

## **FSA'S RESTRUCTURING OF THE U.K. LISTING REGIME**

October 16, 2009

To Our Clients and Friends:

On September 25, 2009, the FSA published the *Listing Rules Sourcebook (Amendment No 3) Instrument 2009* setting out various changes to the U.K. listing regime, to be implemented next April, which are intended to provide a level playing field between U.K. and overseas companies and enable investors to make more informed investment decisions. This client update aims to summarize these changes, focusing primarily on those which will affect overseas issuers of equity securities or GDRs. The changes were proposed by the FSA in December 2008, after almost a year of consultation, and largely follow the original proposals.<sup>1</sup>

The full text of the changes to the Listing Rules, which will be effective from April 6, 2010, can be found at [http://fsahandbook.info/FSA/handbook/LI/2009/2009\\_54.pdf](http://fsahandbook.info/FSA/handbook/LI/2009/2009_54.pdf).

### **SEGMENTATION AND LABELING**

The key change is the re-labeling of the segmentation of the Listing Regime from Primary, Secondary and GDR listings to "Premium" and "Standard" listings. Premium Listing, for equity securities only, denotes a listing with super-equivalent standards, whereas Standard Listing denotes a listing with EU Directive minimum standards. GDRs are not considered "equity securities" and thus may only be granted a Standard Listing. The new structure is intended to help market participants better understand the difference in the disclosure standards to which issuers have to adhere. There will also be a new rule to discourage issuers from giving a false or misleading impression of the type of listing for which they have opted.

### **CORPORATE GOVERNANCE STATEMENT REQUIRED FOR ALL COMPANIES WITH EQUITY AND GDR LISTINGS**

The EU Company Reporting Directive will apply to all listed companies with equity securities or GDRs in issue. This will extend the obligation to include a corporate governance statement in the company's annual report to overseas companies which issue GDRs. The statement must refer to the corporate governance code adopted by the company and explain whether, and to what extent, the company complies with that code. In addition, the statement must contain a description of the main features of the company's internal control

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<sup>1</sup> The proposed changes were discussed in our December 2008 client update entitled *The FSA's Proposed Restructuring of the U.K. Listing Regime*.

and risk management systems in relation to its financial reporting process, and of the composition and operation of its administrative, management and supervisory bodies and their committees.

The FSA recognizes the need to strike a balance between investor protection and competitiveness objectives and is willing to be flexible to accommodate the specific impact of the new rules on overseas companies that may find it difficult to comply, due to conflicts with the legislation in their home jurisdiction or due to other practical matters.

### **STANDARD LISTING TO BE MADE AVAILABLE TO U.K. COMPANIES**

The Standard Listing will be open to U.K. incorporated companies (currently only overseas companies may have a Secondary Listing), thereby ensuring a level playing field between U.K. and overseas issuers.

In response to demand from a small number of issuers with specific capital-raising needs, the FSA has decided to bring forward the implementation of this rule, making the Standard Listing segment available to U.K. companies with effect from October 6, 2009.

### **PERCEPTION OF THE STANDARD LISTING**

It has been suggested that allowing U.K. companies to list under a less rigorous regulatory regime, previously available only to overseas companies, may have a negative impact on investors' perception of the Standard Listing.

For instance, the regulatory requirements of an AIM admission are in some ways more onerous than those for a Standard Listing, because for the latter there is no NOMAD oversight or sponsor equivalent role. Some commentators have suggested that from a regulatory perspective a Standard Listing may be perceived by investors as a less rigorous alternative to an AIM Listing, but it remains to be seen whether this will be borne out in practice.

The FSA does not, however, expect that a significant number of companies will move from a Premium to a Standard Listing. This is partly because only Premium Listing issuers will remain eligible for inclusion in the FTSE U.K. Index Series, and many institutional investors are prevented from buying securities in companies that are not part of such an index. This is expected to remain the same for the foreseeable future, although FTSE policy may change over time.

**OVERSEAS COMPANIES WITH A PREMIUM LISTING**

The new rules will require overseas companies which have a Premium Listing to “comply or explain” against the U.K. Combined Code and offer pre-emption rights to their existing shareholders when making an offer of new securities for cash.

**FURTHER CONSULTATION**

Finally, on October 2, 2009, the FSA published a policy statement (available at [http://www.fsa.gov.uk/pubs/cp/cp09\\_24.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_24.pdf)), which includes consultation on two further issues. The first relates to a rule requiring overseas companies in the Premium Segment to offer pre-emption rights to their shareholders. Although this change has been decided in principle, the FSA is seeking feedback from market participants on whether the rule, as currently drafted, is workable in practice. The second relates to whether listed securities should be capable of being admitted to trading solely on a Multilateral Trading Facility. Current market practice is that securities admitted to the UKLA’s Official List are also admitted to trading on a Regulated Market in the U.K. The deadline for comments to be received by the FSA is December 2, 2009.

Please feel free to contact us with any questions.

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