

FSA'S PROPOSED CHANGES TO LISTING RULES

6 February 2012

To Our Clients and Friends:

On 26 January 2012, the Financial Services Authority (“FSA”) published its Consultation Paper (CP) on proposed changes to the Listing Rules. The proposed changes are largely updates to the rules to take account of existing UKLA practice, to improve the organisation of existing rules and Technical Notes and to reflect some recent developments in market practice. The FSA also invites comments on whether the Listing Rules need tightening as part of the matrix of rules and legal requirements intended to protect minority shareholders. If adopted, such changes may have a significant impact on the listing regime in England.

The Listing Rules are the responsibility of the United Kingdom Listing Authority “UKLA”, operating under the FSA. This client update summarises the key proposed changes to the listing rules proposed by the UKLA which are of relevance to listed issuers and those considering a listing in London.

Free Float and Minority Shareholders

In recent months there has been renewed debate in the media and amongst market professionals as to the standing of the premium listing segment and whether the premium listing segment retains its status as a benchmark of high standards giving adequate protection to investors. Whilst this includes a debate about public float requirements, and notwithstanding recent FTSE eligibility rule changes increasing the minimum public float requirement to 25% for UK incorporated companies, the UKLA has reiterated that its 25% public float requirement is based on liquidity rather than governance concerns underlying the FTSE requirements. The UKLA is inviting comments on ideas for tightening its rules, such as:

- enhancing the rights of minority shareholders by giving them rights of veto over particularly important resolutions such as the election of directors;
- re-instating and strengthening the previous LR 3.12 requirement that, as a condition of listing, companies with controlling shareholders must be capable of carrying on their business independently of the controlling shareholders;
- introducing a new free float requirement that would effectively allow minority shareholders to determine the governance arrangements of the company; or
- strengthening the related party transaction requirements and disclosures.

Reverse Takeovers

The UKLA has emphasised that a reverse takeover should not be used as a way of avoiding substantive eligibility conditions. The UKLA is proposing to introduce a new definition of “reverse takeover” which would expand the existing definition and focus on the substance of a transaction rather than on its legal form. The proposed new definition states that a transaction will be a reverse takeover where any percentage ratio under the LR 10 class tests is 100% or more, or which in substance results in a fundamental change in the business or in a change in the board or voting control of the issuer. The key characteristics of a fundamental change in the business of an issuer would be: (i) the extent to which the transaction will change the strategic direction or the nature of the business, (ii) whether the industry sector classification of the enlarged group will change, and (iii) whether the business of the enlarged group will deal with different end users and suppliers.

In addition, the UKLA proposes a comprehensive revision to the rules to be clearer about when a suspension will be required and when the listing of the issuer will be cancelled.

Sponsors

The UKLA proposes a number of changes to the rules governing the obligations of sponsors. In particular, the new proposals seek to ensure that whenever the Listing Rules require the issuer to obtain advice, assurances or opinions, a sponsor must be appointed for that purpose. The detailed changes are intended to increase the accountability of sponsors to the UKLA and will add to their compliance burden.

The proposals seek to reinforce the responsibility of the sponsor for the accuracy of its communications with the UKLA, regardless of whether a sponsor relies on representations made by the listed company or applicant or a third party. A sponsor will be obligated to ensure that information provided to the UKLA is, to the best of the sponsor’s belief, accurate and complete in all material respects. In addition, a sponsor would be required to promptly notify the UKLA of any breach of the Listing Rules by an issuer or an applicant.

Externally Managed Companies

Externally managed companies are a relatively new breed of listed company; special purpose acquisition vehicles—or SPACs—which have a corporate structure that outsources the strategic and executive management of the issuer. The UKLA believes that those exercising real management of the issuer, being the principals of the advisory firm and whose remuneration involves an element of carried interest, similar to that seen in private equity funds, are in effect placed beyond the reach of some of the key controls for and protections of shareholders.

The UKLA proposes to amend the Listing Rules to:

- make the principals of the advisory firm responsible for any prospectus published by the listed company and to make the principals subject to the DTR requirements in relation to disclosure of share dealings in the listed company's shares as persons discharging managerial responsibilities ("PDMRs"); and
- insert new rules so that applicants incorporating this structure cannot be premium listed.

Financial Information

The UKLA proposes a number of detailed rule changes, including a proposal to limit the date of admission to three months after the date of the relevant prospectus, thereby effectively limiting the age of the financial information to nine months. This proposal could have a significant impact on certain transactions such as (i) schemes of arrangement for which a public offer prospectus is required where there may be a delay in order to satisfy conditions before admission occurs, or (ii) takeover offers where there is a delay in obtaining competition or other governmental approvals.

Disapplying Pre-emption Rights

The UKLA proposes to update the requirement to obtain shareholder approval to disapply pre-emption rights to ensure that it applies to all issuers (not only to UK incorporated issuers to whom the Companies Act 2006 applies). If this change is adopted, such issuers with a premium listing would be required to publish a circular relating to a resolution to disapply pre-emption rights irrespective of their country of incorporation.

The consultation period closes on 26 April 2012. The UKLA intends to publish the feedback to this consultation and its policy statement during the summer of 2012, with the implementation of the rules coming into effect shortly afterwards.

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Please feel free to contact us with any questions you may have about the UKLA's proposed changes to the Listing Rules.

James C. Scoville
+44 20 7786 9010
jcscoville@debevoise.com

Guy Lewin-Smith
+44 20 7786 9007
glsmith@debevoise.com

Alan V. Kartashkin
+7 495 956 3858
avkartashkin@debevoise.com

Natalia A. Drebezgina
+7 495 956 3858
nadrebezgina@debevoise.com

Robert Manson
+7 495 956 3858
rmanson@debevoise.com