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THE MAIN MARKET & AIM

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

Giles Elliott and Vica Irani • Seventh Edition • November 2018

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About This Guide

This is the seventh edition of our guide written for companies and advisers considering or involved in the raising of equity capital on the London markets. It analyses and compares the eligibility and other listing requirements of the Main Market and AIM as at 1 November 2018, as well as the continuing obligations applicable to a listed company. Although a significant proportion of the regulations applicable to the UK's capital markets is derived from EU legislation, it is too early to provide any meaningful comment or forecast in relation to changes that may arise as a result of the UK's scheduled exit from the European Union. For many, that may be something of a relief.

About Jones Day

Jones Day is One Firm Worldwide℠, with more than 2,500 lawyers in over 40 locations around the world, and ranks among the world's largest and most geographically diverse law firms. Jones Day's international securities practice is focused on a broad range of activities, including advising on all aspects of UK securities laws. The practice includes representations for issuers and underwriters in relation to the listing of securities in all the major global financial centres.

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CHAPTER 1

ELIGIBILITY FOR LISTING ON THE MAIN MARKET

INTRODUCTION

The responsibilities for regulating the UK's financial services are shared between the Prudential Regulation Authority, the Financial Policy Committee of the Bank of England, and the Financial Conduct Authority (the "FCA"). The FCA is the body that determines eligibility for listing of equity securities on the Main Market and oversees the regulation and interpretation of the Main Market's Listing Rules. When acting in its capacity as the competent authority for these purposes, the FCA has retained the title of "UK Listing Authority" ("UKLA").

Since its implementation in the UK in 2005, the content of an IPO prospectus has been driven largely by the EU Prospectus Directive 2003/71/EC (the "Prospectus Directive"). However, on 20 July 2017, the new EU Prospectus Regulation 2017/1129 (the "Prospectus Regulation"), repealing and replacing the Prospectus Directive, entered into force. Though a substantial part of the existing framework will remain, the new measures in the Prospectus Regulation are intended to:

- reduce the administrative burden of drawing up a prospectus for all issuers and, in particular, for small and medium-sized enterprises, frequent issuers of securities and secondary issuances;
- make the prospectus a more relevant disclosure tool for potential investors; and
- achieve more convergence between the EU prospectus and other EU disclosure rules.

The Prospectus Regulation pursues a simple goal: to provide all types of issuers with disclosure rules which are tailored to their specific needs while making the prospectus a more relevant tool of informing potential investors. It should be noted that while certain provisions of the Prospectus Regulation came into effect immediately on 20 July 2017, further measures will take effect on a staggered basis, with all provisions put into full effect on 21 July 2019. Where applicable, key changes made by the Prospectus Regulation to the current prospectus regime have been noted throughout the course of this guide.

In any event, neither the Prospectus Directive nor the Prospectus Regulation purports to regulate the requirements for obtaining and maintaining a listing on any particular regulated market and, as a result, the FCA is able to impose additional requirements for issuers seeking a listing on the Main Market.

This chapter summarises the eligibility criteria for all equity securities seeking a listing on the Main Market and the additional criteria that may apply depending on which type of listing is being sought. A company may apply for either a "premium" listing or a "standard" listing of its shares. A standard listing offers a company the opportunity to elect to list its securities on the Main Market, but currently on the basis of the minimum requirements of the Prospectus Directive rather than the obligation to meet the additional, or "super-equivalent", criteria for companies

seeking a premium listing. However, a standard listing does mean that a company is ineligible for inclusion in the prestigious FTSE UK Index Series, and that is a factor that a company would need to take into account when considering which listing to seek.

In 2013, the London Stock Exchange introduced the high-growth segment of the Main Market. The high-growth segment is not a premium listing, but is designed for companies that may not currently satisfy all the criteria to obtain a premium listing, but have the ambition to do so in the future.

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, with those in Chapter 6 applying only to premium listings of equity securities.

When this Guide refers to the rules relating to issuers with a listing on the Main Market, unless otherwise stated, it is referencing the rules relating to issuers seeking, or having, a premium listing rather than the lighter regulations imposed upon those seeking a standard listing.

A. GENERAL REQUIREMENTS FOR ALL SECURITIES

The general eligibility requirements contained in Chapter 2 of the Listing Rules (LR) 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 constitution.[1] 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 laws 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 to 2.2.6)

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).

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

1 This requirement does not apply to a "public-sector issuer" (e.g., a state, local authority or statutory body).

carve-out to cater for overseas laws or regulations (e.g., where the laws of any jurisdiction, such as the US, 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 UKLA has indicated[2] that it would, in very limited circumstances, be willing to agree to certain restrictions on transferability. For example, the UKLA has on various occasions in the past few 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 permitted.) The other notable transfer restrictions permitted relate to protecting the public interest, such as in the context of defence-related assets. The UKLA's guidance states that any such restrictions need to be considered carefully to ensure they do not offend the principle of equality of treatment of all shareholders if they do not generally treat shareholders equally. However, a power initiating a compulsory sell-down of shareholders is not likely to offend the principle of equality of treatment if shareholders are selected according to a fully disclosed pre-set formula and not by a power that allows management to individually choose shareholders.

iv. Market Capitalisation (LR 2.2.7 and 2.2.8)

The expected aggregate market value of all securities (excluding treasury shares) to be listed by a new applicant must be at least £700,000 for shares and £200,000 for debt securities.[3] This minimum market capitalisation requirement may be modified by the FCA 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 and 2.2.13)

Convertible securities will be eligible for admission to listing only if the securities into which

2 UKLA Technical Note – Restriction on Transferability.

3 This does not apply to tap issues where the amount of the debt securities is not fixed.

they are convertible are or will be listed or are securities listed on a regulated, regularly operating, recognised open market. The FCA may dispense with this requirement if it is satisfied that holders of the convertible securities have at their disposal all the information necessary to form an opinion about the underlying securities.

B. REQUIREMENTS FOR THE PREMIUM 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 premium listing of equity securities must comply with the further eligibility requirements contained in Chapter 6 of the Listing Rules:

i. Historical Financial Information (LR 6.2)

An applicant must have unqualified audited accounts that cover at least three years ending no more than six months before the date of the relevant prospectus (and not more than nine months before the date the shares are admitted to listing). The accounts must have been audited in accordance with the applicable auditing standards and must not have been subject to a modified report (other than an emphasis-of-matter paragraph which arises in any of the earlier periods where the opinion on the final period is unmodified or where an emphasis-of-matter paragraph for the final period relates to a going concern but the company is able to satisfy the working capital requirements of LR 6.7.1).[4]

The historical financial information required must represent at least 75 percent of the new applicant's business for the full period required and put prospective investors in a position to make an informed assessment of the business for which admission is sought. In determining what amounts to 75 percent of an issuer's business, the FCA will consider the size, in aggregate, of all of the acquisitions that the relevant issuer has entered into during the period covered by the financial information.

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

- covers the period from at least three years prior to the date of the new applicant's own historical financial information up to the earlier of the date of the new applicant's historical financial information or the date of acquisition by the new applicant;
- is presented in a form that is consistent with the accounting policies adopted in the financial information required to be presented in the prospectus;
- is not subject to a modified report (except of a kind referred to above); and
- in aggregate with its own historical financial information, represents at least 75 percent of the enlarged new applicant's business for the full period.

The FCA states that the purpose of these rules is to ensure that the issuer has representative financial information throughout the three-year track record period and to help prospective investors make a reasonable assessment of what the future prospects of the

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

new applicant's business might be. Investors are then able to consider the new applicant's historical revenue-earning record in light of its particular competitive advantages, the outlook for the sector in which it operates and the general macroeconomic climate. The FCA may consider that a new applicant does not have representative historical financial information and that its equity shares are not eligible for a premium listing if a significant part or all of the new applicant's business has one or more of the following characteristics:

- its business strategy places significant emphasis on the development or marketing of products or services that have not formed a significant part of the new applicant's historical financial information;
- the value of the business on admission 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 those of similar companies in the same sector;
- there is no record of consistent revenue, cash flow or profit growth throughout the period of the historical financial information;
- the new applicant's business has undergone a significant change in its scale of operations during the period of the historical financial information or is due to do so before or after admission; or
- it has significant levels of research and development expenditure or significant levels of capital expenditure.

ii. Independent Business and Controlling Shareholder(s) (LR 6.4 and LR 6.5)

An applicant must demonstrate that it will be carrying on an independent business as its main activity. LR 6.4.3G sets out guidance on the factors relevant to determining independence. Factors that may indicate that an applicant does not satisfy this requirement include where:

- a majority of the revenue generated by the applicant's business is attributable to business conducted directly or indirectly with a controlling shareholder or any associate thereof;
- an applicant does not have strategic control over the commercialisation of its products, its ability to earn revenue, or freedom to implement its business strategy; or
- an applicant cannot demonstrate that it has access to financing other than from a controlling shareholder.

LR 6.4.1 reflects the FCA's desire to ensure that the protections afforded to shareholders of premium listed companies are meaningful, and it has been widely interpreted as a response to a number of high-profile governance issues between controlling shareholders and particular companies. Where a new applicant will have a controlling shareholder upon admission, LR 6.5.4R requires there to be in place an agreement with the controlling shareholder to ensure that:

- transactions and arrangements with the controlling shareholder (and its associates) will be conducted at arm's length and on normal commercial terms;
- neither the controlling shareholder nor any of its associates will take any action that

would have the effect of preventing the applicant from complying with its obligations under the Listing Rules; and

- neither the controlling shareholder nor any of its associates will propose or procure the proposal of any shareholder resolution which is intended or appears to be intended to circumvent the proper application of the Listing Rules.

In addition, the constitution of the applicant must allow for a prescribed dual voting structure in relation to the election and re-election of independent directors, further details of which are summarised in Chapter 8.

A "controlling shareholder" is defined as any person who exercises or controls on his own or together with any person with whom he is acting in concert, 30 percent or more of the votes able to be cast on all, or substantially all, matters at general meetings of the company.

iii. Working Capital (LR 6.7)

An applicant must satisfy the FCA that its group has sufficient working capital for at least the next 12 months from the date of publication of the prospectus.[5] 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 PRA or FCA-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. Whilst the FCA has not been able to alter the requirements of the Prospectus Directive, it has, for the purposes of determining eligibility for listing, set out an alternative for regulated issuers 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 regulated entities not only to meet their capital adequacy and solvency requirements, but to do so for the next 12 months without needing to raise further capital.

iv. Warrants or Options (LR 6.8)

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 applicant[6] as at the time of issue of the warrants or options (excluding rights under employee share schemes).

v. Constitutional Arrangements (LR 6.9)

An applicant must have in place a constitution that allows it to comply with the Listing Rules, including (but not limited to) compliance with LR 9.2.21R to vote on matters relevant to premium listing and LR 9.2.2ER and LR 9.2.2FR concerning the election and re-election of independent directors. See Chapter 8 for further details.

vi. Externally Managed Companies (LR 6.13)

A company applying for a premium listing must ensure that the discretion of its board to make strategic decisions on behalf of the company has not been limited or transferred to a

5 The FCA 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.

6 Excluding treasury shares.

person outside the issuer's group (such as an external management company) and that the board has the capability to act on key strategic matters in the absence of a recommendation from a person outside the issuer's group (and does not, for instance, consist solely of nonexecutive directors).

vii. Shares in Public Hands (LR 6.14)

Twenty-five percent of the shares[7] must, by no later than the time of admission, be distributed to the public in one or more EEA States. (Account may also be taken of holders in a non-EEA State if the shares are listed in the relevant state.[8]) Shares which are subject to a lock-up period of more than 180 days and shares held by directors, their connected persons, persons with the contractual right to nominate a director, trustees of an employee share scheme, and any person (or persons in the same group or persons acting in concert) 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.

The FCA may accept an amount lower than 25 percent if it considers that the market will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of their distribution to the public. LR 6.14.5(2)G sets out the factors that the FCA will take into account when determining whether the market will operate properly where less than 25 percent of the shares are in public hands in EEA States. These include:

- shares held in non-EEA States, even where they are not listed;
- the number and nature of the public shareholders; and
- the expected market value of shares in public hands at admission being in excess of £100 million.

Issuers should note that eligibility criteria for the attractive FTSE UK Index Series include a firm 25 percent free-float requirement for companies incorporated in the UK and greater than 50 percent for non-UK companies.

viii. Overseas Company Applying for a Premium Listing (LR 6.1.25)

An overseas company applying for a premium listing must ensure that, whether by the law of the country of its incorporation or through its constitution, it provides pre-emption rights that are at least equivalent to those specified in LR 9.3.11 (as qualified by LR 9.3.12).

C. SPECIALIST ISSUERS OF SECURITIES

Other than in respect to investment entities and sovereign controlled companies, 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 FCA has stated that it will adopt the recommendations of the European Securities and Markets Authority ("ESMA"),[9] which provide guidance on the interpretation of certain provisions of the Prospectus

7 Excluding treasury shares.

8 Although technically only shares in public hands in one or more EEA States count towards the 25 percent threshold, the FCA does have the discretion (under LR 6.14.5G) to include shares held outside the EEA.

9 The recommendations of the Committee of European Securities Regulators ("CESR") for the consistent implementation of the European Commission's Regulation on Prospectuses No. 809/2004, issued in February 2005 and re-issued by ESMA on 23 March 2011. Whilst the recommended actions are still often referred to as the "CESR Recommendations", as they have been re-issued by ESMA, they are referred to in this Guide as the "ESMA Recommendations".

Directive and include recommendations for supplemental disclosure in the case of certain specialist issuers. These recommendations are detailed further in Chapter 3 of this Guide.

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

i. Mineral Companies (LR 6.10)

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

A mineral company does not need audited accounts covering at least three years, but it must have published or filed historical financial information since the inception of its business. Such accounts must comply with the general criteria set out in LR 6.2.1R, LR 6.2.4R and LR 6.2.6R: namely, that they have been independently audited, are less than six months old (as at the date of the prospectus) and have not been modified (except in very limited circumstances). A mineral company must also be able to demonstrate that it satisfies the independent business test set out in LR 6.4.1R.

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 that give it influence in decisions over the time and method of extraction of those resources" (LR 6.10.3R).

In addition, the ESMA 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.

When considering whether or not a mineral company is eligible for a premium listing, an applicant together with its advisers may wish to consider how the Listing Rules governing related party transactions in LR 11 (see Chapter 8 for further details) will apply post-admission. The holding structures and joint venture agreements used by certain mineral companies mean that compliance with the Listing Rules governing related parties can be complex.

ii. Scientific-Research-Based Companies (LR 6.11)

Similarly, a scientific-research-based company does not need audited accounts that cover at least three years, but it must have published or filed historical financial information since the inception of its business. Such accounts must have been independently audited, must be less than six months old and cannot have been modified (except in very limited circumstances). A scientific-research-based company must also be able to demonstrate that: (1) its historical financial information represents at least 75 per cent of its business for the full period; and (2) it satisfies the independent business test set out in LR 6.4.1R.

However, whilst 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 that do not have audited accounts covering at least three years. Such a 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 before the marketing at the time of listing of at least £20 million (based on the issue price and excluding the value of any securities 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 in laboratory research and development, including details of patents granted or details of progress of patent applications and the successful completion, or the successful progression of, 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 6.11.2R. Any waiver of these conditions would be viewed by the FCA 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 FCA.

The ESMA 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

Chapter 15 of the Listing Rules presents a single platform for all listed closed-ended vehicles, which include investment trusts, investment companies, venture capital trusts and property investment companies, whilst Chapter 16 deals with all rules regarding open-ended investment funds. 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).

Closed-ended investment funds

For closed-ended investment funds, an applicant for listing does not need audited accounts that cover at least three years, nor does it need to satisfy LR 6.4.1R (independent business). However, it must satisfy the following requirements:

- **Investment activity** (LR 15.2.2R to 15.2.4G): An applicant must invest and manage its assets in a way that is consistent with its objective of spreading risk. The applicant's group must not conduct any trading activity that is significant in the context of its group as a whole, although this does not prevent the businesses forming part of its investment portfolio from conducting trading themselves.
- **Cross-holdings** (LR 15.2.5R): No more than 10 percent, in aggregate, of the value of an applicant's total assets may be invested in other listed closed-ended investment funds, although this limit does not apply to investments in closed-ended investment funds that have published policies of investing no more than 15 percent of their total assets in other listed closed-ended investment funds.

- **Feeder funds** (LR 15.2.6R): An applicant that is a feeder fund must ensure that the master fund's investment policies are consistent with its own published investment policy and that the master fund invests and manages its investments in a way that is consistent with the applicant's published investment policy and spreads investment risk.
- **Investment policy** (LR 15.2.7R): An applicant must have a published investment policy that contains information about the policies which the closed-ended investment fund will follow relating to asset allocation, risk diversification and gearing and that includes maximum exposures.
- **Independence** (LR 15.2.11R to 15.2.13A): The applicant's board of directors or equivalent body must be able to act independently of the investment manager.

Open-ended investment companies

There are very few eligibility criteria for applicants that are seeking a listing as an open-ended investment company under Chapter 16 of the Listing Rules, although it must retain a sponsor for the purposes of its application.

The Specialist Fund Segment (formerly the Specialist Fund Market)

The Specialist Fund Segment ("SFS") of the Main Market is geared towards investment entities that target institutional, highly knowledgeable or professionally advised investors. Securities admitted to the Specialist Fund Segment are not admitted to the Official List and compliance with the Listing Rules is not required for SFS issuers. However, as the SFS is a part of the Main Market, a prospectus will be required for admission. Issuers on the SFS are also required to comply with the London Stock Exchange's Admission and Disclosure Standards.

iv. Sovereign Controlled Companies (LR 21)

On 8 June 2018, the FCA announced that it was taking forward a fourth listing category for sovereign controlled companies, with the new rules taking effect from 1 July 2018. Such changes are designed to recognise that, whilst these companies are able to meet with the vast majority of the requirements imposed by the premium listing regime, a sovereign controlled company and the state that owns it have a different relationship to a company with other types of controlling shareholder.

The key provisions of the new regime are as follows:

- **Eligibility**: In order to fall within the definition of a sovereign controlled company, a company will need to demonstrate that substantive control is being exercised by the state in question. In particular, the state (which must be recognised by the UK at the time of the application) will need to hold 30% or more of the voting rights of the company. The FCA has stated that a passive stake held by a sovereign wealth fund is unlikely to meet the requirement to demonstrate substantive control by the state.[10]
- **Investor protections:** All the investor protections applicable to existing premium listings shall apply, subject to two specific modifications that the FCA considers appropriate for sovereign controlled companies:

10 As a sovereign wealth fund is unlikely to be eligible, an entity with a sovereign wealth fund holding more than 30% of its equity should approach the FCA as early as possible in any potential IPO process to determine whether it will satisfy the FCA's requirements in relation to substantive control being exercised by the state.

- The requirement for there to be a controlling shareholder agreement between the sovereign and the company shall not apply. Past experience has shown that these agreements can be impracticable for sovereigns and the fact that significant information will be in the public domain about the relationship between the issuer and the sovereign should allow investors to make an informed assessment. However, the rules requiring a separate shareholder resolution of independent shareholders on the election and re-election of independent directors will still apply and these provisions will need to be included in the company's constitution; and
- Whilst the sovereign controlling shareholder will be considered a related party, the requirement to obtain a fair and reasonable opinion and the need to obtain prior independent shareholder approval for related party transactions will not apply to sovereign controlled companies. For some sovereign controlled companies, the number of transactions makes this a disproportionately onerous requirement. The requirement remains, however, to disclose details of any smaller and Class 2 related party transactions to the market at the time of the transaction on the same basis as conventional commercial companies.

- **Transfers between premium listing categories**: Companies with an existing premium listing which satisfy the eligibility requirements for this new category are entitled to transfer their listing to take advantage of the new rules, but require a vote of the independent shareholders in order to do so.[11]
- **Depositary receipts**: Although historically global depositary receipts have not been eligible for premium listing, those issued in respect of the equity shares of sovereign controlled companies will be eligible for premium listing under the new category if they meet the relevant eligibility criteria.

The other features of the premium listing regime shall apply as usual.

v. Property Companies (LR 6.12)

In October 2017, the FCA published a policy statement introducing a concessionary route to premium listing for property companies that do not have a three-year track record. Under LR 6.12.1R, property companies are able to demonstrate maturity in ways other than through three years of revenue generation to reflect that, in assessing the applicant, investors focus on the property valuation report rather than the issuer's historic financial information. The property valuation report should be published in the applicant's prospectus.

This concession is likely to be applicable to two types of property company:

- Companies established within the previous three years, which predominantly hold assets that generate rental revenue; and
- Companies that have been developing long-term projects for at least three years, but which may only be revenue generating in the future. The ability of an issuer to demonstrate successful development activity representative of its long-term strategy through several years of increases in the asset value on the balance sheet, and supported by a property valuation report, will be much more informative than revenue for such companies.

11 Similarly, in cases where the state ceases to be a controlling shareholder, the company would be required to notify the FCA of that fact and transfer its listing to another listing category (subject to any necessary shareholder vote), failing which the FCA would either suspend or cancel its listing as it would no longer be eligible for inclusion in the sovereign controlled company category.

Property Companies and Shipping Companies

The ESMA Recommendations 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.) In relation to UK real estate investment trusts ("REITs"), the FCA has clarified that a REIT may, depending on its business model, be eligible for a premium listing under Chapter 6 of the Listing Rules, a standard listing under Chapter 14, or a premium listing for closed-ended investment funds set out in Chapter 15 of the Listing Rules. The key determinant will be whether the company is a risk-spreading investment vehicle or a more traditional property company that does not aim to spread risk. If it is a risk-spreading vehicle, then it should apply for the premium (closed-ended investment funds) listing under Chapter 15.

vi. High Growth Segment

The High Growth Segment, introduced, in March 2013, provides an additional route to listing for medium and large high-growth companies. The High Growth Segment has regulated market status but is not part of the Official List and the Listing Rules do not apply. Issuers on the segment are required to comply with the London Stock Exchange's High Growth Segment Rules and the Admission and Disclosure Standards. The Market Abuse Regulation and certain EU directive standards, including sections of the Prospectus Rules and the Disclosure Guidance and Transparency Rules also apply.

In order to join the High Growth Segment, an issuer must: (1) be incorporated in the EEA; (2) be a revenue-generating equity trading business; (3) demonstrate growth in revenues (on a CAGR basis) of at least 20 percent over the three-year period prior to admission; (4) have a free float of at least 10 percent; (5) appoint a "Key Adviser" in relation to admission; and (6) set out an intention to join the listed segment of the Main Market over time. Where a company is classified as a "scientific research issuer", the London Stock Exchange may modify or dispense with the requirements that the issuer must be a trading business and demonstrate growth in revenues (on a CAGR basis) of at least 20 percent over the prior 3 financial years, provided the company has complied with certain other admission criteria and has published or filed historical financial information since the inception of its business.

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 FCA 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 premium 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.

It is generally possible for an issuer incorporated outside the UK to be assigned UK "nationality" for purposes of the FTSE UK Index Series, provided that it publicly acknowledges adherence as far as practicable to the principles of the UK Corporate Governance Code, the pre-emption rights and the UK Takeover Code and, as mentioned above, has a free float greater than 50 percent.

CHAPTER 2

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

As discussed in Chapter 1, the new EU Prospectus Regulation will come into full effect from 21 July 2019 and will replace the Prospectus Directive. Furthermore, additional amendments to the Prospectus Rules, which were published by the FCA in December 2017, took effect on 3 January 2018 in order to reflect the implementation of the Markets and Financial Instruments Directive II ("MiFID II").

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 purposes[12]).

"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 €5.0 million,[13] are excluded from the scope of the Prospectus Directive.[14] Furthermore, the European Commission has 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 typically relevant only

12 In addition to the London Stock Exchange – Main Market, regulated markets in the UK are the BATS Europe Regulated Market, the ICAP Securities & Derivatives Exchange – Main Board, ICE Futures Europe, the London Stock Exchange – High Growth Segment, the London Stock Exchange – Specialist Fund Market, NYSE Euronext London, the London International Financial Futures and Options Exchange ("LIFFE") and the London Metal Exchange.

13 The threshold was increased from €2.5 million to €5.0 million with effect from 31 July 2011 pursuant to the Amending Directive. ESMA guidance has clarified that this 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 €4 million and debt securities with a total consideration of €2 million, both offers will fall within the exclusion.

14 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.

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 (e.g., AIM companies) or further issues of securities by companies already listed on the Main Market. A prospectus will generally be required on every premium listing of equity securities on the Main Market. The flow chart in Appendix I further illustrates the decision-making process for whether a prospectus is required.

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 helps the FCA 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 FCA. 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 FCA (PR 3.1.10). (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 FCA at least 10 business days prior to the intended approval date, or, at least 20 business days prior to the approval date if the applicant does not have transferrable securities admitted to trading and has not previously made an offer of transferrable securities (PR 3.1.3). The company must ensure that the draft is substantially complete and annotated in the margin to indicate compliance with the relevant requirements of the Prospectus Rules, and that the final version (with the additional information required by Article 4

of Commission Delegated Regulation 2016/301 (the "Delegated Regulation"))[15] is submitted to the FCA before midday of the day on which approval is required to be granted.

All drafts of a prospectus are required to be submitted in a searchable electronic format. The first draft submitted must be accompanied by a cross-reference list if so requested by the national competent authority. The prospectus must also be annotated in the margin and accompanied by a document setting out the provisions that are not applicable and where the order of information in the prospectus does not coincide with that set out in the Prospectus Regulation.

Under section 87A(1) of FSMA and PR 3.1.7, the FCA 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.

In the context of an IPO, the FCA is obliged to notify an issuer of its decision within 20 business days of the receipt of the application for approval. However, where the FCA 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. Ensuring submission of a complete "first draft" to the FCA is therefore key to minimising the approval timetable.

In the context of an IPO, once a prospectus has been approved by the FCA, it must be filed with the FCA at the same time it is made available to the public or, if earlier, within 24 hours of receipt by the company of the notification of the approval. The prospectus must be made available to the public as soon as practicable and in any event at a reasonable time in advance of, or at, the beginning of the offer. In the case of an IPO, the prospectus must be made available to the public at least six business days prior to the end of the offer (PR 3.2.3). A prospectus may be made available to the public through:

- publication in a national newspaper;
- distribution in printed form, free of charge, at the offices of the London Stock Exchange, the registered office of the issuer, and the offices of the placing agent;
- distribution in electronic form on the website of the issuer and, if applicable, on the website of the placing agent; or
- distribution in electronic form on the website of the London Stock Exchange.[16]

The FCA has confirmed that the six-day rule does not apply where an issuer is seeking admission to the Main Market for the first time and raising funds only through an institutional placing, as there is no public offer in such circumstances.[17]

15 Article 4 of the Delegated Regulation states that submission for approval of the final draft of the prospectus shall be accompanied by any information in Article 2(2) which has changed since the previous submission. This includes: any cross-reference list which identifies any terms from Annexes I to XXX of the 2004 Prospectus Regulation that have not been included; any request to authorise the omission of information; any requirement of the FCA to notify the competent authority of the host Member State upon approval; any information which is incorporated by reference into the prospectus, and any other information considered necessary for the review of the FCA.

16 The FCA is required to maintain a list of approved prospectuses on its website.

17 UKLA Technical Note – Public Offers – the six-day rule.

An FCA consultation launched in March 2017 raised concerns regarding the availability of information in the UK equity IPO process. The FCA surmised that standard market practice involving a 14 day 'blackout' period between the publication of research by syndicate banks (referred to as 'connected' research) and the circulation of the pathfinder prospectus, during which time unconnected analysts could not publish research, compromised market fairness. As a consequence, on 26 October 2017, the FCA introduced new rules to Rule 11A of the Conduct of Business Sourcebook ("COBS") which re-sequenced the publication of connected research as follows:

- where firms offer unconnected analysts access to the issuer's management in tandem with connected analysts, the new rules allow connected research to be published one day after an approved prospectus or registration document is published; or
- if unconnected analysts do not have the same opportunity to be in communication with management on equal terms with connected analysts, connected research cannot be published until at least seven days after an approved prospectus or registration document is published.

These additions to COBS Rule 11A will take effect from 1 July 2018.

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 request a certificate of approval either simultaneously with the application for approval of the prospectus or after the prospectus has been approved. In the former case, the certificate will be issued within one day of the approval of the relevant prospectus, and in the latter case, within three days of the request being made. The certificate, together with the prospectus as approved, is provided to the competent authority in the host member state and then facilitates the offer or admission (as applicable) in that member state.

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

For EEA issuers, the "home member state" is generally the state in which the issuer has its registered office.[18] 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: (1) the member state in which a public offer of the issuer's securities is or was first made after 31 December 2003,[19] or (2) the member state in which an application for admission of the issuer's securities to trading on a regulated market is or was first made after 31 December 2003[20] (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

18 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.

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

20 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.

the relevant member state, rather than the FCA, and then "passported" into the UK.[21] Even if the overseas issuer's primary listing is being sought in the UK, its home member state's regulator, rather than the FCA, will generally be charged with vetting the prospectus.

However, in the context of a Main Market IPO, even if the FCA 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 "gold standard" premium-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 or that the application for a premium listing will be approved by the FCA. Accordingly, the FCA 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.

B. SPONSOR

i. **Requirement for a Sponsor** (LR 8.2.1R)

Any company seeking a premium listing on the Main Market is required to appoint a "sponsor" (generally, an investment bank), and this is usually one of the first steps in the IPO process.[22] The FCA 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 FCA with any application for listing, confirming that the sponsor has:

- acted with due care and skill in relation to the performance of "sponsor services";[23]
- 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 DTR; and
- come to a reasonable opinion, on the basis of 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);

21 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.

22 Companies seeking a standard listing are not required to appoint a sponsor; this is in line with the policy to bring the requirements for standard listings closer to the European directive minimum.

23 A "sponsor service" is "a service relating to a matter referred to in LR 8.2 that a sponsor provides or is requested or appointed to provide and that is for the purpose of the sponsor complying with LR 8.3.1 or LR 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.

- the directors of the issuer have a reasonable basis on which to make the working capital statement required by the Listing Rules.[24] A sponsor is expected to apply its judgment, experience, knowledge and expertise on the Listing Rules when making this assessment. The sponsor must be able to assure the FCA 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 FCA 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 FCA.

iii. Dealings with the FCA (LR 8.3.5R – LR 8.3.5BR)

A sponsor must, in relation to a sponsor service, act with honesty and integrity. It is required to deal with the FCA in an open and cooperative way and to deal promptly with all enquiries raised by the FCA. In addition, it must promptly notify the FCA if, in connection with the provision of a sponsor service, a sponsor becomes aware that it, or an issuer with (or applying for) a premium listing, is failing or has failed to comply with its obligations under the Listing Rules or the DTR. This potentially represents something of a conflict for issuers; the FCA 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.

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 UKLA section of the FCA's website). Some of these ancillary documents will relate to an issuer's application for approval of a prospectus, and some to its application for admission to listing.

The documents required to obtain approval for a prospectus are detailed in paragraph A of Chapter 4. In addition to these, the following documents will need to be submitted to the FCA in connection with the issuer's application for a premium listing:

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

On a premium listing, a sponsor is required to submit a letter to the FCA 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 for approval of the first draft prospectus or, if the FCA is not approving the prospectus, at a time to be agreed with the FCA.

24 LR 6.7.1R.

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

ii. Documents to Be Provided 48 Hours in Advance (LR 3.3.2R)

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

- a completed application for admission of securities to the Main Market;
- one of: (1) the approved prospectus or listing particulars that have been approved by the FCA; or (2) a copy of the prospectus, a certificate of approval, and a translation of the summary of the prospectus (if another EEA State is the home Member state);
- if applicable, any circular that has been published in relation to the application;
- if applicable, any approved supplementary prospectus or approved supplementary listing particulars; and
- written confirmation of the number of shares to be allotted pursuant to 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 FCA Is to Consider the Application (LR 3.3.3R)

The following documents must be submitted, in final form, to the FCA by 9.00 a.m. on the day the FCA 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 FCA Has Considered the Application (LR 3.3.5R)

- a statement of the number of shares that were issued; and
- if the FCA 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 prospectus[25] comprising:

- a registration document (this contains information relating to the issuer);
- a securities note (this contains details of the securities being offered or admitted to trading); and
- a summary (this covers the key information relevant to the securities).

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 FCA approval, will remain valid for up to 12 months from the date of its approval 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 FCA.

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

- a clear and detailed **table of contents**;
- a **summary** (containing a prescribed "health warning") that conveys concisely, in non-technical language and in an appropriate structure, the key information relevant to the securities that are the subject of the prospectus and which, when read with the rest of the prospectus, is an aid to investors considering whether to invest in the securities. Directive 2010/73/EU (the "Amending Directive") requires summaries to be prepared in a common format in order to facilitate comparability of the summaries of similar securities, and its content should convey the key information of the securities concerned. Every summary

25 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).

should be set out in five mandatory sections in the following order: (1) Introduction and warnings; (2) Issuer and any guarantor; (3) Securities; (4) Risks; and (5) Offer. Article 24 of Regulation 809/2004 (the "2004 Prospectus Regulation") imposes a length limit rather than a specific word limit in respect of the summary: the summary should not exceed a maximum length of 7 percent of the length of the prospectus, or 15 pages, whichever is longer;[26]

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

From 21 July 2019, the Prospectus Regulation will amend the requirements for summaries: (x) a length limit of seven pages; (y) a requirement of three main sections in the summary to cover key information on the issuer, the securities and the offer/admission (in addition to the introductory section containing warnings); and (z) a requirement that no more than 15 of the most material risk factors should be included in the summary.

B. CONTENT REQUIREMENTS FOR A PROSPECTUS

The content requirements for a prospectus are prescribed by the Prospectus Directive and 2004 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 be mindful of the ESMA Recommendations, and in determining whether or not the requirements have been complied with, the FCA will take into account an issuer's compliance with the ESMA 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:

26 Effective from 21 July 2019, the page limit has been reduced to a maximum length of seven sides of A4 paper when printed with four headings, instead of five. These four sections will be: (i) Introduction and warnings; (ii) Key information on the issuer; (iii) Key information on the securities; and (iv) Key information on the offer of securities to the public and/or admission to trading on a regulated market including an indication of whether the offer is subject to an underwriting agreement on a firm commitment basis, stating any portion not covered.

- **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. The UKLA has emphasised that proper consideration should be given to the real risks that face an issuer and that generic or boilerplate disclosure should be avoided. Risk factors should be grouped together in a coherent manner, and those considered to be of the greatest or most immediate significance should be prominent at the beginning of each section or group within the risk-factor section.

    Under the Prospectus Regulation, only risk factors that are material and specific to the issuer are to be included. The European Commission has stated that this is to prevent overloading the document with generic risk factors which obscure the more specific risk factors that investors should be aware of and only serve to protect the issuer or its advisors from liability. To that aim, the issuer can allocate risk factors across a qualitative scale of high, medium or low risk.

  - *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 historical 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"). OFR sections in prospectuses will generally resemble the US-style "MD&A" section[27] typically found in offering documents for global offers or offerings with a US component.

  The ESMA 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 ESMA 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 historical financial information included in the prospectus and should identify those trends and factors relevant to the investors' assessment of past performance and the 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 ESMA 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.

- *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 ESMA 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

27 Management discussion and analysis of financial condition and results of operations.

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, as well as any historical 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, the seasonality of borrowing requirements, and a maturity profile of borrowings and undrawn committed borrowing facilities; and
- 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 FCA has emphasised that the capital resources and liquidity discussion is not a means of qualifying an issuer's working capital statement by the "back door"—any qualifications included in the capital resources discussion (whether express or implied) will require the working capital statement to be expressly qualified.

- *Research and development, patents and licences (item 11)*

  This will include a description of historical research and development 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 ESMA Recommendations may require further information on this area to be disclosed – see the "Specialist issuers" subsection below for further details.

- *Significant trend information (item 12)*

  This requires disclosure of significant recent trends since the end of the last financial year, together with information on any known factors that are reasonably likely to have a material effect on the issuer's prospects for the current financial year. Note that this requires the directors not to form a view of the issuer's prospects for the current financial year, but only to disclose the generic factors reasonably likely to have a material effect on such prospects.

- *Profit forecasts or estimates (item 13)*

  Any profit forecasts or estimates must be reported on, and the ESMA Recommendations include detailed guidance on the preparation of these. Note that an issuer that has published a profit forecast or estimate (otherwise than in a previous prospectus) that 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 ESMA 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). Note also that under the proposals in the ESMA Report, an issuer would be required to state the figure of any profit forecast or estimate in the summary as well as in the main body of the prospectus.[28]

28 ESMA does not propose that additional disclosure be made in the summary to place the forecast in context, as this would render the summary too long. It is sufficient that the detailed background information in relation to the forecast and/or estimate is contained in the main body of the prospectus.

- *Administrative, management and supervisory bodies and senior management (item 14)*

  The disclosures required in relation to directors (e.g., their current and previous directorships, convictions, declared or pending bankruptcies and public criticisms within the last five years) are also required for senior managers, founders (where the issuer has been established for less than five years) and, if applicable, any members of its administrative, management and 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 of directors'/senior managers' terms of office and benefits on termination, information on the audit and remuneration committees, and a statement as to whether or not the issuer complies with the corporate governance requirements of its country of incorporation.

- *Employees (item 17)*

  An issuer is required to disclose either the number of employees at the end of each financial period or the average for each financial year in respect of the period covered by the historical financial information and, if possible and material, the breakdown by main category of employee activity and location. An issuer employing a significant number of temporary employees will likewise be required to disclose 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 in control must also be disclosed.

  Where an issuer is not admitted to trading on an EU-regulated market and Directive 2004/109/EC (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 ESMA Recommendations suggest that the definition of "related party" used by the International Financial Reporting Standards ("IFRS") 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 historical financials and audit reports that are prepared in accordance with:

  1. 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

  2. in the case of a non-EEA issuer, IAS or national accounting standards that are "equivalent" to IAS.[29]

  The financial information included for the last two years must be prepared (or re-stated) on a basis consistent with that which will be used in the preparation of the issuer's next set of financial statements,[30] 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 will be required in the event of a "significant gross change".[31] 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 accountants.[32]

29 In December 2008, the European Commission adopted measures which established that the generally accepted accounting principles ("GAAP") of the US and Japan were equivalent to IFRS and that, until 31 December 2011, financial statements using the GAAP of Canada, South Korea, China and India would be accepted within the EU. In December 2011, the European Commission published the text of a delegated regulation that: (i) provided that third-country issuers may present their historical financial information in accordance with the GAAP of Canada, South Korea and China; and (ii) extended the transitional equivalence status of India until 31 December 2014. In June 2015, the European Commission amended the delegated regulation to extend the period for the transitional equivalence of Indian GAAP until 1 April 2016.

30 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.

31 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.

32 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 non-equity securities, there is no requirement for it to be reported on.

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.

An issuer that has been in operation for less than one financial year would need to include historical information to cover this shorter period. The audited historical financial information covering that period (less than one year) must be prepared in accordance with the standards applicable to annual financial statements under Regulation (EC) No. 1606/2002 or, if not applicable, to a Member State's national accounting standards where the issuer is an issuer from the EU. 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.

If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least:

- (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

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.

See further Appendix IV which sets out the financial information required.

- *Legal and arbitration proceedings (item 20.8)*

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

- *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.

- *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.

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. The FCA has clarified that it expects all reports, letters and other documents and historical information, which are either referred to, or included, in the prospectus, to be put on display. There is no requirement to display material contracts that have been summarised in the prospectus.

- **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 (e.g., warning of share price volatility), the FCA encourages all issuers to be as specific as possible.

    As noted above in relation to the risk factors required under Annex I, under the Prospectus Regulation, only risk factors that are material and specific to the securities are to be included in order to avoid overloading the document with generic risk factors that obscure the more specific risk factors that investors should be aware of.

  - *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. Whilst 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 premium listing of equity securities on the Main Market still need to satisfy the FCA's eligibility condition requiring a clean 12-month working capital statement.

    The ESMA 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. An issuer that 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.

    An issuer 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 that are unsuccessful in each case, in sufficient detail to enable investors to be fully apprised of the actual working capital position of the issuer.

The ESMA Recommendations emphasise the level of diligence that issuers are expected to undertake in relation to their working capital position to minimise the risk that the basis of the working capital statement will subsequently be called into question, and they reiterate the need for a thorough working capital exercise conducted by the issuer and its advisers. The FCA has highlighted the importance of the sponsor's role in the working capital exercise. Whilst 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. A sponsor is expected to apply its judgment, experience, knowledge and expertise on the Listing Rules and DTR when deciding whether an issuer has a reasonable basis on which to make the working capital statement. To do this, the sponsor must have regard to the issuer's circumstances and the context of the transaction. Specifically, the 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 right one under the circumstances.

The binary approach taken by the rules and ESMA 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 the normal procedures to support a clean working capital confirmation. The FCA has stated that it takes 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 ESMA 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 non-public 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 given.[33]

In relation to reverse takeover situations, the FCA has also clarified that whilst the rules set out by the Prospectus Directive and the ESMA 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 that the working capital requirements of the Group, on the basis that the transaction does not proceed, also need to be considered.

33 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 date the offer becomes wholly unconditional.

- *Capitalisation and indebtedness (item 3.2)*

  The ESMA Recommendations include a template for disclosure that should be followed "as much as possible". The ESMA 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; the 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, ESMA has clarified their meaning:

  - **Indirect indebtedness**: "Indirect indebtedness" is any obligation not 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 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.

- *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.

- *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. This is particularly important when such proceeds will be used other than in the ordinary course of business, such as for the acquisition of assets, businesses, or for the reduction of indebtedness.

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.

- *Terms and conditions of the offer (item 5)*

  This section will be of most relevance in the context of offers for sale/subscription or open offers/rights issues.

- *Admission to trading and dealing arrangements (item 6)*

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

- *Selling shareholders (item 7)*

  Details of any selling shareholders (including lock-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** (ESMA Recommendations):

  In addition to the general and specific disclosure requirements set out in the Prospectus Rules, the ESMA Recommendations suggest various additional disclosures in the case of certain specialist issuers. Note also that for specialist issuers seeking a premium listing on the Main Market, the FCA's eligibility conditions may also need to be reflected in the prospectus. (See Chapter 1 for further details.)

  - *Mineral companies*

    In March 2011, ESMA published an updated version of the recommendations for mineral-company prospectuses. For the purpose of the recommendations, the definition of "mineral company" has been extended by removing the previous "principal activity" test. "Mineral company" is now defined as a company with "material mineral projects". In March 2013, the recommendations were further amended to clarify the materiality concept in the context of whether or not an issuer has "material mining projects", such that the projects should be considered material where an "evaluation of the resources"

is necessary to enable investors to make an informed assessment of the prospects of the issuer. Materiality should be assessed having regard to all the issuer's mineral projects relative to it and its group taken as a whole. The ESMA 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 mineral exploration and/or extraction and processing; and
- an explanation of any exceptional factors that have influenced this information.

Where a prospectus is being issued in connection with the acquisition of a mineral company and/or resources, and the acquisition constitutes a significant gross change, the issuer should include the above information on the assets being acquired.

In addition, a mineral company is required to include a mineral expert's report ("MER") when issuing a prospectus as part of its IPO, but not thereafter if it has reported and published annually details of its mineral resources and, where applicable, reserves (presented separately) and exploration results/prospects with one or more of the designated reporting standards. The MER must generally be dated no more than six months from the date of the prospectus (although in exceptional and limited circumstances, the FCA may consider a MER that is between six and twelve months old in the context of a secondary offering) and must report mineral resources and reserves in accordance with one of the specified reporting standards. The previous requirement for certain mineral companies to provide an estimate of funding requirements has been removed on the basis that the other disclosure requirements relating to funding contained in the Prospectus Directive are sufficient.

- *Scientific-research-based companies*

Under the ESMA 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, or, in the absence of such agreements, explanation of how such absence could affect the standing or quality of its research efforts; and
- a comprehensive description of each product, the development of which may have a material effect on the future prospects of the issuer.

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

- *Start-up companies*

  The ESMA 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 issuing securities, not conducting 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 services and/or 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 ESMA 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, provided that 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 ESMA Recommendations, the FCA expects any valuation report for a property company to be in accordance with either the: (1) Appraisal and Valuation Standards (fifth edition) issued by the Royal Institution of Chartered Surveyors; or (2) International Valuation Standards (seventh edition) issued by the International Valuation Standards Council.

- *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 re-valuation of any of the vessels for the purpose of the issue, and it is prominently stated that the valuations quoted are as at the date of the initial purchase or charter of the vessels.

iii. Omission of Information (PR 2.5)

Omission of information from a prospectus is allowed where the FCA 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, 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 FCA (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, half-yearly accounts, and earlier approved and published prospectuses or base prospectuses. 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 submitted.

Under the Prospectus Regulation the scope of the information that may be incorporated by reference is expanded to include all regulated information; historic annual and financial information and audit reports wherever published and for whatever reason and certain documents filed in connection with mergers and acquisitions, management reports, corporate governance statements, and also memoranda and articles of association.

If information is incorporated in the prospectus by reference to another document, the applicant must submit to the FCA for vetting and approval, in searchable electronic format, any information incorporated by reference unless such information has already been approved by or filed with the FCA (PR 3.1.1R). The electronic prospectus must contain hyperlinks to each document containing information incorporated by reference or to each website on which that document is published (PR 3.2.6A).

Where information is incorporated by reference, a cross-reference list must be provided in the prospectus to enable investors to easily identify 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 Prospectus 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 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 FCA 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).[34]

The rules require the publication of a supplementary prospectus if, during the relevant period after approval 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

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

supplementary prospectus as soon as practicable after a significant new factor occurs or a material mistake or inaccuracy is discovered. In its guidance on the publication of supplementary prospectuses, the UKLA has made it clear that it is not appropriate to publish a supplement simply to clarify or revise drafting, nor should drafting changes be made as part of a genuine supplement.

ESMA considers that there is no systematic requirement to supplement a prospectus when interim financial statements are produced. However, this 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).

An investor that 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 advertisements[35] relating to a public offer or application for admission to trading.[36] 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.

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.

On 30 November 2015, the European Commission published the Delegated Regulation supplementing the Prospectus Directive and requiring that issuers must update or amend an advertisement where there is a "significant new factor, material mistake or inaccuracy" that renders the advertisement inaccurate or misleading. The amended advertisement should refer to the original advertisement, state that it has been amended due to it containing inaccurate or misleading information and set out the differences between the two. The regulation imposes an overarching general standard for all issuers that an advertisement must not contradict or present a "materially unbalanced view" of information contained within 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

35 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.

36 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.

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 UK 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 (e.g., 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 an 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 on the number of words used). 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. The Amending Directive extends the potential civil liability to circumstances where the summary does not provide, when read together with other parts of the prospectus, the key information necessary in order to aid investors when considering whether to invest in such securities.

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 FCA for UK issuers) (PR 3.1.10R). Under section 87 of FSMA and PR 3.1.7R, the FCA 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.

In order to obtain this approval, an issuer is required to lodge the following with the FCA (UKLA/PN/903.3):

- a completed Form A (application for approval of a prospectus);
- the prospectus;
- 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;
- a letter identifying non-applicable items in the schedules and building blocks;
- if information is incorporated in the prospectus by reference to another document, a copy of that document;
- if relevant, a request for omission of information from the prospectus;
- contact details of individuals able to answer queries from the FCA;
- if relevant, a passport request;
- the relevant fee; and
- any other information the FCA may require.

The completed Form A, the relevant fee, and drafts of all other documents referred to above must be submitted to the FCA 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 FCA, 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 FCA before midday on the required approval date (PR 3.1.3R).

With effect from 24 March 2016, the Delegated Regulation made the following key changes:

- all drafts of a prospectus must be submitted in searchable electronic formats;
- the first draft of a prospectus must be accompanied by a cross-reference list, in searchable electronic format, if so requested by a national competent authority or the issuer may provide them voluntarily. Otherwise, if the order of information items in the prospectus does not coincide with that set out in the 2004 Prospectus Regulation, a cross-reference list must still be provided (PR 3.1.-1); and
- all subsequent drafts must include a blackline, provided that: (i) "page pulls" will suffice if there are limited changes only; and (ii) any changes not showing in the blackline must be identified in writing. All subsequent drafts must also be accompanied by an explanation of how the competent authority's comments have been addressed.

B. PUBLICATION REQUIREMENTS

Once a prospectus has been approved by the FCA, it must be filed and made available to the public as soon as practicable—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 3.2.3R). A prospectus may be made available to the public through:

(i) publication in a national newspaper where securities are to be offered;

(ii) distribution in printed form, free of charge, at the offices of the London Stock Exchange, the registered office of the issuer, and the offices of the placing agent;

(iii) distribution in electronic form on the website of the issuer or, if applicable, the placing agent; or

(iv) distribution in electronic form on the website of the London Stock Exchange.[37]

Under the Amending Directive, an issuer that publishes a prospectus in accordance with (i) and (ii) above must also publish the prospectus in electronic form, on either its own website or that of its placing agent (PR 3.2.4A).

Under the Delegated Regulation, the prospectus published in electronic form must (PR 3.2.6A):

- be easily accessible, in searchable electronic format, downloadable and printable; and
- not contain hyperlinks, except to include hyperlinks to each document incorporated by reference or the document's website.

Prospectuses made available via the issuer's website "shall take measures" (e.g., insertion of a disclaimer) to avoid targeting jurisdictions where the public offer is not being made. Access to a prospectus in electronic form must not be conditional on registration, the acceptance of a disclaimer limiting legal liability or payment of any fee.

37 The FCA maintains a list of approved prospectuses on its website.

The Prospectus Regulation, which will apply from 21 July 2019, will remove two of the publication options for an approved prospectus: (i) the publication in a newspaper; and (ii) the distribution in printed form at the office of the issuer. However, the requirement to provide a free copy to anyone who requests it is retained. The prospectus will be deemed available to the public where it is made available electronically on the website of any one of the issuer, offeror, or person asking for admission, the financial intermediaries placing or selling the securities or the website of the regulated market. It also requires ESMA to develop a free online searchable library for EU investors. The competent authority will be tasked with supplying ESMA an electronic prospectus once it is approved, as well as data necessary for ESMA classification.

C. OVERSEAS ISSUERS: HOME MEMBER STATE

Under the Prospectus Directive (and the Prospectus Regulation), 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 an issuer of equity (including convertibles) and low-denomination debt[38] not incorporated in the EEA (a non-EEA issuer), as its home member state will be either:

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

ii. the member state in which it makes its first application for admission to trading on a regulated market in the EEA,

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—this 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 states, by notice in writing to the relevant competent authority. Whilst the market view is that the home member states of such issuers will be the states 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.

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

The determination of a home member state for a non-EEA issuer 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 be the issuer's home member state for the purposes of the Transparency Directive, which was implemented in member states on 20 January 2007.[39]

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 (e.g., where the public offer is being undertaken in another member state or where 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 FCA 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.

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

i. the person making the request must do so in writing to the FCA 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 FCA 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 FCA 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 FCA 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 FCA has stated that it is likely to look more favourably upon a transfer

39 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.

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 FCA 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 FCA to other member states should comply with the following:

- the prospectus must be prepared in accordance with the Prospectus Rules and must be vetted by the FCA in the normal way; and
- in order to make a public offer in another member state, the FCA 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 FCA 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 FCA 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 FCA 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
- within three working days beginning on the date of the request.

The FCA 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. Under the Amending Directive, the FCA will be obliged to notify the applicant at the same time as the relevant Host State.

The procedure whereby 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 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:

- the issuer must 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 FCA with the Required Information, and the FCA will, as soon as practicable:
  - inform the issuer, offeror, or person seeking admission that it has received the Required Information; and
  - publish the Required Information on its website.

The relevant issuer will then be able to offer securities to the public in the UK. If the issuer also wishes to apply for admission of the securities to trading on a regulated market, then in addition to the above, it should 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 that 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

A. AIM RULES FOR COMPANIES

AIM is not a "regulated market", and as such, it is not subject to the regulatory regime brought in by the Prospectus Directive and the Transparency Directive. In addition, unlike with 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 historical 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. Appendix V further sets out the main differences between the requirements for listing on the Main Market and AIM. 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 other 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 AR 35)

An AIM company must appoint and retain a nominated adviser and broker at all times. In February 2007, the London Stock Exchange introduced the 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. **Admission Document** (AR 3)

An applicant must produce an admission document (see section A of Chapter 6 for further details) unless the company is using the AIM Designated Market (fast-track) admission procedure. (See section D of Chapter 6 for further details.)

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, substantial shareholders holding an interest (directly or indirectly) in 10 percent or more of the shares or voting rights in the company, and employees holding an interest (directly or indirectly) in 0.5 percent or more of a class of the shares in the company to enter into lock-in arrangements 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. **Transferability of Shares** (AR 32)

All AIM companies must ensure that their shares are freely transferable except where

a jurisdiction, statute, or regulation places restrictions upon transferability or where the 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*, to 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. The equivalent requirement under the Listing Rules for Main Market issuers is not subject to this carve-out.

v. Entire Class Admitted (AR 33)

In order to be eligible for admission, the company must seek admission for the entire class of securities being admitted.

vi. Settlement (AR 36)

All AIM companies must ensure that appropriate settlement arrangements are in place. In particular, their securities must be eligible for electronic settlement. Previously, the London Stock Exchange had been willing to waive the requirement for securities to be eligible for electronic settlement where this was prohibited by applicable law or regulation. However, this rule was changed on 1 September 2015 as a result of Article 3(2) of the CSD Regulation, which requires transactions in transferable securities that take place on a trading venue (such as the AIM) to be settled electronically and recorded in book entry form in a Central Securities Depository.

AIM Regulation[40] has published guidance on the "Category 3" issuers referred to in (iv) above. The guidance notes that the London Stock Exchange expects all existing "Category 3" issuers to be eligible for electronic settlement no later than 1 September 2015.

vii. 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.

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

The AIM Rules provide that:

- an investing company must raise at least £6 million in cash via an equity fundraising on or immediately before admission;
- 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;
- 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 policy[41] within 18 months of admission, it should seek the consent of its shareholders for its investing

40 *Inside AIM*: 07 August 2015.

41 In its guidance, the London Stock Exchange has stated that it would require a substantial portion (usually at least in excess of 50 percent) of all funds available to the investing company to have been invested.

policy at its next annual general meeting and on an annual basis thereafter until such time that its investing policy has been substantially implemented.

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. The AIM Note for Investing Companies also contains 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 ARs 7 (lock-ins), 13 (related party transactions), 21 (restrictions on deals) and 17 (disclosure of deals).

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

The London Stock Exchange has recently updated the AIM Note for Investing Companies to clarify that cash proceeds arising from a fundamental disposal under AR 15 (Fundamental changes of business) shall count towards the £6 million minimum funding to be raised by investing companies.

ix. Resource Companies (AIM Guidance Note for Mineral, Oil and Gas Companies: June 2009)

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. The guidance was updated in June 2009. This guidance includes recommendations that, for each admission of a resource company, a competent person's report on the company's assets and liabilities should be prepared no more than six months prior to the date of the admission document, issued by a suitably qualified person, and should include an up-to-date "no material change" statement. 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.

B. RECENT CHANGES TO THE AIM RULES FOR COMPANIES

Following the consultation process that the London Stock Exchange conducted on some proposed changes to the AIM Rules and the AIM Rules for Nominated Advisers, the London Stock Exchange published AIM Notice 50 on 8 March 2018 containing its feedback on the consultation and confirming several changes to the AIM Rules which took effect on 30 March 2018. Significant changes to the AIM Rules include: (i) the formalisation of the early notification process pursuant to which nominated advisers to applicants are now required to submit an early notification (in the form prescribed by the London Stock Exchange) prior to the submission of any Schedule 1

information; and (ii) changes to the requirements in respect of an AIM company's corporate governance arrangements.

In respect of the change described in (i) above, the precise timing of the notification is left down to the nominated adviser, although this must be prior to the submission of the information required by Schedule 1 of the AIM Rules (which must take place at least 10 business days before the expected date of admission). In the guidance notes to the revised AIM Rules, it is noted that submission of an early notification form that does not allow for "adequate time for discussion with the London Stock Exchange" may contribute to delay. Following the submission of an early notification form, a nominated adviser is also required to update the London Stock Exchange as soon as practicable if it becomes aware of any material new information and/or any change to the information submitted or circumstances of the applicant. In AIM Notice 50, the London Stock Exchange advise that where information is not yet available, a nominated advisor may state this in the early notification form and update the London Stock Exchange when the information becomes available, though nominated advisers are advised to give consideration to whether it is appropriate to make the early notification if a substantial amount of information is still missing. Previously, early notification only applied where a company's admission to AIM would raise potential issues.

In respect of the change described in (ii) above, the previous AIM Rules required an AIM company to publish details on its website of the recognised corporate governance code that the board of directors has decided to apply and how the company complies with that code, or if no code had been adopted, to expressly state this along with its current corporate governance arrangements. Under the amended AR 26, AIM companies are no longer permitted to "opt-out" of adopting a recognised corporate governance code and instead must publish details of the particular code that the board has decided to apply, how the company complies with such code, where it departs from its chosen code (including an explanation of the reasons for doing so) and the date that such information was last reviewed. The implementation of this requirement will take effect from 28 September 2018. However, all new applicants from 30 March 2018 will be required to state which corporate governance code they intend to follow. Although there is flexibility around which corporate governance code an AIM company may choose as the new rules do not define or prescribe a list, well-established benchmarks for AIM companies include the UK Corporate Governance Code and the QCA Code, the latter of which was updated on 25 April 2018 to coincide with these changes. However, for some companies, for example a company admitted to another market, it may be more appropriate to report using home jurisdiction standards.

CHAPTER 6

THE ADMISSION PROCESS AND DOCUMENTATION FOR AN AIM IPO

A. THE ADMISSION DOCUMENT AND DISCLOSURE

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

- where an issuer is making an offer of transferable securities to the public; and
- where an issuer is seeking admission to a regulated market.

The rules introduced by the Prospectus Directive 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 requires an FCA-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 purposes,[42] so an AIM admission document will typically not need to be approved by the FCA. The minimum content requirements for an admission document are set out in Schedule 2 of the AIM Rules and 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:

- pro forma financial information where there has been a "gross significant change" from historical financial information;
- the operating and financial review;
- capital resources;
- research and development, patents and licences;
- administrative, management and supervisory bodies and senior management;[43]
- remuneration and benefits;
- working capital,[44]

42 Please see Chapter 7 for details of the definition of "offer to the public" and an analysis of the applicable exemptions.

43 Schedule 2 to the AIM Rules sets out specific disclosures in relation to directors.

44 This is governed by Schedule 2 to the AIM Rules, which requires a clean working capital statement from the directors covering the 12 months from the date of admission as opposed to the requirement under the Prospectus Rules (12 months from the date of publication).

- capitalisation and indebtedness;
- interests of those in the offer;
- terms and conditions of the offer;
- admission to trading and dealing arrangements; and
- documents on display.

Other than in exceptional circumstances, AIM companies incorporated in an EEA State need to report on the basis of IAS, whilst AIM companies incorporated outside the EEA must prepare and present accounts in accordance with either IAS, US GAAP, Canadian GAAP, Australian IFRS or Japanese GAAP. Under Schedule 2 of the AIM Rules, historical financial information included in admission documents must be prepared on the same basis.

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:

- principal markets; and
- shareholdings and share options of non-board members of senior management.

Besides the content requirements derived from the Prospectus Rules, the additional requirements of Schedule 2 to the AIM Rules must be adhered to,[45] 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 applicant must 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, and 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 applicant'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.

In September 2014, the London Stock Exchange issued AIM Notice 40 to confirm modifications to the AIM application process following the imposition of further EU sanctions against Russia on 31 July 2014 (Council Regulation (EU) No 833/2014) and the amendment to this regulation published on 12 September 2014 by Council Regulation (EU) No 960/2014 (being together, the "Regulation"). The London Stock Exchange requires that all AIM companies must inform their nomad immediately if either now, or if it becomes the case in the future, that they fall within the Regulation (or any subsequent amendment to those regulations). The AIM company application form has been amended to include a confirmation that the company seeking admission to AIM does not come under Articles 5.1 or 5.2 of the Regulation.

45 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 warning regarding investments in AIM.

B. THE NOMINATED ADVISER

Each applicant 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[46] and for providing guidance on its continuing obligations under the AIM Rules.

In addition to assessing the appropriateness of applicants for AIM, a nomad is obliged to comply with the AIM 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. 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 non-exhaustive **list of actions** that the London Stock Exchange would normally expect a nomad to undertake in satisfying that principle.[47]

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 applicant's admission to AIM[48] ("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:

Admission Responsibility 1

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 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 to Admission Responsibility 3;
- 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

46 This would include a "reverse takeover".

47 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 the nomad can show that it has acted with due skill and care at all times.

48 This includes a reverse takeover and also a fast-track applicant.

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 Admission Responsibility 1, the London Stock Exchange has said that it expects a nomad to provide advice to the company on the appointment of advisers.

AIM Regulation[49] published clarificatory guidance on some of the key factors which should be considered by nomads when assessing the appropriateness of an applicant's securities for AIM:

- consideration (including the spread and nature of the shareholders buying the securities) should be given to how the securities are likely to trade when admitted to AIM, following discussion with the company's broker(s) and potential market makers;
- failure to raise initial target funds may be indicative of more fundamental issues of appropriateness and is a matter that should be properly explored by the nomad;
- limited issuances of securities should give rise to questions about the rationale for the applicant to seek admission to AIM;
- where there are concentrated shareholdings (e.g., connected due to family, business, or other interests/connections) securities issues should be considered in conjunction with issues of undue influence, control and ongoing corporate governance arrangements within the company.

Admission Responsibility 2

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 bearing 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' curricula vitae. In the case of directors who are not UK-based, appropriate investigations should be undertaken;
- test the information revealed by the questionnaires and curricula vitae, such as by conducting press searches, obtaining Companies House checks, taking up references and, where appropriate, obtaining third-party checks;[50]
- extend these investigations and considerations as appropriate to key managers and consultants who are discussed in the admission document;

49 *Inside AIM* (01 June 2015).

50 In Issue 5 of *Inside AIM* (October 2012), AIM Regulation (a dedicated team of professionals at the London Stock Exchange regulating AIM companies and nomads) stated that for overseas directors particularly, it would expect it to be the norm rather than the exception for a nomad to undertake third-party due diligence. The objective of third-party due diligence is to provide substantive and reliable independent information which will be beyond what nomads are able to ascertain from desktop searches.

- 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;
- 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 his (proposed) company role and consider whether each (proposed) director is suitable to be a director of a UK public company (i.e., the London Stock 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 the type of the applicant, its 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.

Admission Responsibility 3

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 or firms;
- 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 either that appropriate actions have been undertaken to resolve such matters or that such matters do not affect the appropriateness of the applicant for AIM.

Admission Responsibility 4

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, 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 applicant[51] 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.

Admission Responsibility 5

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 (AR 17) 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.

AIM Regulation[52] published guidance on how a nomad should assess compliance with AR 31 (AIM company and directors' responsibility for compliance). Nomads are encouraged to consider such an assessment in a more meaningful way, which would go beyond merely a review of the relevant documents to include an assessment of whether those policies are capable of working in practice, taking into account the nomad's knowledge of the company and its management. The London Stock Exchange also noted that such systems, procedures and controls must be in place by the time of admission of the securities.

AIM Regulation[53] published guidance encouraging nomads to approach directors' education in a practical and meaningful way, tailoring it to the individual characteristics of each board so that the education can be as effective as possible.[54] It set out some non-exhaustive guidance, including:

51 These sections would usually comprise the "key-information" and "Part 1" sections. (Part 1 of the admission document tends to describe, amongst other things, the business of the company, its prospects and its reasons for wanting to join AIM.) In addition, the nomad should pay particular attention to the risk factors.

52 *Inside AIM* (1 June 2015).

53 Issue 5 of *Inside AIM* (October 2012).

54 Issue 5 of *Inside AIM* (October 2012).

- the approach to directors' education should be of the same standard, whether for new admissions, for the take-on of existing AIM companies or in relation to the appointment of new directors to existing AIM company clients; and
- the education should be led by the nomad so that the nomad can satisfy itself as to the level of understanding and needs of that particular board whilst also providing itself with a good opportunity to get to know its client further and establish the basis of their working relationship for the future so that each understands their respective roles.

In addition to complying with the principles described above, the nomad must 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:
  - 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 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; 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:

Ongoing Responsibility 1

The nomad should maintain regular contact with an AIM company for which it acts, in particular so that it can assess whether: (1) the nomad is being kept up to date with developments at the AIM company; and (2) 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 to disclose price sensitive information under AR 11 and to identify breaches of the AIM Rules (e.g., in relation to AR 17 disclosures of specific types of information)); 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 Admission Responsibility 5 (see above) continue to be effective.

AIM Regulation has re-emphasised that the quality of a nomad's communication with its AIM clients is an important aspect of the AIM regulatory framework. The level and the nature of contact with AIM clients are matters that the London Stock Exchange leaves to nomads to determine on a case-by-case basis. However, it follows that where a nomad has active and meaningful contact with its clients, in circumstances where a company's financial position is deteriorating, the nomad will be well placed to assist the company to fulfil its regulatory obligations to make timely and full disclosure to the market.

Ongoing Responsibility 2

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.

Ongoing Responsibility 3

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 notify itself of 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.

Ongoing Responsibility 4

The nomad should advise the AIM company on any changes to the board of directors the AIM company proposes to make, including: (x) investigating and considering the suitability of proposed new directors; and (y) considering the effect any changes could have on the efficacy of the board as a whole for the company's needs, in each case bearing 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 Ongoing Responsibility 4;
- in relation to new directors, consider the requirements of Admission Responsibility 2 (see above) and take the appropriate actions, including issuing and reviewing directors' questionnaires, reviewing the directors' curricula vitae, 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:

Engagement Responsibility 1

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.

Engagement Responsibility 2

In assessing the appropriateness of an existing AIM company and its securities for AIM, a nomad should: (1) investigate and consider the suitability of each director and proposed director of the AIM company; and (2) consider the efficacy of the board as a whole for the company's needs, in each case bearing in mind that the company is admitted to trading on a UK public market.

Engagement Responsibility 3

The nomad should satisfy itself that the AIM company has in place systems, procedures and controls sufficient 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

Under AIM Nomad Rule 19, a nomad has an obligation to provide the London Stock Exchange with such information as it may reasonably require, as well as to comply with other liaison obligations. 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. Whilst 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.

v. Recent Amendments to the AIM Rules for Nominated Advisers

As discussed in Chapter 5, the London Stock Exchange has published certain amendments to the AIM Rules for Nominated Advisers in AIM Notice 50.

Before a Schedule 1 form is submitted in respect of a new applicant, a nominated adviser is required to submit an early notification form under AR 2 and nomads must engage with the London Stock Exchange where the circumstances of the applicant and its AIM securities could affect its appropriateness for AIM. The following non-exhaustive list of factors may be relevant to the consideration of appropriateness for AIM:

- questions as to the good character, skills, experience, or previous history of a director, key manager, senior executive, consultant, or major shareholder;
- the rationale for seeking admission to AIM is not clear;
- formal criticism of the applicant and/or any of its directors by other regulators, governments, courts, law enforcement, or exchange bodies;
- the applicant has been denied admission to trading on another trading platform or exchange;
- the applicant has a vague or ill-defined business model or its business operations;
- corporate structure and business models which may give rise to concerns regarding appropriateness for a public market, for example where there are issues regarding the legality of the applicant's business operations in the UK and any jurisdiction where

they are materially carried on; or the applicant has not yet secured the key licences, government approvals, intellectual property rights, or other property rights it will need to operate its business; and

- the applicant holds a derivative or economic interest in a material part of its assets or business operations via a risky contractual arrangement (for example contractual arrangements that are potentially unenforceable or may not be enforced or may be difficult to enforce in practice) with the owner of the assets or operations rather than by owning them itself or through a subsidiary.

C. ANCILLARY DOCUMENTATION

i. Early Notification

As discussed in Chapter 5, effective from 30 March 2018, the applicant's nominated adviser must now always submit an early notification form to the London Stock Exchange as soon as reasonably practicable and, in any event, prior to the submission of any Schedule 1 information. A template early notification form to be used by applicants, and setting out key information on the AIM company and its admission, is available on the London Stock Exchange's website.

ii. 10-Day Announcement

The applicant must provide to the London Stock Exchange, at least 10 business days before the expected date of admission to AIM, the information specified by Schedule 1 of the AIM Rules (AR 2), known as a "pre-admission announcement". 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 (including 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.

iii. 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 (AR 5);
- a completed application form (AR 5); and
- a declaration in the prescribed form under Schedule 2 of the Nomad Rules from the nominated adviser (as described in section B above) (AR 5).

iv. AIM Fee

Fees are payable on the basis of a post-admission invoice (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 certain markets including the Australian Securities Exchange, NYSE Euronext, the Deutsche Börse Group, the Johannesburg Stock Exchange, NASDAQ, the NYSE, NASDAQ OMX Stockholm, SIX Swiss Exchange, the TMX Group, or the UK's Main Market (referred to collectively as "designated markets", a current list of which can be found on the London Stock Exchange website) 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 nomad 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 applicant 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;
- the address of a website providing the company's latest published report and accounts, public documents and announcements it has made public over the last two years, and details of the rights attaching to its securities (and, if 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);[55]
- 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 A iii 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 document must contain any other information an

55 The financial information for a quoted company incorporated in the EEA must be prepared in accordance with IAS. Quoted companies not incorporated in the EEA may report in IAS, US GAAP, Canadian GAAP, Japanese GAAP or Australian IFRS.

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 applicant 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 applicants, 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 applicant 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, FCA-approved prospectus and will need to adhere to the relevant 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 earlier, 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 purposes[56]).

In order for a security to fall within the Prospectus Directive regime, it must be a "transferable security".[57] The key consideration in determining whether a security is a "transferable security" for these purposes is whether it is negotiable on a capital market. ESMA and the FCA 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 Directive[58] 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).

Note also that securities included in an offer where the total consideration under the offer is less than €8.0 million[59] (when aggregated with 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 €3 million and debt with a total consideration of €3 million in the same 12-month period, both offers would fall within the exemption.[60] Offers during the 12-month period where a prospectus has been required or where other exemptions have been applicable (e.g. offers to qualified investors) should not be included for the calculation of the limit. 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.

56 AIM ceased to be a "regulated market" in October 2004.

57 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".

58 "Q & A" published by CESR on 18 July 2006 and 21 September 2007. Note that the competent authorities of Germany and Poland have differing views. The Amending Directive extends the employee share scheme exemption relating to offers to the public. This is discussed in more detail in paragraph B(x) of this chapter.

59 Prior to 31 July 2011, this limit was €2.5 million. From 21 July 2018, the upper limit for the total consideration of offers which may be exempt from publishing a prospectus under Article 3(2)(b) increased to €8.0 million (from £5.0 million), calculated over a period of 12 months, under the Prospectus Regulation.

60 "Q & A" published by CESR on 21 September 2007.

The Prospectus Regulation introduces significant changes to the existing requirements for a prospectus when issuing further securities. In its Explanatory Memorandum, the European Commission acknowledged that issuers whose securities are already listed on a regulated market or the future SME growth market should enjoy the benefit of an alleviated prospectus for their secondary issuances. The proposed measures are therefore expected to reduce the cost of drawing up prospectuses and to make the resulting disclosure more relevant for potential investors.

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"; it 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 only for illustrative or informative purposes as constituting an offer.

iii. Free Offers

The Prospectus Directive provides that the obligation to publish a prospectus does not apply to shares offered, allotted, or to be allotted free of charge to existing shareholders. ESMA has clarified[61] that if securities are allocated with no element of choice or right to repudiate for the recipient[62] (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.

This concept is acknowledged in the Prospectus Regulation, that states that no "offer of securities to the public" will have taken place in circumstances in which the investor has had no individual decision to invest.

61 "Q & A" published by CESR on 18 July 2006 and re-issued by ESMA.

62 This would include, for example, bonus issues.

Offers of free shares that involve the recipient's decision whether or not to accept are treated as an offer for no consideration and as such would not, in ESMA's view, ordinarily require a prospectus.[63] 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).[64]

The Amending Directive currently removes this exemption on the basis that it is redundant, as all such free offers fall within the exemption that applies for any offer with a total consideration of less than €100,000.

B. EXEMPTIONS FROM "AN OFFER TO THE PUBLIC"

In addition to the carve-out described above for offers where the total consideration under the offer is less than €8.0 million[65] (when aggregated with any previous offers of the same security in the previous 12 months),[66] 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 FCA allows prospective qualified investors to self-certify their status.

A Qualified Investor is defined in Section 86(7) of FSMA 2000 as:

a) a person or entity described in points (1) to (4) of Section I of Annex II to the Markets in Financial Instruments Directive 2004/39/EC ("MiFID"),[67] other than a person who, before the making of the offer, has agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with MiFID; or

b) a person who has made a request to one or more relevant firms to be treated as a professional client in accordance with Section II of Annex II to MiFID and has not subsequently, but before the making of the offer, agreed in writing with that relevant firm (or each of those relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II to MiFID; or

c) a person who is an eligible counterparty in accordance with article 30 of MiFID and has not, before the making of the offer, agreed in writing with the relevant firm (or each of the relevant firms) to be treated as a non-professional client in accordance with the final paragraph of Section I of Annex II of MiFID; or

63 The FCA 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 ESMA 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 employees would otherwise receive), the employment relationship of itself provides hidden consideration—e.g., because the employees would have higher salaries if the shares were not made available to them. This line of argument would be speculative and difficult to prove.

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

65 This figure was increased to €8.0 million from 21 July 2018.

66 Note that the UK's "financial promotion" regime still applies to small offerings.

67 Points (1) to (4) of Section I of Annex II of MiFID include: (i) credit institutions; (ii) investment firms; (iii) other authorised or regulated financial institutions; and (iv) insurance companies.

d) a person whom:

(i) any relevant firm was authorised to continue to treat as a professional client immediately before 3 January 2018 by virtue of article 71.6 of MiFID; and

(ii) the firm may continue to treat as a professional client from 3 January 2018 by virtue of Section II.2 of Annex II to MiFID.

"Qualified Investors" fall into three main categories:

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 FCA on its register of qualified investors;[68] 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 FCA'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.

The Amending Directive widens the definition of "qualified investors" to include those persons or entities described in points 1 to 4 of section 1 of Annex II to Directive 2004/39/EC and other persons or entities treated as professional clients. The Amending Directive also dispenses with the separate regime for maintaining registers of qualified investors.

ii. An offer of securities made to or directed at fewer than 150 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 149 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.

68 Issuers can inspect this register to determine whether potential offerees are "qualified investors".

Note that the 150-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 FCA to ensure that any potential ambiguity in the regulations is not abused.

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 FCA's initial view was that if shares were placed with discretionary private-client brokers, their clients would count towards the 150-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:

1. is a qualified investor; and
2. 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 150-person threshold.

iii. An offer of securities where the minimum consideration per investor is at least €100,000

By imposing a minimum commitment, this exemption allows smaller issuers 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 €100,000

Under the Prospectus Regulation, the public offer exemption for wholesale debt securities with a minimum denomination of €100,000 remains and extends to non-equity securities traded on a regulated market only where qualified investors alone have access.

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

The Prospectus Regulation introduces a higher threshold to determine when companies must issue a prospectus. Under the Prospectus Regulation, no prospectus will be required for capital raisings below €1 million (as opposed to the €100,000 threshold currently in place).

A Member State may also choose to exempt offers of securities to the public from the prospectus obligation in the Prospectus Regulation or to establish other disclosure requirements, provided that the offer is only made to domestic investors in that sole member state and the total consideration of the offer over a period of 12 months is between €1 million and up to a maximum €8 million. Under this approach, the threshold at which an issue requires a prospectus or other disclosure document depends on whether the issue is cross border or, if domestic, in which jurisdiction, since the threshold will vary according to national law.

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 FCA as being equivalent to that of a prospectus**

The FCA 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 automatically give rise to withdrawal rights in the context of a supplementary document[69] and so may be preferred. However, it is possible that, if a supplementary document is released during the course of an offer to correct information contained in the equivalent documents which was erroneous or misleading in a material respect, the Takeover Panel will require the bidder to allow target shareholders who have already accepted the offer a limited period within which to withdraw their acceptances.

Bidders intending to issue a prospectus in relation to a securities exchange offer should consider the consequences of such withdrawal rights arising and may wish to consider adding a further condition or term to their offers. The Takeover Panel will be concerned to ensure that offers will not continue to be unconditional as to acceptances in the event that the bidders have no longer achieved the minimum 50 percent acceptance threshold. Bidders who might need to include such a provision are encouraged to consult the Takeover Panel in advance. In addition, bidders may want to take steps to prevent an offer from becoming or being declared unconditional as to acceptances when a statutory withdrawal period is running or in circumstances where a supplementary prospectus may subsequently have to be published. Bidders may also wish to consider organising their offers so that they become or are declared unconditional as to acceptances and wholly unconditional at the same time.

Schemes of arrangement (including those implementing takeovers) are generally not regarded as constituting "offers" for this purpose and so will not require publication of this "equivalent" document. The FCA, however, has expressed the view that a securities exchange offer which involves alternative forms of consideration (e.g., a cash alternative/ mix-and-match facility) requiring the target shareholders to make an investment decision as to which form of consideration to accept will constitute an "offer to the public" absent another exemption applying.

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

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

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

x. **Securities offered or allotted to existing or former directors or employees by their employer or by an affiliated undertaking if:**

- the company has its head office or registered office in the EU, provided a document is made available containing information on the number and nature of the transferable securities and the reasons for and details of the offer (under the Prospectus Regulation, this exemption will be extended to all issuers wherever the location of their head office or registered office);
- the company is established outside the EU and 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 transferable securities and the reasons for and details of the offer; or
- the company is established outside the EU and has securities admitted to trading on certain third-country markets, provided that a document is made available containing adequate information, including the number and nature of the transferable securities and the reasons for, and details of, the offer, in a language customary in the sphere of international finance.

xi. **Shares issued from the conversion or exchange of other securities, or from the exercise of rights conferred by other securities, and comprise less than 20% of the number of shares of the same class already admitted to trading**

Even if the shares issued from the conversion or exchange of securities comprise 20% or more of the number of shares of the same class already admitted to trading, a prospectus will not be required, so long as:

- a prospectus was drawn up under the Prospectus Regulation for the offer or admission to trading of the securities giving access to the shares;
- the securities giving access to the shares were issued before the prospectus regulation came into force;
- the shares qualify as Common Equity Tier 1 items under Article 26 of Regulation (EU) Number 575/2013 (the "CRR") of an institution (as defined in Article 4(1)(3) of the CRR) and result from the conversion of AT1 instruments issued by that institution as a result of a trigger event (as set out in Article 54(1)(a) of the CRR); and
- the shares qualify as eligible own funds or eligible basic own funds as defined in Section 3 of Chapter VI of Title I of Directive 2009/138/EC (the "Solvency II Directive"), and result from the conversion of other securities that was triggered for the purposes of fulfilling the obligations to comply with the Solvency Capital Requirement or group solvency requirement of the Solvency II Directive.

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 exemptions only from the obligation to publish a prospectus in connection with an admission to trading. One of the following issues of securities could nevertheless still qualify as an offer of securities to the public and require a prospectus for that reason. For instance, a rights issue or open offer may not require a prospectus because it falls within the 10 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 FCA 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 applies.

   Under the Prospectus Regulation, this exemption will apply to all issuers of fungible securities (including GDR issuers) and allow them to issue over a period of 12 months up to 20 percent of the same class of securities that are already admitted to the same regulated market.

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 FCA as being equivalent to that of a prospectus.

   As mentioned above, the FCA 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; however, it will prevent the triggering of statutory withdrawal rights 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 (even if target shareholders are not required to make an investment decision with respect to alternative forms of consideration).

iv. **Securities offered or allotted in connection with a merger or a division**, if a document is available containing information that is regarded by the FCA 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 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 market.[70]

ESMA has clarified[71] that the exemption does not apply to cases of non-transferable securities converted into shares on the basis that the Prospectus Directive specifically defines "securities" as "transferable securities".

Under the Prospectus Regulation, this limit will be capped at 20 percent of the same class of shares.

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 FCA 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 FCA will generally not express a view (save to challenge in specific cases). Whilst the FCA 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 Rules. The FCA 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 FSMA.

D. SECONDARY OFFERINGS BY MAIN MARKET COMPANIES

i. Placing

A placing of shares to qualified investors and/or fewer than 150 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.

70 The FCA initially 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 FCA has modified its position and has 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 FCA 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 FCA at an early stage.

71 CESR "Q & A" published in February 2007.

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

Previously, open offers and rights issues nearly always required a prospectus, even if they fell within the 10 percent limit, as they typically constituted an "offer to the public". However, the Amending Directive introduced the proportionate disclosure regime, which affects the disclosure requirements in relation to certain secondary issues (including rights issues and certain pre-emptive open offers) and issues by SMEs and issuers with reduced market capitalisation.[72]

In respect of certain secondary issues, under the proportionate disclosure regime, a full prospectus is not required for rights issues or statutorily pre-emptive open offers in respect of shares which are already admitted to trading on a regulated market or a multilateral trading facility that meets certain ongoing disclosure requirements and rules on market abuse (which includes AIM). Where statutory pre-emptive rights have been disapplied by issuers, the proportionate disclosure regime would apply, not requiring the publication of a prospectus, if the disapplied statutory pre-emptive rights have been replaced with "near identical rights". Given the criteria for "near identical rights", where statutory pre-emption rights have been disapplied, the proportionate disclosure regime is likely to be available only for rights issues or compensatory open offers (and not open offers with no compensatory element, as the "near identical rights" criteria would be unlikely to be met).

For pre-emptive secondary issues, a proportionate prospectus is required, the minimum disclosure requirements for which are set out in Annexes XXIII and XXIV of the 2004 Prospectus Regulation (as implemented by the Prospectus Rules) rather than in Annexes I and III. The key disclosure differences for a proportionate prospectus produced under these proportionate disclosure schedules are (amongst others):

- historical financial information shall be required only for the last financial year (or such shorter period that the issuer has been in operation);
- no disclosure is required of selected financial information, operating and financial review, or capital resources; and
- reduced disclosure is required on the history, current status, business and material contracts of the issuer.

See further Appendix III, which sets out the disclosure requirements for proportionate prospectuses on pre-emptive secondary issues.

In respect of proportionate prospectuses drawn up under the proportionate disclosure regime for pre-emptive secondary issues, the beginning of the prospectus must contain a statement to indicate clearly that:

1. the pre-emptive secondary issue is addressed to shareholders of the issuer; and
2. the level of disclosure of the prospectus is proportionate to that type of issue.

72 An issuer with "reduced market capitalisation" is an issuer with an average market capitalisation of less than €100 million on the basis of end-of-year quotes during the last three calendar years.

SMEs and issuers with reduced market capitalisation may also elect to prepare a prospectus in connection with either: (x) an offer of securities to the public; or (y) admission to trading on a regulated market, in accordance with the requirements of the proportionate disclosure schedules set out in Annexes XXV to XXVIII to the 2004 Prospectus Regulation (as implemented by the Prospectus Rules). The key disclosure differences for a proportionate prospectus produced under these proportionate disclosure schedules are (amongst others):

- historical financial information shall be required only for the last two financial years (or such shorter period that the issuer has been in operation);
- no disclosure is required on the issuer's quarterly or half-yearly financial information published since its last audited results;
- no operating or financial review disclosure is required if the issuer's accounts[73] are included in the prospectus; and
- reduced disclosure is required on the operations of the issuer.

See further Appendix III, which sets out the disclosure requirements for proportionate prospectuses for SMEs and issuers with reduced market capitalisation.

SMEs and issuers with reduced market capitalisation, however, may still elect to draw up a prospectus in accordance with the full disclosure schedules in Annexes I to XVII and XX to XXIV of the Prospectus Regulation.

The European Commission has noted that the Amending Directive did not go far enough to alleviate secondary issuers of unnecessary disclosure obligations. Under the Prospectus Regulation, issuers of any securities (including GDR issuers and debt securities) that have been admitted to trading on a regulated market or an SME growth market for at least 18 months and who issue more securities of the same class are able to publish an "alleviated disclosure" prospectus. This alleviated disclosure prospectus will contain minimum financial information covering the last financial year only (which may be incorporated by reference).

The Prospectus Regulation introduces a simplified prospectus for secondary issuances. In April 2018, ESMA published the first part of its technical advice under the Prospectus Regulation in relation to three consultation papers in July 2017. For secondary issuances, the key changes to note include:

- *Statement of compliance*

  ESMA will not be requiring the statement to the FCA confirming compliance with the Transparency Directive and MAR in its technical advice.

- *Financial statements*

  ESMA is concerned that if the requirement only asks for inclusion of published financial statements and there is a danger that if financial statements have not been published and the issuer is in breach of its Transparency Directive obligations, neither the FCA nor an investor would be aware of this. Therefore, ESMA has modified the requirement so that the issuer will include financial statements that are required to be published.

73 Such accounts must be prepared in accordance with Article 46 of Directive 78/660/EEC and Article 36 of Directive 83/349/EEC.

- *Single regime*

  ESMA noted that the majority of respondents did not support a different secondary issuance regime for regulated markets and SME Growth markets.

- *Corporate governance*

  ESMA agreed that a disclosure item providing information on corporate governance would not be necessary in the secondary issuance regime. The proposed disclosure item was therefore deleted.

iii. Shares Issued in Connection with Takeover Offers

No prospectus is required under the rules as long as an "equivalent" document is published, which the FCA has indicated must be effectively identical to a prospectus. The FCA 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.

Under the Prospectus Regulation, the existing requirement to produce a prospectus (or equivalent document) for securities offered in connection with a takeover by means of an exchange offer, a merger or division will be replaced with a requirement to make a document available containing information describing the transaction and its impact on the issuer.

E. SECONDARY OFFERINGS BY AIM COMPANIES

i. Placing

No prospectus will be required, as the "qualified investor" and "150-person"[74] 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 FCA-approved prospectus. (See section D(ii) above for instances where the proportionate disclosure regime will apply.)

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 and 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

74 The exemption is for 150 persons in the UK as a result of the early implementation of certain parts of the Amending Directive.

approach being taken by AIM companies in 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 suggests that whilst the threshold in relation to AIM companies should remain 5 percent of issued share capital, flexibility should be granted to AIM companies up to a threshold of 10 percent (above which particularly cogent justification will be required)[75]

- 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, it 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, which the FCA has indicated must be identical to a prospectus. The FCA 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, in contrast to the position with Main Market companies, shares issued pursuant to a scheme of arrangement will not generally require publication of this "equivalent" document, as a scheme of arrangement is not currently regarded as constituting an "offer to the public". However, as is the case with Main Market companies, the FCA has expressed the view that a securities exchange offer by an AIM company which involves alternative forms of consideration (e.g., a cash alternative/mix-and-match facility), requiring the target shareholders to make an investment decision as to which form of consideration to accept, will constitute an "offer to the public" absent another exemption applying.

F. SME DISCLOSURE REGIME

AIM was registered as a SME growth market on 3 January 2018.

An SME means any of the following:

1. companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria: an average number of employees during the financial year of less than 250, a total balance sheet not exceeding €43 million and an annual net turnover not exceeding €50 million; or

75 National Association of Pension Funds: Corporate Governance Policy and Voting Guidelines for Smaller Companies, November 2012.

2. small and medium-sized enterprises as defined in point (13) of Article 4(1) of MiFID II, being companies that had an average market capitalisation of less than EUR 200 million on the basis of end-year quotes for the previous three calendar years.

The Prospectus Regulation outlines a new 'EU Growth' prospectus which will be available from 21 July 2019, targeting SMEs that do not have securities traded on a regulated market. This is based on the rationale that SMEs usually need to raise relatively lower amounts than other issuers and the cost of drawing up a standard prospectus can be disproportionately high and might deter them from offering their securities to the public. The reduced information required to be disclosed in EU Growth prospectuses should be calibrated in a way that focuses on information that is material and relevant when investing in the securities offered, and on the need to ensure proportionality between the size of the company and its fundraising needs, on the one hand, and the cost of producing a prospectus, on the other.

The proportionate disclosure regime for EU Growth prospectuses is not available where a company already has securities admitted to trading on regulated markets, so that investors on regulated markets feel confident that the issuers whose securities they invest in are subject to one single set of disclosure rules. Therefore, there should not be a two-tier disclosure standard on regulated markets depending on the size of the issuer.

Certain non-SME companies offering securities to the public with a total consideration not exceeding €20 million may be able to benefit from the EU Growth prospectus regime, as well as the types of companies defined in Article 15(1) of the Prospectus Regulation.

Currently, a prospectus is not required for securities listed on MTFs, provided that they are not an 'offer of securities to the public' as defined in the Prospectus Regulation.

i. Content and Format of the EU Growth prospectus

In April 2018, ESMA published the first part of its technical advice on the minimum disclosure requirements for the EU Growth prospectus. The technical advice identifies the minimum disclosure requirements for the EU Growth prospectus, the order in which they should be presented, and the format and content of the specific summary. Subject to endorsement by the European Commission, the technical advice will form the basis for the delegated acts to be adopted by the European Commission by 21 January 2019.

ii. Format of the EU Growth prospectus

In accordance with the Prospectus Regulation, the EU Growth prospectus must consist of:

i. Registration document;

ii. Securities note; and

iii. A summary based on Article 7 of the Prospectus Regulation.

iii. Content of the EU Growth prospectus

- *Registration Document*

  The technical advice included a separate table detailing disclosure items for an EU Growth registration document for equity (Annex 22) and non-equity (Annex 23) issues. A number of changes have been proposed to the content requirements for registration documents including, but not limited to, the following:

i. The cover note should include a statement indicating that it is a prospectus drawn up pursuant to Article 15 of the Prospectus Regulation;

ii. A cross-reference table should be included in the prospectus since it would be helpful for investors seeking to locate specific information that is incorporated by reference;

iii. A section on persons responsible, third party information, experts' reports, and competent authority approval should be included;

iv. A section on strategy, performance and business environment should be included to provide insight into the issuer similar to the information provided in management presentations and roadshows;

v. A diagram highlighting the issuer's organisational structure shall be required to the extent not included elsewhere in the registration document;

vi. Where an issuer of equity or retail debt has previously published a profit forecast or estimate, this information should be presented in the prospectus. Any profit forecast or estimate that has not previously been published may also be included for equity issues if the issuer considers it to be pertinent information for investors;

vii. Risk factors should be material and specific to the issuer, and should be corroborated by the content of the registration document. These should be set out in a standalone section to emphasise that potential investors should carefully read its contents in order to make an informed decision;

viii. A section on corporate governance should be included. Information on the remuneration paid to the issuer's management should be included to the extent that it is not covered elsewhere in the registration document;

ix. A section on shareholder and security holder information should be included, setting out the existence of any legal and arbitration proceedings, the issuer's shareholder structure, the existence of conflicts of interest, related party transactions, material contracts and information on the issuer's memorandum and articles of association. The history of share capital requirement only applies to a period of 12 months prior to the approval of the prospectus, rather than to the period covered by the annual financial statements;

x. A section on financial statements should be included. As proposed, issuers will also be able to include in the EU Growth prospectus financial statements prepared under national accounting standards. If issuers wish to appeal to a broader pool of non-local investors, it would be possible to adopt IFRS on a voluntary basis. Information on the issuer's borrowing and funding structure since the end of the last financial period for which financial statements are included in the prospectus must be included for both equity and non-equity issuers, but information on past investments need only be disclosed to the extent not presented elsewhere in the prospectus; and

xi. Where the registration document is being prepared on a standalone basis, or where the prospectus is being used for the issue of shares, ESMA proposes that the issuer's dividend policy be included. A negative statement is required if an issuer does not have a dividend policy in place.

- *Securities Note*

  As for the registration document, ESMA's technical advice split the securities note disclosure requirements for equity and non-equity issues into separate schedules (Annex 24 and Annex 25 respectively). These include:

  i. Purpose, persons responsible, third party information, expert reports and competent authority approval;

  ii. Risk Factors;

  iii. Details of the offer/admission;

  iv. Terms and conditions of the securities; and

  v. Guarantor information (if any).

  In addition, ESMA proposes a section requiring a working capital statement and statement of capitalisation and indebtedness, although this section is only applicable for equity issues by companies with a market capitalisation above EUR 200 million.

- *EU Growth Summary*

  In order to ensure that the summary of an EU Growth prospectus is considerably shorter than the summary required under Article 7 for a standard prospectus, ESMA has advised:

  i. The maximum length of the summary is reduced to six sides of A4 paper;

  ii. The total number of risk factors included in the summary shall be 15 (the same as for a standard prospectus under Article 7);

  iii. A summary of the underwriting agreements only needs to be included to the extent that it is applicable. Where the offer is underwritten on a firm commitment basis, any portion not covered must be stated;

  iv. Issuers must disclose financial measures that provide information to investors in relation to the issuer's revenue, profitability, assets, capital structure and, where included in the prospectus, cash flows and KPIs; and

  v. Where such information is disclosed in the prospectus, the pro-forma financial information must also be disclosed in the summary.

G. THE UNIVERSAL REGISTRATION DOCUMENT

A new concept introduced by the Prospectus Regulation is the "universal registration document" ("URD"). Issuers already admitted to trading to a regulated market or MTF will be allowed to draw up a URD. The URD will be capable of being used as part of any future equity or debt prospectus. The aim of this concept is to alleviate the burden of producing a prospectus for frequent issuers. Where an issuer draws up a complete registration document every year, describing the company's business, finances, earnings, prospects and governance, it will be afforded a fast-track approval with the competent authority if a prospectus is later required.

The European Commission considers that, as the main constituent part of the prospectus has either already been approved or is already available for review by the competent authority, the competent authority should be able to scrutinise the remaining documents within five, rather than ten, working days. Under the Prospectus Regulation, issuers are allowed to publish their annual and half-yearly reports as part of the URD.

Issuers whose securities are traded on an MTF, and issuers which are exempted from publishing annual and half-yearly financial reports, are allowed to incorporate by reference in a prospectus all, or part of, their annual and interim financial information, audit reports, financial statements, management reports, or corporate governance statements, subject to their electronic publication.

Frequent issuers will need to inform the competent authority at least five working days before the date they envisage submitting an application for approval. An issuer that has filed and received approval for a URD for three consecutive years is considered to be well-known to the competent authority. All subsequent URDs can therefore be filed without prior approval and reviewed on an ex-post basis by the competent authority, where that competent authority deems it necessary. Where the issuer subsequently fails to file a URD for one financial year, the benefit of filing without approval would be lost and all subsequent URDs would need to be submitted to the competent authority for approval until the condition of approval for three consecutive years has been met once more.

CHAPTER 8

CONTINUING OBLIGATIONS AND DTR FOR MAIN MARKET COMPANIES

A. LISTING PRINCIPLES (LR 7)

The Listing Rules contain two overreaching "listing principles" applicable to all companies with a premium or standard listing, plus six "Premium Listing Principles" applicable to issuers with premium listings of equity securities on the Main Market only. These listing principles are enforceable by the FCA as "rules" and are designed to ensure that issuers adhere both to the spirit and to the letter of the Listing Rules. The FCA has emphasised that whilst disciplinary cases may be brought in conjunction with action for breach of a specific rule or rules, it is willing to take enforcement action on the basis of the listing principles alone.

The listing principles require a relevant issuer to:

i. Listing Principle 1: Take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations

The FCA has clarified that this listing principle is limited to a listed company's obligations under the Listing Rules, Disclosure Rules, Transparency Rules and corporate governance rules.

FCA guidance has determined that the focus of this listing principle is on listed companies having adequate procedures, systems and controls in relation to (LR 7.2.2G):

- 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.

The timely and accurate disclosure of information to the market is a key obligation of listed companies, and for these purposes FCA guidance provides that a listed company with a premium listing of equity securities should have adequate systems and controls to be able to ensure that (LR 7.2.3G):

- 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.

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

- lead to the identification of potential inside information, as it arises;
- ensure that potential inside information that has been identified is reported and assessed by the appropriate personnel to determine whether it should be announced;
- ensure that announcements are accurate and complete;
- ensure appropriate steps are taken to keep inside information confidential; and
- ensure where market soundings are undertaken the record keeping and other requirements are complied with.

ii. Listing Principle 2: Deal with the FCA in an open and co-operative manner

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

In August 2014, the UKLA provided guidance on this listing principle, stating that the obligation under the principle is broader than simply requiring issuers to ensure that they deal with the FCA in an open and co-operative manner on ongoing matters. In particular, the principle also requires issuers to approach the FCA in relation to certain types of significant transactions (including, by way of example, reverse takeovers and Class 1 disposals by issuers in severe financial distress). The FCA advises that issuers who are unclear on the application of this listing principle to a transaction should consult the FCA "at the earliest possible stage".[76]

iii. Premium Listing Principle 1: 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 FCA by reference to an objective test.

In July 2016, the GC100[77] published updated 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[78] 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);

76 Under LR 1.2.6G, any consultation with the FCA must be submitted in writing, save in circumstances of exceptional urgency or in the case of a submission from a sponsor in relation to the provision of a sponsor service.

77 The GC100 is the Association of General Counsel and Company Secretaries of the FTSE 100, which was formed in March 2005.

78 The Institute of Chartered Secretaries and Administrators published guidance in July 2012 defining good practice for board-level induction.

- all directors attend a regular programme of ongoing training to update and refresh their skills and knowledge;
- 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; and
- all directors are free from conflicts of interest between duties to the company and private interests and that there are systems and controls in place to manage any such conflicts.

iv. Premium Listing Principle 2: Act with integrity towards holders and potential holders of its premium listed equity securities

There is clearly an overlap here with the DTR and the "market manipulation" regime,[79] and the behaviour targeted by this listing principle could include any deliberate act to mislead shareholders or potential shareholders.

v. Premium Listing Principle 3: All equity shares in a class that has been admitted to premium listing must carry an equal number of votes on any shareholder vote

The FCA's stated intention behind Premium Listing Principles 3 and 4 is to prevent attempts by issuers to circumvent the various protections in the Listing Rules that apply to premium listings, via structural changes to share classes and constitutions. The FCA's guidance on both of these principles is that it is seeking to prevent flagrant abuses rather than focus on borderline cases. Premium Listing Principle 3 is aimed at preventing super-voting shares from being included in premium listed classes of shares via issuers' constitutions.

vi. Premium Listing Principle 4: Where a listed company has more than one class of equity shares admitted to premium listing, the aggregate voting rights of the shares in each class should be broadly proportionate to the relative interests of those classes in the equity of the listed company

Premium Listing Principle 4 is intended to prohibit artificial structures involving multiple classes of shares with different voting powers. With regard to the application of Premium Listing Principle 4, LR 7.2.4G provides guidance on the factors that the FCA will take into account when assessing whether voting rights attaching to different classes of premium listed shares are proportionate. These include, without limitation, the extent to which the rights of the classes differ other than voting rights (e.g., dividend or return-of-capital rights), the extent of dispersion and relative liquidity of the classes, and the commercial rationale for the difference in the rights.

vii. Premium Listing Principle 5: Ensure that it treats all holders of the same class of its listed equity securities which 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.

Some 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,

79 The "market manipulation" regime in the UK is principally governed by section 90 of the Financial Services Act 2012—a detailed analysis of this area is outside the scope of this Guide.

financial or other material disadvantage".[80] Not surprisingly, the FCA has recommended[81] that any such powers be considered carefully to ensure that they do not offend the "equality of treatment" principle. The FCA 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.

viii. Premium Listing Principle 6: Communicate information to holders and potential holders of its listed equity securities in such a way as to avoid the creation of a false market in such listed equity securities

This listing principle overlaps with the DTR in particular. No guidance is given by the FCA on the standard of behaviour that is required, but recklessness in communicating (or not communicating) information to shareholders may lead to a breach.

In a consultation paper published by the FCA in December 2017, the FCA proposed to alter the wording of Premium Listing Principle 6 to restore the wording to that of the former Listing Principle 4 (LP4) from which it was originally derived. The FCA specifically proposes to change "creation" to "creation or continuation" of a false market. The FCA has asked for comments on this proposal by 1 February 2018. The FCA's final decision is still outstanding.

ix. Reception to Listing Principles and FCA Enforcement

When the listing principles were first introduced, 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 FCA 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 FCA 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 issuers 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 FCA 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, these general principles to the Listing Rules require issuers to take a broader view of their regulatory obligations and undoubtedly make it more difficult for any issuers wishing to circumvent the specific rules to do so without consequence. As directors of issuers are likely to be involved in establishing adequate systems and controls under the listing principles, they may be "knowingly concerned" in breaches of the Listing Rules (which include the listing principles) if any systems and

80 Listed securities must be freely transferable. (See Chapter 1 for details.) The FCA 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.

81 FCA Technical Note on the Listing Rules.

controls are inadequate, and they may be held personally liable to disciplinary action for breach under FSMA.

B. DISCLOSURE RULES AND TRANSPARENCY RULES

i. Structure of the DTR

The Disclosure Rules and Transparency Rules (the "Pre MAR DTR") implemented the EU's Market Abuse Directive ("MAD") and the Transparency Directive in the UK. The Disclosure Rules were first introduced in 2005, with the Transparency Rules following on 20 January 2007. The Pre-MAR DTR underwent significant changes on 3 July 2016 as a result of the introduction of the Market Abuse Regulation ("MAR"). Following MAR's implementation the following key changes have been made:

- the Pre-MAR DTR have been renamed "Disclosure Guidance and Transparency Rules" ("DTR"). The sections relating to disclosure in the DTR are now guidance only as opposed to rules and the substantive rules are instead found in MAR;
- the Pre-MAR DTR 1 to 3 have been largely removed and replaced with signposts to the relevant provisions of MAR; and
- the Model Code (which was set out in Annex 1 to LR 9) has been repealed and replaced with general guidelines on restricting dealings with securities by "persons discharging managerial responsibilities".

Where relevant, this Part B will discuss the disclosure obligations that have been introduced by MAR and outline where these obligations differ from those under the pre-MAR DTR.

DTR 2 and 3 contain the main body of the Disclosure Guidance regulating both the disclosure of information to the market and the notification obligation of issuers, PDMRs, and their connected persons in relation to share dealings. DTR 1A, 4, 5 and 6 set out the Transparency Rules covering periodic financial reporting, vote holder/issuer notification rules and certain continuing obligations, and access to information. Finally, DTR 1B, 4 and 7 contain what are commonly referred to as the "FCA's corporate governance rules". These rules are discussed in more detail in this chapter.

The implementation of Directive 2013/50/EU (the "Transparency Directive Amending Directive" or "TDAD") on 26 November 2015 introduced a number of changes to the DTR including: an obligation on issuers to declare their home member state under DTR 6.4; extending the period within which half yearly reports must be published to three months after the end of the financial period and replacing the definition of "qualifying financial instrument" in DTR 5.3 to reflect the wording in the impending Transparency Directive.

ii. Disclosure of Inside Information

The disclosure obligations for issuers under the DTR and MAR are designed to ensure that there is prompt and fair disclosure of relevant information to the market. Issuers are under an express responsibility to ensure that inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public. This is coupled with a further requirement that issuers must not combine the disclosure of inside information with the marketing of activities.[82]

82 Article 17(1) MAR (this replaces the equivalent provision in Pre-MAR DTR 1.3.4 which has now been deleted).

Article 17(1) MAR provides that issuers must inform the public as soon as possible of inside information which directly concerns the issuer, unless Article 17(4) MAR applies (which allows the disclosure of inside information to be delayed in certain circumstances).[83]

- *Definition of "inside information" (Article 7 MAR and DTR 2.2.4G to 2.2.8G)*

  "Inside information" is information of **a precise nature** that:

  - has not been made public;
  - relates **directly or indirectly** to one or more issuers or to one or more financial instruments; and
    - would, if it were made public, **be likely to have a significant effect on the prices** of those financial instruments or on the price of related derivative financial instruments.[84]

  For these purposes, information will be "precise" if it indicates a set of circumstances which exist or may reasonably be expected to come into existence (or an event that has occurred or may reasonably be expected to occur), where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or that event on the prices of the financial instruments or related derivative instruments. 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 the effect of the information 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, Article 7(4) MAR states that an issuer should consider whether it is information which if it were made public would have a significant effect on the prices of the securities and would be information which a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

  Note that MAR extends the scope of the market abuse regime by providing specific definitions of inside information for commodity derivatives, emissions allowances, and for persons charged with the execution of orders concerning financial instruments (and derivative instruments in relation to such products).

  DTR 2.2.4G(2) indicates that there is no figure (percentage change or otherwise) that can be set for any issuer when determining what constitutes a significant effect on the price of the financial instruments, as this will vary from issuer to issuer. Guidance on the operation of the "reasonable investor test" requires an issuer to take account of the fact that the significance of information will vary between issuers and depend on a variety of factors, such as the issuer's size, recent developments, and market sentiment about the issuer and the sector in which it operates. In addition, the issuer is to assume that a reasonable investor will make investment decisions relating to the investment to maximise their economic self-interest.[85]

83 Note that this replaces Pre-MAR DTR 2.2.1A and 2.2.3G.
84 Article 7(1) MAR. Note that this replaces Pre-MAR DTR 2.2.3G and section 118(C) FSMA which has now been repealed.
85 DTR 2.2.5G.

Furthermore, any assessment should take into consideration the anticipated impact of the information in light of the totality of the issuer's activities, the 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.[86]

- *Timing of disclosure*

Subject to a very limited ability to delay disclosure, MAR provides that any required announcement must be made "as soon as possible" in respect of the inside information.

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.

Note that the FCA is not likely to regard the inability physically to convene a full board meeting as justification for 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.[87]

If an issuer is required to notify information to a RIS ("Regulatory Information Service") at a time when a RIS is not open for business, it must distribute the information as soon as possible to: (1) not less than two national newspapers in the United Kingdom; (2) two newswire services operating in the United Kingdom; and (3) a RIS for release as soon as it opens. The fact that a RIS is not open for business is not, in itself, sufficient grounds for delaying the disclosure or distribution of information.

- *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 FCA 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.

86 DTR 2.2.6G.
87 UKLA Technical Note, March 2017

Guidance under the DTR states that 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 MAR. An issuer that is in any doubt about the timing of its disclosure obligations should consult the FCA at the earliest opportunity.

- *Communication with third parties*

  FCA guidance (DTR 2.2.10G) acknowledges that many issuers provide unpublished information to third parties such as analysts, employees, credit-rating agencies, finance providers and major shareholders, often in response to queries from such parties. Whilst accepting that the fact that information is unpublished does not in itself make it inside information, the guidance emphasises that any unpublished information that does constitute inside information may be disclosed only in accordance with the DTR, and issuers must ensure compliance at all times.

- *Publication on an issuer's website (Article 17(1) MAR)*

  The general disclosure obligation under Article 17(1) MAR requires that an issuer must, for a period of five years following publication, post on its website all inside information that it is required to disclose publically. Note that this is a more onerous requirement than what had been the equivalent obligation under Pre-MAR DTR 2.3.5R (which has now been repealed), which only required information to be published on the website for one year. ESMA's Final Report on the draft technical standards states that all information to be published on a website must appear in an "easily identifiable section of the website". The Law Society has clarified that issuers can comply with the requirement by posting the information on the section of their website that contains all of the regulatory information and do not need to establish a separate section.[88]

  Under Article 17(10) MAR, ESMA is tasked with developing technical standards on the public disclosure of information. These standards, which came into force in 2016, provide further technical information regarding the publication of information on an issuer's website.

iii. Delaying Disclosure

Under Article 17(4) MAR an issuer may delay public disclosure of inside information provided that:

(1) immediate disclosure is likely to prejudice the legitimate interests of the issuer;

(2) delay of disclosure is not likely to mislead the public; and

(3) the issuer is able to ensure the confidentiality of the information.

88 Law Society Q&A on the Market Abuse Regulation, 5 July 2016.

In February 2016, the FCA clarified that it is their and ESMA's expectation that Article 17(4) should be narrowly interpreted and that **all** of the conditions set out under Article 17(4) must be met in order to delay the disclosure of information. ESMA published its guidelines regarding delay in the disclosure of inside information in October 2016.

MAR introduces a further requirement that an issuer must notify the FCA in writing of its decision to delay an announcement immediately after the information is disclosed to the public. The notification is made using an online form and must contain certain prescribed information such as the date and time of the decision to delay disclosure and the identities of the people responsible for making that decision. The technical standards published by ESMA also set out the requirements for the internal records that an issuer must maintain when delaying disclosure. MAR also requires issuers to provide a written explanation of the decision to delay but currently the FCA has clarified that this information will only need to be provided upon request. In any event, it is essential that issuers keep clear and comprehensive records of any decisions to delay disclosure of inside information.

Whilst accepting that "delaying disclosure of inside information will not always mislead the public", DTR 2.5.2(G) 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 February 2017, the FCA amended DTR 2.5 by removing the non-exhaustive list of affairs that may constitute legitimate interests that would justify delaying disclosure of information, as the list overlapped with ESMA's final guidance.[89] According to the ESMA guidance dated 20 October 2016, in applying Article 17(4) MAR, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:

- the company is conducting negotiations, the outcome of which would likely be jeopardised by immediate public disclosure (examples of negotiations include those related to mergers, acquisitions and restructurings);
- the financial viability of the company is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders by jeopardising the conclusion of the negotiations designed to ensure the financial recovery of the company;
- where the issuer has developed a product or invention and the immediate public disclosure of such information may jeopardise the rights of the issuer;
- where the issuer is planning to buy or sell a major holding in another entity and the disclosure of such information would jeopardise the conclusion of the transaction; and
- where a transaction previously announced is subject to a public authority's approval, and such approval is conditional on additional requirements, where the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the transaction.

As part of the guidance ESMA also issued an indicative, non-exhaustive list of the situations in which delay of disclosure of insider information is likely to mislead the public namely, where the inside information whose disclosure the issuer intends to delay is:

89 Guidance in DTR 2.5.5G.

- materially different from the previous public announcement of the issuer on the matter to which the inside information refers to; or
- regards the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced; or
- in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, road shows or any other type of communication organised by the issuer or with its approval.

The FCA has stated that a company should not be obliged to disclose "impending developments" that could be jeopardised by such premature disclosure.

Whatever the rationale, where an issuer decides to delay disclosure, it should follow the steps set out below.

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;
- prepare an internal form which details why the delay is legitimate;
- prepare a notification to the FCA in the prescribed form stating that it is delaying disclosure;
- 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 confidentiality.

iv. Liquidity Support

Article 17(5) MAR replaced Pre-MAR DTR 2.5.5AR in relation to liquidity support but the content broadly remained the same: it may be appropriate to allow the delay of the disclosure of inside information by credit or financial institutions in order to preserve the stability of the financial system. The disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, may be delayed, provided that:

- the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;
- it is in the public interest to delay the disclosure;
- the confidentiality of that information can be ensured; and
- the FCA has consented to the delay on the basis that the three conditions above are met.

The FCA will ensure that the disclosure is only delayed for a period as is necessary in the public interest and it shall evaluate, at least on a weekly basis, where the conditions above are satisfied. However, in the event of any leak of such information, an immediate disclosure would be required.

v. Selective Disclosure

Article 17(8) MAR allows selective disclosure of inside information where the recipient owes a duty of confidentiality to the company. Under MAR, unless a company is delaying disclosure in accordance with Article 17(4), it must ensure that no inside information is released. If it is released to a third party in the normal course of the exercise of an employment, profession or duties, then unless the recipient owes a duty of confidentiality, the information must be treated in the normal way for disclosures of inside information. Therefore, the issuer must announce that information publically either simultaneously where the disclosure was intentional or as soon as possible where the disclosure was unintentional.

Depending on the circumstances, DTR 2.5.7G provides guidance which states that an issuer may be justified in disclosing inside information to the following persons in addition to those employees of the issuer who require the information to perform their functions:

- 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

The FCA has previously given 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, 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 by only 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 FCA 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;
- 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 non-participating 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 FCA 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 selective disclosure is permitted, in certain limited circumstances, this does not contemplate inside information being given to journalists. The FCA 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 "Friday night drop") has also been criticised by the FCA. The FCA 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 MAR 17(1). 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 pursuant to Article 17(4) MAR, as it can no longer ensure confidentiality

of the inside information, and it should announce the inside information as soon as possible (Article 17(7) MAR).

Conversely, the knowledge that the press speculation or market rumour is false is not likely to amount to inside information. However, the FCA has previously informally acknowledged 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 FCA expects in most cases that an issuer would be able to delay disclosure in accordance with the standard set by Article 17(4) MAR.

The FCA 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, the FCA's preference is for the issuer to make a formal announcement via an RIS, and where a denial is likely to affect the share price, then a formal announcement would be best practice. The FCA also suggests that an issuer should announce a negative statement over an RIS in circumstances where it is concerned that reaction to a wholly unfounded rumour is resulting in a disorderly market.

The FCA 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 an 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 Article 17(4) MAR, to 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 occurs; 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:

- *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) and set out how in each case the identification objective will be met;

- allocate responsibility for internal reporting and assessing information that may be inside information;
- establish financial and nonfinancial key performance indicators for internal-reporting purposes (thresholds should be conservative);[90]
- assess regular internal reports submitted routinely;
- identify at their inception relevant projects that could result in inside information; 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 communication 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.

90 The GC100 has indicated that when identifying key performance indicators and setting thresholds, it is likely to be useful to seek advice from the issuer's brokers on the key performance indicators regarded as important to investors and the level of threshold that would be appropriate. For financial years ending on or after 30 September 2013, issuers must prepare a strategic report (which has replaced the business review section of the annual report). To the extent necessary for an understanding of the development, performance, or position of the issuer's business, the strategic report must include analysis using financial and, where appropriate, nonfinancial key performance indicators. There are no statutory requirements on how key performance indicators should be presented and no requirements to produce explanatory information with key performance indicators, but the Financial Reporting Council's guidance on the strategic report provides some useful guidance on key performance indicators.

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 risk of a leak.

ix. Insider Lists (Article 18 MAR)

Since the entry into force of MAR on 3 July 2016, the rules governing the adoption and maintenance of insider lists are contained within Article 18 MAR.

Under Article 18(1) MAR issuers must compile lists of all persons who have access to inside information and who are working for them either: (i) under a contract of employment; or (ii) otherwise performing tasks through which they have access to inside information, i.e as advisors, accountants or credit rating agencies. Insider lists must be kept properly up to date and provided to the competent authority as soon as possible on request.

Under MAR, the requirements for the information to be included on the insider lists are more onerous than before. Now, the insider list must include, amongst other things, the dates and times on which access to the inside information was obtained, full names, National Identification Numbers, phone numbers and addresses of individuals.

The insider list must be updated promptly where the reason for including an individual on the list changes, where a new individual needs to be added to the list or where a person ceases to have access to inside information, and each update to the list shall specify the date and time when the change triggering the update occurred.

Issuers or any person acting on their behalf or on their account, shall take all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of insider information. In circumstances where another person acts on behalf of the issuer to draw up and update the insider list, the issuer remains responsible for complying with Article 18 MAR.

Insider lists need to be kept by issuers, or any person acting on their account or behalf, for a period of at least five years from the date on which they are drawn up or updated.

x. Disclosure of Dealings by "Persons Discharging Managerial Responsibilities" ("PDMRs")

Article 19(1) MAR requires persons discharging managerial responsibilities as well as "persons closely associated with them" to notify the issuer and the competent authority in respect of transactions conducted on their own account relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them.

Notification under Article 19(1) is only required once the PDMR has surpassed the de minimis threshold for disclosure of dealings of €5000 per calendar year. The threshold for disclosure is calculated by adding all relevant transactions within a year so it will be necessary to keep accurate records. Such notifications must be made to the FCA as competent authority promptly and in any event no later than three business days after the date of the transaction. The notification form is available on the FCA's website.

Issuers must notify all PDMRs of their obligations under Article 19 MAR in writing. PDMRs must notify the persons closely associated with them of their obligations under Article 19

MAR and keep a copy of this notification. Issuers are also required to keep a list of all PDMRs and persons closely associated with them.

PDMRs must not conduct any transactions on their own account or on behalf of a third party, directly or indirectly, relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them during a closed period, being the period of 30 calendar days before the announcement of an interim financial or year-end report which the issuer is obliged to make public.

For these purposes, a PDMR is defined as a person within an issuer who is:

- a member of the administrative, management or supervisory body of that entity (e.g., a director); or
- a senior executive who is not a member of the administrative, management or supervisory body but who has regular access to inside information relating directly or indirectly to that entity and the power to take managerial decisions affecting the future developments and business prospects of that entity.

Under MAR, a "person closely associated" ("PCAs") with a PDMR includes:

- a spouse or civil partner of the PDMR;
- a dependent child, in accordance with national law, of the PDMR;
- a relative who has shared the same household of the PDMR for at least one year on the date of the transaction concerned; and
- a legal person (e.g., a body corporate), trust or partnership, the managerial responsibilities of which are discharged by a PDMR or by a PCA, which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

The FCA had previously provided guidance on what would be considered to be a body corporate "connected" with a PDMR[91] and issuers had been advised to consider the level of control that the PDMR or its connected persons had within that body corporate. Under MAR, the definition of a body corporate that is considered a PCA is wider and it includes situations where either the PDMR or a PCA holds a managerial role or an economic interest in that body corporate or where the body corporate is set up for the benefit of such PDMR, in addition to situations where either the PDMR or a PCA exercises direct or indirect control over that body corporate.

Prior to MAR coming into force, the FCA had reported numerous breaches of the timeline and content requirements in respect of disclosures by PMDRs and their connected persons and it had said that it would consider taking public disciplinary action for serious breaches. Therefore, it is essential to ensure that the MAR disclosure obligations are complied with and the guidance in DTR 3 is followed. Note that these disclosure obligations supplement the requirements set out in Chapter 5 of the DTR (see paragraph D below for details).

91 The Pre-MAR DTR referred to transactions by PDMRs and their "connected persons". However, under MAR, the definition of "connected person" has been replaced with the MAR definition of "persons closely associated". The DTR still refer to PDMRs and their connected persons but signpost to the relevant provisions of MAR for the definition of these terms.

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 (the denomination per unit of which is at least €100,000 (or an equivalent amount)) and issuers on the PSM are required to prepare annual reports and may use accounting standards other than IFRS (i.e., there is no requirement to prepare half-yearly reports);[92]
- issuers of convertible securities or depositary receipts are required to prepare annual financial reports (i.e., no requirement to prepare half-yearly reports); and
- non-EEA issuers whose laws are considered by the FCA 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 FCA on its website.

ii. Annual Financial Reports

Contents and timing (DTR 4.1.3R 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 standards;[93]
- a management report containing a fair review of the issuer's business and a description of the principal risks and uncertainties facing it;[94] and
- appropriate responsibility statements from persons responsible in the company (usually the directors) on behalf of the issuer[95] 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.

92 DTR 4.4.2R provides that issuers of wholesale debt (the denomination per unit of which is at least €100,000 (or an equivalent amount)) are exempted from the reporting requirements under DTR 4.1. DTR 4.1 does not apply to the PSM, as it is not a regulated market for the purposes of the Prospectus Directive. Issuers of wholesale debt and PSM issuers must comply with the requirements of LR 17.3.4 and 17.3.5 as regards periodic financial reporting.

93 IAS for UK Main Market issuers.

94 See further paragraph iii (Strategic Reports) below.

95 The FCA has 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.

In addition to the requirements of the Transparency Rules, directors of listed companies should be aware of the recommendations of the UK Corporate Governance 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 presenting 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:

- 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 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 (which is broadly a person or persons acting jointly by agreement, whether formal or otherwise, who are entitled to exercise, or control the exercise of, 30 percent or more of the votes able to be cast on all or substantially all matters at a general meeting of the issuer) subsisting during the period under review;
- in the case of an issuer that 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 issuer's group by a controlling shareholder subsisting during the period under review;
- 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 UK Corporate Governance Code, together with an explanation of the details and reason for any noncompliance;[96] and
- a report to the shareholders by the issuer containing the information set out in LR 9.8.8R.

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

96 In CP12/25, the FCA proposed amending LR 9.8.6R(5) by requiring a listed company to disclose in its annual report further details of the steps it has taken to ensure that it has addressed Principle B4 of the UK Corporate Governance Code (requiring premium listed companies to consider the skills and knowledge of their directors). The FCA, in CP13/15, decided not to proceed with this proposal but indicated that it may revisit it again in the future. In the meantime the FCA has indicated that premium listed companies need to bear in mind that they are required under Premium Listing Principle 1 above to take reasonable steps to enable their directors to understand their responsibilities and obligations as directors. On 16 July 2018, the Financial Reporting Council published a new "shorter and sharper" UK Corporate Governance Code which applies to all accounting periods beginning on or after 1 January 2019.

LR 9.8.4(14) requires premium listed companies to include in their annual reports a statement made by the board of directors that the company has complied with the independence provisions in any agreements entered into with controlling shareholders and that so far as the company is aware, so did the controlling shareholder and each of its associates. To the extent that a company did not enter into a relationship agreement with its controlling shareholder when obliged to do so (further information in respect of which is discussed in paragraph G(iii) of this chapter) or there has been any noncompliance by either the company or the controlling shareholder, the annual report must include a statement that the FCA has been notified of that noncompliance and must provide a brief description of the background to, and reasons for, failing to enter into the agreement that enables shareholders to evaluate the impact of noncompliance on the listed company.

This requirement stems from the proposals that all issuers with controlling shareholders are required to enter into agreements with such shareholders to ensure that they are capable of operating independently without undue influence from their major shareholders.

iii. Strategic Reports (Companies Act 2006 s. 414ANE)

For financial years ending on or after 30 September 2013, under sections 414ANE of the Companies Act 2006, issuers must prepare a strategic report in addition to the directors' report that forms part of their annual financial report. The strategic report replaces the existing requirement to produce a business review under section 417 of the Companies Act 2006, and whilst the new requirements largely replicate those in relation to the business review, section 414 of the Companies Act 2006 now requires companies to include additional disclosures relating to environmental matters; employees (including, in particular, details on gender diversity); and social, community and human rights issues. The strategic report must be presented as a separate section of the annual financial report and must include a description of the company's strategy and business model (aligning the Companies Act 2006 requirements with the existing requirements under the UK Corporate Governance Code to include such detail in annual financial reports). The detailed content requirements for strategic reports are set out in section 414C of the Companies Act 2006. The Financial Reporting Council has issued guidance for companies (and, in particular, listed companies) on the requirements for preparing strategic reports.

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

The issue of a preliminary statement ("prelim") is 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.

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.

v. 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 three months[97] after the end of the period to which it relates[98] and must include:

97 This used to be two months prior to the implementation of TDAD on 26 November 2015. In addition, pursuant to TDAD annual and half yearly reports must now be made publically available for at 10 years rather than 5. This applies to reports that were published less than 5 years prior to 26 November 2015 that must now be made available for the full 10 years, beginning on the date that the report was first published.

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

- 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
- if it has been audited or reviewed by auditors; the audit report or the review reproduced in full, or otherwise a statement to the effect that it has not been audited.

Following the implementation of TDAD in November 2015, interim management statements are no longer required to be published by issuers and DTR 4.3 has accordingly been deleted. Issuers will, however, still be able to report quarterly on a voluntary basis.

vi. Closed Periods Under MAR

Prior to the introduction of MAR, the definition of closed periods was found in the Model Code, which formed part of LR 9. The Model Code has now been deleted and the definition of closed period is found in Article 19(11) MAR as the period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to makes public according to the rules of the market on which the issuer's securities are traded or national law.

As stated above, listed companies are not obligated to publish preliminary statements. Where they choose to do so however, the Model Code previously prescribed a closed period prior to the statement which ended once the preliminary statement is made. Under MAR publication of a preliminary statement containing sufficient detail will bring the closed period to an end and instead it will continue until the annual report is published. The FCA recognised that there was some confusion amongst issuers as to whether issuers that announce their preliminary results need to impose closed periods before either the preliminary results, the year-end report, or both. ESMA has subsequently clarified that where preliminary results are announced, the closed period ends with the announcement of the preliminary results.[99]

MAR does permit dealings by PDMRs during a "closed period" in certain circumstances, with the issuer's consent, including where there are exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares. Transactions during a "closed period" under employee share schemes or where the beneficial interest in the relevant security does not change may also be permitted by the issuer. The European Commission has also published a draft delegated regulation which clarifies a non-exhaustive list of employee share scheme dealings that may be permitted during closed periods, and this remains broadly the same as dealings which were previously permitted under the Model Code.

99 Section 2, ESMA Questions and Answers on the Market Abuse Regulation, 13 July 2016.

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.

In 2009, the changes to DTR 5 (as discussed below) widened the scope of the regime to cover those financial instruments that give rise to a similar economic effect to qualifying financial instruments. Following the implementation of TDAD, which came into force on the 26 November 2015, various amendments were made to DTR 5 as outlined above in section B of this chapter.

ii. Applicability of Chapter 5 of the DTR

Chapter 5 of the DTR applies to issuers with shares admitted to trading on a regulated market (e.g., the Main Market) for which the UK is the home member state and to other UK issuers with shares admitted to trading on a prescribed market.[100] The FCA maintains a list of non-EEA States whose laws lay down requirements equivalent to those imposed on issuers by DTR 5 or where the requirements equivalent to those imposed by this chapter of where the requirements of the law of that non-EEA State are considered to be equivalent by the FCA (DTR 5.11.5G).[101]

iii. Announcement of Share Capital and Voting Rights by Issuers (DTR 5.6)

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) both: (1) at the end of each calendar month during which there is an increase or decrease in its share capital; and (2) as soon as possible and in any event no later than the end of the business day after the day on which the increase or decrease occurs, following the completion of a transaction by an issuer (unless its effect on the total number of voting rights is immaterial when compared with the position before completion).

iv. The Disclosure Obligation

- *Disclosure thresholds* (DTR 5.1.2R)

  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 applies[102] 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, up to 100 per cent.
  - For non-UK issuers: 5 percent, 10 percent, 15 percent, 20 percent, 30 percent, 50 percent, and 75 percent.

100 AIM and the ISDX Growth Market are both prescribed markets.

101 The FCA is currently satisfied that the following countries are equivalent to the requirements under DTR 5: the United States, Japan, Israel and Switzerland.

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

- *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 Form TR1, available in electronic format at the FCA's website (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 an 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 by the disclosure regime. For example, the 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. 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 arise from the holding of certain financial instruments. The defined list of financial instruments which trigger a notification requirement previously included under DTR 5.3 has been removed following implementation of the TDAD in the UK. Now, under DTR 5.3, as amended, holders of financial instruments granting on maturity the unconditional right to acquire or discretion as to the right to acquire shares to which the voting rights are attached must make a notification. From 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 such a financial instrument, 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 5.1.2R (i.e., in the case of a UK issuer, 3 percent of its voting rights and each whole percentage point thereafter).

- *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 the 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 the 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 declare any intention of exercising (and does not exercise) the voting rights; and
  - shares acquired for stabilisation purposes in accordance with the Buyback and Stabilisation Regulation (Regulation 2273/2003), if the voting rights attached to those shares are not otherwise used to intervene in the management of the company.

  In addition to the above, the following voting rights will 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 thresholds.[103]

  - 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 created an exemption for financial instruments held by client-serving intermediaries, such as CfD writers, who do not attempt to intervene in 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 providing only 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:

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

- any change of name of the company (LR 9.6.19R);
- any proposed change in its capital structure (including the structure of its listed debt securities)[104] (LR 9.6.4R(1));
- 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);
- any redemption of its listed securities (LR 9.6.4R(3));
- any extension of time granted for the currency of temporary documents of title (LR 9.6.4R(4));
- 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 an 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;
- dealings in securities by directors and persons discharging managerial responsibilities (and their connected persons) (DTR 3.1.2R and 3.1.4R);
- the appointment of a new director, including details of the status of the new director, any particular executive responsibilities or functions assumed by the new director, and the date of appointment if it is not with immediate effect. (LR 9.6.11R);
- the removal, resignation, or retirement of a director, and any important changes in the functions or executive responsibilities of a director (LR 9.6.11R);
- any lock-up arrangements not already disclosed, changes to any lock-up arrangements previously disclosed and any disposals under exemptions permitted thereunder (LR 9.6.16R and 9.6.17R);
- all shareholder resolutions passed (other than ordinary business at an annual general meeting) (LR 9.6.18R);
- 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 liquidations, 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;

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

(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

- any changes in this information in respect of current directors (LR 9.6.14R).

F. ANNUAL INFORMATION UPDATE

The Amending Directive deleted Article 10 of the Prospectus Directive, which set out the requirement for issuers to publish an annual information update, on the basis that it was duplicative of the requirements in the Transparency Directive. The FCA deleted PR 5.2 (requiring issuers to prepare an annual information update) with effect from 1 July 2012 to reflect the amendments made by the Amending Directive.

G. REQUIREMENTS WITH CONTINUING APPLICATION

i. **Admitted to Trading** (LR 9.2.1R and 9.2.2R for premium listed companies and LR 14.3.1R for standard listed companies)

A listed company must ensure that its listed equity shares are admitted at all times to trading on, for example, the Main Market of the London Stock Exchange and must inform the FCA as soon as possible if trading in its listed equity shares has been cancelled or suspended.

ii. **Independent Business** (LR 9.2.2AR)

LR 9.2.2AR requires that a listed company must carry on an independent business as its main activity at all times.

iii. **Controlling Shareholders** (LR 9.2.2AB)

Where a listed company has a controlling shareholder, it must have in place at all times: (1) a written and legally binding agreement which is intended to ensure that the controlling shareholder complies with the independence provisions set out in LR 6.5.4R; and (2) a constitution that allows the election of independent directors to be conducted in accordance with certain election procedures set out in LR 9.2.2ER and LR 9.2.2FR.

The "independence provisions" specified are undertakings that:

- transactions and relationships with the controlling shareholder (and/or any of its associates) will be conducted at arm's length and on normal commercial terms;
- no controlling shareholder or any of its associates will take any action that would have the effect of preventing the new applicant or listed company from complying with its obligations under the Listing Rules; and

- no controlling shareholder or any of its associates will propose or procure the proposal of a shareholder resolution which is intended or appears to be intended to circumvent the proper application of the Listing Rules.

The election procedures are contained in LR 9.2.2ER and LR 9.2.2FR and provide that the election or re-election of any independent director must be approved by separate resolutions of: (x) the shareholders of the listed company; and (y) the independent shareholders of the listed company (i.e., all shareholders other than any controlling shareholders). If the election or re-election of an independent director is not approved by both the shareholders and the independent shareholders but the listed company wishes to propose that person for election or re-election as an independent director, the listed company must propose a further resolution to elect or re-elect the proposed independent director, which, rather than being voted on within a period of 90 days from the date of the original vote, must be voted on within a period of 30 days from the end of such period and must be approved by the shareholders of the listed company by ordinary resolution.

Where as a result of changes in the ownership or control of a listed company, a person becomes a controlling shareholder, LR 9.2.2C requires that the listed company put in place an agreement with the controlling shareholder containing the independence provisions within six months of such event and has until the company's next annual general meeting (except in circumstances where notice of the annual general meeting has already been given or is given within three months of the event) to amend its constitution to provide for the dual voting structure in relation to the election or re-election of independent directors. LR 13.8.17 requires that where a company has a controlling shareholder, a circular to shareholders relating to the election or re-election of an independent director must include details of any existing or previous relationship, transaction or arrangement that the proposed independent director has or had with the listed company, its directors, any controlling shareholder or its associates or a confirmation that there have been no such relationships, transactions or arrangements. It must also contain a description of: (a) why the listed company believes the proposed independent director will be an effective director; (b) how the company has determined that the proposed director is independent; and (c) the selection process that was followed.

iv. **Shares in Public Hands** (LR 9.2.15R to 9.2.15AG for premium listed companies and LR 14.2.2R to 14.2.3AG for standard listed companies).

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 FCA may have agreed). For these purposes, shares in "public hands" do not include shares which are subject to a lock-up period of more than 180 days and shares held by directors, their connected persons, persons with the contractual right to nominate a director, trustees of an employee share scheme, and any person (or persons in the same group or persons acting in concert) 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 FCA does have the discretion (under LR 6.14.5G for premium listed companies and under LR 14.2.3G for standard listed companies) to include shares held outside the EEA. The FCA has confirmed 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 (e.g., in circumstances where, although a significant proportion of the public-hands

element is held outside the EEA, all trades will take place in London). LR 6.14.5G sets out the factors that the FCA will take into account when determining whether the market will operate properly where less than 25 percent of the shares are in public hands in EEA States. These include: (1) shares held in non-EEA States, even where they are not listed; (2) the number and nature of the public shareholders; and (3) the expected market value of shares in public hands at admission in excess of £100 million.

Where the FCA has accepted a lower percentage of shares in public hands in accordance with LR 6.14.5G on the basis that the market will operate properly but the FCA considers that in practice the market for the shares is not operating properly, the FCA may revoke the modification in accordance with LR 1.2.1R(4).

v. Settlement

An issuer must ensure that its shares are eligible for electronic settlement at all times, under the Central Securities Depositaries Regulation that came into force in September 2014 and which applies to both premium and standard listings.

vi. Contact Details (LR 9.2.11R and 9.2.12G for premium listed companies and LR 14.3.8R for standard listed companies)

Each issuer must ensure that the FCA 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 to it, 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 FCA of contact details is available on the FCA's website.

H. OTHER CONTINUING OBLIGATIONS (DTR 6.1 AND LR 9)

i. Equality of Treatment (DTR 6.1.3R)[105]

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)[106]

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

iii. Further Issues (LR 9.5.14R for premium listed companies and LR 14.3.4R for standard listed companies)

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,

105 An issuer whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FCA is exempted from this requirement. At present, the FCA considers only the law governing information requirements for issuers of shares in Switzerland to be equivalent to DTR 6.1.3R (only to the extent that it relates to issuers of shares); therefore, issuers of shares admitted to trading on a regulated market in the UK that are incorporated in Switzerland will be exempt from these requirements.

106 An issuer whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FCA is exempted from this requirement. At present, the FCA considers only the law governing information requirements for issuers of shares in Switzerland to be equivalent to DTR 6.1.6R (only to the extent that it relates to issuers of shares); therefore, issuers of shares admitted to trading on a regulated market in the UK that are incorporated in Switzerland will be exempt from these requirements.

for premium listed companies within one month of the allotment and for standard listed companies within one year of allotment).

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

Directors or employees of a premium 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, 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 premium 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 placing falls under a pre-existing general authority to disapply statutory pre-emption rights.

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

Premium listed companies proposing to issue equity securities for cash (or to sell treasury shares that are equity shares for cash) must do so pre-emptively unless:

- the proposed issue is within the terms of a general disapplication of statutory pre-emption rights pursuant to sections 570 and 571 of the Companies Act 2006 (or any equivalent law of the country of incorporation of an overseas company);
- 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 since 6 August 2010, this requirement to offer new shares on a pre-emptive basis has applied to overseas companies as well as UK issuers.

vi. Proxy Forms (LR 9.3.6R)

A premium 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 proxies.[107] Shareholders and debt security 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.

107 An issuer whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FCA is exempted from this requirement. At present, the FCA considers only the law governing information requirements for issuers of shares in Switzerland to be equivalent to DTR 6.1.5R (only to the extent that it relates to issuers of shares or shareholders); therefore, issuers of shares admitted to trading on a regulated market in the UK that are incorporated in Switzerland will be exempt from these requirements.

vii. Communications with Security Holders (DTR 6.1.4R and DTR 6.1.7G to 6.1.15R)[108]

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 member 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 are in place so that the holders or other persons entitled to exercise or direct the exercise of voting rights are effectively informed;
- holders are: (1) 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 (2) able to request at any time in the future that information be conveyed to them in writing[109] and
- any apportionment of the costs entailed in conveying information electronically is 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.

viii. Sanctions for Default of "793 Notices" (LR 9.3.9R)

The Listing Rules prescribe certain constraints on a premium listed 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 2006.[110]

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

108 An issuer whose registered office is in a non-EEA State whose relevant laws are considered equivalent by the FCA is exempted from this requirement. At present, the FCA considers only the law governing information requirements for issuers of shares in Switzerland to be equivalent to DTR 6.1.4R (only to the extent that it relates to issuers of shares); therefore, issuers of shares admitted to trading on a regulated market in the UK that are incorporated in Switzerland will be exempt from these requirements.

109 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 website (subject to shareholder approval)).

110 These notices require disclosure of interests in shares.

- 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 apply to overseas issuers.

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

UK-incorporated premium 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.

I. TRANSACTIONS

i. Class Tests (LR 10)

The Listing Rules contain detailed requirements as to the provision of information and the obtaining of shareholders' consent when a premium listed 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 capitalisation. Further details of the applicable class tests are set out in Appendix VI. In addition, industry-specific tests are encouraged, where relevant, to support these bases. The acquisition or disposal will be compared on all relevant grounds and will be classified as Class 2 or Class 1, where any one of the percentage ratios is greater than 5 percent but each is less than 25 percent or any percentage ratio is greater than 25 percent, respectively. The FCA 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 2 transactions require 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 the obtaining of members' approval.[111]

111 In the case of a Class 1 disposal by an issuer in severe financial difficulty, the FCA 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 FCA as early as possible, but in any event, at least five clear business days before the terms of the disposal are agreed.

The concept of Class 3 transactions was deleted from the Listing Rules with effect from 1 October 2012 on the basis that the rules served no additional purpose to the disclosure obligations of issuers under DTR 2.2. Market participants responding to the FCA's consultation on the matter considered that the Class 3 notification requirements resulted in "immaterial information being disclosed to the market".

ii. Reverse Takeovers (LR 5.6R)

In October 2012, the provisions relating to reverse takeovers in LR 10 were replaced with new provisions in LR 5.6R, applicable to both standard listed and premium listed issuers.

Issuers are under an obligation under Listing Principle 6 to deal with the FCA in an open and co-operative manner and, when a reverse takeover is contemplated, to approach the FCA at the earliest possible stage. The new provisions of LR 5.6R do not apply when an issuer proposes to acquire shares in a target in the same listing category.

Where the rules do apply, the FCA's main concern is whether a suspension of the issuer's shares is appropriate. The FCA will generally be satisfied that a suspension is not required in certain circumstances, including where the target is admitted to a regulated market or subject to a market with disclosure requirements that do not materially differ from the DTR.

Prior to 1 January 2018, the leak or announcement of a reverse takeover would automatically trigger a suspension of the issuer's shares on the non-rebuttable presumption that insufficient information is in the market. However, based on the commentary published by the FCA in October 2017, this has now changed. Under the amended rules, this presumption (and therefore automatic suspension) will only apply to shell companies and SPACs (special purpose acquisition companies), on the assumption that through compliance with MAR, sufficient information should otherwise be in the public domain to allow the market to function properly. It will remain possible for an issuer to request suspension or for the FCA to seek to impose a suspension if there is insufficient information to allow the market to function effectively.

Nevertheless, issuers will still have the option to consult with the FCA in accordance with LR 1.2.5G.

iii. Related Party Transactions (LR 11)

Transactions between a premium listed company and certain categories of related parties generally require shareholder approval before implementation.[112] 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.

112 Very small transactions (i.e., ones with percentage ratios of less than 0.25 percent) and transactions 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 (LR 11.1.6R).

In January 2009, the FCA 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 FCA's acknowledgement 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 Rules.

As part of the changes made to the Listing Rules in May 2014 relating to controlling shareholders, LR 11.1.1C stipulates that in circumstances where: (1) a relationship agreement has not been entered into pursuant to LR 9.2.2AR(2)(a); (2) a listed company or its controlling shareholder has not complied with its obligations under such agreement; or (3) an independent director declines to support the statement required to be made in the company's annual report relating to compliance with the independence provisions, the concessions relating to ordinary-course transactions and certain small transactions not being treated as related party transactions are suspended. The effect of such suspension is that any such transaction would require the approval of independent shareholders. The suspension will continue until the listed company publishes an annual report containing a clean compliance statement.

iv. Purchase of Own Securities (LR 12)

Any decision by the board of directors to submit to shareholders a proposal for a premium listed 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 an 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 FCA 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 an 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 must provide the details of purchases of a certain size once made.

MAD created a safe harbour for share buy-backs, and this safe harbour is more restrictive than the provisions of LR 12. In accordance with FCA 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: (1) debt

financial instruments exchangeable into equity instruments; or (2) employee share option programmes or other allocations of shares to employees of the issuer or of an associate company;

- the buy-back programme must comply with the conditions laid down in section 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 market.[113] 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, the transaction prices and the 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 FCA of its intention, and discloses that it will deviate from the 25 percent limits and where 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.

On 20 October 2011, the European Commission published its legislative proposals to replace the MAD with a regulation on insider dealing and market manipulation MAR and a directive on criminal sanctions for insider dealing and market manipulation ("CSMAD"). As discussed above, MAR was adopted in June 2014 and will apply in all Member States including the UK from 3 July 2016 on which date MAD will be repealed.[114] The provisions relating to share buy-backs (contained in Article 5 of MAR) are similar to those contained in MAD. In order for a share buy-back to fall within the MAR safe harbour, "the full details of the programme [must be] disclosed prior to the start of trading, trades [must be] reported as being part of the buyback programme to the competent authority and subsequently disclosed to the public, and adequate limits with regards to price and volume [must be] respected."[115] By way of transitional provisions, MAR permits market practices which were in existence prior to its entry into force and which had been accepted by competent authorities to remain applicable until 12 months after MAR enters into force in July 2016. Of note, the UK

113 In the UK, the FCA accepts disclosure through an RIS.

114 With the exception of certain provisions specified in Article 39(2) MAR which came into force on 2 July 2014.

115 Article 5 Market Abuse Regulation (2014/596/EU).

Government has decided to exercise its discretion to not opt into CSMAD at the present time, although it may do so at a later date.

v. 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 FCA has indicated 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).

J. 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 premium 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 shares voting on a resolution to approve the cancellation and, if the company has a controlling shareholder, of more than 50 percent of the votes attaching to the shares of independent shareholders who voted on the resolution. This requirement does not apply:

i. 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

ii. in the case of a takeover offer when the offeror or any controlling shareholder who is an offeror is interested in 50 percent or less of the voting rights of the company before announcing its firm intention to make its takeover offer and the offeror has acquired (or agreed to acquire) 75 percent of the voting rights of the issuer and has 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 attainment of the required 75 percent or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006,[116] 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); or

iii. in the case of a takeover offer when the offeror or any controlling shareholder who is an offeror is interested in more than 50 percent of the voting rights of the company before announcing its firm intention to make its takeover offer and the offeror has acquired (or agreed to acquire) 75 percent of the voting rights of the issuer and such acceptances represent a majority of the voting rights held by the independent shareholders on the date its firm intention to make its takeover offer was announced and has 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.

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

CHAPTER 9

CONTINUING OBLIGATIONS FOR AIM COMPANIES

A. GENERAL OBLIGATION OF DISCLOSURE

Under AR 11, an AIM company must notify an 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).

AIM companies are also subject to the general obligation of disclosure of inside information under Article 17(1) MAR. Although the obligation is similar to the requirement under AR 11, there are certain additional requirements that issuers must also comply with. The most notable of these is the requirement to keep detailed records when disclosure is delayed and the requirement to notify the FCA when disclosure is delayed.

AIM companies must therefore assess whether any disclosure is required: (1) in compliance with AR 11; and (2) under MAR. Issuers should be aware that compliance with MAR will not be a defence to non-compliance with the AIM Rules; the obligations under each of the AIM Rules and MAR are separate and distinct.

Although it is crucial for AIM companies to keep in regular contact with their nomads to ensure that the general obligation of disclosure is not breached, there have been numerous instances of AIM companies falling foul of this obligation. For example, two AIM companies were privately censured[117] and fined a total of £120,000 by the AIM Executive Panel for, *inter alia*, breaches of AR 10 and AR 11, demonstrating the seriousness with which the London Stock Exchange views the failure of an AIM company to properly communicate with its nomad.

In one of the cases, which involved a £40,000 fine, the company had received urgent enquiries from its nomad regarding press speculation and a corresponding rise in the company's share price. In response to these enquiries, the company confirmed to its nomad that there were no new developments or corporate activities to announce. However, at the time of the nomad's enquiries, the company was undertaking a transaction that constituted unpublished price-sensitive information. In breach of AR 31, the company failed: (x) to let the nomad know about the transaction upon being asked the specific question whether there were any undisclosed corporate transactions in the context of a price movement; and (y) further, to inform the nomad previously that it had been in discussions to imminently close the transaction.

117 Reported in Issue 5 of *Inside AIM* (October 2012).

In breach of AR 10, a misleading notification was issued (with no reference to the imminent transaction) which created the impression that the company had no news to announce. The transaction was then completed and was disclosed in a notification soon after. The news was accompanied by a significant change in the company's share price, and an investigation/ disciplinary action followed.

i. Introduction to MAR

The framework of continuing obligations imposed on AIM companies has been extended since the entry into force of MAR. MAR is equally applicable to AIM companies as it is to companies whose shares are listed on the Main Market, the result being that AIM companies have dual disclosure obligations: (1) obligations under MAR (owed to the FCA); and (2) disclosure obligations under the AIM Rules (owed to AIM Regulation). Key disclosure obligations under MAR relate to the disclosure of inside information and disclosure of deals by PDMRs and PCAs and are discussed throughout this chapter.

Where relevant, this Part A will discuss the disclosure obligations that have been introduced by MAR and outline where these obligations differ from those under the pre-MAR rules for AIM companies.

Where applicable, further proposed changes by the FCA to individual rules will be discussed throughout this chapter.

ii. Disclosure of Inside Information

The disclosure obligations for issuers under MAR are designed to ensure that there is prompt and fair disclosure of relevant information to the market. Issuers are under an express responsibility to ensure that inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public. This is coupled with a further requirement that issuers must not combine the disclosure of inside information with the marketing of its activities.[118]

Article 17(1) MAR provides that issuers must inform the public as soon as possible of inside information which directly concerns the issuer, unless Article 17(4) MAR applies (which allows the disclosure of inside information to be delayed in certain circumstances).

- *Definition of "inside information" (Article 7 MAR)*

  "Inside information" is information of **a precise nature** that:

  - **has not been made public**;
  - relates **directly or indirectly** to one or more issuers or to one or more financial instruments;
  - would, if it were made public, **be likely to have a significant effect on the prices** of those financial instruments or on the price of related derivative financial instruments; and
  - for persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders

118 Article 17(1) MAR.

in financial instruments, which is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments.

For these purposes, information will be "precise" if it indicates a set of circumstances which exist or may reasonably be expected to come into existence (or an event that has occurred or may reasonably be expected to occur), where it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or that event on the prices of the financial instruments. 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 the effect of the information 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, Article 7(4) MAR states that an issuer should consider whether it is information that a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

Note that MAR extends the scope of the market abuse regime by providing specific definitions of inside information for commodity derivatives, emissions allowances and for persons charged with the execution of orders concerning financial instruments (and derivative instruments in relation to such products).

- *Timing of disclosure*

  Subject to a very limited ability to delay disclosure, MAR provides that any required announcement must be made "as soon as possible".

  The FCA has specifically reiterated the need for company directors to consider their general disclosure obligations (under Article 17(1) MAR) as regards to 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 compliance. When changes in the company's circumstances are under consideration, a listed company should also consider consulting its financial advisers as early as possible.

  Note that the FCA 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.

- *Publication on an issuer's website (Article 17(1) MAR)*

  The general disclosure obligation under Article 17(1) MAR requires that an issuer must, for a period of five years following publication, post on its website all inside information that it is required to disclose publically. ESMA's Final Report on the draft technical standards states that all information to be published on a website must appear in an "easily identifiable section of the website". The Law Society has clarified that issuers can comply with the requirement by posting the information on the section of their website that contains all of the regulatory information.[119]

119 Law Society Q&A on the Market Abuse Regulation, 5 July 2016.

Under Article 17(10) MAR, ESMA is tasked with developing technical standards on the public disclosure of information which will be submitted to the Commission for eventual adoption. These draft standards are likely to provide further technical information regarding the publication of information on an issuer's website. ESMA published its Final Report on the draft technical standards on 28 September 2015 and it is currently with the Commission for approval.

iii. Delaying Disclosure

Under Article 17(4) MAR an issuer may delay public disclosure of inside information provided that:

(1) immediate disclosure is likely to prejudice the legitimate interests of the issuer;

(2) delay of disclosure is not likely to mislead the public; and

(3) the issuer is able to ensure the confidentiality of the information.

In February 2016, the FCA clarified that it is their and ESMA's expectation that Article 17(4) should be narrowly interpreted and that *all* of the conditions set out under Article 17(4) must be met in order to delay the disclosure of information. ESMA published its guidelines regarding delay in the disclosure of inside information in October 2016.

MAR introduces a further requirement that an issuer must notify the FCA in writing of its decision to delay an announcement immediately after the information is disclosed to the public. The notification is made using an online form and must contain certain prescribed information such as the date and time of the decision to delay disclosure and the identities of the people responsible for making that decision. The technical standards published by ESMA also set out the requirements for the internal records that an issuer must maintain when delaying disclosure. MAR also requires issuers to provide a written explanation of the decision to delay but currently the FCA has clarified that this information will only need to be provided upon request. In any event, it is essential that issuers keep clear and comprehensive records of any decisions to delay disclosure of inside information.

Whilst accepting that "delaying disclosure of inside information will not always mislead the public", DTR 2.5.2(G) 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 February 2017, the FCA amended DTR 2.5 by removing the non-exhaustive list of affairs that may constitute legitimate interests that would justify delaying disclosure of information, as the list overlapped with ESMA's final guidance.[120] According to the ESMA guidance dated 20 October 2016, in applying Article 17(4) MAR, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:

- the company is conducting negotiations, the outcome of which would likely be jeopardised by immediate public disclosure (examples of negotiations include those related to mergers, acquisitions and restructurings);

120 Guidance in DTR 2.5.5G.

- the financial viability of the company is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders by jeopardising the conclusion of the negotiations designed to ensure the financial recovery of the company;
- where the issuer has developed a product or invention and the immediate public disclosure of such information may jeopardise the rights of the issuer;
- where the issuer is planning to buy or sell a major holding in another entity and the disclosure of such information would jeopardise the conclusion of the transaction; and
- where a transaction previously announced is subject to a public authority's approval, and such approval is conditional on additional requirements, where the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the transaction.

As part of the guidance ESMA also issued an indicative, non-exhaustive list of the situations in which delay of disclosure of insider information is likely to mislead the public namely, where the inside information whose disclosure the issuer intends to delay is:

- materially different from the previous public announcement of the issuer on the matter to which the inside information refers to; or
- regards the fact that the issuer's financial objectives are not likely to be met, where such objectives were previously publicly announced; or
- in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market, such as interviews, road shows or any other type of communication organised by the issuer or with its approval.

The FCA has stated that a company should not be obliged to disclose "impending developments" that could be jeopardised by such premature disclosure.

Whatever the rationale, where an issuer decides to delay disclosure, it should follow the steps set out below.

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;
- prepare an internal form which details why the delay is legitimate;
- prepare a notification to the FCA in the prescribed form stating that it is delaying disclosure;
- 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 confidentiality.

iv. Liquidity Support

Article 17(5) MAR replaced Pre-MAR DTR 2.5.5AR in relation to liquidity support but the content broadly remained the same: it may be appropriate to allow the delay of the disclosure of inside information by credit or financial institutions in order to preserve the stability of the financial system. The disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, may be delayed provided that:

- the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;
- it is in the public interest to delay the disclosure;
- the confidentiality of that information can be ensured; and
- the FCA has consented to the delay on the basis that the three conditions above are met.

The FCA will ensure that the disclosure is only delayed for a period as is necessary in the public interest and it shall evaluate, at least on a weekly basis, where the conditions above are satisfied. However, in the event of any leak of such information, an immediate disclosure would be required.

v. Selective Disclosure

Article 17(8) MAR allows selective disclosure of inside information where the recipient owes a duty of confidentiality to the company. Under MAR, unless a company is delaying disclosure in accordance with Article 17(4), it must ensure that no inside information is released. If it is released to a third party in the normal course of the exercise of an employment, profession or duties, then unless the recipient owes a duty of confidentiality, the information must be treated in the normal way for disclosures of inside information. Therefore, the issuer must announce that information publically either simultaneously where the disclosure was intentional or as soon as possible where the disclosure was unintentional.

Depending on the circumstances, DTR 2.5.7G provides guidance which states that an issuer may be justified in disclosing inside information to the following persons in addition to those employees of the issuer who require the information to perform their functions:

- 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. Insider Lists (Article 18 MAR)

Prior to MiFID II coming into force, AIM companies were required to comply with the rules governing the adoption and maintenance of insider lists contained within Article 18 MAR.

However, AIM was registered as an SME Growth Market on 3 January 2018, and subsequently the requirements for insider lists have changed. Under Article 18(6) MAR companies with shares admitted to trading on an SME Growth Market are exempt from the drawing up insider lists, provided that:

- the issuer takes all reasonable steps to ensure that any person with access to information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information; and
- the issuer is able to provide the competent authority, upon request, with an insider list.

The insider list will only need to include personal data of the insiders if the information is available to the company at the time of the FCA request.

B. RESTRICTIONS ON DEALS

Since the entry into force of MAR on 3 July 2016, the rule governing share dealing in AIM companies has been amended. Under the amended AR 21, an AIM company must have in place a reasonable and effective share dealing policy to ensure, *inter alia*, that its directors and "applicable employees" (i.e., PDMRs, as defined under MAR) do not deal in any of its securities during a close period. In addition to enforcing a share dealing policy, AIM companies must also comply with the broader obligations imposed on PDMRs and their persons closely associated, under Article 19 MAR.

In the Guidance Notes to the AIM Rules, it is expressly stated that compliance with AR 21 does not mean that an AIM company will have satisfied its obligations under Article 19 of MAR. In determining whether it is appropriate to give clearance under its dealing policy, the London Stock Exchange would expect an AIM company to consider its wider obligations under MAR.

i. Dealing Policy (AR 21)

Previously, AR 21 contained a restriction on dealings of directors and applicable employees[121] in close periods but the creation and enforcement of a dealing policy was not a mandatory requirement. Under the revised framework, all AIM companies must have a dealing policy in place.

Dealing by directors and PDMRs includes any transaction on his or her own behalf or on behalf of a third party either directly or indirectly relating to the shares or debt instruments of the AIM company or to derivatives or other financial instruments linked to them. Under MAR, a closed period is the period 30 calendar days before the announcement of an interim financial report or of a year-end report that the AIM company is obliged to make public.

121 Prior to 3 July 2016, the definition of "applicable employee" under the AIM Rules included any employee of the AIM company, its subsidiary or parent undertaking, who was likely to be in possession of unpublished price sensitive information in relation to the AIM company because of his or her employment.

Under AR 21, an AIM company must have a dealing policy in place that sets out:

- the company's close periods during which the directors and applicable employees cannot deal;
- when a director or applicable employee must obtain clearance to deal;
- an appropriate person within the company to grant clearance requests;
- procedures for obtaining clearance for dealing;
- the appropriate timeframe for a director or applicable employee to deal once they have received clearance;
- how the company will assess whether clearance to deal may be given; and
- procedures on how the company will notify deals to be made public under MAR.

ii. Article 19 MAR

MAR introduces a broader set of obligations than those currently imposed under the AIM Rules. Article 19(1) requires persons discharging managerial responsibilities as well as their PCAs to notify the issuer and the competent authority in respect of transactions conducted on their own account relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them.

Notification under Article 19(1) is only required once the PDMR has surpassed the de minimis threshold for disclosure of dealings of €5000 per calendar year. The threshold for disclosure is calculated by adding all relevant transactions within a year so it will be necessary to keep accurate records. Such notifications must be made to the FCA as competent authority promptly and in any event no later than three business days after the date of the transaction. The notification form is available on the FCA's website.

There is an obligation on issuers to notify, in writing, all PDMRs of their obligations under Article 19 MAR. PDMRs must in turn notify their PCAs of their obligations under Article 19 MAR and keep a copy of this notification. Issuers are also required to keep a list of all PDMRs and PCAs with them.

PDMRs must not conduct any transactions on their own account or on behalf of a third party, directly or indirectly, relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them during a closed period, being the period of 30 calendar days before the announcement of an interim financial or year-end report which the issuer is obliged to make public.

For these purposes, a "person discharging managerial responsibilities" is defined as a person within an issuer who is:

- a member of the administrative, management, or supervisory body of that entity (e.g., a director); or
- a senior executive who is not a member of the administrative, management, or supervisory body, but who has regular access to inside information relating directly or indirectly to that entity and the power to take managerial decisions affecting the future developments and business prospects of that entity.

Under MAR, a "person closely associated" ("PCA") with a PDMR includes:

- a spouse or civil partner of the PDMR;
- a dependent child, in accordance with national law, of the PDMR;
- a relative who has shared the same household of the PDMR for at least one year on the date of the transaction concerned; and
- a legal person (e.g., a body corporate), trust or partnership, the managerial responsibilities of which are discharged by a PDMR or by a PCA, which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

C. SPECIFIC DISCLOSURE OBLIGATIONS UNDER AIM RULES

i. **Miscellaneous Information** (AR 17)

An issuer must notify an RIS without delay of:

- any relevant changes to the holding of a significant shareholder (3 percent holder) that increase or decrease such holding through a single percentage;[122]
- the resignation, dismissal, or appointment of any director;
- any change in its accounting reference date;
- any material change between its actual trading performance or financial condition and any profit forecast, estimate or projection included in its admission document or otherwise made public on its behalf;
- any decision to make any payment in respect of its AIM securities, specifying the net amount payable per security, the payment date and the record date;
- 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 website address at which information required by AR 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) on any other exchange or trading platform, where such admission or cancellation is at the application or with the agreement of the AIM company.

122 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 AR 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 AR 17, notwithstanding that their local laws may not contain provisions similar to the DTR. In those circumstances, the relevant AIM company is advised, under the guidance to AR 17, to include provisions in its constitution requiring significant shareholders to notify it of any relevant changes to their shareholdings.

Note that following MAR coming into force, AR 17 no longer requires the disclosure of deals by directors. This is because Article 19(1) MAR requires PMDRs and PCAs to notify both the issuer and the FCA of every transaction conducted by them relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them. As a result of MAR coming into force, the key differences for AIM companies are the following:

- MAR obligations apply to all PMDRs and PCAs, not just directors;
- MAR only requires disclosure of dealings above an annual de minimis threshold of €5,000; and
- disclosure under MAR must be made in the form of a prescribed template.

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 an RIS without delay and in any event no 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 no 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; and
- director's remuneration earned in respect of the financial year by each director of the AIM company acting in such capacity during the financial year.

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 website, 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 website 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 operation;[123]
- 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 shareholders;[124]
- 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;
- its most recent admission document, together with any circulars or similar publications sent to shareholders within the past 12 months;
- details of the recognised corporate governance code that the AIM company has decided to apply, how it complies with such code, where it departs from its chosen code (including an explanation of the reasons for doing so) and the date that this information was last reviewed;
- whether the AIM company is subject to the UK City Code on Takeovers and Mergers, or any other such legislation or code in its country of incorporation or operation, or any other similar provisions it has voluntarily adopted; and
- details of its nominated adviser and other key advisers (as might normally be found in an admission document).

The guidance to the AIM Rules requires this information to be kept up to date, with 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 (e.g., by the use of "click-throughs" or appropriate legends).

123 This should be interpreted as the geographic 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.

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

Guidance on how to comply with AR 26 is available via the *IR Website Best Practice Guide*, which was compiled by RNS (the regulatory and financial news service of 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 website.

D. CORPORATE TRANSACTIONS

i. **Substantial Transactions** (AR 12)

An AIM company must notify an 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 company.[125]

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 an 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 nomad, 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 an 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.

125 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.

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 an 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 disposal is to divest the AIM company of all, or substantially all, of its trading-business, activities or assets and/or where an AIM company takes any action, the effect of which is that it will cease to own, control or conduct all, or substantially all, of its existing trading-business, activities or assets upon completion of the disposal or action, the AIM company will be considered an "AIM Rule 15 cash sell"

Within six months of becoming an AIM Rule 15 cash shell, the AIM company must make an acquisition or acquisitions which constitute a reverse takeover under AR 14. For the purposes of this rule only, becoming an investing company pursuant to AR 8 (including the associated raising of funds as specified in AR 8) will be treated as a reverse takeover and the provisions of AR 14 will apply.

Where an AIM company became an "investing company" (pursuant to AR 15) prior to 1 January 2016, the requirements of AR 15 set out in the AIM Rules will continue to apply. Accordingly, if such a company does not make an acquisition or acquisitions that constitute a reverse takeover under AR 14 or otherwise fails to implement its investing policy to the satisfaction of the London Stock Exchange within twelve months of becoming an investing company, the London Stock Exchange will suspend trading in such a company's securities pursuant to Rule 40.

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 19 applies where they are entered into by the AIM company with the same person or persons or their families; 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 AR 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 *AIM 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 the 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 *AIM Disciplinary Procedures and Appeals Handbook*, if the London Stock Exchange considers that a nomad is 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 the nomad;

- remove the nomad from the register; or
- publish the action it has taken and the reasons for that action.

iii. Recent Enforcement

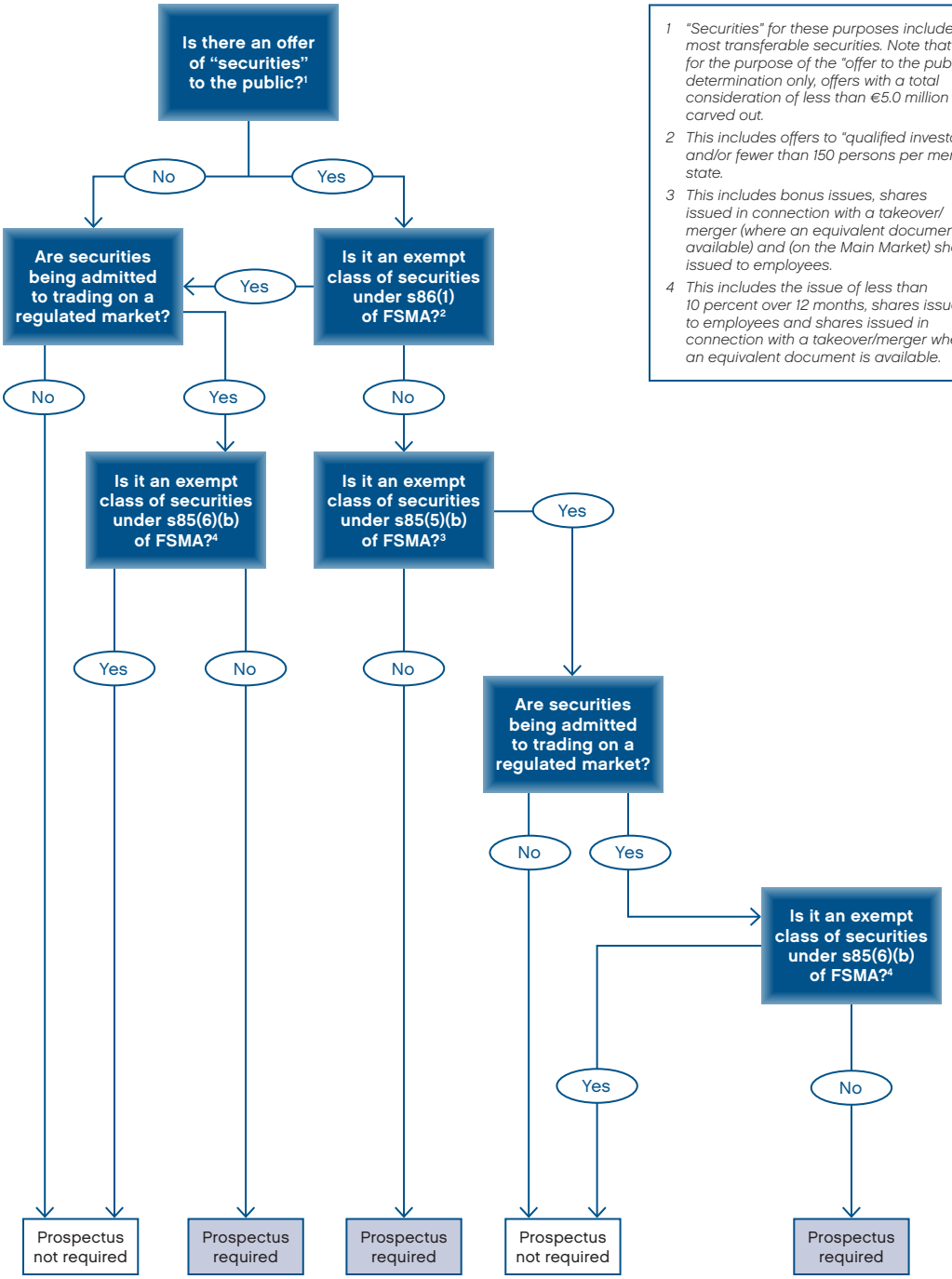
The London Stock Exchange actively monitors compliance with the AIM Rules and the AIM Rules for Nominated Advisers and takes action where companies or nomads breach those rules. The London Stock Exchange can issue both public and private censures, though the former are reserved for the most serious cases, 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 website.

APPENDICES

APPENDIX I:
IS A PROSPECTUS REQUIRED?



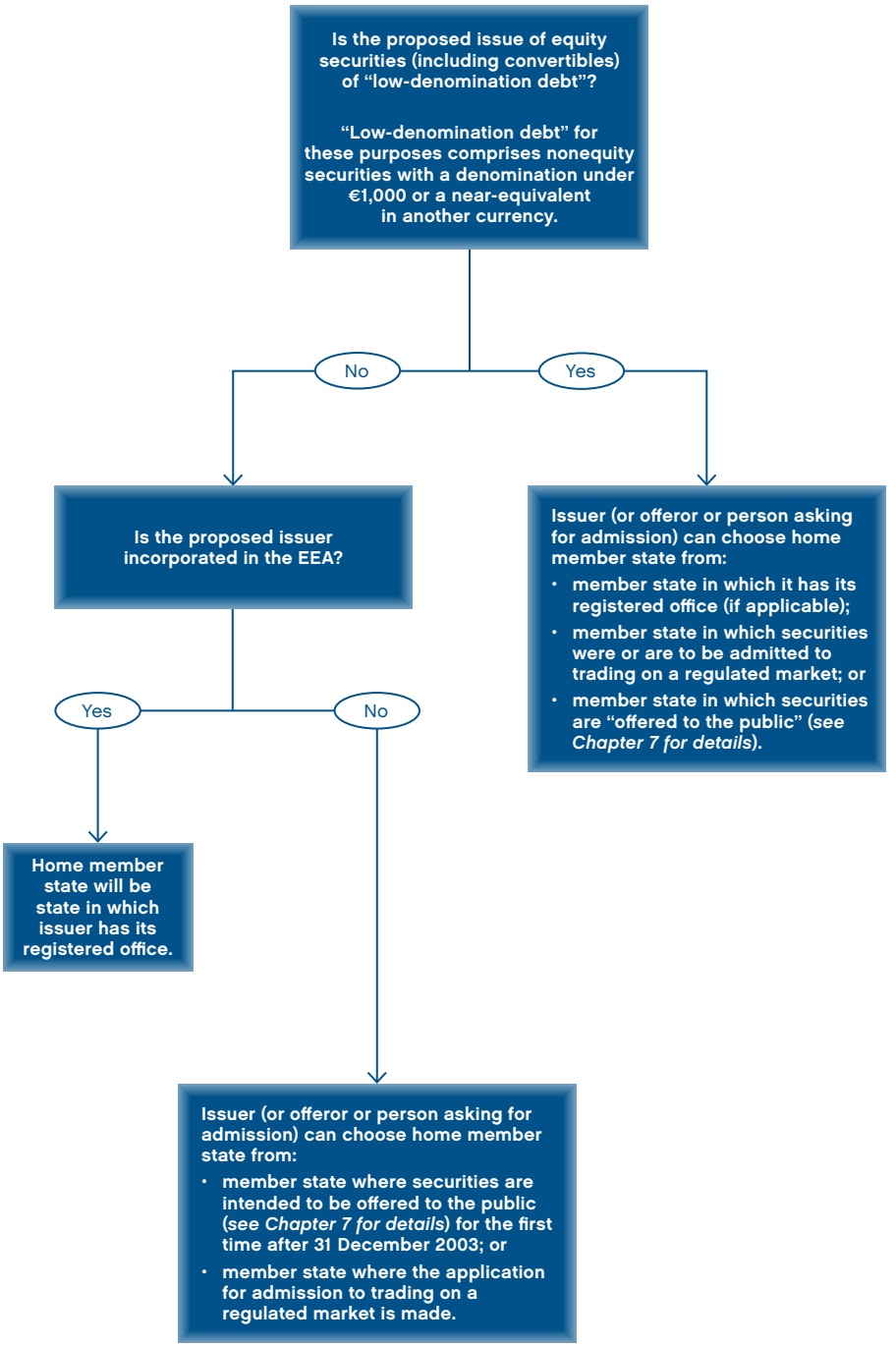
1 *"Securities" for these purposes include most transferable securities. Note that for the purpose of the "offer to the public" determination only, offers with a total consideration of less than €5.0 million are carved out.*

2 *This includes offers to "qualified investors" and/or fewer than 150 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 *This includes the issue of less than 10 percent over 12 months, shares issued to employees and shares issued in connection with a takeover/merger where an equivalent document is available.*

APPENDIX II:
DETERMINING AN ISSUER'S HOME MEMBER STATE



APPENDIX III:
CONTENT REQUIREMENTS FOR PROSPECTUS

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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 and supervisory bodies, indicate the name and function of the person; in case of legal persons, indicate the name and registered office.	Mandatory	Mandatory Item 1.1, Annex XXIII	Mandatory Item 1.1, Annex XXV
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	Mandatory Item 1.2, Annex XXIII	Mandatory Item 1.2, Annex XXV
2.	**STATUTORY AUDITORS**			
2.1	Names and addresses of the issuer's auditors for the period covered by the historical financial information (together with their membership in a professional body).	Mandatory	Mandatory Item 2.1, Annex XXIII	Mandatory Item 2.1, Annex XXV
2.2	If auditors have resigned, been removed or not been reappointed during the period covered by the historical financial information, indicate details if material.	Mandatory	Mandatory Item 2.2, Annex XXIII	Mandatory Item 2.2, Annex XXV
3.	**SELECTED FINANCIAL INFORMATION**			
3.1	Selected historical financial information regarding the issuer, presented for each financial year for the period covered by the historical financial information, and any subsequent interim financial period, in the same currency as the financial information.	Carved out	Carved out	Mandatory Item 3.1, Annex XXV
3.2	The selected historical financial information must provide the key figures that summarise the financial condition of the issuer.	Carved out	Carved out	Mandatory Item 3.1, Annex XXV
3.3	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	Carved out	Mandatory Item 3.2, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
4.	**RISK FACTORS**			
	Prominent disclosure of risk factors that are specific to the issuer or its industry in a section headed "Risk Factors".	Mandatory	Mandatory Item 3, Annex XXIII	Mandatory Item 4.1, Annex XXV
5.	**INFORMATION ABOUT THE ISSUER**			
5.1	**History and Development of the Issuer**			
5.1.1	The legal and commercial name of the issuer;	Mandatory	Mandatory Item 4.1, Annex XXIII	Mandatory Item 5.1.1, Annex XXV
5.1.2	The place of registration of the issuer and its registration number;	Mandatory	Carved out	Mandatory Item 5.1.2, Annex XXV
5.1.3	The date of incorporation and the length of life of the issuer, except where indefinite;	Mandatory	Carved out	Mandatory Item 5.1.3, Annex XXV
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); and	Mandatory	Carved out	Mandatory Item 5.1.4, Annex XXV
5.1.5	The important events in the development of the issuer's business.	Mandatory	Carved out	Mandatory Item 5.1.5, Annex XXV
5.2	**Investments**			
5.2.1	A description (including the amount) of the issuer's principal investments for each financial year for the period covered by the historical financial information up to the date of the registration document;	Mandatory	Reduced disclosure Item 4.2.1, Annex XXIII	Mandatory Item 5.2.1, Annex XXV
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); and	Mandatory	Mandatory Item 4.2.2, Annex XXIII	Mandatory Item 5.2.2, Annex XXV
5.2.3	Information concerning the issuer's principal future investments on which its management bodies have already made firm commitments.	Mandatory	Mandatory Item 4.2.3, Annex XXIII	Mandatory Item 5.2.3, Annex XXV
6.	**BUSINESS OVERVIEW**			
6.1	**Principal Activities**			
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	Reduced disclosure (additional disclosure required regarding significant change) Item 5.1, Annex XXIII	Reduced disclosure (additional disclosure required regarding significant change) Item 6.1, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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	Mandatory Item 5.1, Annex XXIII	Mandatory Item 6.1, Annex XXV
6.2	**Principal Markets**			
6.2.1	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	Reduced disclosure (additional disclosure required regarding significant change) Item 5.2, Annex XXIII	Reduced disclosure (additional disclosure required regarding significant change) Item 6.2, Annex XXV
6.2.2	Where the information given pursuant to items 6.1 and 6.2 has been influenced by exceptional factors, mention that fact.	Mandatory	Reduced disclosure Item 5.3, Annex XXIII	Mandatory Item 6.3, Annex XXV
6.2.3	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	Mandatory Item 5.4, Annex XXIII	Mandatory Item 6.4, Annex XXV
6.2.4	The basis for any statements made by the issuer regarding its competitive position.	Mandatory	Mandatory Item 5.5, Annex XXIII	Mandatory Item 6.5, Annex XXV
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	Mandatory Item 6.1, Annex XXIII	Mandatory Item 7.1, Annex XXV
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	Carved out	Conditionally excluded Item 7.2, Annex XXV. This is required only if the information is not included in the financial statements.
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	Carved out	Carved out
8.2	A description of any environmental issues that may affect the issuer's utilisation of the tangible fixed assets.	Mandatory	Mandatory	Mandatory Item 8.1, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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	Carved out	Conditionally excluded Item 9.1, Annex XXV. This is required only if the annual reports (prepared and presented in the specified format) are not included in or annexed to the prospectus.
9.2	**Operating Results**			
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	Carved out	Conditionally excluded Item 9.2.1, Annex XXV. This is required only if the annual reports (prepared and presented in the specified format) are not included in or annexed to the prospectus.
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	Carved out	Mandatory Item 9.2.2, Annex XXV.
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	Carved out	Mandatory Item 9.2.3, Annex XXV.
10.	**CAPITAL RESOURCES**			
10.1	Information concerning the issuer's capital resources (both short- and long-term);	Carved out	Carved out	Carved out
10.2	An explanation of the sources and amounts of, and a narrative description of, the issuer's cash flows;	Carved out	Carved out	Mandatory Item 10.1, Annex XXV
10.3	Information on the borrowing requirements and funding structure of the issuer;	Carved out	Carved out	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; and	Carved out	Carved out	Mandatory Item 10.2, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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	Carved out	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	Carved out	Mandatory Item 11, Annex XXV
12.	**TREND INFORMATION**			
12.1	The most significant recent trends in production, sales and inventory, and costs and selling prices from the end of the last financial year to the date of the registration document.	Mandatory	Mandatory Item 7.1, Annex XXIII	Mandatory Item 12.1, Annex XXV
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	Mandatory Item 7.2, Annex XXIII	Mandatory Item 12.2, Annex XXV
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 (*NB: Profit forecasts/ estimates dealt with in Schedule 2 to the AIM Rules*)		
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 and supervisory bodies can influence and assumptions about factors which are exclusively outside the influence of the members of the administrative, management and 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.		Mandatory Item 8.1, Annex XXIII	Mandatory Item 13.1, Annex XXV
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. Where financial information relates to the previous financial year and only contains non misleading figures substantially consistent with the final figures to be published in the next annual audited financial statements for the previous financial year, and the explanatory information necessary to assess the figures, a report shall not be required provided that the prospectus includes all of the following statements:	Carved out	Mandatory Item 8.2, Annex XXIII	Mandatory Item 13.2, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
	(a) the person responsible for this financial information, if different from the one which is responsible for the prospectus in general, approves that information; (b) independent accountants or auditors have agreed that this information is substantially consistent with the final figures to be published in the next annual audited financial statements; and (c) this financial information has not been audited.			
13.3	The profit forecast or estimate must be prepared on a basis comparable with the historical financial information.	Carved out	Mandatory Item 8.3, Annex XXIII	Mandatory Item 13.3, Annex XXV
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. If such forecast is no longer valid, explain why.	Carved out	Mandatory Item 8.4, Annex XXIII	Mandatory Item 13.4, Annex XXV
14.	**ADMINISTRATIVE, MANAGEMENT AND SUPERVISORY BODIES AND SENIOR MANAGEMENT**			
14.1	Names, business addresses and functions in the issuer of the following persons and an indication of the principal activities performed by them outside that issuer where these are significant with respect to that issuer: (a) members of the administrative, management and 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 and supervisory bodies of the issuer and of each person mentioned in points (b) and (d) of the first subparagraph, details of that person's relevant management expertise and experience and the following information: (a) the names of all companies and partnerships of which such person has been a member of the administrative, management and 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 and 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 and supervisory bodies;	Carved out (*NB: Disclosures regarding directors dealt with in Schedule 2 to the AIM Rules*)	Mandatory Item 9.1, Annex XXIII	Mandatory Item 14.1, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
	(b) any convictions in relation to fraudulent offences for at least the previous five years; (c) details of any bankruptcies, receiverships or liquidations with which a person described in (a) and (d) of the first subparagraph who was acting in the capacity of any of the positions set out in (a) and (d) of the first subparagraph was associated for at least the previous five years; and (d) details of any official public incrimination and/or sanctions of such person by statutory or regulatory authorities (including designated professional bodies) and whether such person has ever been disqualified by a court from acting as a member of the administrative, management and 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. If there is no such information to be disclosed, a statement to that effect is to be made.			
14.2	Administrative, management and supervisory bodies and senior management conflicts of interest. Potential conflicts of interest 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. 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 and supervisory bodies or member of senior management. 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.	Carved out	Mandatory Item 9.2, Annex XXIII	Mandatory Item 14.2, Annex XXV
15.	**REMUNERATION AND BENEFITS**			
	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:			
15.1	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. 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.	Carved out	Conditional exemption Item 10.1, Annex XXIII	Mandatory Item 15.1, Annex XXV
15.2	The total amounts set aside or accrued by the issuer or its subsidiaries to provide pension, retirement or similar benefits.	Carved out	Conditional exemption Item 10.2, Annex XXIII	Mandatory Item 15.2, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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 item 14.1:			
16.1	Date of expiration of the current term of office, if applicable, and the period during which the person has served in that office.	Mandatory	Conditional exemption Item 11.1, Annex XXIII	Mandatory Item 16.1, Annex XXV
16.2	Information about the service contracts that members of the administrative, management and supervisory bodies have with the issuer or any of its subsidiaries which provide for benefits upon termination of employment, or an appropriate negative statement.	Mandatory	Conditional exemption Item 11.2, Annex XXIII	Mandatory Item 16.2, Annex XXV
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	Conditional exemption Item 11.3, Annex XXIII	Mandatory Item 16.3, Annex XXV
16.4	A statement as to whether or not the issuer complies with the corporate governance regime or regimes of its country of incorporation. 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	Conditional exemption Item 11.4, Annex XXIII	Mandatory Item 16.4, Annex XXV
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 the number of temporary employees on average during the most recent financial year.	Mandatory	Carved out	Mandatory Item 17.1, Annex XXV
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.	Carved out for persons other than directors	Mandatory Item 12.1, Annex XXIII	Mandatory Item 17.2, Annex XXV
17.3	Description of any arrangements for involving the employees in the capital of the issuer.	Mandatory	Mandatory Item 12.2, Annex XXIII	Mandatory Item 17.3, Annex XXV
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 and/or 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	Mandatory Item 13.1, Annex XXIII	Mandatory Item 18.1, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
18.2	Whether the issuer's major shareholders have different voting rights, or an appropriate negative statement.	Mandatory	Mandatory Item 13.2, Annex XXIII	Mandatory Item 18.2, Annex XXV
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	Mandatory Item 13.3, Annex XXIII	Mandatory Item 18.3, Annex XXV
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	Mandatory Item 13.4, Annex XXIII	Mandatory Item 18.4, Annex XXV
19.	**RELATED PARTY TRANSACTIONS**			
	Details of related party transactions (which for these purposes are those set out in the standards adopted according to Regulation (EC) No 1606/2002) that the issuer has entered into during the period covered by the historical financial information and up to the date of the registration document must be disclosed in accordance with the respective standard adopted according to Regulation (EC) No 1606/2002, if applicable. If such standards do not apply to the issuer, the following information must be disclosed:	Mandatory	Modified requirement Item 14, Annex XXIII	Modified requirement Item 19, Annex XXV
(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.			
(b)	the amount or the percentage to which related party transactions form part of the turnover of the issuer.			
20.	**FINANCIAL INFORMATION CONCERNING THE ISSUER'S ASSETS AND LIABILITIES, FINANCIAL POSITION, AND PROFITS AND LOSSES**			
20.1	**Historical Financial Information** 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. If the issuer has changed its accounting reference date during the period for which historical financial information is required, the audited historical financial information shall cover at least 36 months or the entire period for which the issuer has been in operation, whichever is the shorter. 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. 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.	Mandatory	Modified requirement Item 15.1, Annex XXIII	Modified requirement Item 20.1, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
	The last two years' audited historical financial information must be presented and prepared in a form consistent with that which will be adopted in the issuer's next published annual financial statements having regard to accounting standards and policies and legislation applicable to such annual financial statements. If the issuer has been operating in its current sphere of economic activity for less than one year, the audited historical financial information covering that period must be prepared in accordance with the standards applicable to annual financial statements under 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. If the audited financial information is prepared according to national accounting standards, the financial information required under this heading must include at least: (a) the balance sheet; (b) the 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) the cash flow statement; and (e) accounting policies and explanatory notes. 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.			
20.2	**Pro Forma Financial Information**			
	In the case of a significant gross change, a description of how the transaction might have affected the assets and liabilities and earnings of the issuer, had the transaction been undertaken at the commencement of the period being reported on or at the date reported. This requirement will normally be satisfied by the inclusion of pro forma financial information. This pro forma financial information is to be presented as set out in Annex II and must include the information indicated therein. Pro forma financial information must be accompanied by a report prepared by independent accountants or auditors.	Carved out	Mandatory Item 15.2, Annex XXIII	Mandatory Item 20.2, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
20.3	**Financial Statements**			
	If the issuer prepares both its own and consolidated annual financial statements, include at least the consolidated annual financial statements in the registration document.	Mandatory	Mandatory Item 15.3, Annex XXIII	Carved out
20.4	**Auditing of Historical Annual Financial Information**			
20.4.1	A statement that the historical financial information has been audited. If audit reports on the historical financial information have been refused by the statutory auditors or if they contain qualifications or disclaimers, such refusal or such qualifications or disclaimers must be reproduced in full and the reasons given.	Mandatory	Mandatory Item 15.4.1, Annex XXIII	Mandatory Item 20.3.1, Annex XXV
20.4.2	Indication of other information in the registration document which has been audited by the auditors.	Mandatory	Mandatory Item 15.4.2, Annex XXIII	Mandatory Item 20.3.2, Annex XXV
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	Mandatory Item 15.4.3, Annex XXIII	Mandatory Item 20.3.3, Annex XXV
20.5	**Age of Latest Financial Information**			
20.5.1	The last year of audited financial information may not be older than one of the following: (a) 18 months from the date of the registration document if the issuer includes audited interim financial statements in the registration document; or (b) 15 months from the date of the registration document if the issuer includes unaudited interim financial statements in the registration document.	Mandatory	Mandatory Item 15.5.1, Annex XXIII	Mandatory Item 20.4.1, Annex XXV
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	Mandatory Item 15.6.1, Annex XXIII	Modified requirement Item 20.5.1, Annex XXV
20.6.2	If the registration document is dated more than nine months after the end of the last audited financial year, it must contain interim financial information, which may be unaudited (in which case that fact must be stated) covering at least the first six months of the financial year. The interim financial information must include comparative statements for the same period in the prior financial year, except that the requirement for comparative balance-sheet information may be satisfied by presenting the year-end balance sheet.	Mandatory	Mandatory Item 15.6.2, Annex XXIII	Carved out
20.7	**Dividend Policy**			
	A description of the issuer's policy on dividend distributions and any restrictions thereon.	Mandatory	Mandatory Item 15.7, Annex XXIII	Mandatory Item 20.6, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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	Mandatory Item 15.7.1, Annex XXIII	Mandatory Item 20.6.1, Annex XXV
20.8	**Legal and Arbitration Proceedings**			
	Information on any governmental, legal or arbitration proceedings (including any such proceedings which are pending or threatened of which the issuer is aware), during a period covering at least the previous 12 months which may have, or have had in the recent past, significant effects on the issuer, and/or group's financial position or profitability, or provide an appropriate negative statement.	Mandatory	Mandatory Item 15.8, Annex XXIII	Mandatory Item 20.7, Annex XXV
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 Item 15.9, Annex XXIII	Mandatory Item 20.8, Annex XXV
21.	**ADDITIONAL INFORMATION**			
21.1	**Share Capital**			
	The following information as of the date of the most recent balance sheet included in the historical financial information:			
21.1.1	The amount of issued capital, and for each class of share capital: (a) the number of shares authorised; (b) the number of shares issued and fully paid and of shares 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 percent of capital has been paid for with assets other than cash within the period covered by the historical financial information, state that fact.	Mandatory	Mandatory Item 16.1.1, Annex XXIII	Mandatory Item 21.1.1, Annex XXV
21.1.2	If there are shares not representing capital, state the number and main characteristics of such shares.	Mandatory	Mandatory Item 16.1.2, Annex XXIII	Mandatory Item 21.1.2, Annex XXV
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	Carved out	Mandatory Item 21.1.3, Annex XXV
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	Mandatory Item 16.1.3, Annex XXIII	Mandatory Item 21.1.4, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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	Mandatory Item 16.1.4, Annex XXIII	Mandatory Item 21.1.5, Annex XXV
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	Mandatory Item 16.1.5, Annex XXIII	Mandatory Item 21.1.6, Annex XXV
21.1.7	A history of share capital, highlighting information about any changes, for the period covered by the historical financial information.	Mandatory	Carved out	Mandatory Item 21.1.7, Annex XXV
21.2	**Memorandum and Articles of Association**			
21.2.1	A description of the issuer's objects and purposes and where they can be found in the memorandum and articles of association.	Mandatory	Carved out	Mandatory Item 21.2.1, Annex XXV
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	Carved out	Mandatory Item 21.2.2, Annex XXV
21.2.3	A description of the rights, preferences and restrictions attaching to each class of the existing shares.	Mandatory	Carved out	Mandatory Item 21.2.3, Annex XXV
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	Carved out	Mandatory Item 21.2.4, Annex XXV
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	Carved out	Mandatory Item 21.2.5, Annex XXV
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	Carved out	Mandatory Item 21.2.6, Annex XXV
21.2.7	An indication of the articles of association, statutes, charter or bylaws, if any, governing the ownership threshold above which shareholder ownership must be disclosed.	Mandatory	Carved out	Mandatory Item 21.2.7, Annex XXV
21.2.8	A description of the conditions imposed by the memorandum and articles of association statutes, charter or bylaws governing changes in the capital, where such conditions are more stringent than is required by law.	Mandatory	Carved out	Mandatory Item 21.2.8, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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. A summary of any other contract (not being a contract entered into in the ordinary course of business) entered into by any member of the group which contains any provision under which any member of the group has any obligation or entitlement which is material to the group as at the date of the registration document.	Mandatory	Reduced disclosure Item 17, Annex XXIII	Mandatory Item 22, Annex XXV
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, provide 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	Mandatory Item 18.1, Annex XXIII	Mandatory Item 23.1, Annex XXV
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	Mandatory Item 18.2, Annex XXIII	Mandatory Item 23.2, Annex XXV
24.	**DOCUMENTS ON DISPLAY**			
	A statement that for the life of the registration document, the following documents (or copies thereof), where applicable, may be inspected: (a) the memorandum and articles of association of the issuer; (b) all reports, letters and other documents, plus 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; and (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. An indication of where the documents on display may be inspected, by physical or electronic means.	Carved out	Reduced disclosure Item 19, Annex XXIII	Mandatory Item 24, Annex XXV
25.	**INFORMATION ON HOLDINGS**			
	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	Carved out	Mandatory Item 25, Annex XXV

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
ANNEX II				
Pro Forma Financial Information Building Block				
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; and (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.	Carved out	N/A	N/A
2.	In order to present pro forma financial information, a balance sheet, a profit and loss account and accompanying explanatory notes, depending on the circumstances, may be included.	Carved out	N/A	N/A
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.	Carved out	N/A	N/A
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; and (b) the source of each item of information and adjustment.	Carved out	N/A	N/A
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.	Carved out	N/A	N/A
6.	Pro forma adjustments related to the pro forma financial information must be: (a) clearly shown and explained; (b) directly attributable to the transaction; and (c) factually supportable.	Carved out	N/A	N/A

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
	In addition, in respect of a pro forma profit and loss or cash flow statement, they must be clearly identified as to those which are 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; and (b) that basis is consistent with the accounting policies of the issuer.	Carved out	N/A	N/A

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 and supervisory bodies, indicate the name and function of the person; in case of legal persons, indicate the name and registered office.	Mandatory	Mandatory Item 1.1, Annex XXIV	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	Mandatory Item 1.2, Annex XXIV	Mandatory

2. RISK FACTORS

	Prominent disclosure in a section headed "Risk Factors" of the 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.	Mandatory	Mandatory Item 2, Annex XXIV	Mandatory

3. ESSENTIAL 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 (*NB: Working capital statement required under Schedule 2 to the AIM Rules*)	Mandatory Item 3.1, Annex XXIV	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
3.2	**Capitalisation and Indebtedness**			
	A statement of capitalisation 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	Mandatory Item 3.2, Annex XXIV	Mandatory
3.3	**Interest of Natural and Legal Persons Involved in the Issue/Offer**			
	A description of any interest, including conflicting ones, that is material to the issue/offer, detailing the persons involved and the nature of the interest.	Carved out	Mandatory Item 3.3, Annex XXIV	Mandatory
3.4	**Reasons for the Offer and Use of Proceeds**			
	Reasons for the offer and, where applicable, the estimated net amount of the proceeds broken into each principal intended use and presented by order of priority of such uses. If the issuer is aware that the anticipated proceeds will not be sufficient to fund all the proposed uses, state the amount and sources of other funds needed. Details must be given with regard to the use of the proceeds, in particular when they are being used to acquire assets, other than in the ordinary course of business, to finance announced acquisitions of other business, or to discharge, reduce or retire indebtedness.	Mandatory	Mandatory Item 3.4, Annex XXIV	Mandatory
4.	**INFORMATION CONCERNING THE SECURITIES TO BE OFFERED/ADMITTED TO TRADING**			
4.1	A description of the type and class of the securities being offered and/or admitted to trading, including the International Security Identification Number ("ISIN") or other such security identification code.	Mandatory	Mandatory Item 4.1, Annex XXIV	Mandatory
4.2	Legislation under which the securities have been created.	Mandatory	Mandatory Item 4.2, Annex XXIV	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	Mandatory Item 4.3, Annex XXIV	Mandatory
4.4	Currency of the securities issue.	Mandatory	Mandatory Item 4.4, Annex XXIV	Mandatory
4.5	A description of the rights attached to the securities, including any limitations of those rights, and the procedure for the exercise of those rights. • Dividend rights: - Fixed date(s) on which the entitlement arises; - Time limit after which entitlement to dividend lapses and an indication of the person in whose favour the lapse operates; - Dividend restrictions and procedures for non-resident holders; and	Mandatory	Mandatory Item 4.5, Annex XXIV	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
	- Rate of dividend or method of its calculation, periodicity, and cumulative or noncumulative nature of payments. • Voting rights. • Pre-emption rights in offers for subscription of securities of the same class. • Right to share in the issuer's profits. • Right to share in any surplus in the event of liquidation. • Redemption provisions. • Conversion provisions.			
4.6	In the case of new issues, a statement of the resolutions, authorisations and approvals by virtue of which the securities have been or will be created and/or issued.	Mandatory	Mandatory Item 4.6, Annex XXIV	Mandatory
4.7	In the case of new issues, the expected issue date of the securities.	Mandatory	Mandatory Item 4.7, Annex XXIV	Mandatory
4.8	A description of any restrictions on the free transferability of the securities.	Mandatory	Mandatory Item 4.8, Annex XXIV	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	Carved out	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	Carved out	Mandatory
4.11	In respect of the country of the registered office of the issuer and the country(ies) where the offer is being made or admission to trading is being sought: • information on taxes on the income from the securities withheld at source; and • indication as to whether the issuer assumes responsibility for the withholding of taxes at the source.	Mandatory	Mandatory Item 4.9, Annex XXIV	Mandatory
5.	**TERMS AND CONDITIONS OF THE OFFER**			
5.1	**Conditions, Offer Statistics, Expected Timetable and Action Required to Apply for the Offer**			
5.1.1	Conditions to which the offer is subject.	Carved out	Mandatory Item 5.1, Annex XXIV	Mandatory
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	Modified requirement Item 5.1.2, Annex XXIV	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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	Mandatory Item 5.1.3, Annex XXIV	Mandatory
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	Mandatory Item 5.1.4, Annex XXIV	Mandatory
5.1.5	A description of the possibility to reduce subscriptions and the manner for refunding excess amount paid by applicants.	Carved out	Mandatory Item 5.1.5, Annex XXIV	Mandatory
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	Mandatory Item 5.1.6, Annex XXIV	Mandatory
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	Mandatory Item 5.1.7, Annex XXIV	Mandatory
5.1.8	Method and time limits for paying up the securities and for delivery of the securities.	Carved out	Mandatory Item 5.1.8, Annex XXIV	Mandatory
5.1.9	A full description of the manner and date in which results of the offer are to be made public.	Carved out	Mandatory Item 5.1.9, Annex XXIV	Mandatory
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	Mandatory Item 5.1.10, Annex XXIV	Mandatory
5.2	**Plan of Distribution and Allotment**			
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	Carved out	Mandatory
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 percent of the offer.	Carved out	Mandatory Item 5.2.1, Annex XXIV	Mandatory
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	Carved out	Mandatory
	(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	Carved out	Mandatory
	(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	Carved out	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
	(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	Carved out	Mandatory
	(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	Carved out	Mandatory
	(f) a target minimum individual allotment, if any, within the retail tranche;	Carved out	Carved out	Mandatory
	(g) the conditions for the closing of the offer as well as the date on which the offer may be closed at the earliest; and	Carved out	Carved out	Mandatory
	(h) whether or not multiple subscriptions are admitted and, where they are not, how any multiple subscriptions will be handled.	Carved out	Carved out	Mandatory
5.2.4	Process for notification to applicants of the amount allotted and indication whether dealing may begin before notification is made.	Carved out	Mandatory Item 5.2.2, Annex XXIV	Mandatory
5.2.5	Over-allotment and "green shoe": (a) the existence and size of any over-allotment facility and/or "green shoe"; (b) the existence period of the over-allotment facility and/or "green shoe"; and (c) any conditions for the use of the over-allotment facility or exercise of the "green shoe".	Carved out	Carved out	Mandatory
5.3	**Pricing**			
5.3.1	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.	Carved out	Mandatory Item 5.3.1, Annex XXIV	Mandatory
5.3.2	Process for the disclosure of the offer price.	Carved out	Mandatory Item 5.3.2, Annex XXIV	Mandatory
5.3.3	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.	Carved out	Mandatory Item 5.3.3, Annex XXIV	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
5.3.4	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.	Carved out	Carved out	Mandatory
5.4	**Placing and Underwriting**			
5.4.1	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.	Carved out	Mandatory Item 5.4.1, Annex XXIV	Mandatory
5.4.2	Name and address of any paying agents and depositary agents in each country.	Carved out	Mandatory Item 5.4.2, Annex XXIV	Mandatory
5.4.3	Name and address of the entities agreeing to underwrite the issue on a firm-commitment basis, and name and address of the entities agreeing to place the issue without a firm commitment or under "best efforts" arrangements. Indication of the material features of the agreements, including the quotas. Where not all of the issue is underwritten, a statement of the portion not covered. Indication of the overall amount of the underwriting commission and of the placing commission.	Carved out	Mandatory Item 5.4.3, Annex XXIV	Mandatory
5.4.4	When the underwriting agreement has been or will be reached.	Carved out	Mandatory Item 5.4.4, Annex XXIV	Mandatory
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	Mandatory Item 6.1, Annex XXIV	Mandatory
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	Mandatory Item 6.2, Annex XXIV	Mandatory
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	Mandatory Item 6.3, Annex XXIV	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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	Mandatory Item 6.4, Annex XXIV	Mandatory
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	Carved out	Mandatory
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	Carved out	Mandatory
6.5.2	The beginning and the end of the period during which stabilization may occur;	Carved out	Carved out	Mandatory
6.5.3	The identity of the stabilization manager for each relevant jurisdiction unless this is not known at the time of publication; and	Carved out	Carved out	Mandatory
6.5.4	The fact that stabilization transactions may result in a market price that is higher than would otherwise prevail.	Carved out	Carved out	Mandatory
7.	**SELLING SECURITY HOLDERS**			
7.1	Name and business address of the person or entity offering to sell the securities, as well as 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	Carved out	Mandatory
7.2	The number and class of securities being offered by each of the selling security holders.	Mandatory	Carved out	Mandatory
7.3	Lock-up agreements: • The parties involved; • Content and exceptions of the agreement; and • Indication of the period of the lock-up.	Mandatory	Mandatory Item 7.1, Annex XXIV	Mandatory
8.	**EXPENSE OF THE ISSUE/OFFER**			
8.1	The total net proceeds and an estimate of the total expenses of the issue/offer.	Mandatory	Mandatory Item 8.1, Annex XXIV	Mandatory
9.	**DILUTION**			
9.1	The amount and percentage of immediate dilution resulting from the offer.	Mandatory	Mandatory Item 9.1, Annex XXIV	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	Mandatory Item 9.2, Annex XXIV	Mandatory

Item	Prospectus Requirement for Equity Issue	AIM Admission Document Requirement	Proportionate Prospectus Requirement for Pre-Emptive Secondary Issues	Proportionate Prospectus Requirement for SMEs and Small Caps
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	Mandatory Item 10.1, Annex XXIV	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, a reproduction of the report or, with permission of the competent authority, a summary of the report.	Mandatory	Mandatory Item 10.2, Annex XXIV	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, provide 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	Mandatory Item 10.3, Annex XXIV	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	Mandatory Item 10.4, Annex XXIV	Mandatory

APPENDIX IV:
FINANCIAL INFORMATION REQUIRED

HISTORICAL FINANCIAL INFORMATION

- **Period covered?**

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

- **Age of last audited accounts?**

  Not more than:

  - Nine months old if no interims included;
  - 15 months old if unaudited interims included; or
  - 18 months old if audited interims included.

  (*cf. eligibility requirements for Premium Listing*)

- **Applicable accounting standards?**

  If *EEA issuer*, IFRS or, if not applicable to a member state, the relevant national accounting standards.

  If non-EEA issuer, IFRS 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 IFRS, so in most cases, information in respect of the last two years will need to be prepared or restated to IFRS.

- **What about AIM companies?**

  If EEA issuer, IFRS.

  If non-EEA issuer, IFRS, US GAAP, Canadian GAAP, Australian IFRS or Japanese GAAP.

- **True and fair?**

  The historical 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 are more than nine months old, interims covering at least the first six months of the current year must be included; if more than 15 months old, they must be audited.

APPENDIX V:
KEY DIFFERENCES BETWEEN REQUIREMENTS FOR THE MAIN MARKET AND AIM

MAIN MARKET	AIM
• Minimum 25 percent shares to be held in public hands in one or more EEA States.[1]	• No requirements for shares to be held in public hands.
• Normally three-year trading record and audited accounts required.	• No trading record requirement.
• Offering document on IPO approved by the FCA (or competent authority in issuer's home member state, where not the UK).	• Offering document on IPO does not generally require approval of the regulators, unless IPO is being undertaken in conjunction with an "offer to the public".[2]
• Sponsor required for IPO and certain transactions.	• Nominated adviser required at all times.
• Prior shareholder approval required for substantial acquisitions and disposals.	• No prior shareholder approval required (other than for reverse takeovers).
• Minimum market capitalisation requirement (£700,000).	• No minimum capitalisation required.
• Modifications to the requirement for accounts covering three years for scientific-research-based companies and mineral companies.[3]	• 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 percent 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. See Chapter 1 for further details.

APPENDIX VI:
APPLICABLE CLASS TESTS FOR THE MAIN MARKET AND AIM

THE CLASS TESTS[1]

i. The Gross Assets test is calculated by dividing the gross assets the subject of the transaction by the gross assets of the listed company[2] and multiplying the result by 100.

ii. The Profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the listed company[3] and multiplying the result by 100.[4]

iii. The Consideration test is calculated by dividing the consideration payable to the vendors by the aggregate 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.

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 FCA 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.
>10%.	See below.	Disclose information under Schedule 4; no shareholder approval (AR 12).
>5%, <25%.	**Class 2:** Notify a RIS with details in LR 10.4.1.	N/A.
>25%, <100%.	**Class 1:** Notify a RIS as if Class 2; send explanatory circular to shareholders and obtain shareholder approval.	N/A.
<100%.	**Reverse Takeover:** Comply with Class 1 requirements; on completion, listing will be cancelled and must make application for listing as a new applicant.[5]	**Reverse Takeover:** Send circular to shareholders and obtain approval.

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 Under the Listing Rules, "profits" means the profits after deducting all charges except taxation, whilst under the AIM Rules, it means the profits before taxation and extraordinary items.

4 As of 1 January 2018, the profits test in LR 10 has been amended. Under LR 10.13R premium listed issuers are permitted to disregard the profits test if it yields an anomalous result of 25% or more on a transaction which is not a related party transaction, when all other applicable class tests are below 5%, without consulting the FCA in advance. The FCA has not issued any guidance as to the interpretation of "anomalous result", which will be left to the judgement of sponsors based on existing guidance in LR 10.

5 The FCA will usually seek to cancel the issuer's listing (LR 5.6.18G), however under certain circumstances it may be satisfied that cancellation is not required.

GLOSSARY

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

Admission and Disclosure Standards	the Admission and Disclosure Standards of the London Stock Exchange.
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; references to "**AR**" shall be references to the AIM Rules.
Amending Directive	the Directive of the European Parliament and of the Council of 24 November 2010 amending the Prospectus Directive and the Transparency Directive (No. 2010/73/EU).
Central Securities Depository	an institution holding securities in a dematerialised form so that ownership of such securities is easily transferable through a book entry.
CESR	the Committee of European Securities Regulators.
CSD Regulation	the EU Regulation on Central Securities Depositories.
CSMAD	the Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse.
Delegated Regulation	the Commission Delegated Regulation (EU) 2016/301.
Disclosure Rules and Transparency Rules or DTR	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 FCA 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, which have now been renamed the Disclosure Guidance and Transparency Rules.
EEA	the European Economic Area, comprising those states which are, from time to time, contracting parties to the agreement on the European Economic Area signed in Porto, Portugal, on 2 May 1992; as at 12 April 2014, the following states form the EEA: Austria, Belgium, Bulgaria, Croatia (provisionally pending full ratification), 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, Slovakia, Slovenia, Spain, Sweden and the UK. References to an "**EEA State**" or a "**member state**" shall be to a member of the EEA.
EEA Issuer	an issuer incorporated in an EEA State.
ESMA	the European Securities and Markets Authority.

ESMA Recommendations	the recommendations of CESR for the consistent implementation of the European Commission's Regulation on Prospectuses No 809/2004, issued in February 2005 and re-issued by ESMA on 23 March 2011.
EU	the European Union, comprising 28 member states as at 12 April 2014.
FCA	the Financial Conduct Authority, which, acting as the competent authority for listing, is referred to as the "**UK Listing Authority**".
FSA	the now defunct Financial Services Authority, which, acting as the competent authority for listing, was referred to as the "UK Listing Authority" until the reorganisation of the financial services regulation in 2013.
FSMA	the Financial Services and Markets Act 2000, as amended.
GAAP	generally accepted accounting principles.
GC100 Guidelines	guidelines published in July 2016 by the Association of General Counsel and Company Secretaries of the FTSE 100 or establishing procedures, systems and controls to ensure compliance with the Listing Rules.
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	Regulation (EC) 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).
ISIN	International Security Identification Number.
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 FCA 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 London Stock Exchange's international market for the admission and trading of equity, debt and other securities.
Market Abuse Directive or MAD	the 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).
Market Abuse Regulation or MAR	the Regulation of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC (No 596/2014).

MD&A	management discussion and analysis.
MiFID	the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.
MiFID II	the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments including, where relevant, Regulation of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (No 600/2014).
Model Code	now deleted following the implementation of MAR. Previously it was 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 definitive record of whether a company's securities are officially listed in the United Kingdom, as maintained by the FCA.
OFR	operating and financial review.
PCA	a person closely associated as defined in Article 3(1)(26) of MAR.
PDMR	a person discharging managerial responsibilities as defined in Article 3(1)(25) of MAR.
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 2017/1129 of the European Parliament and the European Council.
Prospectus Rules	the rules relating to transferable securities issued by the FCA pursuant to the Prospectus Rules Instrument 2005; references to "**PR**" shall be references to the Prospectus Rules.
regulated market	(i) 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: 1. 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; 2. functions regularly; 3. 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 4. requires compliance with all the reporting and transparency requirements laid down by Articles 20 and 21 of the Investment Services Directive; and (ii) 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.

RIS	a regulatory information service
SFS	Specialist Fund Segment
SMEs	small and medium-sized enterprises
TDAD	Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.
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.
Transparency Directive Amending Directive	Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directive 2004/109/EC of the European Parliament and of the Council on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Directive 2003/71/EC of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading and Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC Text with EEA relevance.
Treasury	Her Majesty's Treasury, a UK Government department designated: (a) for the purposes of section 2(2) of the European Communities Act 1972; and (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.
UKLA	the UK Listing Authority.
2004 Prospectus Regulation	Regulation No 809/2004 of the European Commission.