the issuer that 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;
- any other information that has not been made public and that would otherwise be required to be disclosed in an admission document if the standard route had been followed (in addition to the specific disclosure requirements for admission documents, note that the AIM Rules require that an admission

⁶² The financial information for a quoted company incorporated in the EEA must be prepared in accordance with IAS for periods commencing on or after 1 January 2007 (or, in the case of periods commencing prior to that date, UK GAAP). Quoted companies not incorporated in the EEA may report in IAS, US GAAP, Canadian GAAP, Japanese GAAP or Australian IFRS.

document must contain any other information an issuer reasonably considers necessary to enable investors to form a full understanding of the assets and liabilities, financial position, profits and losses, and prospects of the issuer and its 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:

- an electronic version of its latest report and accounts;
- a formal application for the admission of the securities;
- the nomad's declaration referred to above; and
- the relevant AIM fee.

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 MAIN MARKET

One of the effects of AIM's status as an "exchange-regulated market" rather than a "regulated market" is that moving to the Main Market using a fast-track process is not an option for AIM companies. An AIM company wishing to move up to the Main Market will need to produce a full, FSA-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 OF SECURITIES ON THE MAIN MARKET AND AIM: IS A PROSPECTUS REQUIRED?

As mentioned above, 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 Main Market is a regulated market for these purposes⁶³).

In order for a security to fall within the Prospectus Directive regime, it must be a “transferable security”⁶⁴. The key consideration in determining whether a security is a “transferable security” for these purposes lies in whether it is negotiable on a capital market. CESR and the FSA have taken the view that most options granted under employee benefit schemes will not be “transferable securities” and that no offer to the public within the meaning of the Prospectus Directive⁶⁵ occurs at the time of exercise or conversion of such options. In addition, the current view is that loan notes issued on takeovers will generally not be caught by the 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)⁶⁶.

Note also that securities included in an offer where the total consideration under the offer is less than €2.5 million⁶⁷ (calculated by reference to any previous offers of the same security in the previous 12 months) fall outside the scope of the “offer to the public” regime, so no prospectus will be required in the context of such an offer. This exclusion applies separately to offers of different kinds of securities within a 12-month period—for example, if an issuer offers shares with a total consideration of €2 million and debt with a total consideration of €2 million in the same 12-month period, both offers would fall within the exclusion⁶⁸. Offers during the 12-month period where a prospectus has been required or where other exemptions have been applicable (for

63 AIM ceased to be a “regulated market” in October 2004.

64 Defined in section 102A of FSMA as “anything which is a transferable security for the purposes of the Markets in Financial Instruments Directive other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months”.

65 “Q & A” published by CESR on 18 July 2006 and 21 September 2007. Note that the competent authorities of Germany, Poland and Italy have differing views.

66 In Issue No. 10 of *List!* (June 2005), the FSA states that issuers of loan notes or other securities designed to allow target shareholders to participate in the bidding vehicle will probably have to produce a prospectus or equivalent document if the securities are constituted as “transferable securities”.

67 CESR advises that the €2.5 million limit should be calculated on an EEA-wide basis (“Q & A” published by CESR on 18 July 2006).

68 “Q & A” published by CESR on 21 September 2007.

example, offers to qualified investors) should not be included for the calculation of the limit⁶⁹. 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 “offer of securities to the public” is

“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”* (Article 1(d)).

i. Secondary-Market Trading

The width of the definition of “offer to the public” initially 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 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 (section 102B(5) of FSMA).

ii. Communications

The definition of “offer” for these purposes does not expressly refer 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 therefore encompass a broad range of related communications (e.g., newspaper articles or analyst reports), the Treasury clarified 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:

- (A) the person issuing the communication must have a legitimate interest in the offer being progressed;
- (B) an “offer” must have been made or have a reasonable prospect of being made; and
- (C) the nature of the information included must be sufficient to enable an investment decision to be made (this will typically require adequate descriptions

69 “Q & A” published by CESR on 21 September 2007.

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).

iii. Free Offers

CESR has clarified⁷⁰ that if securities are allocated with no element of choice or right to repudiate for the recipient⁷¹ (this allocation would almost invariably be free of charge), there is no offer of securities to the public. This is on the basis that the definition of “offer to the public” refers to information to enable an investor to decide to purchase or subscribe for securities, and if there is no decision to be made, there can be no offer to the public.

Offers of free shares that involve the recipient deciding whether or not to accept are treated as an offer for no consideration and as such, would not, in CESR's view, ordinarily require a prospectus⁷². In addition, the offer of rights in connection with a rights issue to existing shareholders should be considered as an offer of the underlying shares rather than a free offer (on the basis that the rights can almost immediately be exercised)⁷³.

The FSA has emphasised⁷⁴ that although it would be receptive to issuers that wish to apply the views expressed by CESR, issuers are encouraged to take legal advice on whether a prospectus is required in the circumstances.

B. EXEMPTIONS FROM “AN OFFER TO THE PUBLIC”

Offerings falling within any of 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:

i. An offer of securities made to or directed at “qualified investors” only;

The implementation of a registration system for qualified investors was optional for EEA States and was introduced by the FSA with a view to encouraging smaller issuers to approach private investors and others when seeking to raise capital.

The FSA allows prospective qualified investors to self-certify their status.

“Qualified investors” fall into three main categories:

⁷⁰ “Q & A” published by CESR on 18 July 2006.

⁷¹ This would, for example, include bonus issues.

⁷² The FSA may take into account any “hidden consideration”, and therefore care should be taken to ensure that the offer is genuinely being made for no consideration. Note, however, that CESR does not take the view that where free shares are offered in the context of an employee share scheme (other than where shares are offered in lieu of remuneration that the employee would otherwise receive), the employment relationship of itself provides hidden consideration—e.g., because the employees would have a higher salary if the shares were not made available to them. This line of argument would be speculative and difficult to prove.

⁷³ “Q & A” published by CESR in May 2008. Note that the competent authorities of Germany, Austria and Poland have differing views.

⁷⁴ *List!* Issue No. 16 (July 2007).

- (A) 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”);
- (B) individuals resident in the UK and SMEs with registered offices in the UK that are registered by the FSA on its register of qualified investors⁷⁵; and
- (C) investors authorised as qualified investors by any other EEA State for the purposes of the Prospectus Directive.

In addition to being resident in the UK, an individual wishing to register on the FSA's register of qualified investors must meet at least two of the following criteria:

- (A) he has carried out transactions of a significant size (at least €1,000) on securities markets at an average frequency of at least 10 per quarter over the previous four quarters;
- (B) his securities portfolio exceeds €500,000; and
- (C) he works or has worked for at least one year in the financial sector in a professional position that requires knowledge of securities investment.

In addition to having its registered office in the UK, a company wishing to register must 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:

- (A) its average number of employees is less than 250;
- (B) its total balance sheet does not exceed €43 million; and
- (C) 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;

This is one of the most commonly used exemptions and allows an issuer to make an offer to 99 nonqualified investors in each EEA State (or to any number outside the EEA) (which may be in addition to qualified investors) without requiring a prospectus.

Note that the 100-person exemption is not aggregated over a 12-month period—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.

⁷⁵ Issuers can inspect this register to determine whether potential offerees are “qualified investors”.

This exemption has been the subject of much debate 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,

is 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 that has an advisory or execution-only relationship with its underlying client, as it will be the clients that make the ultimate investment decision and hence count towards the 100-person threshold.

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

This has proved to be a useful exemption in our experience, and by imposing a minimum €50,000 commitment, smaller issuers have been able to facilitate some shareholder participation in offerings without triggering the prospectus obligation.

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 €2.5 million over a 12-month period fall outside the “public offer” regime, it is difficult to see where this exemption would be used.

Not surprisingly, the FSA has received a number of questions about the interaction between this exemption and the €2.5 million exemption. It has been suggested⁷⁶ that as these two provisions were negotiated at different times (the €2.5 million exemption was a relatively late addition in the European Parliamentary process), the interaction between these two provisions would not necessarily have been considered in depth.

⁷⁶ This view was expressed in Issue No. 11 of *List!* (September 2005).

While it could certainly be argued that the €2.5 million exemption has simply rendered this €100,000 carve-out redundant, the FSA has suggested that there may be an alternative interpretation. Offers of less than €2.5 million fall outside the ambit of the Prospectus Directive⁷⁷, and thus member states have been able to make such offers subject to additional requirements under national law. Offers falling below €100,000, on the other hand, do fall within the scope of the Prospectus Directive and are simply exempt from the prospectus requirements. This arguably means that, as the Prospectus Directive is a “maximum harmonisation” directive, member states cannot impose further local law requirements on these offers. While this is not relevant for the UK (as the UK has chosen not to introduce a separate regime for offers under €2.5 million), other member states may well have imposed additional requirements under national law for offers falling between €100,000 and €2.5 million.

- 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 that 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. Effectively, this allows bidders to choose whether to prepare a prospectus or “equivalent” document. A prospectus has the advantage of being capable of being “passported” into other EEA States (which would be particularly useful if the target had significant numbers of shareholders in other member states). An “equivalent” document, on the other hand, does not give rise to withdrawal rights in the context of a supplementary document⁷⁸ and so may be preferred.

Schemes of arrangement (including those implementing takeovers) are not 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 prospectus⁷⁹;

77 The Prospectus Directive is a “maximum harmonisation” directive, which means that member states have not been able to supplement it with additional “super-equivalent” provisions.

78 The publication of a supplementary prospectus gives rights to statutory withdrawal rights, which provide accepting shareholders with the right to withdraw (this right is exercisable during the two business days following publication of the prospectus) (section 87Q of FSMA).

79 The Commission has stated that there is scope for flexibility in interpreting the meaning of “merger” and has invited member states to consult national experts on company law on this issue. The Commission further suggests that, where company law requires the provision of the same information for a de-merger as that required in the case of a merger, then the two kinds of transaction should be treated in the same way for this purpose. In the “Q & A” published by CESR on 21 September 2007, CESR states that it considers that the exemption can be applied to any type of merger or de-merger where a public offer is made according to the Prospectus Directive and about which provision of similar information is required by national legislation.

- 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 that 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 Main Market 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:
- nontransferable share options fall outside the prospectus regime, as they do not constitute “transferable securities”. The issue of shares pursuant to the exercise of such options will also be exempt, as this is treated simply as the execution of a previous offer⁸⁰;
 - the exemption for offers to fewer than 100 persons may be useful in the context of an issuer with fewer than 100 participating employees per EEA State; and
 - 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 €2.5 million⁸¹. 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.

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

In order for a company listed on the Main Market 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 Main Market.

The key exemptions from the obligation to publish a prospectus in the context of an “admission to a regulated market” are set out below. 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 following issues of securities could

⁸⁰ This was clarified in the “Q & A” published by CESR on 18 July 2006.

⁸¹ Note that the UK’s “financial promotion” regime still applies to small offerings.

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 percent exemption, but it may nevertheless constitute an offer to the public.

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

Listed companies are (subject to the availability of a suitable “offer to the public” exemption) able to issue 10 percent of their issued share capital without triggering the prospectus requirements.

The FSA has stated that in calculating the 10 percent limit, issuers should include in the numerator any shares that have benefited from this exemption during the previous 12 months but should exclude shares admitted without the publication of a prospectus due to other types of exemptions. Note, however, that such shares will be taken into account in calculating the issued share capital of the company to which the 10 percent threshold applies⁸².

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 that 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. This “equivalent document” will not benefit from the passport that would be available to an approved prospectus but, on the other hand, will avoid statutory withdrawal rights being triggered in the event of a supplement. 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 that 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 re-investment 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

⁸² CESR gives a practical example over a period of 12 months in the “Q & A” published by CESR on 21 September 2007. CESR also confirms that the basis for the 10 percent calculation should be adjusted for legal measures that affect the number of shares admitted to trading, such as a 1:2 or similar reversed share split, and gives a practical example over a 12-month period.

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;
- vii. **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 market⁸³;

CESR has clarified⁸⁴ that the exemption does not apply to cases of nontransferable securities converted into shares on the basis that the Prospectus Directive specifically defines “securities” as “transferable securities”.

- 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 having been fulfilled; and
 - the person requesting the admission to trading under this exemption making a summary document available.

The FSA has clarified that it is up to the issuer seeking to use this exemption to decide (on the basis of its own legal advice) whether it meets the conditions set out in the exemption and the FSA will generally not express a view (save to challenge in specific cases). While the UKLA will not formally approve the content of a summary document, it may conduct a review in order to determine the issuer’s general compliance with the content requirements set out in PR 1.2.3(8) and, where the issuer also seeks a listing on the Main Market, the various eligibility conditions contained in the Listing Rules⁸⁵. The UKLA is also concerned to ensure that there are no issues that may cause it to consider refusing a listing on the basis that it would be detrimental to the interests of investors in accordance with section 75(5) of the Financial Services and Markets Act 2000.

83 In Issue Nos. 10 (June 2005) and 11 (September 2005) of *List!*, the FSA suggested that it would apply a “purposive” approach to this exemption and would therefore generally require both the convertible security and the underlying security to be admitted to trading on a regulated market for the exemption to apply. In light of subsequent CESR discussions, the FSA has modified its position and in Issue No. 16 of *List!* (July 2007) confirmed that if an issuer has issued a convertible or exchangeable security, the issue of the underlying shares will not require a prospectus as long as they are of the same class as those already listed. However, the FSA has emphasised that abuse of this exemption (e.g., interposing an artificial convertible instrument to avoid producing a prospectus) will not be tolerated, and issuers are encouraged to discuss any areas of concern with the FSA at an early stage.

84 CESR “Q & A” published in February 2007.

85 *List!* Issue No. 19 (October 2008).

D. SECONDARY OFFERINGS BY MAIN MARKET COMPANIES

i. Placing

A placing of shares to qualified investors and/or fewer than 100 other persons per member state that represents less than 10 percent of the issuer's issued share capital over a 12-month period will not require a prospectus.

Placings in excess of the 10 percent 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 nearly always require a prospectus even if they fall within the 10 percent limit, as they will typically constitute an "offer to the public".

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, so in practice, the exemptions available here will not result in significant time or cost savings. Our experience to date suggests that bidders tend to prefer publishing a prospectus where the target has a significant number of shareholders in other EEA States (as the document can then be "passed" in to those other states) but that in other cases, the absence of statutory withdrawal rights makes "equivalent" documents more attractive.

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".

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:

- In July 2008, the Pre-Emption Group published a Statement of Principles which recommends that a routine disapplication of pre-emption rights should generally be limited to 5 percent of ordinary share capital in any one year (with a cumulative limit of 7.5 percent in any three-year rolling period with a maximum discount of no more than 5 percent).

The Statement of Principles is aimed at companies with a Main Market listing, and whilst AIM companies are encouraged to comply, there is an express recognition that greater flexibility may be justified for AIM companies. Accordingly, we are seeing a more flexible approach being taken by AIM companies with respect to the disapplication of pre-emption rights, which would further facilitate larger placings.

As a result of this practice, the National Association of Pension Funds (“NAPF”) proposes to increase the recommended threshold to 10 percent of issued share capital for AIM companies only. The NAPF notes that this recommendation has been made on the basis that most AIM companies routinely seek a general disapplication of up to 10 percent and that due to the small issued share capitals of most AIM companies, the normal 5 percent limit is not sufficient to be used effectively⁸⁶.

- Many placings on AIM disregard the guidelines of investor protection committees recommending that placings of more than 10 percent of the issuer’s issued share capital be accompanied by an open offer and, on this basis, that even larger fundraisings could be conducted by way of a placing only (thereby avoiding the need for a prospectus).
- As mentioned above, AIM issuers that 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 although this can attract criticism as being prejudicial to smaller shareholders, this may well serve as a useful compromise in certain circumstances.

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, so in practice, the exemptions available here will not result in significant time or cost savings. Our experience to date suggests that bidders tend to prefer publishing a prospectus where the target has a significant number of shareholders in other EEA States (as the document can then be “passported” in to those other states) but that in other cases, the absence of statutory withdrawal rights makes “equivalent” documents more attractive.

However, unlike the position with Main Market 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”.

⁸⁶ National Association of Pension Funds: *Corporate Governance Policy and Voting Guidelines, 2008/9 Updates* (6 February 2009).

CHAPTER 8

CONTINUING OBLIGATIONS AND DTR FOR MAIN MARKET COMPANIES

A. LISTING PRINCIPLES (LR 7)

The Listing Rules contain six overarching “listing principles” applicable to issuers with primary listings of equity securities on the Main Market. These listing principles are enforceable by the FSA as “rules” and are designed to ensure that issuers adhere both to the spirit and to the letter of the Listing Rules. 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 requires listed companies to operate appropriate training programmes for directors covering their obligations under the Listing Rules and the DTR.

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

In May 2007, the GC100⁸⁷ published guidelines for establishing procedures, systems and controls to ensure compliance with the Listing Rules (the “GC100 Guidelines”). Compliance with these guidelines is not mandatory, but they do serve as useful “best practice” recommendations. In order to comply with Listing Principle 1, the GC100 Guidelines recommend that issuers:

- ensure that all directors receive an up-to-date induction programme on joining the board and a memorandum on their duties as directors and on the DTR (the GC100 Guidelines also recommend that issuers ask directors to confirm in writing that they have read and understood this memorandum);
- ensure that all directors attend a regular programme of ongoing training to update and refresh their skills and knowledge; and
- ensure that clear written records are kept of all training given to directors and of any decisions taken or relevant changes implemented by directors following such training.

87 The GC100 is the Association of General Counsel and Company Secretaries of the FTSE100, which was formed in March 2005.

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 DTR and does not extend to matters outside the Listing Rules and DTR, 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
- 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 that requires disclosure under the Listing Rules or DTR in a timely manner; and
- any such information is properly considered by the directors and such consideration encompasses whether the information should be disclosed (LR 7.2.3G).

In order to satisfy their obligations for dealing with inside information, the GC100 Guidelines recommend that listed companies implement compliance procedures designed to:

- lead to the identification of potential inside information;
- ensure that potentially inside information that has been identified is reported and assessed by the appropriate personnel to determine whether it should be announced; and
- ensure that announcements are accurate and complete.

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

There is clearly an overlap here with the DTR and the “market manipulation” regime⁸⁸, and the behaviour targeted by this listing principle could include any deliberate act to mislead shareholders or potential shareholders.

⁸⁸ The “market manipulation” regime in the UK is principally governed by section 397 of FSMA—a detailed analysis of this area is outside the scope of this Guide.

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

This listing principle overlaps with the DTR in particular. In response to market concerns regarding the relationship between this listing principle and the DTR, 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 DTR. 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 that are restricted by the laws of other jurisdictions from treating all shareholders in exactly the same way.

Recently, a growing number of issuers have sought to include compulsory acquisition or mandatory redemption provisions in their articles that would typically be triggered upon a transfer of shares to a new shareholder, which may cause the company to suffer, for example, a "pecuniary, tax, financial or other material disadvantage"⁸⁹. Not surprisingly, the FSA has recommended⁹⁰ that any such powers be considered carefully to ensure that they do not offend the "equality of treatment" principle. The FSA currently takes the view that a compulsory acquisition power is not likely to contravene the "equality of treatment" principle where shareholders are selected according to a fully disclosed pre-set formula (rather than, for example, by management discretion). Any such power, however, would need to be properly defined and disclosed in the issuer's circular or prospectus so as to enable shareholders to understand precisely the circumstances and manner in which it was intended to operate.

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 the FSA as soon as possible with "any other information or explanation that the FSA may reasonably require to verify whether listing rules are being, and have been, complied with".

⁸⁹ Listed securities must be freely transferable (see Chapter 1 for details). The FSA has been unwilling to allow the directors of listed issuers broad discretionary powers to refuse to register a transfer if a certain shareholder may cause the company to suffer, for example, a "pecuniary, tax, financial or other material disadvantage". As a result, these powers are structured as compulsory acquisition or redemption powers that operate after the transfer has taken place, rather than as a prohibition on transferability.

⁹⁰ *List!* Issue No. 16 (July 2007).

When the listing principles were first introduced in July 2005, opinion was divided on the merits of adding overarching “principles” to the Listing Rules. It was accepted that the use of “general principles” in the City Code on Takeovers and Mergers provided a useful context for the interpretation of specific rules and where no particular result was dictated. However, there was a concern that the FSA might exploit the inherent ambiguity in the drafting of the listing principles and might use them to pursue issuers in the absence of a specific breach. In addition, the listing principles were criticised as they duplicate, in some respects, the more detailed rules.

The FSA responded to market concerns by confirming that it would 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 in the Listing Rules confirms 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 also clarified that the principles do not expand the scope of the rules, particularly in the case of detailed provisions such as the DTR. Nonetheless, the introduction of these general principles to the Listing Rules does require issuers to take a broader view of their regulatory obligations and undoubtedly makes it more difficult for any issuers wishing to circumvent the specific rules to do so without consequence.

B. DISCLOSURE RULES AND TRANSPARENCY RULES

i. Implementation of the Transparency Directive, Statutory Audit Directive and Company Reporting Directive

The Transparency Directive was implemented in the United Kingdom (via the introduction of Transparency Rules and certain changes made to Part 6 of FSMA) on 20 January 2007. Although the disclosure requirements under the previous Disclosure Rules were left largely unchanged, new Chapters 1A, 4, 5 and 6 were added to incorporate the new Transparency Rules, and the sourcebook was renamed the “Disclosure Rules and Transparency Rules”. The key changes introduced by the new regime were as follows:

- amended content and timing requirements for the publication of financial reports;
- annual and half-yearly reports are required to include responsibility statements;
- a requirement for interim management statements;
- a new statutory liability regime for financial reports;
- issuers are no longer required to issue a preliminary statement of their annual results under the Listing Rules. (However, market practice dictates that many issuers still issue preliminary statements. In June 2008 and again in March

2009, the FSA reminded issuers that retaining pre-Transparency Directive annual financial reporting procedures does not necessarily comply with the DTR financial reporting obligations—please see “Periodic Financial Reporting” below);

- a new regime for the notification of major shareholdings and related obligations on companies to release this information and other information relating to changes in their voting share and loan capital; and
- more detailed obligations on communicating with shareholders (including electronic communications) and the market and additional rules on filing information with the FSA.

The DTR were further amended on 29 June 2008 to implement certain parts of the Statutory Audit Directive and the Company Reporting Directive into the United Kingdom’s disclosure and reporting regime. The new additions to the DTR (which are also commonly referred to as the “FSA’s Corporate Governance Rules”) are set out in DTR 1B, 4 and 7.

The key change has been the addition of DTR 7, “Corporate Governance”, which largely requires issuers to:

- have a body responsible for carrying out the audit functions;
- issue a statement identifying the body that carries out the audit functions and describes how that body is composed; and
- issue a statement that refers to the corporate governance code that the company applies and explains whether, and to what extent, it complies with such code and to include a description of the main features of the issuer’s internal control and risk-management features for the financial reporting process, as well as a description of the composition and operation of the issuer’s administrative, management and supervisory bodies and their committees.

The Combined Code, which was revised in June 2008, acknowledges that there is some overlap between the content of the Combined Code and the rules in DTR 7. Equally, the FSA’s guidance regarding the operation of DTR 7 states that compliance with such areas of the Combined Code will be deemed sufficient for the issuer to comply with the DTR. However, it should be noted that where a company chooses to explain rather than comply with the Combined Code, it will need to demonstrate that it still meets the minimum requirements of DTR 7.

ii. Disclosure of Inside Information

The disclosure obligations for issuers under the DTR 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 that any information they give to a Regulatory Information Service (“RIS”) is not misleading, false or deceptive and does not omit anything likely to affect the

import of the information⁹¹. This is coupled with 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 therefore required to have regard to the wider context of their marketing activities against which any announcement will be interpreted.

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

- *Definition of “inside information” (DTR 2.2.3 to 2.2.8)*

“Inside information” is information of a precise nature that:

- 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 investments⁹².

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 judgment 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.

Central to the operation of the “inside information” test is the issue of price sensitivity. In determining the likely price significance of information, guidance on the DTR (DTR 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.

The FSA guidance on the DTR 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

91 DTR 1.3.4R.

92 Section 118C of FSMA.

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

- *Timing of disclosure*

Subject to a very limited ability to delay disclosure, the DTR require any required announcement to be made "as soon as possible".

Guidance under the DTR (DTR 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 DTR will therefore require an issuer's executive officers to monitor performance and give consideration to whether there has been a change in the company's expectation as to its performance. They must call to the attention of the board any material change in expectation as soon as possible so that the board may review it and make a formal decision on any required announcement. In January 2009, in light of the difficult economic climate, the FSA specifically reiterated the need for company directors to consider their general disclosure obligations (under DTR 2.2.1R) as regards any potential inside information arising out of such regular monitoring of, for example, their companies' cash flow position, available bank or finance facilities, and covenant compliance⁹³. When changes in the company's circumstances are under consideration, a listed company should also consider consulting its financial advisers as early as

93 List! Issue No. 20 (January 2009).

possible. This guidance replicates the position taken by the FSA in its public statement on Marconi's breach of the old disclosure obligations under paragraph 9.2 of the pre-July 2005 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. 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. 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 (DTR 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, so it will be important for an issuer to be able to demonstrate that it reacted reasonably and expeditiously to the event in question.

An 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 (DTR 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 (DTR 2.2.9G(3)). Note that an issuer whose trading is suspended must still comply with the applicable DTR. An issuer who is in any doubt about the timing of its disclosure obligations should consult the FSA at the earliest opportunity.

- *Publication on an issuer's web site (DTR 2.3)*

Where an issuer has a web site, the DTR provide that:

- inside information announced via a RIS must be available on the issuer's web 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 web site. Guidance makes it clear that an issuer should not publish inside information on its web site as an alternative to or in advance of its disclosure via a RIS; and

- an issuer must, for a period of one year following publication, post on its web site all inside information that it is required to disclose via a RIS (DTR 2.3.5R).

iii. Delaying Disclosure

Under DTR 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 guidance to the directors under DTR 2.2.8G to continuously monitor circumstances to ensure compliance with the DTR.

In applying DTR 2.5.1, legitimate reasons may, in particular, relate to the following nonexhaustive circumstances:

- 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’ interests 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 that 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); and
- where the company or a member of its group has been in receipt of liquidity support by the Bank of England or by another central bank⁹⁴.

94 DTR 2.2.5AR.

The guidance given by the FSA is that a company should not be obliged to disclose “impending developments” that could be jeopardised by premature disclosure. Whether or not a company has a legitimate interest that would be prejudiced by the disclosure of certain inside information is an assessment that must be made by the company in the first instance. However, the FSA considers that other than in relation to “impending developments” or matters described above, there are unlikely to be other circumstances where delay would be justified⁹⁵.

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 nondisclosure 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.

iv. FSA Guidance in relation to Liquidity Support

The DTR were amended in December 2008 to provide guidance to issuers that might have a legitimate interest in delaying disclosure concerning the provision of liquidity support by the Bank of England or another central bank. The FSA reasoned that whilst the receipt of liquidity support may well be inside information (as it would likely have a significant effect on an issuer’s financial instruments), such support would likely be provided on the basis that the issuer was solvent and therefore disclosure at an early stage could lead to a loss of confidence among consumers and counterparties. This could potentially exacerbate liquidity problems, thereby causing a threat to the solvency of the issuer.

Any delay of disclosure would not, the FSA noted, be unconditional or indefinite, given the need to comply with the Market Abuse Directive tests of “ensuring confidentiality” and “not misleading”. A particular example the FSA indicated is that nondisclosure would be misleading when the market would reasonably expect the company to make a disclosure in order to correct an impression resulting from its recent market statements that would now be contradicted by the inside information (the receipt of liquidity support) which had arisen. The FSA also stated that the length of time that information about the receipt of liquidity support can be kept confidential may be uncertain. However, it reminded issuers that in the event of any leak of such information, an immediate disclosure would be required.

95 DTR 2.5.5.

In any event, given the requirement for issuers to produce interim management statements covering significant events in the previous period, the maximum amount of time that the market would be unaware of the receipt of liquidity support by an issuer would be four and a half months.

The FSA explains that DTR 2.5.5AR really applies only to liquidity support that is bespoke to the recipients, *i.e.*, in terms of its duration, cost and the collateral requirements associated with it. It is not typically envisaged that the receipt of liquidity support provided by the Bank of England, where the support could be accessed on the same terms by all eligible market recipients (*e.g.*, as part of a common liquidity facility), would constitute inside information. It would, however, remain the responsibility of the issuer to make this determination. Information that an issuer had accessed such a facility to a very significant extent could constitute inside information.

In response to market comments, the FSA has signalled that as it would be involved in discussions with any issuer in need of liquidity support, it would be able to act as a monitor so as to require a disclosure by an issuer under DTR 1.3.3R if it feels that a disclosure is required to protect investors or ensure the smooth running of the market.

v. Selective Disclosure

The DTR 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 DTR, unless a company is delaying disclosure in accordance with DTR 2.5.1R, it must ensure that no inside information is released. 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 DTR 2.5.1R, it may selectively disclose the inside information to persons owing a duty of confidentiality, but selective disclosure may be made to another person only if it is in the normal course 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 DTR 2.5.7G, an issuer may be justified in disclosing inside information to the following persons:

- its advisers and the 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 trade unions 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; and
- 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.

vi. Dealing with Analysts

In its newsletter *List!*⁹⁶, the FSA sets out informal advice on good practice when dealing with analysts, which 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 making an announcement to correct significant errors that come to its attention, which in its view have led to widespread and serious misapprehension in the market. Note that the knowledge that a forecast is inaccurate is more likely to amount to inside information if an issuer is covered only 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 DTR;

96 *List!* Issue No. 9 (June 2005).

- 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 a nonparticipating audience through telephone lines; and
- employees meeting analysts during visits should be briefed on the extent and nature of the information that they can communicate.

vii. 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 from using the information until it has been formally announced, as this essentially amounts to selective disclosure. Although the DTR 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 DTR—an issuer may delay the disclosure of inside information only 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 DTR 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 DTR 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 (DTR 2.7.2G).

Conversely, the knowledge that the press speculation or market rumour is false is not likely to amount to inside information. However, 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. Even if it does, the FSA expects in most cases that an issuer would be able to delay disclosure (often indefinitely) in accordance with DTR 2.5.1R (DTR 2.7.3G).

FSA informal advice⁹⁷ states that 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 it 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.

viii. Control of Inside Information and Compliance Procedures

The DTR 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 DTR 2.5.1R, it should prepare a holding announcement (in accordance with DTR 2.2.9G(2)) to be released if and when any actual or likely breach of confidence occurs⁹⁸; and
- 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.

The GC100 Guidelines recommend that issuers establish procedures designed to facilitate the *identification*, *control* and *verification* of inside information. Key recommendations include the following:

⁹⁷ *List!* Issue No. 9 (June 2005).

⁹⁸ This is a new obligation to ensure that any announcement can be used as soon as there is a breach of confidentiality.

- *Identification*

In order to ensure that inside information is identified, the GC100 Guidelines recommend that issuers:

- identify likely sources of inside information (including trading information, events and projects);
- allocate responsibility for internal reporting and assessing of information that may be inside information;
- establish financial and nonfinancial key performance indicators for internal reporting purposes (thresholds should be conservative);
- assess regular internal reports submitted routinely;
- identify relevant projects that could result in inside information at their inception; and
- identify individuals likely to become aware of a relevant event.

- *Control*

The GC100 Guidelines recommend that, in dealing with inside information, issuers should:

- establish clear reporting lines (to facilitate early disclosure, these should be as short as practicable);
- identify people responsible for making decisions (and ensure that they have access to adequate information and advice);
- determine the extent of board involvement and establish a suitable “emergency procedure”;
- allocate responsibility for keeping “market expectations” under review;
- maintain a record of any forward-looking statements made;
- establish and maintain “insider lists” (see below for further details);
- ensure confidentiality of information pending disclosure/leak announcements;
- consider adopting communications policies;
- keep records of inside information announced and information deemed not “inside information”; and
- provide appropriate training for directors and employees and audit compliance procedures on a regular basis to ensure their continued effectiveness.

- *Verification*

Listed companies are under an obligation to take all reasonable care to ensure that any announcements made are not misleading, false or deceptive and do not omit anything likely to affect the import of the information.

In light of this, issuers should ensure appropriate verification of announcements, and responsibility for verifying and approving the text of announcements should be allocated. The obligation to announce inside information “as soon as possible” will inevitably preclude the undertaking of a lengthy verification process, but nonetheless, sufficient verification must be carried out to ensure the accuracy of an announcement. If the company is faced with an unexpected and significant event, a short delay may be acceptable if necessary to clarify the situation. Note that in these circumstances, a holding announcement may be required, particularly if there is a risk of a leak.

ix. **Insider Lists** (DTR 2.8)

The DTR 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. (To be included on the list, persons need to *act for the issuer and have access to inside information*; this will therefore include persons working for the issuer’s 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 maintained⁹⁹ and has said that it is acceptable to keep the required information in electronic form. Insider lists must be updated promptly when the reason why a person is on the list changes, when any person not on the list is provided with access to inside

⁹⁹ The GC100 Guidelines include certain best-practice recommendations for maintaining insider lists.

information and when 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, so an issuer must 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.

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

The DTR (DTR 3.1.2R) 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 shares¹⁰⁰.

For these purposes, “persons discharging managerial responsibilities” (“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 (section 96B(1) of FSMA).

Their connected persons for these purposes include:

- the spouse, civil partner, children or stepchildren 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 percent of the voting power in general meeting (excluding votes attached to treasury shares) or are interested in at least 20 percent (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, civil partner or any of his children or stepchildren 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 a household with that person for at least 12 months (note that “relative” is not defined for these purposes); and

¹⁰⁰ DTR 3.1.2R does not define “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.

- 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 (section 96B(2) of FSMA).

The definition of “connected bodies corporate” referred to in the last bullet above was initially met with concern, as it suggests that listed companies are persons connected with each other when they share the same director. However, to alleviate this concern, the FSA has provided guidance¹⁰¹ offering a much narrower interpretation of 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 its connected persons have within that body corporate. The person must have the power to control that body corporate rather than merely being able to exert influence over it. The FSA has clarified that it expects an issuer to announce dealings in its shares, derivatives or other financial instruments by a body corporate only where a PDMR at an issuer or one of its connected persons is the sole director of a body corporate and/or is a director or senior executive of a body corporate that has the power to control the body corporate’s management decisions affecting the body corporate’s future development and business prospects.

Note that these disclosure obligations supplement the disclosure requirements set out in Chapter 5 of the DTR (see paragraph D below for details).

C. PERIODIC FINANCIAL REPORTING

i. Introduction

Chapter 4 of the DTR sets out certain periodic financial reporting requirements and, in addition to the Listing Rules’ requirements (see below), applies to companies whose transferable securities are admitted to trading on a regulated market (e.g., the UK’s Main Market) and whose home member state is the UK. A company whose securities are admitted to trading on a regulated market whose home member state is not the UK will need to comply with the corresponding law of its home member state.

Partial exemptions from the full requirements apply to certain issuers of the following types:

- issuers of wholesale debt and issuers on the Professional Securities Market (“PSM”) are required to prepare annual reports and may use accounting

¹⁰¹ *List!* Issue No. 9 (June 2005).

standards other than IFRS (*i.e.*, no requirement to prepare half-yearly reports or interim management statements)¹⁰²;

- issuers of convertible securities or depositary receipts are required to prepare annual financial reports (no requirement to prepare half-yearly reports or interim management statements); and
- non-EEA issuers whose laws are considered by the FSA to impose “equivalent” requirements are exempted from the periodic financial reporting requirements in the DTR. A list of such non-EEA States is maintained by the FSA on its web site.

ii. Annual Financial Reports

- *Contents and timing (DTR 4.1.4R to 4.1.12R)*

An annual financial report must be published within four months of the financial year-end to which it relates and must include:

- the issuer’s audited financial statements prepared in accordance with the applicable accounting standards¹⁰³;
- a management report containing a fair review of the issuer’s business and a description of the principal risks and uncertainties facing it; and
- appropriate responsibility statements from persons responsible in the company (usually the directors) on behalf of the issuer¹⁰⁴ confirming that the financial statements give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer and undertakings included in the consolidation taken as a whole and that the management report includes a fair review of the business and the position of the issuer and undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties they face.

In addition to the requirements of the Transparency Rules, directors of listed companies should also be aware of the recommendations of the Combined Code that 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.

Furthermore, the Listing Rules (LR 9.8) contain certain additional content requirements that include the following:

¹⁰² DTR 4.4.2 for wholesale debt. DTR 4 does not apply to the PSM, as it is not a regulated market for the purposes of the Prospectus Directive. PSM issuers must comply with the requirements of LR 17.3.4 and 17.3.5 as regards the periodic financial reporting.

¹⁰³ IAS for UK Main Market issuers.

¹⁰⁴ Following its consultation on the proposed extension of responsibility for periodic financial information published by UK-incorporated listed companies to their directors, the FSA decided not to extend beyond the company responsibility for financial information published pursuant to the requirements of the Listing Rules or DTR. Responsibility statements can therefore be signed by one director on behalf of the company without incurring personal liability.

- 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 percent 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 noncompliance;
- 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; and
- an auditor's report.

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

iii. Preliminary Statement of Annual Results (LR 9.7A.1R)

The issue of a preliminary statement (“prelims”) is now optional. However, if companies do choose to issue prelims, they will need to comply with the requirements of LR 9.7A.1R, including the requirement that they be published as soon as possible after being approved by the board and the requirement for them to be agreed by the auditors.

As mentioned earlier in this chapter, the FSA has noted that it is market practice for many issuers to retain their pre-Transparency Directive annual financial reporting procedures. While announcing prelims, to be followed by the annual report and accounts two months later, is not strictly in keeping with the obligations under the DTR, the FSA has offered tentative guidance as to what issuers should do in these circumstances. Issuers still publishing prelims should include the information required by DTR 6.3.5(2)(b) (the information required for half-yearly reports to be reproduced in unedited full text) as if the prelim was an annual financial report. The FSA has urged issuers to then refer to the prelim when making the later release of the annual report and accounts.

Issuers that do not elect to issue prelims will still be required to publish inside information as soon as possible in line with their obligations under DTR 2.

iv. Half-Yearly Financial Reports (DTR 4.2)

A half-yearly financial report (no longer referred to as an “interim statement”) must be issued no later than two months after the end of the period to which it relates¹⁰⁵ and must include:

- a condensed set of financial statements;
- an interim management report, including an indication of the important events that have occurred during the first six months of the financial year and their impact on the condensed financial statements, and a description of the principal risks and uncertainties facing the company in the next six months, together with details of related-party transactions;
- a responsibility statement identifying those particular individuals responsible for the half-yearly report and their functions; and
- an indication of whether or not it has been audited or reviewed by auditors; if so, the audit report or review must be reproduced in full.

¹⁰⁵ The FSA no longer requires listed companies to send half-yearly financial reports to shareholders or to publish them in newspapers.

In October 2008 the FSA commented on the need for companies to provide a description of the principal risks and uncertainties facing them in the next six months. The FSA stated that as companies gave significant thought to such risks in their annual reports, it would be acceptable for issuers to state in their half-yearly reports that the principal risks and uncertainties have not changed, to summarise those risks and to cross-reference the relevant sections of the annual reports containing a detailed explanation of these. Given the current economic turbulence, however, issuers should think carefully about whether any new principal risks or uncertainties have arisen¹⁰⁶.

v. Interim Management Statements (DTR 4.3)

Unless an issuer publishes quarterly financial reports, it must release a statement during the first six-month period of any financial year and also during the second six-month period. The management must release the interim management statement between 10 weeks after the beginning and six weeks before the end of the relevant six-month period.

The interim management statement must explain material events and transactions that have taken place since the start of the relevant period and their impact on the company's financial position and describe the financial position and performance of the company during that time.

The FSA expects these disclosures to be less onerous than producing quarterly financial reports, and issuers may be able to use trading statements as an alternative. The FSA has stated¹⁰⁷ that issuers may be able to satisfy the interim management statement requirements through the release of performance reports, trading statements and other similar disclosures as long as the relevant information is included.

vi. Close Periods under the Model Code

With effect from 20 January 2007, the definition of "close period" for the purposes of the Model Code (which forms part of LR 9) was amended to comprise:

- the period of 60 days immediately preceding a preliminary announcement of the listed company's annual results;
- the period of 60 days immediately preceding the publication of its annual financial report or, if shorter, the period from the end of the relevant financial year up to and including the time of such publication;
- if the listed company reports on a half-yearly basis, the period from the end of the relevant financial period up to and including the time of such publication; and

¹⁰⁶ *List!* Issue No. 19 (October 2008).

¹⁰⁷ The Transparency Directive edition of *List!* (Issue No. 14 (April 2007)).

- if the listed company reports on a quarterly basis, the period of 30 days immediately preceding the announcement of the quarterly results.

D. SHAREHOLDER NOTIFICATION REQUIREMENTS

i. Introduction

Chapter 5 of the DTR and sections 89A to 89L of FSMA implemented the Transparency Directive provisions on the disclosure of major shareholdings. They replaced the provisions requiring disclosure of share interests in sections 198 to 220 of the Companies Act 1985, with responsibility for monitoring and enforcement passing from the Department of Trade and Industry to the FSA.

Whilst initially the FSA undertook not to take an enforcement-led approach to ensuring compliance with the new rules, two years on, the FSA has indicated that it sees such undertaking as having less relevance. It has now indicated that where shareholders or listed companies breach these obligations, it will consider the future use of public disciplinary action if this is warranted.

This will be particularly relevant in 2009, as the changes to DTR 5 (as discussed below) widen the scope of the regime to cover those financial instruments that give rise to a similar economic effect to qualifying financial instruments.

ii. Applicability of Chapter 5 of the DTR

Chapter 5 of the DTR applies to issuers whose shares are admitted to trading on a regulated market (e.g., the Main Market) for whom *the UK is the home member state*¹⁰⁸ and to other *UK issuers with shares admitted to trading on a prescribed market*¹⁰⁹. The provisions relating to the notification of major interests in shares in sections 198 to 220 of the Companies Act 1985 were repealed with effect from 20 January 2007.

iii. Announcement of Share Capital and Voting Rights by Issuers

In order to ensure that the notification regime provides investors with the information they need to make the appropriate disclosures in a timely manner, each issuer is required to make a public announcement of the total number of voting rights and capital for each listed class of shares (distinguishing the voting rights attaching to shares held in treasury) at the end of each calendar month during which there is an increase or decrease in its share capital.

¹⁰⁸ The FSA may exempt certain non-EEA issuers from the requirements of DTR 5, provided they are subject to laws the FSA considers to be equivalent in their own countries (DTR 5.11.6R). The FSA's web site includes an "equivalence" section listing the countries to which this applies (the laws of the USA, Japan, Israel and Switzerland are deemed to be "equivalent" for these purposes, so issuers incorporated in these jurisdictions are exempt from the requirements of DTR 5).

¹⁰⁹ AIM and PLUS quoted are both prescribed markets.

iv. The Disclosure Obligation

- *Disclosure thresholds (DTR 5.1.2)*

Subject to the exemptions described below, a person with an interest in the share capital of an issuer to which Chapter 5 of the DTR applies¹¹⁰ will be obliged to disclose its aggregated interest in shares that it holds as shareholder and shares it is deemed to hold through its direct or indirect holding of financial instruments (as discussed below) where its interest crosses the following thresholds:

- for UK issuers: 3 percent of its voting rights and each whole percentage point after that
- for non-UK issuers: 5 percent, 10 percent, 15 percent, 20 percent, 30 percent, 50 percent and 75 percent

The requirement under section 324 of the Companies Act 1985 for directors of companies to disclose their shareholdings was repealed with effect from 6 April 2007, although they will be required to disclose holdings to the extent they fall within the thresholds above.

- *Time limits for notification and manner of notification (DTR 5.8 and 5.9)*

Disclosure to the relevant issuer must be made within two trading days in the case of UK issuers and four trading days in the case of non-UK issuers. The time limit runs from when the shareholder became aware or should have become aware of the relevant acquisition or disposal. Note that where a person has instructed a third party to effect the transaction, he will be deemed to have knowledge of the transaction no later than two trading days thereafter.

A notification in relation to shares admitted to a regulated market (e.g., the Main Market) must be made using the form TR1 available in electronic format at the FSA's web site at www.fsa.gov.uk (DTR 5.8.10R). The relevant holder must at the same time file a notification with the competent authority of the home member state of the issuer as well as with the issuer itself (DTR 5.9.1R).

The issuer must release details to a RIS as soon as possible on receipt of a notification and by no later than the end of the following trading day for UK issuers with shares admitted to trading on a regulated market and by no later than the end of the third trading day for other issuers.

- *Interests to which the disclosure obligation applies (DTR 5.2)*

DTR 5.2 sets out the types of shareholding that will potentially lead to a notification obligation. Both "direct" and "indirect" holdings of shares are covered

¹¹⁰ Chapter 5 of the DTR applies to issuers whose shares are admitted to trading on a regulated market (e.g., the Main Market) for whom the UK is the home member state and to other UK issuers with shares admitted to trading on a prescribed market (including AIM).

by the disclosure regime. For example, a parent company of a subsidiary that holds shares will generally be an indirect shareholder, and the shares held by the parent will generally have to be aggregated with those held by its subsidiary when determining if a notification obligation arises. In contrast to the previous requirements of the Companies Act 1985, interests held by family members are not generally aggregated when determining if a notification obligation has arisen, although the rules in relation to direct and indirect holdings should be examined in each case to ascertain if interests need to be aggregated.

In addition to shareholdings, notification obligations can also arise from the holding of certain financial instruments. These include instruments such as options, futures, swaps, forward rate agreements and any other derivative contracts that result in an entitlement to acquire, on the holder's own initiative, under a formal agreement, shares (already in issue) to which the voting rights are attached. In June 2009, the definition of "financial instruments" was widened to include those financial instruments that give only an economic exposure to the underlying shares, without conferring voting rights (e.g., contracts for differences, or "CfDs"). Such instruments' terms will be referenced to an issuer's shares and will give the holder a long position on the shares, thereby potentially enabling the holder to gain an economic advantage in acquiring, or gaining access to, the underlying shares.

As a result, any person holding relevant financial instruments, either directly or indirectly, must disclose its interest in the shares that it is deemed to hold by virtue of holding the financial instrument, where its interest crosses the threshold requirements set out in DTR 5.1.2, *i.e.*, 3 percent of its voting rights and each whole percentage point thereafter. Following the recent amendments to DTR 5, such interests must be aggregated with any voting rights held.

- *Principal exemptions from disclosure (DTR 5.1.3R)*

The notification requirements of DTR 5.1.2 do not apply in the following cases:

- shares acquired for the sole purpose of clearing and settlement within a settlement cycle not exceeding three days;
- persons holding shares in their capacity as custodian or nominee, provided that they can exercise voting rights only under written or electronic instructions;
- a market maker holding less than 10 percent in that capacity, provided that it does not intervene in the management of the company or exert influence on the company to buy back shares or back the share price. As soon as the 10 percent threshold is reached, the entire holding is disclosable;
- shares or shares underlying financial instruments representing less than 5 percent of the voting rights of a company held within a trading book of a credit institution or investment firm, provided that the institution or firm

ensures that the voting rights in respect of those shares or those shares underlying financial instruments are not exercised or otherwise used to intervene in the management of the company;

- shares held by a collateral taker under a collateral transaction involving an outright transfer of securities, provided that the collateral taker does not exercise the voting rights; and
- shares held by a borrower under a stock lending agreement, provided that the borrower on-lends or disposes of the shares by the end of the next trading day.

In addition to the above, the following voting rights are to be disregarded for the purposes of determining whether a person has a notification obligation unless the holdings reach the 5 percent, 10 percent and higher thresholds¹¹¹:

- shares held by persons in their capacity as investment managers;
- shares held by operators of unit trusts and certain other collective investment schemes; and
- shares held by investment companies with variable share capital.

The amendments introduced in June 2009 also create an exemption for financial instruments held by client-serving intermediaries, such as CfD writers, who do not attempt to intervene or exert influence on the management of an issuer. This exemption is designed to reduce the number of meaningless disclosures from such intermediaries acting in client-serving roles and effectively only providing liquidity.

E. SPECIFIC DISCLOSURE OBLIGATIONS

In addition to the general obligation of disclosure under the DTR, 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 9.6.19R);
- ii. Any proposed change in its capital structure (including the structure of its listed debt securities)¹¹² (LR 9.6.4R(1));
- 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 9.6.22G);

¹¹¹ Note that when the relevant 5 percent, 10 percent and higher thresholds are crossed, the entire holding becomes disclosable.

¹¹² An announcement of a new issue may be delayed while marketing or underwriting is in progress.

- iv. Any redemption of its listed securities (LR 9.6.4R(3));
- v. Any extension of time granted for the currency of temporary documents of title (LR 9.6.4(4)R);
- vi. 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 9.6.4R(6)). Where the securities are subject to an underwriting agreement, the issuer may, at its discretion, delay notifying a RIS for up to two 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 that is not underwritten, notification of the result must be made as soon as it is known;
- vii. Dealings in securities by directors and persons discharging managerial responsibilities (and their connected persons) (DTR 3.1.2R and 3.1.4R);
- viii. 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);
- ix. The removal or resignation of a director, and any important changes in the functions or executive responsibilities of a director (LR 9.6.11R);
- x. Any lock-in arrangements not already disclosed, changes to any lock-in arrangements previously disclosed and any disposals under exemptions permitted thereunder (LR 9.6.16R and 9.6.17R);
- xi. All shareholder resolutions passed (other than ordinary business at an AGM¹¹³) (LR 9.6.18R);
- xii. 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):
 - (a) 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;
 - (b) any unspent convictions in relation to indictable offences; details of any receiverships, compulsory liquidation, creditors' 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;
 - (c) 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;

113 The Listing Rules do not define "ordinary business" in this context or in the newsletter *List!* (Issue No. 12, February 2006). The FSA has stated that listed companies should make their own judgments about what they would consider to be ordinary business, with reference to their articles of association.

- (d) 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 months preceding such event; and
- (e) 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; and

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

F. ANNUAL INFORMATION UPDATE

The Prospectus Rules (PR 5.2) contain a continuing obligation that requires issuers whose securities are admitted to trading on a regulated market and whose home member state is the UK 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 months¹¹⁴.

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; and
- 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.

¹¹⁴ This requirement does not apply in relation to nonequity transferable securities with a denomination per unit of at least €50,000.

G. EQUALITY OF TREATMENT (DTR 6.1.3R)

i. Equality of Treatment (DTR 6.1.3R)¹¹⁵

As reinforced by Listing Principle 5, an issuer must ensure equality of treatment for all holders of the issuer's listed securities who are in the same position.

ii. Financial Agent (DTR 6.1.6R)¹¹⁶

An issuer must designate, as its agent, a financial institution through which shareholders or debt securities holders may exercise their financial rights.

iii. Admitted to Trading (LR 9.2.1R and 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 FSA as soon as possible if trading in its securities has been cancelled or suspended.

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

A listed company must ensure that the proportion of any class of its listed securities in the hands of the public in one or more EEA States does not fall below 25 percent 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 percent or more of the shares of the relevant class. Although technically only shares in public hands in one or more EEA States count towards the 25 percent threshold, the FSA does have the discretion (under LR 6.1.20G) to include shares held outside the EEA. The FSA has confirmed¹¹⁷ that it would try to operate a flexible approach when exercising this discretion and would expect an issuer to demonstrate that the market would operate properly with a percentage lower than 25 percent held in public hands in EEA States (for example, in circumstances where, although a significant proportion of the public-hands element is held outside the EEA, all trades will take place in London). Conversely, the FSA has also emphasised its reluctance to permit the overall number of shares in public hands to fall below 25 percent other than in the context of the largest issuers.

An issuer that no longer complies with this requirement must notify the FSA as soon as 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

115 An issuer whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FSA is exempted from this requirement (the FSA maintains a list of non-EEA States whose laws are considered "equivalent" for these purposes).

116 An issuer whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FSA is exempted from this requirement (the FSA maintains a list of non-EEA States whose laws are considered "equivalent" for these purposes).

117 *List!* Issue No. 11 (September 2005).

precluded by the need to maintain the smooth operation of the market or to protect investors).

v. Settlement (LR 9.2.3R)

An 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 (DTR 6.1.2)

An issuer must notify the FSA of any proposed amendments to its constitution and communicate the proposed changes to the market without delay but by no later than the date upon which it convenes the meeting to vote on, or be informed of, the amendments.

viii. Compliance with the Model Code and DTR (LR 9.2.5G to 9.2.9G)

A listed company 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. An issuer may impose more rigorous dealing obligations than those required by the Model Code.

A listed company is also required to comply with the DTR.

ix. Discounted Option Arrangements (LR 9.4.4R and 9.4.5R) and Discounted Equity Offerings (LR 9.5.10)

Directors or employees of a 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).

A listed company may not issue equity shares pursuant to an open offer, placing, vendor placing or offer for subscription at a discount of more than 10 percent to the middle-market price of the relevant shares at the time of announcing the terms of the offer or agreeing the placing unless the terms of the relevant offer or placing at that discount have been specifically approved by the issuer's shareholders or the relevant offer or the placing falls under a pre-existing general authority to disapply statutory pre-emption rights.

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

Listed companies 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 dis-application 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 that 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. Proxy Forms (LR 9.3.6R)

A listed company must ensure that a proxy form provides for at least three-way voting on all resolutions (other than procedural resolutions) and states that if it is returned without an indication as to how the proxy should vote on any particular matter, the proxy will exercise his discretion as to whether (and if so, how) he votes. DTR 6 also imposes requirements relating to proxies¹¹⁸. Shareholders and debt securities holders must not be prevented from exercising their rights by proxy, and an issuer must make available, either with the notice of meeting or after the announcement of the meeting, a proxy form (in paper or electronic form) to each person entitled to vote at the relevant meeting.

xii. Communications with Securityholders (DTR 6.1.4R and 6.1.7G to DTR 6.1.15R)¹¹⁹

An issuer must ensure that all the facilities and information necessary to enable holders of shares and debt securities to exercise their rights are available in their home states and that the integrity of data is preserved. Issuers may use electronic means to communicate with holders, provided that:

- the decision to communicate electronically is approved by shareholders;
- the use of electronic means is not dependent on the location or residence of the holders;
- identification arrangements must be put in place so that the holders or other persons entitled to exercise or direct the exercise of voting rights are effectively informed;

¹¹⁸ An issuer whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FSA is exempted from this requirement (the FSA maintains a list of non-EEA States whose laws are considered "equivalent" for these purposes).

¹¹⁹ An issuer whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FSA is exempted from this requirement (the FSA maintains a list of non-EEA States whose laws are considered "equivalent" for these purposes).

- holders must be (i) contacted in writing to request their consent for the use of electronic means for conveying information, and if they do not object within a reasonable period, their consent is deemed to have been given; and (ii) able to request at any time in the future that information be conveyed to them in writing¹²⁰; and
- any apportionment of the costs entailed in conveying information electronically must be determined by the issuer in compliance with the principle of equal treatment mentioned above.

In addition, issuers are required to disseminate certain prescribed information, including the following:

- the place, time and agenda of meetings;
- the total number of shares and voting rights;
- information on the allocation and payment of dividends or interest (as applicable) and the issue of new securities, including information on any arrangements for allotment, subscription, cancellation, conversion, exchange and/or repayment; and
- rights of holders to participate in meetings and exercise their rights.

Any change in the rights attaching to listed shares or other securities must be announced without delay. Any new loan issues and, in particular, any guarantee or security in respect of such issues must also be announced without delay.

xiii. Sanctions for Default of “793 Notices” (LR 9.3.9F)

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 793 of the Companies Act 2006¹²¹.

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 percent 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.

¹²⁰ This does not apply in any case where Schedule 5 to the Companies Act 2006 applies (this allows UK companies to send or supply documents and information to shareholders in electronic form and by a web site (subject to shareholder approval)).

¹²¹ These notices require disclosure of interests in shares.

xiv. Contact Details (LR 9.2.11R and 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 DTR. 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 web site at www.fsa.gov.uk/pubs/forms/LR_contact_details.pdf.

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

UK-incorporated listed companies (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 that either:

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

xvi. Control over Assets (LR 9.2.2AR)

LR 9.2.2AR clarifies that a listed company must comply with the requirements under LR 6.1.4R (2) and (3) to demonstrate that it controls the majority of its assets and carries on an independent business as its main activity on a continuing basis once listed.

H. TRANSACTIONS

i. Class Tests

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 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 capitalisation¹²². 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 a reverse takeover, where the percentage ratios are less than 5 percent, less than 25 percent, less than 100 percent or more than 100 percent, 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 involving an issue of securities by the listed company require notification of the terms to a RIS¹²³; 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 obtained*¹²⁴. 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 the publication of listing particulars or a prospectus relating to the company that 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 implementation¹²⁵. The categories of related parties include:

- a substantial shareholder, entitled at any time within the 12 months prior to the transaction to control 10 percent 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 person exercising significant influence; and
- any associate of the above.

¹²² The FSA has clarified the treatment of a class test where either the issuer or the target or both have produced a loss in the most recent year (*List!* Issue No. 11 (September 2005)). The FSA has stated that it will no longer treat the result as necessarily being anomalous and may disregard the negatives and perform the class test in the normal way. Note, however, that the FSA nonetheless reserves the right to decide that this produces an anomalous result.

¹²³ Although other Class 3 transactions do not require an announcement, if the issuer releases any details of the transaction to the public, a concurrent notification to a RIS is required.

¹²⁴ 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 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.

¹²⁵ Very small transactions (*i.e.*, ones with percentage ratios of less than 0.25 percent) 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 I to Chapter 11 are also carved out from the related-party requirements, as long as they do not have any unusual features (LR11.1.6R).

In January 2009, the FSA addressed concerns relating to circulars sent out by issuers proposing to ratify or fix some action or inaction by their directors that has resulted in an actual or potential breach of law or regulation. The issue in question is whether or not removing an actual or theoretical liability of the directors could be viewed as a related-party transaction under LR 11.1.5(3). Despite the FSA's acknowledgment that the risk of such an unintended effect of the circular is remote, it has admitted that there will be instances where a proposed ratification resolution confers a clear benefit on a related party (such as a director) and that these should also be regulated by Chapter 11 of the Listing Rules¹²⁶.

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 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 percent 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 created a 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 been broadly 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 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 the 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;

¹²⁶ *List!* Issue No. 20 (January 2009).

- the buy-back programme must comply with the conditions laid down in section 701 of the Companies Act 2006;
- prior to the start of trading, details of the programme approved under section 701 of the Companies Act 2006 must be adequately disclosed to the public in member states in which the issuer requests admission of its shares to trading on a regulated market¹²⁷. 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;
- 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 percent 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 and discloses that it will deviate from the 25 percent limits, and the volume of the buy-back does not exceed 50 percent 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 is not completed 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 percent of the offer value (if the listed company is being acquired) and in any other case 1 percent of the market capitalisation of the listed company. The FSA has confirmed¹²⁸ that where an issuer has committed to more than one break fee as part of a transaction, it would expect the relevant break fees to be aggregated with the greatest potential amount being tested (although mutually exclusive break fees would not need to be aggregated).

¹²⁷ In the UK, the FSA accepts disclosure through a RIS.

¹²⁸ *List!* Issue No. 13 (September 2006).

I. CANCELLATION OF LISTING (LR 5.2.5R TO 5.2.12R)

An issuer wishing to cancel the listing of any of its equity securities that have a primary listing on the Main Market must, subject to certain limited exceptions, obtain the consent of not less than 75 percent 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 not a regulated market, so shareholder approval will be required in the case of an issuer wishing to move from the Main Market to AIM) (LR 5.2.6R);
- 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 (LR 5.2.7R); or
- iii. when, in the case of a takeover offer, the offeror has acquired (or agreed to acquire) 75 percent 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's attaining the required 75 percent or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006¹²⁹ and is intended to give the holders of the remaining securities time to trade out their positions (LR 5.2.10R to 5.2.12R).

The FSA published a consultation paper in December 2008 in which it sought feedback on a number of amendments to the Listing Rules¹³⁰. These included a proposal to delete LR 5.2.6R, thereby requiring prior shareholder approval for the cancellation of the listing of an issuer's equity securities, even if the securities in question are admitted to another regulated market in the EEA. The full results of the consultation are not yet known, but the GC100 has already stated its preference (in line with the other proposals) that LR 5.2.6R be deleted and that shareholder approval be sought for such cancellation of securities¹³¹.

129 This section gives an offeror the right to squeeze out a dissenting minority.

130 Consultation on amendments to the Listing Rules and Feedback on DP08/1 (08/21).

131 GC100 response to FSA CP08/21, 24 February 2009.

CHAPTER 9

CONTINUING OBLIGATIONS FOR AIM COMPANIES

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

A. GENERAL OBLIGATION OF DISCLOSURE

Under AIM Rule 11, an AIM company must notify a RIS without delay of *any new developments that 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 provides is not misleading, false or deceptive and does not omit anything likely to affect the import of such information, and it must provide the information no later than it is published elsewhere (AR 10).

B. SPECIFIC DISCLOSURE OBLIGATIONS

i. Miscellaneous Information (AR 17)

An issuer must notify a RIS without delay of:

- any deals by directors¹³²;
- any changes to the holding of a significant shareholder (3 percent holder) that increases or decreases such holding through a single percentage¹³³;
- the resignation, dismissal or appointment of any director;
- any change in its accounting reference date;

¹³² Granting of security over shares (by the creation of a security interest such as a pledge, mortgage or charge) will constitute a “dealing” for the purposes of the AIM Rules.

¹³³ AIM companies to which Chapter 5 of the DTR applies (i.e., UK companies admitted to AIM) must comply with the provisions of the DTR in respect of significant shareholder notifications (see Chapter 8 for further details) in addition to the requirements of AIM Rule 17. Other AIM companies, which are not required to comply with Chapter 5 of the DTR (i.e., non-UK companies admitted to trading on AIM), are required to use all reasonable endeavours to comply with AIM Rule 17, notwithstanding that their local law may not contain provisions similar to the DTR. In those circumstances, the relevant AIM company is advised, under the guidance to AIM Rule 17, to include provisions in its constitution requiring significant shareholders to notify it of any relevant changes to their shareholdings.

- 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;
- the occurrence and number of shares taken into and out of treasury;
- any change in the web site address at which information required by AIM Rule 26 (see paragraph v below) is available;
- any subsequent change to certain details disclosed in respect of a director; and
- the admission to trading (or cancellation from trading) of the AIM securities (or any other securities issued by the relevant AIM company) or any other exchange or trading platform, where such admission or cancellation is at the application or with the agreement of the AIM company.

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 when 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 that 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. An AIM company incorporated in an EEA State must prepare its accounts in accordance with IAS. An AIM company incorporated in a non-EEA State may prepare its accounts

in accordance with IAS, US GAAP, Canadian GAAP, Australian IFRS or Japanese GAAP.

These accounts must disclose any transaction with a related party, whether or not previously disclosed under the AIM Rules, where any of the class tests (see below) exceed 0.25 percent 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 on its web site, and this must be publicised. An electronic copy of the relevant document must also be sent to the London Stock Exchange.

v. Company Information Disclosure (AR 26)

An AIM company must, from admission, maintain a web site on which the following information should be made available free of charge:

- a description of its business and, where it is an investing company, its investing policy and details of any investment manager and/or key personnel;
- the names of its directors and brief biographical details of each;
- a description of the responsibilities of the members of the board and details of any board committees and their responsibilities;
- its country of incorporation and main country of operation¹³⁴;
- where the AIM company is not incorporated in the UK, a statement that the rights of shareholders may be different from the rights of shareholders in the UK-incorporated company;
- its current constitutional documents;
- details of any other exchanges or trading platforms on which it has applied or agreed to have any of its securities admitted or traded;
- the number of AIM securities in issue and, insofar as it is aware, the percentage of AIM securities that are not in public hands, together with the identity and percentage holdings of its significant shareholders¹³⁵;
- details of any restrictions on the transfer of its AIM securities;
- its most recent annual report and all half-yearly, quarterly or similar reports published since the last annual report;
- all announcements that it has made in the past 12 months;

¹³⁴ This should be interpreted as the geographical location from which the AIM company derives (or intends to derive) a large proportion of its revenues or where the largest proportion of its assets is (or will be) located as is most appropriate, depending on the business of the company.

¹³⁵ This information should be updated at least every six months.

- its most recent admission document, together with any circulars or similar publications sent to shareholders within the past 12 months; and
- details of its nominated adviser and other key advisers.

The guidance to the AIM Rules requires this information to be kept up to date and details of the last date on which it was updated to be included. AIM companies will need to take appropriate legal advice on how to make available any admission documents, circulars or other shareholder publications so as not to infringe any securities laws (e.g., US securities laws) that may apply to them (for example, by the use of “click-throughs” or appropriate legends)¹³⁶.

Guidance on how to comply with AIM Rule 26 is available via the IR Website Best Practice Guide, which was compiled by RNS (the company news service from the London Stock Exchange). The guide also includes access to web templates that can be used as the basis for AIM companies to build a Rule 26-compliant IR web site.

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 who 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 reports 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 percent in any of the class tests specified in Schedule 3 to the AIM Rules, save for any transactions of a revenue nature in the ordinary course of business and transactions to raise finance that do not involve a change in the fixed assets of the AIM company or its subsidiaries. As is the case on the Main Market, each class test involves a comparison between the size of the transaction (or the target of the transaction (as applicable)) and the AIM company¹³⁷.

¹³⁶ The London Stock Exchange undertook an exercise to assess compliance with AIM Rule 26, and on 10 January 2008, it issued AIM Notice 29 as an update to Rule 26. As a result of this assessment, disciplinary action for non-compliance was taken against nine AIM companies. The fines imposed totalled £95,000.

¹³⁷ 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.

ii. **Related-Party Transactions** (AR 13)

This rule applies to any transaction whatsoever with a related party that exceeds 5 percent 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, having consulted with its nominated adviser, consider 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 percent 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 materially from its investing policy as stated in its admission document or approved by shareholders in accordance with the AIM Rules.

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
- 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 that, when aggregated with any other disposal or disposals over the previous 12 months, exceeds 75 percent 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 4 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 policy going forward, which must also be approved by shareholders (see Chapter 5 for further details).

The AIM company will then have to make an acquisition or acquisitions that constitute a reverse takeover under AR 14 or otherwise implement the investing policy approved at the general meeting to the satisfaction of the London Stock Exchange within 12 months of becoming an investing company.

v. Aggregation of Transactions

Transactions completed during the prior 12 months must be aggregated for the purposes of determining whether AIM Rule 12, 13, 14 or 15 applies where they are entered into by the AIM company with the same person or persons or their families or where they involve the acquisition or disposal of securities or an interest in one particular business, or where together they lead to a principal involvement in any business activity that did not previously form a part of the AIM company’s principal activities.

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 names of any other parties, where relevant;
- a description of the assets that are the subject of the transaction or the business carried on by, or using, the assets that are the subject of the transaction;
- the profits attributable to those assets, if different from the consideration;
- the value of those assets;
- the full consideration and how it is being satisfied;

- the effect on the AIM company;
- details of the service contracts of any proposed directors;
- in the case of a disposal, the application of any 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; and
- any other information necessary to enable investors to evaluate the effect of the transaction upon the AIM company.

F. BREACH AND ENFORCEMENT

i. Companies

Pursuant to the procedures set out in the Disciplinary Procedures and Appeals Handbook, if the London Stock Exchange considers that a company has contravened the AIM Rules, it may take one or more of the following measures (AR 42):

- issue the company a warning notice;
- fine or censure such company;
- publish the fact that the company has been fined or censured and the reasons for that action; or
- cancel the admission of the company's AIM securities.

ii. Nomads

Pursuant to the procedures set out in the Disciplinary Procedures and Appeals Handbook, if the London Stock Exchange considers that a nomad is either in breach of its responsibilities under the AIM Rules or the Nomad Rules or that the integrity and reputation of AIM has been or may be impaired as a result of the nomad's conduct or judgment, it may take one or more of the following actions:

- issue a warning notice;
- fine or censure such nomad;
- remove the nomad from the register; or
- publish the action it has taken and the reasons for that action.

iii. Recent Enforcement

The London Stock Exchange actively monitors compliance with the AIM Rules for Companies and the AIM Rules for Nominated Advisers and takes action where companies or nomads breach those rules. The London Stock Exchange can

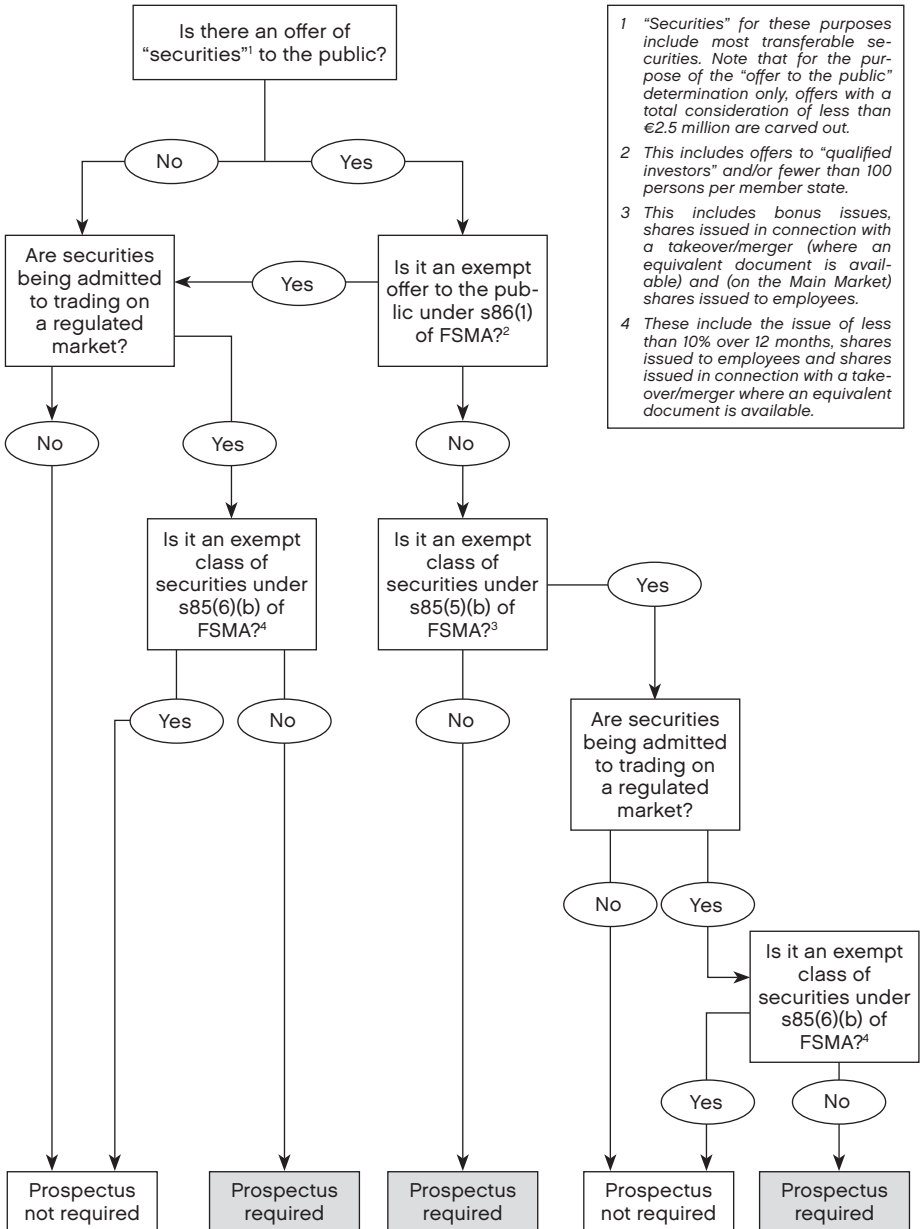
issue both public and private censures, though the former are reserved for the most serious cases, generally involving significant market impact.

Renewed focus has been placed on rules relating to the timing and accuracy of disclosures and proper consultation with nomads. In particular, the London Stock Exchange has repeatedly drawn attention to breaches of AR 10 (Principles of Disclosure), AR 11 (General Disclosure of Price Sensitive Information) and AR 31 (Responsibility for Compliance).

The London Stock Exchange publishes full details of all AIM disciplinary notices on its web site.

APPENDICES

APPENDIX I: IS A PROSPECTUS REQUIRED?



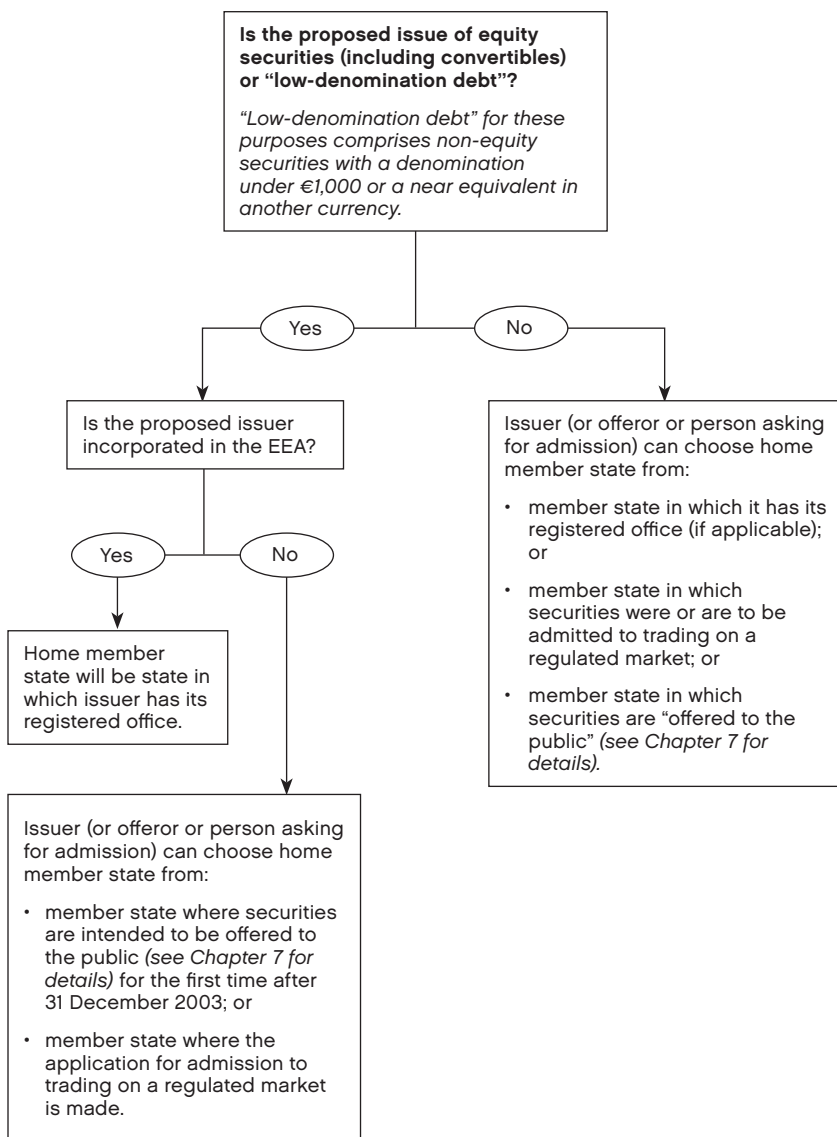
1 "Securities" for these purposes include most transferable securities. Note that for the purpose of the "offer to the public" determination only, offers with a total consideration of less than €2.5 million are carved out.

2 This includes offers to "qualified investors" and/or fewer 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) and (on the Main Market) shares issued to employees.

4 These include the issue of less than 10% over 12 months, shares issued in connection with a takeover/merger where an equivalent document is available.

APPENDIX II: DETERMINING AN ISSUER'S HOME MEMBER STATE



APPENDIX III:

CONTENT REQUIREMENTS FOR PROSPECTUS

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
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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

Mandatory

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. SELECTION 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

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
	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	
4.1	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	Mandatory
5.1.1	the legal and commercial name of the issuer;	Mandatory
5.1.2	the place of registration of the issuer and its registration number;	Mandatory
5.1.3	the date of incorporation and the length of life of the issuer, except where indefinite;	Mandatory
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);	Mandatory
5.1.5	the important events in the development of the issuer's business.	Mandatory
5.2	Investments	Mandatory
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;	Mandatory
5.2.2	A description of the issuer's principal investments that are in progress, including the geographic distribution of these investments (home and abroad) and the method of financing (internal or external);	Mandatory
5.2.3	Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.	Mandatory
6.	BUSINESS OVERVIEW	
6.1	Principal Activities	Mandatory
6.1.1	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	Mandatory
6.1.2	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.	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
6.2	Principal Markets 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.	Mandatory
6.3	Where the information given pursuant to items 6.1 and 6.2 has been influenced by exceptional factors, mention that fact.	Mandatory
6.4	If material to the issuer's business or profitability, summary information regarding the extent to which the issuer is dependent on patents or licences; industrial, commercial or financial contracts; or new manufacturing processes.	Mandatory
6.5	The basis for any statements made by the issuer regarding its competitive position.	Mandatory
7.	ORGANIZATIONAL STRUCTURE	
7.1	If the issuer is part of a group, a brief description of the group and the issuer's position within the group.	Mandatory
7.2	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.	Mandatory
8.	PROPERTY, PLANTS AND EQUIPMENT	
8.1	Information regarding any existing or planned material tangible fixed assets, including leased properties, and any major encumbrances thereon.	Carved out
8.2	A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.	Mandatory
9.	OPERATING AND FINANCIAL REVIEW	
9.1	Financial Condition 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.	Carved out
9.2	Operating Results	Carved out
9.2.1	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
9.2.2	Where the financial statements disclose material changes in net sales or revenues, provide a narrative discussion of the reasons for such changes.	Carved out

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
9.2.3	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
10. CAPITAL RESOURCES		
10.1	Information concerning the issuer's capital resources (both short and long term);	Carved out
10.2	An explanation of the sources and amounts of, and a narrative description of, the issuer's cash flows;	Carved out
10.3	Information on the borrowing requirements and funding structure of the issuer;	Carved out
10.4	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
10.5	Information regarding the anticipated sources of funds needed to fulfil commitments referred to in items 5.2.3 and 8.1.	Carved out
11. RESEARCH AND DEVELOPMENT, PATENTS AND LICENCES		
	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.	Carved out
12. TREND INFORMATION		
12.1	The most significant recent trends in production, sales and inventory; costs; and selling prices since the end of the last financial year to the date of the registration document.	Mandatory
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.	Mandatory
13. PROFIT FORECASTS OR ESTIMATES		
	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:	Carved out <i>(NB: Profit forecasts/ estimates dealt with in Schedule 2 to the AIM Rules)</i>
13.1	A statement setting out the principal assumptions upon which the issuer has based its forecast or estimate. 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 estimates underlying the forecast.	<i>(NB: Profit forecasts/ estimates dealt with in Schedule 2 to the AIM Rules)</i>

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
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.	Carved out
13.3	The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.	Carved out
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.	Carved out
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:	Carved out <i>(NB: Disclosures regarding directors dealt with in Schedule 2 to the AIM Rules)</i>
	(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:	
	(e) 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;	
	(f) any convictions in relation to fraudulent offences for at least the previous five years;	

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
	<p>(g) 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;</p> <p>(h) 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.</p>	
	<p>If there is no such information to be disclosed, a statement to that effect is to be made.</p>	
14.2	<p>Administrative, Management and Supervisory bodies and Senior Management conflicts of interests.</p>	Carved out
	<p>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.</p>	
	<p>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.</p>	Carved out
	<p>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.</p>	Carved out
15.	REMUNERATION AND BENEFITS	
	<p>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:</p>	Carved out
15.1	<p>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.</p>	Carved out
	<p>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.</p>	Carved out
15.2	<p>The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.</p>	Carved out

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
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:	Mandatory
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.	Mandatory
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.	Mandatory
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.	Carved out
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.	Mandatory
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.	Mandatory
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.	For persons other than directors, carved out at nomad's discretion.
17.3	Description of any arrangements for involving the employees in the capital of the issuer.	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
18.	MAJOR SHAREHOLDERS	
18.1	Insofar 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.	Mandatory
18.2	Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.	Mandatory
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.	Mandatory
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.	Mandatory
19.	RELATED PARTY TRANSACTIONS	
19.1	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.	Mandatory
	If such standards do not apply to the issuer, the following information must be disclosed:	Mandatory
	(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 arm's length. In the case of outstanding loans, including guarantees of any kind, indicate the amount outstanding.	Mandatory
	(b) the amount or the percentage to which related party transactions form part of the turnover of the issuer.	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
20.	FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION AND PROFITS AND LOSSES	Mandatory
20.1	<p data-bbox="165 256 493 280">Historical Financial Information</p> <p data-bbox="165 292 807 464">Audited historical financial information covering the latest three 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.</p>	<p data-bbox="835 256 949 280">Mandatory</p> <p data-bbox="835 292 983 592">Mandatory <i>(NB: No requirement to include IAS-compliant financial information in respect of periods commencing prior to 1 January 2007)</i></p>
	<p data-bbox="165 608 807 807">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.</p>	Mandatory
	<p data-bbox="165 823 807 967">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.</p>	Mandatory
	<p data-bbox="165 983 807 1308">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, 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.</p>	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
	<p>If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:</p> <ul style="list-style-type: none"> (a) balance sheet; (b) income statement; (c) 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; (d) cash flow statement; (e) accounting policies and explanatory notes. <p>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 applicable in a member state or an equivalent standard.</p>	Mandatory ¹
20.2	<p>Pro forma financial information</p> <p>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.</p> <p>This requirement will normally be satisfied by the inclusion of pro forma financial information.</p> <p>This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein.</p> <p>Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.</p>	Carved out
20.3	<p>Financial statement</p> <p>If the issuer prepares both own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.</p>	Mandatory
20.4	<p>Auditing of historical annual financial information</p>	
20.4.1	<p>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.</p>	Mandatory
20.4.2	<p>Indication of other information in the registration document which has been audited by the auditors.</p>	Mandatory

¹ Financial information for periods commencing prior to 1 January 2007 may also be prepared in accordance with UK GAAP or US GAAP (for EEA issuers) or their country equivalent standards (for non-EEA issuers), subject to the requirement that the information relating to the last two financial periods must be prepared in a form consistent to that which will be adopted in the issuer's next published annual statements (see Chapter 9 for further details).

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
20.4.3	Where financial data in the registration document is not extracted from the issuer's audited financial statements, state the source of the data and state that the data is unaudited.	Mandatory
20.5	Age of latest financial information	
20.5.1	<p>The last year of audited financial information may not be older than one of the following:</p> <p>(a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document;</p> <p>(b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.</p>	Mandatory
20.6	Interim and other financial information	
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	<p>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.</p> <p>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 year-end balance sheet.</p>	Mandatory
20.7	<p>Dividend Policy</p> <p>A description of the issuer's policy on dividend distributions and any restrictions thereon.</p>	Mandatory
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.	Mandatory
20.8	<p>Legal and arbitration proceedings</p> <p>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.</p>	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
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 has been published, or provide an appropriate negative statement.	Mandatory Mandatory
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:	Mandatory
21.1.1	The amount of issued capital, and for each class of share capital: (a) the number of shares authorised; (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.	Mandatory
21.1.2	If there are shares not representing capital, state the number and main characteristics of such shares.	Mandatory
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.	Mandatory
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.	Mandatory
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.	Mandatory
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.	Mandatory
21.1.7	A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.	Mandatory
21.2	Memorandum and Articles of Association	

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
21.2.1	A description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.	Mandatory
21.2.2	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.	Mandatory
21.2.3	A description of the rights, preferences and restrictions attaching to each class of the existing shares.	Mandatory
21.2.4	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.	Mandatory
21.2.5	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.	Mandatory
21.2.6	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.	Mandatory
21.2.7	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.	Mandatory
21.2.8	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.	Mandatory
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.	Mandatory
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.	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
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.	Mandatory
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:	Carved out	<p>(a) the memorandum and articles of association of the issuer;</p> <p>(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;</p> <p>(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.</p> <p>An indication of where the documents on display may be inspected, by physical or electronic means.</p>
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.	Mandatory

ANNEX II

Pro forma financial information building block

Carved out

1. **The pro forma information must include a description of the transaction, the businesses or the 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.

Item Prospectus Requirement for Equity Issue

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 be published only 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	AIM Admission Document Requirement
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ANNEX III

Minimum Disclosure Requirements for the Share Securities Note (schedule)

1. PERSONS RESPONSIBLE

- | | | |
|-----|---|-----------|
| 1.1 | 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. | Mandatory |
| 1.2 | 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. | Mandatory |

2. RISK FACTORS

- | | | |
|-----|---|-----------|
| 2.1 | 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". | Mandatory |
|-----|---|-----------|

3. KEY INFORMATION

- | | | |
|-----|---|---|
| 3.1 | Working Capital Statement
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. | Carved out
<i>(NB: Working capital statement required under Schedule 2 to the AIM Rules)</i> |
| 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. | Carved out |
| 3.3 | Interest of natural and legal persons involved in the issue/offer
A description of any interest, including conflicting ones that are material to the issue/offer, detailing the persons involved and the nature of the interest. | Carved out |

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
3.4	Reasons for the offer and use of proceeds	
3.5	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.	Mandatory
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.	Mandatory
4.2	Legislation under which the securities have been created.	Mandatory
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.	Mandatory
4.4	Currency of the securities issue	Mandatory
4.5	<p data-bbox="165 849 807 922">A description of the rights attached to the securities, including any limitations of those rights, and procedure for the exercise of those rights.</p> <ul data-bbox="165 933 807 1452" style="list-style-type: none"> <li data-bbox="165 933 359 957">• Dividend rights: <li data-bbox="165 968 673 992">• Fixed date(s) on which the entitlement arises; <li data-bbox="165 1003 807 1086">• Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates; <li data-bbox="165 1098 807 1150">• Dividend restrictions and procedures for non-resident holders; <li data-bbox="165 1161 807 1214">• Rate of dividend or method of its calculation, periodicity and cumulative or non-cumulative nature of payments. <li data-bbox="165 1225 333 1249">• Voting rights. <li data-bbox="165 1260 807 1313">• Pre-emption rights in offers for subscription of securities of the same class. <li data-bbox="165 1324 572 1348">• Right to share in the issuer's profits. <li data-bbox="165 1359 773 1383">• Right to share in any surplus in the event of liquidation. <li data-bbox="165 1394 445 1418">• Redemption provisions. <li data-bbox="165 1430 434 1453">• Conversion provisions. 	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
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	<p>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:</p> <ul style="list-style-type: none"> • 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. 	Mandatory
5.	TERMS AND CONDITIONS OF THE OFFER	
5.1	Conditions, offer statistics, expected timetable and action required to apply for the offer	Carved out
5.1.1	Conditions to which the offer is subject.	Carved out
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.	Carved out
5.1.3	The time period, including any possible amendments, during which the offer will be open and description of the application process.	Carved out
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.	Carved out
5.1.5	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.	Carved out
5.1.6	Details of the minimum and/or maximum amount of application (whether in number of securities or aggregate amount to invest).	Carved out
5.1.7	An indication of the period during which an application may be withdrawn, provided that investors are allowed to withdraw their subscription.	Carved out

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
5.1.8	Method and time limits for paying up the securities and for delivery of the securities.	Carved out
5.1.9	A full description of the manner and date in which results of the offer are to be made public.	Carved out
5.1.10	The procedure for the exercise of any right of pre-emption, the negotiability of subscription rights and the treatment of subscription rights not exercised.	Carved out
5.2	Plan of distribution and allotment	Carved out
5.2.1	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.	Carved out
5.2.2	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 5% of the offer.	Carved out
5.2.3	Pre-allotment Disclosure:	
	(a) The division into tranches of the offer, including the institutional, retail and issuer's employee tranches and any other tranches;	Carved out
	(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;	Carved out
	(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;	Carved out
	(d) 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;	Carved out
	(e) 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;	Carved out
	(f) A target minimum individual allotment, if any, within the retail tranche;	Carved out
	(g) The conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest;	Carved out
	(h) Whether or not multiple subscriptions are admitted, and where they are not, how any multiple subscriptions will be handled.	Carved out
5.2.4	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	Carved out

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
5.2.5	<p>Over-allotment and “green shoe”:</p> <p>(a) The existence and size of any over-allotment facility and/or “green shoe”.</p> <p>(b) The existence period of the over-allotment facility and/or “green shoe”.</p> <p>(c) Any conditions for the use of the over-allotment facility or exercise of the “green shoe”.</p>	Carved out
5.3	Pricing	
5.3.1	<p>An indication of the price at which the securities will be offered. If the price is not known or if there is no 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.</p>	Carved out
5.3.2	Process for the disclosure of the offer price.	Carved out
5.3.3	<p>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.</p>	Carved out
5.3.4	<p>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.</p>	Carved out
5.4	Placing and Underwriting	
5.4.1	<p>Name and address of the co-ordinator(s) of the global offer and of single parts of the offer and, to the extent known to the issuer or to the offeror, of the placers in the various countries where the offer takes place.</p>	Carved out
5.4.2	<p>Name and address of any paying agents and depositary agents in each country.</p>	Carved out
5.4.3	<p>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.</p> <p>Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.</p>	Carved out
5.4.4	<p>When the underwriting agreement has been or will be reached.</p>	Carved out

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
6.	ADMISSION TO TRADING AND DEALING ARRANGEMENTS	
6.1	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.	Carved out
6.2	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.	Carved out
6.3	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.	Carved out
6.4	Details of the entities which have a firm commitment to act as intermediaries in secondary trading, providing liquidity through bid and offer rates and a description of the main terms of their commitment.	Carved out
6.5	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:	Carved out
6.5.1	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;	Carved out
6.5.2	The beginning and the end of the period during which stabilization may occur;	Carved out
6.5.3	The identity of the stabilization manager for each relevant jurisdiction unless this is not known at the time of publication;	Carved out
6.5.4	The fact that stabilization transactions may result in a market price that is higher than would otherwise prevail.	Carved out
7.	SELLING SECURITIES HOLDERS	
7.1	Name and business address of the person or entity offering to sell the securities and the nature of any position, office or other material relationship that the selling persons have had within the past three years with the issuer or any of its predecessors or affiliates.	Mandatory
7.2	The number and class of securities being offered by each of the selling security holders.	Mandatory
7.3	Lock-up agreements	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement
	<p>The parties involved.</p> <p>Content and exceptions of the agreement.</p> <p>Indication of the period of the lock-up.</p>	
	8. EXPENSE OF THE ISSUE/OFFER	
8.1	The total net proceeds and an estimate of the total expenses of the issue/offer.	Mandatory
	9. DILUTION	
9.1	The amount and percentage of immediate dilution resulting from the offer.	Mandatory
9.2	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.	Mandatory
	10. ADDITIONAL INFORMATION	
10.1	If advisers connected with an issue are mentioned in the Securities Note, a statement of the capacity in which the advisers have acted.	Mandatory
10.2	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.	Mandatory
10.3	Where a statement or report attributed to a person as an expert is included in the Securities Note, 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 Securities Note.	Mandatory
10.4	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.	Mandatory

APPENDIX IV:

FINANCIAL INFORMATION REQUIRED

HISTORIC FINANCIAL INFORMATION

- **Period covered?**

Three years (or, if less, period since incorporation) (*cf. eligibility requirements for Main Market*)

- **Age of last audited accounts?**

Not more than:

- *Nine months* old if no *interims* included,
- *15 months* old if *unaudited interims* included,
- *18 months* old if *audited interims* included.

(*Cf. eligibility requirements for Main Market*)

- **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 two years must be presented on a basis consistent 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 two years will need to be prepared or restated to IAS.

- **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.

- **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 nine months old, interims covering at least the first six 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 MAIN MARKET AND AIM

MAIN MARKET

- Minimum 25% shares to be held in public hands in one or more EEA States¹
- Normally three-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 based companies and mineral companies³

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"²
- Nominated adviser required at all times
- No prior shareholder approval required (other than for reverse takeovers)
- No minimum market capitalisation required⁴
- Not applicable

1 For these purposes, shares held by persons in non-EEA States will be taken into account only 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.

2 See Chapter 7 for further details on what constitutes an "offer to the public" for these purposes.

3 Scientific research based 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.

4 Note that the London Stock Exchange may apply an unofficial "upper limit" of £500 million.

APPENDIX VI:

APPLICABLE CLASS TESTS FOR MAIN MARKET & AIM

THE CLASS TESTS¹

- i. The *Gross Assets* test is calculated by dividing the gross assets the subject of the transaction by the gross assets of the listed company² 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 company³ 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.

1 Note that LR 10.7 sets out modifications to the class tests for property companies, mineral companies and scientific research based companies.

2 The definitions of "gross assets" in the Listing Rules and in 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.

3 The definition of "profits" under the Listing Rules means profits after deducting all charges except taxation, while under the AIM Rules it means profits before taxation and extraordinary items.

REQUIREMENTS

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

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

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 and Transparency Rules	the Disclosure Rules and Transparency 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 Transparency Obligations Directive (Disclosure Rules and Transparency Rules) Instrument 2006 (FSA 2006/70) containing the final rules which implement certain provisions of the EU Transparency Directive (2004/109/EC). References to “ DTR ” shall be references to the Disclosure Rules and Transparency Rules
EDX	the Equity Derivatives Exchange at the London Stock Exchange
EEA	<p>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; as at 1 September 2007, the following states form the EEA:</p> <p><i>Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Slovenia, Spain, Sweden and the UK</i></p> <p>References to an “EEA State” or a “member state” shall be to a member of the EEA</p>
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
GAAP	Generally Accepted Accounting Principles
Host State	as defined in Article 2.1(n) of the Prospectus Directive, the State where an offer to the public is made or admission to trading is sought, when different from the home member state
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
LIFFE	the London International Financial Futures Exchange
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; references to “ LR ” shall be references to the Listing Rules
London Stock Exchange	London Stock Exchange plc
Main Market	the Official List maintained by the FSA, also known as the Main Market
Market Abuse Directive	Directive of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (No 2003/6/EC)
MD&A	Management Discussion and Analysis
Model Code	the model code on directors’ dealings set out in LR 9 Annex 1 of the Listing Rules
nomad	a nominated adviser for the purposes of the AIM 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
OFR	operating and financial review
PDMR	Person Discharging Managerial Responsibilities as defined in section 96B(1) of FSMA
PLUS	a regulated RIE based in London run by PLUS Markets plc

PLUS quoted	an unregulated market run by PLUS Markets plc in London
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 No 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; references to “ PR ” shall be references to the Prospectus Rules
regulated market	<p>(a) as defined in article 1 of the Investment Services Directive, a market for the instruments listed in Section B of the Annex to the Investment Services Directive which:</p> <ul style="list-style-type: none"> (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 <p>(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</p>
RIE	a Recognised Investment Exchange
RIS	a Regulatory Information Service
Transparency Directive	Directive 2004/109/EC of the European Parliament and of the Council of 5 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

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

ABOUT JONES DAY

Jones Day encompasses more than 2,400 lawyers in 32 locations around the world and ranks among the world's largest and most geographically diverse law firms. Jones Day's international Capital Markets Practice is focused on a broad range of activities, including advising on all aspects of UK securities laws, as well as securities regulations in Belgium, France, Germany, Hong Kong, India, Italy and Spain. The practice includes representations for issuers and underwriters in relation to the listing of securities in all these jurisdictions.

ABOUT MERRILL CORPORATION

Founded in 1968, Merrill Corporation remains a privately owned company, headquartered in St Paul, Minnesota. We have over 6,000 employees across 70 US and 15 international locations, including New York, London, Paris, Singapore, Hong Kong, Dubai and Sydney. Merrill is the leading global provider of transaction and compliance services, DataSite™ virtual data rooms and litigation support. We provide documentation services for M&A, debt and equity capital markets, litigation support and virtual data room technology for our corporate, investor banking and law firm clients.