

50% FREE FLOAT REQUIREMENT FOR INCLUSION OF NON-UK INCORPORATED COMPANIES IN FTSE INDICES

3 November 2010

To Our Clients and Friends:

FTSE has changed the eligibility criteria for inclusion in the FTSE UK Indices, so that, from 27 October 2010, non-UK incorporated companies must have a free float of 50% or more in order to be considered for inclusion in any index which is part of the FTSE UK Index Series, including the FTSE 100.

This change does not affect the free float requirement when applying to list in London—this is set by the UKLA who currently usually require at least 25% of the listed securities to be in the hands of the public on a listing. In order to apply for inclusion in a FTSE UK Index, a company must have a Premium Listing. The 50% free float requirement is only relevant when applying to be included in one of the FTSE UK Indices.

The latest version of the “*Ground Rules for the Management of the FTSE UK Index Series*”¹ published on 27 October 2010 contains an important change to the criteria to be applied when determining whether an applicant company has “UK nationality.” A company must be allocated “UK nationality” effectively as a pre-condition to being eligible to be included in any index of the FTSE UK Index Series.²

In order to be ascribed “UK nationality” the rules now state that ***where a company is not incorporated in the UK:***

- the company must publicly acknowledge adherence to the principles of the UK Corporate Governance Code, pre-emption rights and the UK Takeover Code as far as practicable; and
- ***the company must have a free float of not less than 50%.***

The FTSE definition of “free float” excludes certain cross-shareholdings, significant long-term holdings by founders, their families or directors, employee share schemes, government

¹ http://ftse.com/Indices/UK_Indices/Downloads/FTSE_UK_Index_Series_Index_Rules.pdf#

² FTSE 100, FTSE 250, FTSE 350, FTSE SmallCap, FTSE All-Share, FTSE Fledgling, FTSE All-Small

holdings and investments subject to a “lock in clause” (excluding lock-ins in connection with an IPO which can still be counted towards the free float).

Once a company can demonstrate that it satisfies these two requirements, the FTSE Nationality Committee will determine appropriate nationality, by reference to a list of factors. Where a company does not have a free float of at least 50% it will no longer even be considered for “UK nationality.” FTSE has made this change to ensure that no controlling shareholder or group of controlling shareholders has undue influence over the company.

We understand that the changes will not be applied retrospectively on foreign companies already included in any FTSE index. Going forward, any non-UK incorporated company wishing to be included in one of the FTSE UK Indices, once they have obtained a Premium Listing in London, will have to ensure that it has a free float, calculated in accordance with the FTSE rules, of at least 50%.

Alternatively, the non-UK incorporated company may have to consider a restructuring involving putting a new UK incorporated holding company on top which can then apply to become the premium listed group holding company.

Please feel free to contact us with any questions.

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