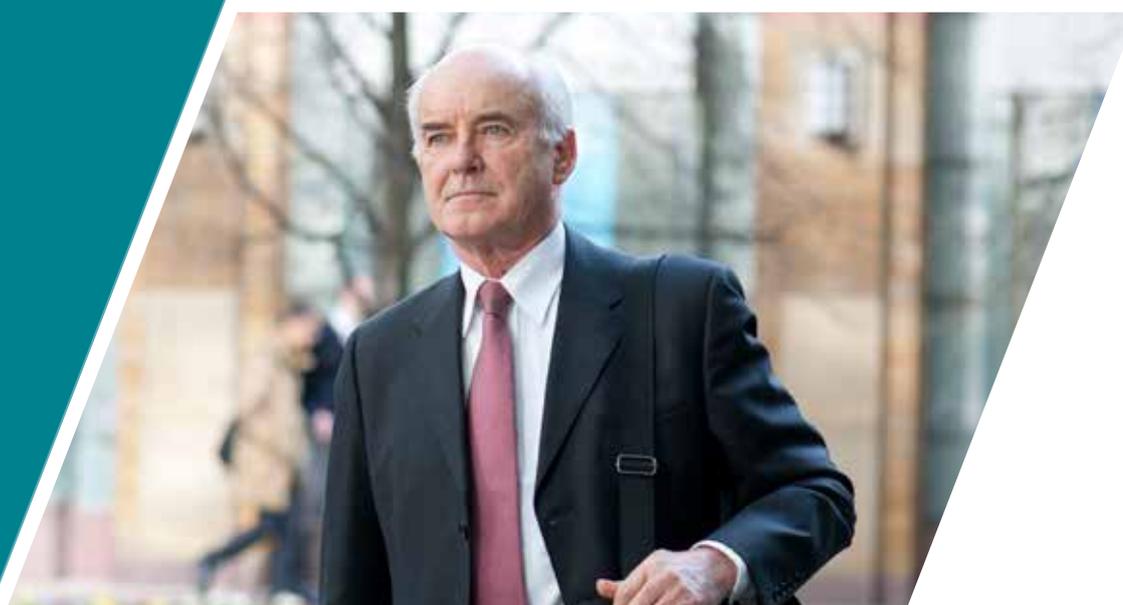


Consultation Paper

CP17/4\*\*

# Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime



February 2017



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We are asking for comments on this Consultation Paper by 14 May 2017.

You can send them to us using the form on our website at: [www.fca.org.uk/cp17-04-response-form](http://www.fca.org.uk/cp17-04-response-form)

**Or in writing to:**

Primary Markets Policy  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London E14 5HS

**Telephone:** 020 7066 1684  
**Email:** [cp17-04@fca.org.uk](mailto:cp17-04@fca.org.uk)

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We have developed the policy in this Consultation Paper in the context of the existing UK and EU regulatory framework. We will keep the proposals under review to assess whether any amendments may be required in the event of changes in the UK regulatory framework, including as a result of any negotiations following the UK's vote to leave the EU.

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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## Abbreviations used in this paper

<b>CBA</b>	cost benefit analysis
<b>CP</b>	Consultation Paper
<b>DP</b>	Discussion Paper
<b>FCA</b>	Financial Conduct Authority
<b>FSA</b>	Financial Services Authority
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GAAP</b>	generally accepted accounting principles
<b>IPO</b>	initial public offering
<b>LR</b>	Listing Rules sourcebook
<b>MAR</b>	Market Abuse Regulation (Regulation (EU) No 596/2014)
<b>PBT</b>	profit before tax
<b>SPAC</b>	special purpose acquisition company
<b>SRBC</b>	scientific research based company
<b>UKLA</b>	UK Listing Authority



# 1. Overview

## Introduction

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- 1.1 The Financial Conduct Authority (FCA) has the overarching strategic objective of ensuring markets function well. An important part of that is ensuring the UK's primary markets remain effective.
- 1.2 Primary markets play a key role in supporting the wider economy by bringing together investors seeking investment opportunities and issuers that want to access deep and liquid pools of capital to finance their businesses. We have an important role in ensuring the UK's primary markets remain effective in meeting both these needs.

## Background

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- 1.3 In our 2016/17 Business Plan, we said we would carry out a review of the structure of the UK's primary markets to ensure that they continue to serve the needs of issuers and investors. The overall outcome we want to achieve is an increase in the efficiency and effectiveness of primary markets to ensure they meet those needs<sup>1</sup>. We are now publishing two documents to progress this aim.
- 1.4 Firstly, we are publishing a Discussion Paper (DP) that considers the broader market landscape and sets out a number of areas where we want to explore opportunities for structural enhancements to UK primary markets. The DP is entitled 'Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape' and has been published on our website<sup>2</sup>. The second document we are publishing is this Consultation Paper (CP), which sets out more developed proposals to enhance certain aspects of the Listing Rules. While the CP and DP are separate and different in nature, they complement each other and many stakeholders in the primary markets will want to read both.
- 1.5 The proposals in this CP take into account the stakeholder feedback we have received as part of our review of the UK's primary markets and address issues that have emerged from our interactions with issuers and their advisors on transactions. The proposals aim to ensure that the Listing Rules continue to meet the needs of issuers and investors, and most relate to the premium segment of the listing regime. As the proposals are primarily technical, we think it is appropriate to address them now, and that this does not affect the broader, high-level discussion set out in the DP.

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1 [www.fca.org.uk/publication/corporate/business-plan-2016-17.pdf](http://www.fca.org.uk/publication/corporate/business-plan-2016-17.pdf) (page 28)

2 [www.fca.org.uk/publication/discussion/dp17-02.pdf](http://www.fca.org.uk/publication/discussion/dp17-02.pdf)

- 1.6** In addition to the CP and DP, we are currently working on, or have completed, a number of other workstreams which are relevant to our policy aims in the primary markets. Some of these have helped shape the proposals in this paper. These are:
- Our investment and corporate banking market study, which concluded with the publication of a Final Report (MS15/1.3) in October 2016<sup>3</sup>
  - Our work contributing to the negotiation of the new Prospectus Regulation (PD3)
  - Our work with market participants to look at options for improving the availability of information in the UK initial public offering (IPO) process, which we will shortly consult on, and
  - Our work to improve the effectiveness of the UK's primary debt markets to better meet the needs of issuers and investors, including through the UK Debt Market Forum, as explained in our report 'Practical measures to improve the effectiveness of UK primary listed debt markets'<sup>4</sup>

### Stakeholder discussions and views

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- 1.7** Our discussions with stakeholders so far have provided strong endorsement for the UK's premium listing regime. However, they have also identified some areas for further technical enhancement. We have similarly become aware of potential improvements through our recent experiences working with sponsors advising on transactions in our capacity as the UK Listing Authority (UKLA).
- 1.8** We are therefore proposing amendments to the Listing Rules to ensure that certain provisions that apply to premium listing remain effective and appropriately calibrated. This will involve a number of changes to our Handbook and supporting guidance (including in UKLA technical notes that we publish on the FCA's website) to clarify, simplify or reduce unnecessary regulatory requirements. While these proposals will primarily benefit issuers with, or applying for, a premium listing, they may also benefit some issuers with a standard listing. We discuss this further below.
- 1.9** There are three groups of proposals in this CP. These cover:
- The requirements in Chapter 6 of the Listing Rules which apply to commercial companies applying for a premium listing of their shares.
  - The treatment of transactions that are outside the ordinary course of business and which are, or are proposed to be, undertaken by listed issuers. These changes involve the so-called 'class tests', used to assess the size of the transaction relative to the listed issuer, and specifically the 'profits test'<sup>5</sup>.
  - Our approach to suspending the listing of an issuer that has announced a reverse takeover, or where details of such a transaction have leaked.

<sup>3</sup> [www.fca.org.uk/publication/market-studies/ms15-1-3-final-report.pdf](http://www.fca.org.uk/publication/market-studies/ms15-1-3-final-report.pdf)

<sup>4</sup> See our report on the UK Debt Market Forum at: [www.fca.org.uk/publication/newsletters/practical-measures-improve-effectiveness-uk-primary-listed-debt-markets.pdf](http://www.fca.org.uk/publication/newsletters/practical-measures-improve-effectiveness-uk-primary-listed-debt-markets.pdf).

<sup>5</sup> 4R, Annex 1 to Chapter 10 of the Listing Rules

1.10 We have summarised these changes below.

### Who does this consultation affect?

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1.11 This CP will be of particular interest to:

- UK and overseas companies that have listed equity securities or certificates representing equity securities, or are considering a UK listing of such securities
- firms advising on the issuance of UK listed equity securities or certificates representing equity securities
- firms or persons investing or dealing in UK listed equity securities or certificates representing equity securities

### Is this of interest to consumers?

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1.12 This paper will be of interest to consumers who deal and invest in UK listed shares either directly or through institutions. It will also be of interest to issuers in their capacity as consumers of sponsor services.

### Summary of our proposals

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#### Clarifications to the premium listing eligibility requirements for commercial companies

1.13 Chapter 6 of the Listing Rules (LR 6) sets out the requirements an applicant has to meet in order to obtain a premium listing. We have amended this chapter a number of times. While the premium listing eligibility requirements are strongly endorsed by stakeholders, our discussions identified several areas where the rules could provide greater clarity on what is required.

1.14 We are therefore making a range of proposals to present the existing requirements more clearly and ensure the drafting better reflects the intention of the rules and how they are applied in practice. We are also proposing new technical notes with additional guidance to give greater context to the rules.

#### Changes to the concessionary routes to premium listing

1.15 As well as redrafting sections of LR 6, we are also proposing changes to what are known as the 'concessionary routes' to premium listing. Applicants for premium listing are usually required to have a three-year revenue earning track record in order to be eligible for premium listing. However, there are specific rules for companies in some sectors which exempt an applicant from this requirement. Instead, they enable it to gain a premium listing by complying with other conditions (the 'concessionary routes').

**1.16** In this CP, we propose a new concessionary route to premium listing for certain property companies that cannot meet the LR 6 track record requirements. The proposed new concession would recognise that a property valuation report might be considered as a more appropriate way to judge the maturity of a property company when assessing its eligibility for premium listing.

**1.17** We have also looked at the existing concessionary routes to premium listing to assess if they are still up to date and comprehensive enough. We have decided that they are still appropriate, and so are not proposing any substantial changes to these provisions. However, we have decided that they would benefit from new guidance in some areas to ensure they are properly understood. As a result, we are consulting on two new technical notes and replacing an existing one with new content. These are set out in Appendix 1.

### **Classifying transactions – changes for premium listed issuers**

**1.18** The obligation for premium listed issuers to provide certain disclosures or seek shareholder approval for large transactions that are outside the ordinary course of business (typically acquisitions, disposals and joint ventures) is an important feature of the governance requirements and shareholder protections imposed by the Listing Rules. To establish whether these obligations apply, the Listing Rules require proposed corporate transactions to be classified according to a number of tests of relative size. These tests are known as the 'class tests'. The classification of a transaction (unclassified, class 2 or class 1) determines whether a premium listed issuer must make certain disclosures on the transaction and whether it will have to seek shareholder approval. The classification will also indicate whether the transaction is a reverse takeover.

**1.19** To ensure the regime is effective, the method for assessing the size of a transaction must be clear and result in appropriate classifications. However, stakeholder feedback and our own experience dealing with requests from issuers and their advisors for individual guidance on the application of the class tests suggests that one of the class tests - the 'profits test' - often produces anomalous results.

**1.20** We have carefully considered the feedback we have received, and now propose two changes to the profits test:

- That premium listed companies will be permitted to disregard an anomalous profits test result of 25% or more when all of the other class test results are below 5%, and
- That premium listed issuers will be permitted in certain limited circumstances to make specified adjustments to the profit figures used in the profits test without first seeking our agreement.

**1.21** These would apply where the transaction would otherwise be classed as a class 1 or reverse takeover and the issuer has obtained the guidance of a sponsor under LR 8.2.2R in relation to the application of the Listing Rules on classifying the transaction. As part of this, we propose to update the guidance in our separate Technical Note (UKLA/TN/302.1) on adjusting the profit figures.

**1.22** We are also proposing certain adjustments to the figures used to classify assets and profits. Currently, these figures must be those in the latest published audited consolidated accounts or preliminary statement (or subsequently published interim balance sheet), which are adjusted to take account of subsequently completed transactions that meet or exceed the threshold for a class 2 transaction. We are now proposing to amend the rules to require the figures used for classifying assets and profits to be adjusted for such transactions completed during the last financial year. While this approach is currently set out in a separate Technical Note (UKLA/TN/302.1), we think it would be more appropriate to include it explicitly in the Handbook itself.

### **Reverse takeovers**

**1.23** A reverse takeover is a transaction where the business, company or assets being acquired (which we refer to as the 'target') is or are bigger than the listed issuer (based on the results of the class tests), or where the transaction results in a fundamental change in the business, board or voting control of the issuer. We refer to this as a reverse takeover because the entity being 'taken over' becomes the major part of the combined business.

**1.24** Our approach to date has been to assume that, where a reverse takeover is in contemplation, there will be insufficient information in the market about the target unless the listed company can provide it. The information that will generally satisfy us that a suspension is not required is specified in the Listing Rules and is broadly equivalent to that required to be disclosed to the market on a listed company. Where the information is not provided, our view has historically been that the market will not operate smoothly and we will often use our powers to suspend the issuer's listing, until either the 'information gap' is bridged or the issuer confirms that the reverse transaction is no longer in contemplation.

**1.25** However, in response to stakeholder feedback and our own experience with reverse takeovers, we propose to change our approach. Under our proposals, the assumption of insufficient information being available in the market will no longer apply. Instead we will assume that the market can operate smoothly on the basis of the information that listed companies already make publicly available as part of their compliance with existing obligations, principally the obligation to disclose inside information under the Market Abuse Regulation (MAR).

**1.26** The proposed change also addresses stakeholder feedback that suspending a listing is a disproportionate action which harms investors because it means they cannot trade in the securities of the acquiring party, potentially for a long period of time. Stakeholders have told us that issuers want to avoid any possibility of this kind of detriment, but are concerned they may not be able to give us the specific information we need to decide not to suspend their listing. Feedback suggests that this has the practical effect of deterring some issuers from pursuing transactions altogether.

**1.27** However, we propose keeping our existing approach for shell companies. By shell companies we mean issuers whose assets consist wholly or predominantly of cash or short dated securities, or whose predominant objective is to undertake an acquisition or merger (e.g. special purpose acquisition companies (SPACs)). This is because different considerations apply to shell companies.

**1.28** Our proposals do not include changing the premise in LR 5.6.19G that we will generally seek to cancel an issuer's listing when it completes a reverse takeover. They also do not include changing or removing our general power to suspend listing in LR 5.1.1R and the related guidance in LR 5.1.2G.

### Equality and diversity considerations

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- 1.29** We have considered the equality and diversity issues that may arise from the proposals in this CP. Overall, we do not consider that our proposals adversely impact any of the groups with protected characteristics (i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment).
- 1.30** We will continue to consider the equality and diversity implications of the proposals during the consultation period, and will revisit them when publishing the final rules.
- 1.31** In the interim we welcome any input to this consultation on such matters.

### Next steps

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#### What do you need to do next?

- 1.32** We welcome your views on the questions and proposals put forward in this paper. Please send your responses to us by 14 May 2017.

#### How?

- 1.33** Use the online response form on our website or write to us at the address on page 3.

#### What will we do?

- 1.34** We will consider your feedback and publish our rules in a Policy Statement in the second half of 2017.

## 2. Clarifications to Chapter 6 of the Listing Rules

### Introduction

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- 2.1** In this chapter we propose amendments to Chapter 6 of the Listing Rules (LR 6), the chapter which deals with the eligibility requirements for premium listed companies. This is to make the rules in LR 6 clearer and more transparent.
- 2.2** Stakeholders have provided us with strong feedback that the premium listing segment works well, and that we should not disturb the equilibrium the current rules achieve between the needs of investors and issuers. However, we have amended LR 6 several times over the years, and as a result the drafting has, in places, become difficult to interpret.
- 2.3** We therefore propose to reorder the chapter and amend provisions to simplify and clarify the existing provisions, giving market participants a better understanding of the premium listing eligibility requirements. These amendments are not intended to create significant changes in underlying policy, but should make the premium listing process more efficient and effective by being more transparent, consistent and accessible. We also propose substantive changes to a small number of rules and propose to add and delete a small number of rules and guidance provisions. We explain these further below.
- 2.4** In certain cases we consider it necessary to explain the operation of rules further through additional guidance, which we think sits best in our Knowledge Base<sup>6</sup> of technical and procedural notes on the Listing Rules, Prospectus Rules and Disclosure Guidance and Transparency Rules. As a result, we propose a number of new technical notes, set out in Appendix 1 to this paper. Depending on consultation feedback, we will add these to the Knowledge Base in due course..

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<sup>6</sup> Our source of technical guidance on the FCA's Listing Rules, Prospectus Rules and Disclosure Guidance and Transparency Rules, published on our website at [www.fca.org.uk/markets/ukla/knowledge-base](http://www.fca.org.uk/markets/ukla/knowledge-base).

## Summary of proposed amendments

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### Where LR 6 applies

- 2.5** We propose a revised section to better explain to whom LR 6 applies, and also propose to update the rules to refer consistently to 'applicant' (some rules previously referred to 'new applicant'). As a result, the 'new applicant' definition in the Handbook's Glossary of Terms (Glossary) is no longer required and we propose to delete it.
- 2.6** We have also amended the drafting to clarify that a company that is an applicant for premium listing by virtue of it being inserted as a new top holding company of an existing premium listed group (so-called 'new topco' transactions) and which is also undertaking a transaction will not necessarily be treated as an applicant for premium listing to whom LR 6 applies. This will only be the case where the transaction is a reverse takeover.
- 2.7** Likewise, we have clarified that LR 6 does not apply to further issues of shares of the class already listed unless this occurs in conjunction with a reverse takeover.
- 2.8** In 'reordering' LR 6, we have re-designated the original provisions into new provisions and then amended, deleted or restated the text. We have also created new rules in the process

### Requirement for historical financial information

- 2.9** Currently in LR 6.1.3R, we set out that a new applicant for premium listing must have published or filed certain historical financial information. We propose to state explicitly (in LR 6.2.4R) that the additional financial information (which may be required where there have been acquisitions during the three year track record period) needs to be audited. This is currently only implicit in the rules.

### The track record requirements

- 2.10** LR 6 requires an applicant for premium listing to demonstrate a three-year financial track record that is representative of the business to be listed. This ensures that businesses demonstrate a certain level of maturity in order to be eligible for premium listing. While the three-year track record requirement is long-established and continues to have broad stakeholder support, recent cases have made clear that issuers can find it difficult to understand when their track record meets the requirements of the rules, and for sponsors to advise their clients with confidence.
- 2.11** We propose to clarify the drafting of the requirements, currently in LR 6.1.3BR to LR 6.1.3EG (LR 6.2.1R to LR 6.3.2G in the proposed new rules), and make it clearer that only a company that has been generating revenues in its declared line of business for the past three financial years can demonstrate that it is eligible for premium listing. We propose to do this by inserting a clear reference to revenue generation in LR 6.3.1R(1), whereas currently it appears only in the associated guidance. We also propose to provide an additional Technical Note, UKLA/TN/102.1, with further guidance on how to interpret the track record requirements.

**2.12** We also propose to delete the guidance set out in LR 6.1.13G to LR 6.1.15G which explains where we might waive the requirement for financial information and a track record. As we do not normally waive these requirements, we consider that an explicit reference to our willingness to do so is misleading.

**2.13** We also propose further amendments to some of the track record rules for readability and clarification purposes. As well as updating the financial track record requirements and the related cross-references, we have also clarified that the requirement for a revenue earning track record does not apply to a mineral company. Further, we are proposing that for mineral companies that have been in existence for less than three years, the requirement for representative historical financial information only applies to the period for which a mineral company publishes or files its historical financial information.

### **The independence requirements**

**2.14** In 2012 to 2014<sup>7</sup>, we consulted on enhancing the requirements in LR 6 relating to the independence of an issuer's business, focusing particularly on three areas:

- The listed company's business should be a standalone business. It should be independent and able to implement its business strategy without relying on a third party to generate its business.
- Where there is a controlling shareholder, the relationship with the controlling shareholder should be appropriate – recognising nevertheless that a large holding will rightly confer significant voting rights.
- The board of the company should be able to control the company's business. This may not be possible when, for example, a company's only assets are minority holdings in other entities.

**2.15** The changes at that time were triggered by suggestions in the market that a small number of companies with dominant controlling founder shareholders, often from jurisdictions with corporate governance traditions different from the UK's, were being run more like private than public companies, and that the interests of minority shareholders were being disregarded. At the same time, the consultation process recognised that the UK tradition of 'one share - one vote' should be maintained, and that minority shareholders should not be able to control a company, meaning that a majority shareholder would naturally have significant influence, given its majority of voting rights in the company.

**2.16** We continue to regard our requirement to demonstrate an independent business as important. The current rules are structured as a single overarching requirement, with guidance that gives an illustration of circumstances where this requirement might not be met. However, our recent discussions with market participants have shown that this structure has unintentionally obscured the meaning of the rule, and risked businesses applying the guidance inappropriately. So to clarify these requirements we propose to state more explicitly which factors within the existing guidance apply to which of the three areas mentioned above by splitting out the current rules into three sections. This split should clarify, for example, that a majority shareholder exercising voting rights does not necessarily impede the issuer's freedom to implement its business strategy.

<sup>7</sup> See CP12/25, CP13/15 and PS 14/8

- 2.17** Our proposal involves splitting the existing independence rule, LR 6.1.4R, into three separate provisions:
- a rule on the need to carry out an independent business per se (LR 6.4)
  - a rule that clarifies the need to have a business independent of any controlling shareholder (LR 6.5), and
  - a rule that clarifies the issuer must control its business (LR 6.6)
- 2.18** We also propose some accompanying guidance (LR 6.4.3G, LR 6.5.3G and LR 6.6.3G) that sets out factors that may indicate the issuer does not comply with the rules.
- 2.19** We further propose to insert guidance (LR 6.4.2G, LR 6.5.2G, LR 6.6.2G) to make the purpose of the rules more explicit, namely that the protections afforded to shareholders under the Listing Rules must be meaningful.
- 2.20** As this is an area that requires difficult judgements to be made, we also propose to supplement the relevant Handbook provisions with a new Technical Note, UKLA/TN/103.1, to help interpret it. In particular, we propose that this Technical Note gives examples of what might be seen as improper influence.

#### **Working capital**

- 2.21** We propose to delete the guidance in LR 6.1.17G and LR 6.1.18G. This states that we may dispense with the requirement in LR 6.1.16R for an applicant for listing, and any subsidiary undertakings, to have sufficient available working capital to meet the group's requirements for at least the next 12 months (proposed LR 6.7.1R). We have not waived this requirement since the listing function was conducted by the FCA or its predecessor, the FSA, and are unlikely to do so in future. As a result, we consider that the current guidance is no longer appropriate

#### **Constitutional arrangements**

- 2.22** We propose explicitly stating in LR 6 that an issuer's constitution must allow it to comply with the Listing Rules, and have grouped rules that relate to the issuer's constitution in one section, LR 6.9.1R to LR 6.9.2R, for ease of reference.

#### **Other consequential changes**

- 2.23** Finally, we propose consequential changes to several chapters of the Listing Rules and the Glossary to ensure they include appropriate cross-references to LR 6.
- 2.24** There are proposed cross-reference amendments to LR 5, LR 8, LR 9, LR 11, LR 13, LR 15, LR 16 and the Fees Manual.
- 2.25** Given the more tightly drafted application of LR 6, we have updated the cross-reference in LR 8.4.2R and LR 8.4.8R to refer to the working capital statement in the document provided with the listing application, rather than specifically referring to LR 6.7.1R.

**2.26** We propose to update the Glossary as follows:

- the controlling shareholder definition has moved out of LR 6 and into the Glossary
- the new applicant definition has been deleted
- the independent director definition has been amended as a result of the deletion of 'new applicant', and
- the 'group' definition for the Listing Rules has been amended to update cross-references

**Q1: Do you agree with the proposals to clarify the requirements discussed above regarding the historical financial track record and revenue earning track record requirements for premium listing eligibility?**

**Q2: Do you agree with our proposals to split the current independent business requirements into three distinct areas with associated guidance?**

**Q3: Do you agree with the other proposed minor clarifications to LR 6?**

## 3.

# Concessionary routes to premium listing

### Introduction

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- 3.1** Ordinarily, commercial companies that apply for premium listing are required to have a three-year revenue-earning track record in order to be eligible. However, for some sectors there are specific rules which exempt a new applicant from these requirements and enable it to gain a premium listing by instead complying with other conditions. These are the so-called 'concessionary routes' to premium listing. There are two such concessionary routes in the Listing Rules. These are for mineral companies (current LR 6.1.8R to LR 6.1.10R, proposed LR 6.10) and scientific research based companies (SRBCs) (currently LR 6.1.11R to LR 6.1.12R, proposed LR 6.11).
- 3.2** These concessions recognise that companies in these sectors have special attributes. In particular, they acknowledge that a three-year revenue-earning track record may say little about the value of the company, as investors typically use non-financial statement metrics to assess the issuer's prospects.
- 3.3** As part of our work on the effectiveness of the listing regime, we have examined whether these concessions remain appropriate, up to date, and sufficiently comprehensive. The two current concessions for SRBCs and mineral companies have existed in their present form for some time. While discussions with stakeholders showed general support for the existing concessions, we are proposing some minor changes as a result. We set these out below. Market participants also suggested that we should create a new concessionary route for certain types of property companies, which are typically assessed and valued against their property valuation report. We have set out a proposal to address this feedback below.

### Guidance on the current concessions

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- 3.4** As a result of our stakeholder discussions and our recent experiences, we have decided to replace the existing Technical Note for SRBCs (UKLA/TN/422.2) with a new Technical Note (UKLA/TN/422.3) to provide additional guidance on the interpretation of the concession.
- 3.5** In addition, for mineral companies, we propose a new Technical Note, UKLA/TN/427.1, to help interpretation. We have also updated the current concessions to make consequential changes arising from the reordering and amendment of LR 6 as a whole. This is set out in Appendix 1.

- Q4: Do you agree with replacing our existing Technical Note – Scientific research based companies (UKLA/TN/422.2) with our proposed Technical Note for SRBCs (UKLA/TN/422.3)?**
- Q5: Do you agree with our proposals to introduce a new Technical Note for mineral companies (UKLA/TN/427.1)?**

### Property companies

- 3.6** Stakeholders' main request for expanding the concessions was for property companies. Several stakeholders pointed out that a property valuation report might be considered in the place of a financial track record, and that the drafting of the current LR 6.1.3EG (proposed LR 6.3.1R(1)), with its references to revenue, might not translate clearly to the property industry.
- 3.7** While property companies can be very different from companies that develop their own assets to fund-like structures that let mature assets, these companies are similar in that investors will typically look to their property valuation report to assess the value of the company. Further, the valuation of property assets follows well-established principles.
- 3.8** Weighing up the call for a concession for property companies with wider feedback not to dilute unduly the requirements of LR 6, we identified two subcategories of property companies that may rightly benefit from a concession:
- Companies that have been established for less than three years, but predominantly hold mature, let assets that generate revenue. The track record of these companies as the current 'holding vehicle' of the assets is arguably less important than the performance of the assets themselves. An example may be a spin out of a mature portfolio. For such companies, property valuation reports will provide key information for assessing the value of the company.
  - Property companies that develop assets, and have done so for three years, but focus on long-term projects that may only be revenue generating after many years, if not decades. For these companies, the issuer's ability to demonstrate successful development activity representative of its long-term strategy through several years of increases in the value of the assets on its balance sheet, and supported by the property valuation report, will be much more informative than revenue figures.
- 3.9** We propose to introduce in a new rule LR 6.12.1R a concessionary route to premium listing to take account of the above.
- 3.10** We also propose to publish additional guidance in the form of a new Technical Note, UKLA/TN/426.1, to give greater clarity to the requirements proposed.
- Q6: Do you believe a specific concession for property companies in LR 6.12 is appropriate? If so, is the proposed concession correctly calibrated and do you agree with our proposed new Technical Note – Property company concession (UKLA/TN/426.1) in Appendix 1?**

## 4. Classifying transactions for premiums listed issuers

### Introduction

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- 4.1** The obligation for premium listed issuers to disclose or seek shareholder approval for certain large corporate transactions that are outside of the ordinary course of business is an important feature of the governance requirements and shareholder protections imposed by the Listing Rules. These transactions are typically acquisitions, disposals and joint ventures.
- 4.2** To determine the disclosure and approval requirements that apply, the Listing Rules require issuers with a premium listing to use the prescribed 'class tests' in LR 10 Annex 1 to assess the relative size of the proposed transaction to the issuer. There are four class tests:
- **The gross assets test** (calculated by dividing the gross assets the subject of the transaction by the gross assets of the listed company);
  - **The profits test** (calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the listed company);
  - **The consideration test** (calculated by taking the consideration for the transaction as a percentage of the aggregate market value of all the ordinary shares (excluding treasury shares) of the listed company); and
  - **The gross capital test** (calculated by dividing the gross capital of the company or business being acquired by the gross capital of the listed company). This test applies only to acquisitions.
- 4.3** The results of the class tests determine whether the issuer must make specific disclosures on the transaction (where any percentage ratio is 5% or more but less than 25%, the transaction is classified as a class 2 transaction) and seek shareholder approval for the transaction (where any percentage ratio is 25% or more, the transaction is classified as a class 1 transaction). The classification will also indicate whether the transaction is a reverse takeover (where any percentage ratio is 100% or more).
- 4.4** Issuers assessing potential transactions are not required to seek individual guidance or agree the classification of a transaction with us before proceeding to fulfil the requirements of the rules in relation to the transaction. They are only required to approach us if they believe that the class tests, when prepared in accordance with our rules in LR 10 Annex 1, produce an anomalous result or are inappropriate given the company's activities. In these instances we may agree either that adjusted figures can be used in a class test or that appropriate substitute tests can be used.

- 4.5** To ensure the effective operation of the premium listing regime, the method for assessing the size of the transaction and its resulting classification must produce an appropriate result that reflects the true size of the transaction being entered into. Taking into account stakeholders' feedback and our own experiences of transactions and requests for individual guidance, it is clear that issuers that classify transactions frequently question if the profits test result is an accurate representation of the size of the transaction.
- 4.6** We therefore propose two changes in our approach to the profits test. Firstly, we propose to permit premium listed issuers to disregard the profits test where its result is anomalous, the result is 25% or more and all other class test results are under 5%. This will result in the transaction being treated as unclassified.
- 4.7** Secondly, we propose in limited circumstances - where the profits test result is 25% or more and is anomalous - to allow premium listed issuers to make certain adjustments to the profit figures they use in their profits tests.
- 4.8** In relation to both proposals the issuers would need to continue to obtain the guidance of a sponsor under LR 8.2.2R, as they would at the moment, but there would be no requirement to seek our agreement.
- 4.9** In parallel with this we are consulting on whether we should include further adjustments to the profits test results, or alternative measures of profitability in the classification rules.
- 4.10** We are also consulting on amending paragraph 8R of LR 10 Annex 1, in relation to the figures used for classifying assets and profits, to take account of the guidance currently set out in our Technical Note - Classification tests (UKLA/TN/302.1).

#### **Regarding the profits test result as anomalous**

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- 4.11** We receive many requests for guidance where the profits test result is markedly out of line with other class test results and arguably not representative of the relative size of the transaction to the issuer.
- 4.12** These requests often involve cases where a transaction would require shareholder approval because of the profits test result alone, but where the other tests show the transaction to be small, for example, under 5%. Stakeholders have tended to view the requirement to treat these as class 1 transactions or reverse takeovers as disproportionate. In this context, we are regularly persuaded by the arguments that sponsors make to us.
- 4.13** We are therefore proposing to add new rules in LR 10 Annex 1 (proposed paragraphs 12R, 13R and 15G). The new rules would state that, where the result of the profits test is 25% or more but the results of all other applicable class tests are below 5% and the profits test result is anomalous, the premium listed issuer may disregard the profits test result for the purpose of the classification of the transaction without consulting us in advance.

- 4.14** This means that the issuer would no longer have to consult us in relation to these transactions. From the arguments typically presented to us by sponsors, we would expect that in most cases where the sponsor would currently write to us about anomalous class tests, the sponsor would be able to conclude that it is appropriate to regard a profits test result of 25% or more as anomalous when the other class test results are below 5%.
- 4.15** However, there may be some limited situations where, in the sponsor's view, regarding the profits test as anomalous would not be appropriate because the sponsor considers the profits test reflects the true size of the transaction under consideration. This could occur, for example, where an issuer is due to acquire a loss-making entity and the relative size of the target's losses will have a significant effect on the issuer's medium term prospects. In these circumstances, the sponsor may consider that a class 1 or reverse takeover result appropriately represents the size of the proposed transaction, or may contact us for guidance as they would currently.
- 4.16** We considered including an alternative rule that would automatically make all transactions unclassified if the profits test produced a result over 25% and all other tests results were less than 5%, without the requirement to obtain the guidance of a sponsor. We decided against this proposal as the resulting classification will depend on the application of judgement to the case in hand, and the same decision may not be reached in every such scenario.
- 4.17** Nevertheless, a premium listed issuer, having obtained a sponsor's guidance under LR 8.2.2R, may continue to seek our guidance on applying the profits test if the result is over 25% and all of the other class test results are below 5%.

#### Adjustments to the profits figures used in the profits test

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- 4.18** We are frequently asked to allow certain adjustments to the calculation of the profits test on an individual basis. We regularly accept the arguments of sponsors who advise issuers under LR 8.2.2R in this context. So we propose that premium listed issuers, having sought guidance from a sponsor, should be able to adjust the figures they use to calculate the profits test if the transaction's classification would otherwise be anomalous, without having to consult us (proposed LR 10 Annex 1 paragraphs 12R and 13R(2)).
- 4.19** This should lead to the profits test returning the correct classification of the transaction more often, and issuers having to consult with us less often.
- 4.20** The profits test compares the issuer's and the target's profits after deducting all charges except tax (profit before tax (PBT)). We propose that the issuer can adjust profits for the following, provided that the item is a genuine one-off cost:
- costs incurred by the issuer or the target in connection with its IPO, and
  - closure costs incurred either by the issuer or the target that are not part of an ongoing restructuring that will span more than one financial period

- 4.21** If the sponsor providing guidance under LR 8.2.2R does not advise that the cost is a genuine one-off, or that the profits test result is anomalous, the issuer may not adjust PBT without first consulting with us in accordance with existing guidance in paragraphs 10G and 11G of LR 10 Annex 1. In assessing whether the item is a genuine one-off cost for the profits test, issuers and sponsors should continue to have regard to our Technical Note - Classification tests (UKLA/TN/302.1). We propose to update this note to reflect the proposed rule changes
- 4.22** We also propose that the issuer or target may adjust PBT for historic financing costs where it has recently completed its IPO and undertaken a capital restructuring. In these circumstances we propose to allow adjustments to PBT to remove historic financing charges incurred during private ownership which are no longer relevant. These include, for example, interest charges on debt owed to private equity investors which has been repaid or replaced. These charges should be substituted on a pro-forma basis with the costs of the issuer's current borrowing arrangements.
- 4.23** The issuer should also apply the adjustments consistently to both itself and its target, where applicable, to ensure a like-for-like comparison.

#### **Obtaining guidance from a sponsor and consulting the FCA**

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- 4.24** We have focused our two proposals above on transactions by premium listed companies that would be class 1 or above. Most of the individual guidance requests we currently receive relate to transactions of this nature.
- 4.25** For such transactions issuers are already required to obtain guidance from a sponsor pursuant to LR 8.2.2R. Importantly, this requirement would remain the same, because the transaction could amount to a class 1 or reverse takeover. However, the requirement to consult us would be removed in both instances. As such, where the profits test result is 25% or more and is anomalous, having sought guidance from a sponsor, the issuer will be able to disregard the profits test result or make the specified adjustments to it without prior consultation with us.
- 4.26** For all other situations where the premium listed issuer considers that the profits test produces an anomalous result, we propose to keep our existing requirement that the issuer must consult us if it wants to modify the way it applies the profits test rules. This would include related party transactions (subject to the requirements of Chapter 11 of the Listing Rules) and class 2 transactions where the issuer is not required to seek the guidance of a sponsor. Extending the proposals further would have required us to extend the sponsor service requirements in LR 8.2.2R to other transactions. Based on our experience of past guidance requests, we took the view that the introduction of new requirements for transactions below class 1 was not justified.
- 4.27** Although standard listed issuers should apply the class tests to assess whether a transaction is a reverse takeover (LR 5.6.4R), our proposals do not apply to standard listed issuers. As is currently the case, such issuers must consult with us before adjusting or disregarding any class test results.

- Q7:** Do you agree that it is reasonable for a premium listed issuer, having obtained the guidance of a sponsor under LR 8.2.2R, to disregard the result of the profits test, where the result is 25% or more and the other class test results are below 5%, and the profits test result is anomalous?
- Q8:** Do you agree that an element of judgement should be applied when deciding whether to disregard the result of the profits test where the result is 25% or more and all other class tests results are below 5%?
- Q9:** Do you agree that premium listed issuers, having obtained guidance on the class tests from a sponsor under LR 8.2.2R, should be allowed to make the proposed adjustments to the figures used to classify profits without being required to consult and agree the adjustments in advance with us?

#### Alternatives to PBT

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- 4.28** We have also considered whether an alternative line in the income statement could be used for the profits test. The advantage of using PBT in the profits test calculation is that it is the most consistently presented profit figure and so, in theory, allows a 'like-for-like' comparison between the issuer's profits and those of the target. However, we note that investors often use alternative (non GAAP) profit measures to evaluate companies. These can include earnings before interest, tax, depreciation and amortisation (EBITDA) and earnings before interest and tax (EBIT).
- 4.29** Taking this into account, and the feedback that the current profits test based on PBT often results in a classification that is not representative of the size of the transaction, we are seeking views on other possible enhancements to the calculation of the profits test. This includes whether there are other adjustments to PBT that should be permitted to be made on the guidance of a sponsor without having to agree them first with us. Alternatively, we are seeking views on whether other profit measures should be used in the class tests, whether in place of or as well as the current profits test.
- 4.30** We also considered whether the profits test could be removed, but remain of the view that investors consider income statement-based metrics when they assess companies, so it is important to keep an income statement-based test. We welcome further stakeholder views on this issue.
- Q10:** Are there any other possible enhancements to the calculation of the profits test that could be made?
- Q11:** As an alternative to our proposals, are there any alternative profit measures that should be used either in conjunction with or in place of the current profits test?

### Adjustments for transactions completed during the last financial year

- 4.31** Paragraph 8R in LR 10 Annex 1 states that the figures used to classify assets and profits in calculating the class tests are those in the year-end balance sheet and income statement (whether audited or preliminary statements) or the interim balance sheet (if published). These figures must also be adjusted to take into account transactions (such as acquisitions and disposals) entered into by either the issuer or the target after the year end or, where applicable, after the publication of the interim balance sheet. The required adjustments apply to those transactions that are large enough to meet the threshold for a class 2 transaction when the class tests are applied. Guidance on this is currently contained in our Technical Note - Classification tests (UKLA/TN/302.1), under the section headed "Class tests – figures used to classify assets and profits" (LR 10 Annex 1 paragraph 8R(3)).
- 4.32** In the Technical Note we also explain that we apply the approach in LR 10 Annex 1 paragraph 8R(3) to adjusting the figures to be used to calculate the class tests for such transactions that the issuer or the target completed during the last financial year. This ensures that the class tests do not produce the anomalous result that would occur if the figures used were adjusted for a transaction that had happened shortly after the year end but not for one that had occurred shortly before it. We propose to change this guidance into a rule (by amending LR 10 Annex 1 paragraph 8R(3)(a) and (b)) as we consider it is more appropriate to present it in the Handbook itself. This will make it explicit that the figures used in the class tests must be adjusted for transactions completed during the financial period to which the figures relate.

**Q12: Do you agree with our proposal to amend LR 10 Annex 1 paragraph 8R(3)(a) and (b) to set out our existing approach to adjusting the figures used to classify assets and profits for transactions that have occurred during the last financial year that are class 2 or larger?**

**Q13: Do you agree with the related changes to our Technical Note – Classification tests (UKLA/TN/302.1) which are set out in the revised note in Appendix 2 of this CP?**

## 5. Suspensions of listing for reverse takeovers

### Introduction

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- 5.1** In this chapter we propose to remove the guidance for certain listed companies to provide us and the market with specified information in order to ensure that we do not suspend the listing of the company's securities in a reverse takeover situation.
- 5.2** We currently assume that when a proposed reverse takeover becomes public the market in the acquiring company's securities will not be able to operate smoothly because there will be insufficient information about the proposed transaction for proper price formation to happen. Therefore, in order to prevent a disorderly market, we will often suspend the issuer's listing unless specified information on the proposed target company (broadly equivalent to the information required for a listed company) is publicly available. Under our proposals these assumptions will no longer apply. Instead, we will assume that proper price formation can happen on the basis of the information that listed companies already make public as part of their compliance with other existing obligations, principally disclosing inside information under MAR.
- 5.3** We propose these changes based on our experience of reverse takeovers and stakeholders' feedback that, for most companies, there is no need to suspend listing in a reverse takeover situation to avoid a disorderly market. Rather, there is sufficient information publicly available to ensure smooth operation of the market and so a suspension of listing is unnecessary.
- 5.4** The changes we propose will apply to premium and standard listed issuers other than shell companies (proposed LR 5.6.5AR), for whom different considerations apply. We discuss this rationale further below.

### Rationale for the current rule

- 5.5** LR 5.1.1R(1) sets out that the FCA 'may suspend, with effect from such time as it may determine, the listing of any securities if the smooth operation of the market is, or may be, temporarily jeopardised or it is necessary to protect investors'.
- 5.6** There has been a longstanding approach under the Listing Rules that a suspension of listing may be necessary in a reverse takeover situation. This is because, in the past, we have taken the view that the market will not have adequate information to operate smoothly. Until 2005, suspension was automatic on the announcement of an agreed or contemplated reverse takeover. This position was changed on the basis that suspension was not always necessary, as there may be sufficient information about the target in the market and the issuer may be able to assess its financial position accurately and inform the market accordingly.

- 5.7** Nevertheless, in many cases there was still a presumption that there would be insufficient information in the market and that a suspension would be necessary, unless the issuer could satisfy us otherwise. This is currently reflected in the Listing Rules. As we highlight in our Technical Note – Reverse Takeovers (UKLA/TN/306.3), we refer to this as the ‘rebuttable presumption of suspension’ of listing for issuers where a reverse takeover has been announced or leaked.
- 5.8** With the above in mind, the Listing Rules set out in detail the confirmations from the issuer, and the information on the proposed target company to be made public, in order to satisfy us that a suspension is not required (LR 5.6.10G to LR 5.6.17R).
- 5.9** These provisions are based on the assumption that the information needed on the target company is largely the equivalent of the information that a listed company must make publicly available. This is because, by definition, a reverse takeover involves a target that is larger than the issuer or that will result in a fundamental change in the issuer’s business, board or voting control.
- Stakeholder concerns**
- 5.10** Stakeholders representing issuers and investors have informed us that a presumption of insufficient information being available and the resulting suspension is not necessary to ensure an orderly functioning market.
- 5.11** We have also received feedback that the presumption of suspension has a serious impact on investors and issuers. Investors are concerned by the suspension of trading in the securities, potentially for an indefinite period, until we restore the listing. The suspension prevents existing shareholders trading out of their holdings and prospective investors buying interests in the company. Investors are prevented not only from reacting to the potential reverse transaction, but also from dealing based on other events and developments, whether specific to the issuer or more general macroeconomic events.
- 5.12** Issuers, on the other hand, may be discouraged from contemplating reverse takeovers. Companies may consider the potential benefits of undertaking such transactions to be outweighed by the impact of a potential suspension of listing. We understand that issuers want to avoid any possibility of investor detriment as a result of trading in their shares being suspended. This view suggests that our current rule may be distorting companies’ behaviour when they consider potential transactions.
- 5.13** In practice, we suspend relatively infrequently for reverse takeovers. We have suspended 23 companies since November 2012; just 2 were premium listed, while 20 were shell companies pursuing acquisitions. However, we have been told that there are a significant number of transactions where issuers decide not to proceed with a potential reverse takeover even before approaching us. This is because they believe they are unlikely to be able to meet the information disclosures on the proposed target under the Listing Rules to satisfy us that a suspension is not required.

### Presumption of suspension

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- 5.14** Based on this feedback, we propose to remove the presumption of suspension for reverse takeovers for all issuers with a premium or standard listing of securities. Shell companies, which we discuss further below, are an exception to this. We tend to agree with stakeholders' views that our general power to suspend, combined with the existing disclosure obligations, should be enough to ensure that the market operates smoothly, without the need for additional specific guidance under the Listing Rules. In particular, we consider that proper price formation can take place based on information disclosed to the market in order to comply with the issuer's obligations under MAR.
- 5.15** Our proposals will also address stakeholders' concerns about the unintended consequences of our current rules in deterring listed companies from pursuing legitimate reverse takeover transactions.
- 5.16** We propose to remove the obligation for issuers (other than shell companies) to contact us as early as possible to discuss whether a suspension is appropriate before announcing a reverse takeover which has been agreed or is in contemplation. We also propose to remove the obligation for issuers to request a suspension where details of the reverse takeover have leaked (LR 5.6.6R).
- 5.17** We do not propose to change our general position that we may still suspend listing if we consider that the issuer is unable to accurately assess its financial position and inform the market accordingly (LR 5.1.2 G (3)), or where there is insufficient information in the market (LR 5.1.2G (4)). In this context, we will not be treating reverse takeovers differently from class 1 transactions.
- 5.18** As with other types of transactions that are not reverse takeovers (such as class 1 acquisitions) the issuer should continue to inform the market about the proposed transaction by virtue of its obligations to disclose inside information under MAR. Where a reverse takeover is agreed, premium listed issuers will continue to be obliged to make the specific announcements that are required for any transaction that is classified as class 2 or class 1 under the Listing Rules (LR 10.4.1R). Issuers should note that, under the existing guidance in the Listing Rules, we can suspend an issuer if it has failed to meet its continuing obligations.

### The changes made to remove the presumption of suspension

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- 5.19** To make these changes we propose to remove the rebuttable presumption of suspension (other than for shell companies). We will do this by amending LR 5.6 and deleting our Technical Note – Reverse takeovers (UKLA/TN/306.3).
- 5.20** We also propose to remove the requirement for issuers (other than shell companies) or, for issuers with a premium listing, their sponsor, to contact us as early as possible in the following situations (LR 5.6.6 R):
- before announcing a reverse takeover which has been agreed or is in contemplation, to discuss whether a suspension of listing is appropriate, or
  - where details of the reverse takeover have leaked, to request a suspension

**5.21** To reflect the changes made to remove the presumption of suspension for companies other than shell companies, we also propose to amend the provisions which explain the circumstances in which we will generally be satisfied that a suspension is not required. These refer to specific disclosures and confirmations by the issuer (or the premium listed issuer's sponsor) about the target and any relevant disclosure regime under which the target operates (as applicable per LR 5.6.10G to LR 5.6.18R). We will also update our Technical Note - Listing Principle 2 Dealing with the FCA in an open and cooperative manner (UKLA/TN/209.2) to reflect these proposals.

**Q14: Do you agree that we should amend the applicable provisions in LR 5.6 to remove the rebuttable presumption of an issuer's listing being suspended upon announcement or leak of a reverse takeover (other than for shell companies)?**

**Q15: Accordingly, do you agree that (other than for shell companies) an issuer or, where the issuer is premium listed, its sponsor should no longer be automatically required to contact us as early as possible to discuss whether a suspension is appropriate when a reverse takeover is agreed or is in contemplation, or to request a suspension where details of the reverse takeover have leaked?**

**Q16: Do you agree with our proposal to delete the Technical Note – Reverse takeovers (UKLA/TN/306.3) and with our proposed changes to the Technical Note - Listing Principle 2 Dealing with the FCA in an open and cooperative manner (UKLA/TN/209.2) set out in Appendix 4?**

### **Keeping the presumption of suspension for shell companies**

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**5.22** For listed equity issuers that are shell companies (as defined in our proposed new rule LR 5.6.5AR) we intend to keep the current requirements on the rebuttable presumption of suspension where a reverse takeover is announced or leaked. For these issuers, we also propose to keep all related rules and guidance in the Listing Rules which explain the specific disclosures and confirmations that will generally satisfy us that a suspension is not required. We also propose to keep the requirement to contact us as early as possible to discuss whether a suspension is appropriate (for reverse takeovers that have been agreed or are in contemplation) or to request a suspension (where details of the reverse takeover have leaked) (proposed LR 5.6.6R).

**5.23** In our experience, we have typically seen two types of listed shell companies. These are commercial companies that have become cash shells through disposing of their business and assets, and special purpose acquisition companies (SPACs) that apply for a standard listing with the objective of seeking an acquisition. Both types of issuer will be a shell company under the proposed new rule LR 5.6.5AR. Shell companies are defined in LR 5.6.5AR as an issuer whose assets consist solely or predominantly of cash or short-dated securities, or whose predominant purpose or objective is to undertake an acquisition or merger (SPACs).

- 5.24** In recent years we have seen a change in the typical size of SPACs seeking admission to standard listing. Specifically, there has been a significant increase in the number of SPACs with very small market capitalisations. Previously, we found that SPACs were usually led or backed by a high profile entrepreneur or promoter and were raising significant amounts of capital. We have also noted that many of these small companies have a very broad acquisition strategy, rather than a strategy focusing on a specific industry or region.
- 5.25** Our recent experience is that share prices in these types of issuers can experience high levels of volatility around the time of a proposed transaction, which is much less evident in the share prices of commercial companies. This may be because the market has priced the transaction with incomplete information, suggesting the smooth operation of the market has been disrupted, and this may be detrimental to investors. As a result, we still consider that a presumption of suspension is appropriate to protect investors and avoid a disorderly market.
- 5.26** In this context, our current approach to the class tests for shell companies means that any acquisition is likely to be a reverse takeover. This is because the Listing Rules state that when a company whose assets are wholly or mainly cash or short dated securities applies the percentage ratios to an acquisition, it must exclude the cash and short dated securities when calculating its assets and market capitalisation (LR 10 Annex 1, 8R (5)). The transaction is also likely to result in a fundamental change in the business or a change in board or voting control of the issuer.
- 5.27** We also propose to update our existing Technical Note – Special purpose acquisition companies (SPACs) (UKLA/TN/420.1), which we present in a new note (UKLA/TN/420.2) in Appendix 4 by:
- Renaming it ‘Cash shells and special purpose acquisition companies (SPACs)’
  - Revising it as follows:
    - By including guidance on our understanding of the term ‘cash shell’ and updating our explanation of our understanding of the term ‘SPAC’. This will take into account our more recent experience of these types of issuers who are either listed or applying for listing. We will also capture the types of micro-cap issuers that have applied for a standard listing of shares in recent years and who are not necessarily led or backed by a high-profile entrepreneur or promoter.
    - By reminding certain issuers – such as cash shells whose shares have previously been admitted to a premium listing – of the provisions in LR 5.4A.16G. They state that an issuer’s business may have changed over a period of time so that it no longer meets the requirements of the applicable listing category against which it was initially assessed for listing. In those situations, we may consider cancelling the listing of the equity shares or suggest to the issuer that, as an alternative, it applies to transfer its shares to a different listing category.
    - By incorporating the guidance in Technical Note – Reverse Takeovers (UKLA/TN/306.3) (which we propose to delete because it currently applies to all issuers – see above).
    - By including some further changes for readability and clarification purposes.

- Q17:** Do you agree with our proposed criteria for the types of issuers who will continue to be covered by the rebuttable presumption of suspension and related provisions?
- Q18:** In particular, do you agree that we should retain the rebuttable presumption of suspension for shell companies upon announcement or leak of a reverse takeover?
- Q19:** Accordingly, do you agree that shell companies should continue to be required to contact us as soon as possible (i) before announcing a reverse takeover, to discuss whether a suspension of listing is appropriate, or (ii) where details of the reverse takeover have leaked, to request a suspension?
- Q20:** Do you agree with our proposed amendments to the Technical Note - Special purpose acquisition companies (SPACs) (UKLA/TN/420.1)?

# Annex 1

## List of questions

- Q1:** Do you agree with the proposals to clarify the requirements discussed above regarding the historical financial track record and revenue earning track record requirements for premium listing eligibility?
- Q2:** Do you agree with our proposals to split the current independent business requirements into three distinct areas with associated guidance?
- Q3:** Do you agree with the other proposed minor clarifications to LR 6?
- Q4:** Do you agree with replacing our existing Technical Note – Scientific research based companies (UKLA/TN/422.2) with our proposed Technical Note for SRBCs (UKLA/TN/422.3)?
- Q5:** Do you agree with our proposals to introduce a new Technical Note for mineral companies (UKLA/TN/427.1)?
- Q6:** Do you believe a specific concession for property companies in LR 6.12 is appropriate? If so, is the proposed concession correctly calibrated and do you agree with our proposed new Technical Note – Property company concession (UKLA/TN/426.1) in Appendix 1?
- Q7:** Do you agree that it is reasonable for a premium listed issuer, having obtained the guidance of a sponsor under LR 8.2.2R, to disregard the result of the profits test, where the result is 25% or more and the other class test results are below 5%, and the profits test result is anomalous?
- Q8:** Do you agree that an element of judgement should be applied when deciding whether to disregard the result of the profits test where the result is 25% or more and all other class tests results are below 5%?

- Q9:** Do you agree that premium listed issuers, having obtained guidance on the class tests from a sponsor under LR 8.2.2R, should be allowed to make the proposed adjustments to the figures used to classify profits without being required to consult and agree the adjustments in advance with us?
- Q10:** Are there any other possible enhancements to the calculation of the profits test that could be made?
- Q11:** As an alternative to our proposals, are there any alternative profit measures that should be used either in conjunction with or in place of the current profits test?
- Q12:** Do you agree with our proposal to amend LR 10 Annex 1 paragraph 8R(3)(a) and (b) to set out our existing approach to adjusting the figures used to classify assets and profits for transactions that have occurred during the last financial year that are class 2 or larger?
- Q13:** Do you agree with the related changes to our Technical Note – Classification tests (UKLA/TN/302.1) which are set out in the revised note in Appendix 2 of this CP?
- Q14:** Do you agree that we should amend the applicable provisions in LR 5.6 to remove the rebuttable presumption of an issuer’s listing being suspended upon announcement or leak of a reverse takeover (other than for shell companies)?
- Q15:** Accordingly, do you agree that (other than for shell companies) an issuer or, where the issuer is premium listed, its sponsor should no longer be automatically required to contact us as early as possible to discuss whether a suspension is appropriate when a reverse takeover is agreed or is in contemplation, or to request a suspension where details of the reverse takeover have leaked?
- Q16:** Do you agree with our proposal to delete the Technical Note – Reverse takeovers (UKLA/TN/306.3) and with our proposed changes to the Technical Note - Listing Principle 2 Dealing with the FCA in an open and cooperative manner (UKLA/TN/209.2) set out in Appendix 4?
- Q17:** Do you agree with our proposed criteria for the types of issuers who will continue to be covered by the rebuttable presumption of suspension and related provisions?

- Q18:** In particular, do you agree that we should retain the rebuttable presumption of suspension for shell companies upon announcement or leak of a reverse takeover?
- Q19:** Accordingly, do you agree that shell companies should continue to be required to contact us as soon as possible (i) before announcing a reverse takeover, to discuss whether a suspension of listing is appropriate, or (ii) where details of the reverse takeover have leaked, to request a suspension?
- Q20:** Do you agree with our proposed amendments to the Technical Note - Special purpose acquisition companies (SPACs) (UKLA/TN/420.1)?

## Annex 2

# Cost benefit analysis

1. Section 138I(2)(a) of FSMA requires us to publish a cost benefit analysis (CBA) alongside proposed rule changes. As part of this, we are required to include estimates of the costs and benefits, unless these cannot reasonably be estimated or it is not reasonably practicable to produce an estimate (FSMA s138I(8)(a)&(b)). Moreover, FSMA s138L states that if we consider that, in making the appropriate comparison, there will be no increase in costs, or there will be an increase in costs but that increase will be of minimal significance, we do not need to carry out a cost benefit analysis.
2. This Annex sets out our CBA for the proposals in this paper. As far as possible, we assess the costs and benefits of our proposal against the benchmark of what would happen if we did not make these changes.

### Clarifying Chapter 6 of the Listing Rules

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#### Our proposals

3. As set out in chapter 2 of this CP, we are proposing a range of amendments to LR 6, which deals with eligibility for premium listing, to make it more accessible and to clarify how we apply the requirements in practice. These changes apply to a number of areas addressed by the rules in LR 6, including those related to: historical financial information, the track record requirements and the independence of an issuer's business. Our aim in making these proposals is to ensure that LR 6 is clear and that the regulatory framework is transparent.

#### Assessing the benefits and costs

4. We do not intend to make substantive changes to LR 6 through the redrafting of the chapter. However, there is a substantive change regarding eligibility of property companies for premium listing, which we discussed separately below.

#### Benefits

5. We consider that the proposed changes to clarify LR 6 will make the chapter clearer and the regulatory requirements in it easier to understand. We think this will benefit issuers and their advisors as it will save them time in understanding the requirements and reduce the need for them to refer queries to our UK Listing Authority department.

#### Costs

6. As the changes proposed in this regard relate purely to presentation, we assess that they will not result in any increase in costs.

## Concessionary routes to premium listing for property companies

### Our proposals

7. As explained in chapter 3 of this CP, we propose to set out in LR 6 that, for property companies, we would accept property valuations as an alternative metric to revenue when assessing eligibility for premium listing. The aim of this change is to take reasonable account of the basis on which investors typically value property companies – by the value of the property assets these companies own, rather than by their revenue generation.
8. In summary, the proposed change involves introducing a new rule to allow us to set aside the requirement for the applicant to have a three year revenue generating track record, but the applicant must:
  - demonstrate that it has three years of development represented by increases in the gross asset value of its assets, supported by a property valuation report, or
  - publish a property valuation report that shows that 75% of the applicant's assets by value are revenue generating at the point in time when they made their application for admission of the equity shares to a premium listing.

### Assessing the benefits and costs

9. The above proposal does not change the regulatory requirements on companies with a premium listing, just the number of firms that may qualify for such a listing. By the nature of the proposed change, flexibility would be provided to property companies to gain a premium listing if they complied with the new Rule, but would not otherwise be able to meet the required standard. Because of this, property companies would only have additional costs (whether compared to keeping a standard listing or to having no listing) if they chose to use this route to gain a premium listing. Additionally, the old route would still be available. Using the new route would presumably only happen if the issuer's management decided that the commercial benefits of premium listing would be greater than the associated costs.
10. It is not reasonably practicable to quantify the number of property companies that may obtain a premium listing through the new concessionary route and their benefits from doing so. So our subsequent analysis of the costs and benefits of the proposals is qualitative.

### Benefits

11. We recognise that property companies vary greatly in nature and size. The benefit to any company that chooses to pursue a premium listing would very much depend on their specific circumstances. The anticipated benefits may involve, amongst other things, the impact on the company's cost of capital, its management's aim to increase the company's visibility in the markets, and the broadening of the company's set of potential investors, including through inclusion of the equity in indices.
12. These benefits could potentially vary significantly and using this route to premium listing is purely optional for those companies that meet its criteria. This means that we do not believe it is reasonably practicable to provide an estimate of the total benefits that may be obtained. Nevertheless, at best the new rule offers property companies a new way to pursue these benefits and, at worst, an option that they choose not to use.

13. From a competition perspective, companies from different sectors of the real economy should be able to access the listed equity market under similar conditions. The current requirement for an applicant for premium listing to have a three-year representative track record of revenue generation reflects our desire to see companies in the premium segment that have at least a minimum level of maturity as businesses. Therefore, the proposed new rule acknowledges that investors will commonly assess the value and maturity of property companies using property valuation reports. This approach is in line with the sector-specific approach that underpins the existing concessions for mineral companies and scientific research based companies.

#### **Costs**

14. The requirements for premium and standard listing are not themselves changing and so neither are the costs. But introducing the new rule potentially creates a new cost for producing property valuation reports which falls on property companies that choose to use the rule.
15. However, property companies already need to include property valuation reports in their prospectuses in order to become listed. So commissioning these reports would only be an incremental cost of achieving premium listing if the timing of doing so did not coincide with the company originally coming to market. This would be most likely to happen if a company has acquired a standard listing and subsequently decides that it wants a premium listing. Therefore there is only a subset of circumstances where property companies would face an incremental cost.
16. As with the above benefits, the cost of obtaining property valuation reports depends heavily on circumstances. These circumstances may include the size and nature of the property portfolio, which countries the company operates in and the firm it chooses to undertake the valuation.
17. Given the uncertainty about the cost impact of a property company using the new rule and that it would be the issuer's choice to use it, we do not believe a meaningful estimate of costs can be provided for the purposes of this CBA.
18. In previous reviews of the Listing Rules, we have also noted an additional potential cost that premium listed companies whose behaviour is not seen as meeting the high standards expected can undermine the perception of the regime as a whole. This could reduce the attractiveness to investors of the UK market and so may raise the cost of capital for all UK-listed issuers. However, we do not consider these to be material risks. We have not found property companies to be any less likely than those in other sectors to meet the standards expected of premium listed issuers. As a result, we think there are minimal reputational risks to the premium listing brand and to the UK markets more generally.

## Classifying transactions – the profits test

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### Our proposals

19. As explained in chapter 4, we propose to make changes to the profits test. In summary, those changes are to allow:

- Issuers to disregard the profits test result in certain circumstances when considering how to classify a transaction, without having to consult us in advance, and
- Premium listed issuers to make adjustments to their calculation of profit before tax for certain one-off costs and certain historic financing charges where they consider that the result of the profits test would otherwise be anomalous. They can do this without having to agree these adjustments with us, as long as they have obtained the guidance of a sponsor under LR 8.2.2R.

### Assessing the benefits and costs

20. We think these limited changes would be proportionate and in line with the approach we already adopt when issuers request individual guidance from us. In some respects they also bring guidance that is currently in the form of a technical note into the Listing Rules. As a result, we consider the proposed changes will give issuers a clearer and more consistent understanding of how our rules apply to the profits test. Therefore, we assess the incremental changes in costs and benefits will be minimal and we discuss these below.

### Benefits

21. We think the changes we propose would deliver two key benefits. Firstly, they would give issuers greater clarity and consistency on how to apply the profits test. Secondly, they should make it quicker and simpler for issuers to apply the tests in practice, working with their sponsor where appropriate, and limiting their need to refer issues to us to consider. We do not think it is possible to quantify the scale of these benefits as they will depend on the issuer's specific circumstances and will only arise when an issuer needs to calculate a profits test. Nevertheless, we assess at a qualitative level that they would be of benefit in making this process easier for issuers.

### Costs

22. We do not think that, in practice, the changes we propose would give rise to any costs. In part they simply reflect in our rules the approach we already adopt in practice, including as reflected in technical note guidance. We recognise that the changes would involve fewer issues being referred to us for consideration when a profits test is being calculated, so effectively reducing our oversight of the calculation process. However, we think that the limited circumstances in which we will allow this to happen means there is no material risk of a profits test being calculated on a basis that we would not approve under our existing rules. As a result, we do not think these changes would in any way be prejudicial to the fair and accurate completion of calculations, and thus would not impose new costs or risk of loss on investors.

## Adjustments for transactions completed during the last financial year

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### Our proposals

23. In chapter 4, we set out the provisions in Chapter 10 of the Listing Rules (LR 10) about the figures used to classify assets and profits when calculating the class tests. We also explain how these figures may need to be adjusted to take into account transactions that take place after their calculation date. In addition, we note how guidance in UKLA Technical Note – Classification tests (UKLA/TN/302.1) sets out our approach to adjusting the figures to be used to calculate the class test for transactions that the issuer or the target completed during the last financial year. The change we propose is to change the guidance in this Technical Note into a new rule (at LR 10 Annex 1 paragraph 8R(3)(a) and (b)) as we consider it would be more appropriate to present it in the Handbook itself.

### Assessing the benefits and costs

24. As with our proposed changes to the profits test, our proposals for transactions that the issuer or the target completed during the last financial year will align the Listing Rules with our existing approach in practice.

### Benefits

25. We consider the amendments we propose will make the provisions of LR 10 easier to follow by incorporating into the Listing Rules useful information that is currently only in the associated Technical Note.

### Costs

26. The changes we propose have no impact on the substance of LR 10 and how it is applied. Therefore, we do not think that the changes will create any new costs.

## Suspensions of listing for reverse takeovers

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### Our proposals

27. As set out in chapter 5, we propose to amend Chapter 5 of the Listing Rules to make clear that we will no longer apply a rebuttal presumption that a company's listing will be suspended when a reverse takeover is announced or leaked to the market. We consider that the obligations on issuers to provide timely information to the market, coupled with the general power we have to suspend a listing if the smooth operation of the market is, or may be, temporarily jeopardised or to protect investors, will allow us to maintain an orderly market in a reverse takeover situation. Nevertheless, we propose to keep the existing rebuttable presumption of suspension for shell companies, as our experience is that their share prices can experience high levels of volatility around the time of a proposed acquisition.

### Assessing the benefits and costs

28. The benefits and costs of the changes we propose for reverse takeovers depend on the specific circumstances and will only occur if an issuer is considering such a transaction. It is not reasonably practicable for us to accurately predict the number of future transactions and issuers that would be affected by the changes, or to give a meaningful estimate of how this would affect costs. As a result, we do not think it is reasonably practical to quantify the benefits and costs that might arise from our proposals. Nevertheless, we have set out below our qualitative assessment of the impact of the proposals.

**Benefits**

29. As set out in chapter 5, we have received stakeholder feedback that, for the majority of companies, there is no need to suspend listing in the circumstances of a reverse takeover to avoid a disorderly market. These stakeholders argue that the market is able to form a proper price, and that our existing regulatory approach creates negative impacts in the market – namely:
- a suspension of listing disrupts the smooth operation of the market, and is detrimental to investors because it creates a parallel halt in trading which prevents participants from trading into or out of positions in the issuer's shares, and
  - our existing approach may discourage listed companies from contemplating reverse takeovers, as their wish to avoid a suspension of their listing outweighs the potential benefits
30. We recognise these concerns and the risk of distorting the markets our current approach may cause. We think that a change to our rules would reduce these negative impacts without undermining our underlying aim of maintaining the smooth operation of the market, particularly as we will keep our general power to suspend. While we cannot estimate the scale of the benefits in advance, we think investors will gain from being able to take a view on the impact of the proposed reverse takeover and buy into or trade out of the company's shares accordingly. As a result, transactions made with a legitimate and sound business rationale will potentially increase as companies will no longer face a stark choice between pursuing a reverse takeover and avoiding a suspension of listing.

**Costs**

31. Our existing approach errs very much on the side of caution. The rebuttable presumption of suspension ensures that any risk, however small, of market disruption as a result of announcing or leaking of a reverse takeover is usually eliminated immediately. Removing the rebuttable presumption for all but shell companies, means we rely instead on issuers' public disclosure requirements under MAR to maintain an orderly market, and our general power to suspend as a mechanism to intervene if necessary. We consider these are sufficient but we recognise they do not provide the same blanket guarantee of avoiding market disruption compared to immediate suspension under our existing approach. As noted above, we do not think it practicable to quantify the scale of the risk. However, our general confidence in the robustness of the disclosure obligations we place on issuers and our ability to intervene swiftly with a suspension of listing if necessary means we consider the risk to be small.
32. Otherwise, we do not foresee any new costs in the proposed changes. They should give issuers greater flexibility in their business dealings and do not increase regulatory burdens.

## Annex 3

# Compatibility statement

1. This Annex shows the FCA's compliance with a number of legal requirements that apply to the proposals in this consultation. This includes an explanation of our reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).
2. When consulting on new rules, we are required by section 138I(2)(d) FSMA to include an explanation of why we believe that making the proposed rules is (a) compatible with our general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with our strategic objective and advances one or more of our operational objectives, and (b) our general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. We are also required by s. 138K(2) FSMA to state our opinion on whether the proposed rules will have a significantly different impact on mutual societies compared to other authorised persons.
3. This Annex also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing our consumer protection and/or integrity objectives.
4. This Annex includes our assessment of the equality and diversity implications of these proposals.

### The FCA's objectives and regulatory principles: compatibility statement

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5. The proposals in this CP are compatible with our strategic objective of ensuring that the relevant markets function well. In particular, by ensuring requirements for issuers seeking to raise capital through listed securities are clear and proportionate, and are primarily intended to advance our operational objectives of:
  - Securing consumer protection – maintaining and securing an appropriate degree of protection for consumers by ensuring that investors benefit from appropriate disclosure for reverse takeovers, that we avoid unnecessary suspensions of trading and that rules do not deter transactions that could be beneficial to investors.
  - Enhancing market integrity – protecting and enhancing the integrity of the UK financial system by ensuring that we apply the Listing Rules proportionately, transparently and effectively.

6. In preparing our proposals set out in this consultation, we have had regard to the regulatory principles set out in s. 3B FSMA. In particular:

**The need to use our resources in the most efficient and economic way**

7. The proposals set out in this CP are consistent with an efficient and economic use of our resources.

**The principle that a burden or restriction should be proportionate to the benefits**

8. We consider that our proposals will have a positive impact on ensuring that the burdens and restrictions placed on issuers under the Listing Rules are proportionate to the benefits.

**The principle that we should exercise of our functions as transparently as possible**

9. We consider that our proposals will deliver greater transparency in the way we exercise our functions in relation to the Listing Rules.
10. In formulating these proposals, we have considered the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). We do not expect our proposals to have a direct bearing on financial crime.

**Expected effect on mutual societies**

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11. We do not expect the proposals in this CP to have a significantly different impact on mutual societies. The rules and guidance we propose to add will apply equally to persons regardless of whether they are a mutual society or other authorised person.

**Compatibility with the duty to promote effective competition in the interests of consumers**

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12. We do not consider the proposals in this CP to be inconsistent with our duty to promote effective competition in the interests of consumers.

**Equality and diversity**

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13. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.
14. The outcome of the assessment in this case is stated in paragraph 1.29 of the CP.

# Appendix 1

## Technical notes for consultation on clarifications to Chapter 6 of the Listing Rules

### Eligibility for premium listing – financial information and the track record requirements

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#### Ref: UKLA/TN/102.1 – Guidance Consultation

##### Financial information

As per LR 6.2.1R and LR 6.2.4R, an applicant for premium listing must present three years of audited financial information.

This financial information must represent at least 75% of the applicant's business, and must be presented in the issuer's GAAP and accounting policies.

##### How to calculate the 75% requirements

The 75% requirement is intended to ensure that audited financial information covering at least 75% of the business to be listed is presented to investors. Where an applicant has acquired other companies during the relevant period, additional financial information relating to those acquired entities may be needed to meet this requirement.

The relative size of the acquired businesses needs to be assessed. The class tests in Chapter 10 of the Listing Rules provide a useful starting point, which can be supplemented or replaced by other metrics which provide a more accurate assessment of the relative size of the acquired businesses.

The tests should be performed using the latest available figures for the business that has been acquired against the enlarged group as it will be listed. However, where the acquired entities can no longer be separately identified in the enlarged group, class tests can be used which reflect the size of the acquired business at the time of its acquisition.

##### Acquisitions need to be aggregated

It is also necessary to consider whether there are any gaps in the financial information presented when considering whether it is sufficient for establishing the eligibility of the business to be listed. For example, where a company acquired by the applicant had a different financial year end from the applicant itself, there may be a gap between the date of the pre-acquisition financial information and the point at which the entity had been acquired, for which additional financial information should be presented.

The financial information requirements are intended to ensure that financial information for at least 75% of the business to be listed is presented. Where an issuer has acquired assets (rather than a business), additional financial information will not normally be required. However we will consider the substance of the transaction, rather than its legal form, when assessing whether additional financial information is required.

### **When we may accept modifications or qualifications**

The three years of financial information must be audited and the last year must be reported on without modification or qualification.

An issuer may be eligible where a going concern modification in relation to the final year of its financial information is cured at the time of listing, for example where there is a concurrent fundraising used to repay debt that would otherwise fall due.

### **Track record**

An applicant should be able to demonstrate a track record that puts prospective investors in a position to make an informed assessment of the business that is to be listed (LR 6.3.1R)

In some cases an applicant will have three years of financial information which does not properly reflect the applicant's business, as the information does not demonstrate a revenue earning record that is representative of the business to be listed. In such cases the applicant does not have a compliant financial track record.

LR 6.3.2G sets out five factors that may indicate that a track record is not representative. These factors will be especially relevant for companies that are very early stage, or that have otherwise changed significantly, such that the financial information does not allow a meaningful assessment of the future prospects of the business for which listing is sought. This may be the case where a business has changed fundamentally during the track record period by exiting one industry and entering an unrelated one, or where a business is reliant upon products or lines of business that have just been, or have yet to be, developed.

A consistent record of losses can also indicate that a company may be at too early a stage of development. However, we will also take account of the impact of financing structures that may be replaced ahead of IPO, in order to assess the genuine maturity of the underlying business.

Significant investment may also indicate that a company is at a relatively early stage, though again we will consider the overall maturity of the business.

It is not necessarily the case that a high valuation multiple makes a company ineligible. However, a high multiple may be evidence that the company's valuation is based on future changes in the business that are not related to the information presented in the track record (for example where a company is in its infancy, and is only just about to scale up its operation, and is hoping to experience rapid growth).

## **The independent business requirements for companies applying for premium listing – interpretation of LR 6.4, LR 6.5 and LR 6.6**

### **Ref: UKLA/TN/103.1 – Guidance Consultation**

This Technical Note is intended to provide a non-exhaustive guide to cases where we are required to consider an applicant's ability to meet the requirement for an independent business.

We also discuss the requirement for an applicant to control its business, and situations where there is a controlling shareholder.

### **General requirement to carry on an independent business (LR 6.4)**

The independent business rule in LR 6.4.1R is intended to ensure that a premium listed issuer is operating a meaningful business in its own right, and does not for example simply exist as part of a wider enterprise.

The vast majority of applicants to premium listing will clearly demonstrate an independent business. However, in a small number of cases, further careful enquiry will be required. Whilst every applicant's circumstances are different, the circumstances in which such further enquiry might be necessary include where:

- an applicant has been carved out of a wider group, and which has retained close ties with its former parent. Such ties may take the form of extensive services being provided by the former parent, beyond normal outsourcing arrangements or Transitional Services Agreements. Particular regard should be had to circumstances where an applicant is required to source those services from its parent, or may not have control over information that is essential to decision making at the applicant's level.
- key contracts are contingent on the relationship with the parent, or where the applicant's business is predominantly generated through the parent group. This kind of dependency might also exist with a single party outside the applicant's group (beyond a normal key customer or supplier relationship), to the extent that the business could not survive without the relationship.
- an applicant cannot access financing other than through the parent group. This is different from circumstances where an applicant has chosen to finance itself in a certain way for commercial reasons. The evidential threshold here will clearly be applicant specific. A profitable, credit-worthy applicant may find it much easier to demonstrate that its financing arrangements are based on commercial decision-making rather than reliance on a parent. The guidance relating to financing being obtained only from one person is not intended to apply to situations where an issuer has finance on normal commercial terms from an unrelated financial institution.
- a business is based on an applicant's rights as a franchisee under a franchise agreement. Often franchise agreements will be entirely acceptable, as the applicant can control the day to day running and the key strategic choices of its business. In these circumstances we will seek to understand the details of a franchise agreement to form a view on a specific applicant. This will include what control the issuer has over future changes to the terms of the agreement, and whether there is a risk of abrupt loss of value in the business at the discretion of the franchisor.
- constitutional arrangements give a third party control over voting rights that would normally be conferred on shareholders. Such arrangements are often in place in order to circumvent foreign ownership restrictions. The requirement for an issuer to be able to implement its business strategy is not meant to prohibit premium listed issuers from having majority shareholders who might be expected to use their voting rights and rights of appointment to significantly influence an issuer's strategy.

Considering continuing obligations, there may be circumstances in a rescue situation where an issuer can only access finance from a controlling shareholder. This does not mean that an issuer would automatically be unable to meet the continuing obligations set out in LR 9.2.2ABR - we would clearly need to consider the circumstances of the business in the round.

#### **Control of business (LR 6.6)**

The control of business rule in LR 6.6.1R is intended to prevent the listing of corporate structures that do not provide an applicant's Board or shareholders with effective control over the listed group.

Without such control, the ability of the issuer to keep the market informed of price sensitive information on a timely and on an ongoing basis may be compromised. The shareholders of the issuer may also be unable to avail themselves of the protections offered by Chapters 10 and 11, or to determine the listed group's strategy.

To demonstrate compliance with this requirement, an issuer should have positive control over the majority its business. However, there may be circumstances where an issuer's eligibility is in doubt regardless of whether the non-controlled parts of the issuer's group make up the majority of that group. Conversely, an issuer with direct control over only a minority of the group's businesses may still be eligible for listing. We are therefore seeking to engage in a broader principles-based assessment. However, we are likely to consider a structure that consists wholly of non-controlled stakes as ineligible for premium listing.

The circumstances where particular consideration should be given to the issuer's ability to control its business include circumstances where:

- a predominant part of an issuer's business is held through minority stakes or joint venture arrangements
- an issuer owns a majority stake in its subsidiaries, but a third party has special rights that allow it to control the strategy of the underlying business, for example, because of a legacy relationship with the underlying business

An issuer may have to use assets as security for loans provided by genuine third party finance providers. Such scenarios are not intended to be captured by the control of business provisions.

#### **Relationship with the controlling shareholder (LR 6.5)**

LR 6.5.3G provides a number of indicators of the circumstances in which an applicant may be unable to demonstrate sufficient independence from a controlling shareholder. One of these circumstances is where a controlling shareholder is able to influence the operations of the issuer in a way which subverts its normal governance processes.

Examples of circumstances where this might be the case include:

- using financing or other business arrangements to unduly influence the strategy of the company
- using significant stakes in subsidiaries of the listed company to exert indirect control over the group as a whole
- installing staff with familial or other relationships in key roles to gain day-to-day control

Where a controlling shareholder has a majority stake in the issuer, it will necessarily be the case that the controlling shareholder will have significant practical control through the normal exercise of its voting rights and its ability to appoint directors to the Board of the listed company. The controlling shareholder provisions do not seek to limit the controlling shareholder's ability to exercise its rights in this way, and do not seek to vest disproportionate control in minority shareholders.

A controlling shareholder should therefore generally be able to do the following, in the absence of other factors, without compromising the independence of the listed issuer:

- accept or make a takeover offer, or propose a scheme of arrangement to effect a takeover offer.
- give an irrevocable undertaking to a third party in connection with a takeover offer.
- propose a resolution for the company to pay a dividend.

## Appendix 2

# Technical notes for consultation on concessionary routes to premium listing

### Property companies

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#### Ref: UKLA/TN/426.1 – Guidance Consultation

LR 6.12

The concession for certain property companies from the revenue earning track record requirements in LR 6.3.1R is meant to allow property companies to demonstrate maturity in other ways than through three years of revenue generation.

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

1. Companies established within the previous three years, which predominantly hold mature assets that generate rental revenue. For such companies, the track record of the current holding vehicle is arguably less important than the revenue performance of the underlying assets. An example of this type of company is the spin out and listing of a mature portfolio, or the bringing together of a number of mature assets under a new umbrella holding company.
2. Companies that have been developing long-term projects for at least three years, but which may only be revenue generating at some point in the future. For such companies, the ability of the 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. We would not regard the mere holding of property or a planning application without development as being sufficient, as this would give investors little insight into the track record of the company.

## Scientific research based companies

### Ref: UKLA/TN/422.3 – Guidance Consultation

The Listing Rules offer a concessionary route to premium listing for scientific research based companies (SRBCs) that would not otherwise be eligible for premium listing under LR 6. In place of having to satisfy the historical financial information requirements in LR 6.2.1R(1) and/or the revenue earning track record requirements in LR 6.3.1R, LR 6.11.2R sets out five specific requirements that SRBCs must meet. The concession requirements seek to balance providing premium listing as an option for SRBCs at an earlier stage of development, in particular pre-revenue, but ensuring that the applicant has a sufficient track record and that the development of an identified product is sufficiently advanced such that commercialisation is a near-term possibility.

This concession was originally introduced into the Listing Rules by the London Stock Exchange in 1993. To date the concession has primarily been relied upon by pharmaceutical companies. However, it is open to companies coming from other sectors if they can fall within the Listing Rule definition of SRBC. Where the applicant or its sponsor have concerns about complying with any of the specific premium listing criteria, including the ability to rely on this particular concession, individual guidance can be obtained on the application of a particular rule in accordance with LR 1.2.5G and Chapter 9 of our Supervision Manual (SUP).

Applicants need to demonstrate an ability to attract funds from sophisticated investors prior to the marketing at the time of listing under LR 6.11.2R(1). 'Sophisticated investor' is not defined in the Listing Rules but when considering this requirement we are looking for the applicant to have attracted investment from institutional investors and occasionally will accept other investors that specialise in this sector. This is on the basis that this is a good indication that due diligence has been completed on the company and institutions have historically been willing to invest. It gives credibility to the applicant's proposition. There is also a question mark over when sophisticated investors will need to have invested in order to meet the requirement that funds must have been attracted 'prior to the marketing at the time of listing'. Pre-IPO fundraisings undertaken before the appointment of a sponsor in accordance with LR 8.2.1R will usually meet this requirement. If an applicant has raised any funds shortly before submitting an eligibility letter, we recommend that this is set out in the eligibility submission.

The requirement for an applicant to have as its primary reason for listing the raising of finance to bring identified products to a stage where they can generate significant revenues under LR 6.11.2R(4) is key to ensuring that SRBCs are sufficiently mature and are seeking the last injection of capital before earning significant revenue. The financing should primarily be used to fund the final stages of research and development and commercialisation (depending on the business model) of an identified product before significant revenue generation. However, this does not prevent there being secondary reasons for listing. For example, a sell down by existing shareholders does not necessarily mean this requirement is not being met but broadly an applicant would need to demonstrate that this was a secondary rather than primary reason. An identified product can potentially include a platform technology.

When considering what constitutes 'significant revenue' we will have regard to the applicant's business model and whether it has historically generated any revenue. The fact that an applicant has already generated revenue is not an automatic bar to relying on the concession. However, if an applicant is already generating revenue from their products and no further products are in the pipeline this is potentially a concern. We will consider each applicant on a case-by-case basis and we will have regard to an explanation of whether or not any income will be accounted for as revenue under the relevant accounting standards. For example, for an applicant that does not plan to commercialise their identified products themselves but to out-license, then any ongoing royalties due under the out-licensing arrangements may constitute significant revenue. There are no requirements for generating 'significant revenue' within a specified time frame but applicants are required to disclose anticipated timelines in any prospectus.

Applicants are required to demonstrate under LR 6.11.2R(5) that they have a three year record in laboratory research and development. This requirement is partly to ensure that the products are already identified and that significant milestones have already been reached but it is also intended to indicate that the applicant has the expertise to progress the research and development.

For applicants that have operated for less than three years or where products have been acquired or in-licensed this can be problematic because the applicant itself may not have a three year record. In order to establish a three year record of research and development, we are willing to consider arguments to modify this requirement and to have regard to the experience of the applicant's management team, the extent of the applicant's rights over the products and who will be conducting the research and development. Where an applicant is outsourcing their research and development, for example to a contract research organisation, we will consider the identity and experience of the provider. In particular, we will need to understand if the applicant has sufficient control over the research and development in order to meet the requirements for an independent business and having operational control as set out in LR 6.4.1R and LR 6.6.1R respectively.

## Mineral Companies

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### Ref: UKLA/TN/427.1 – Guidance Consultation

Considering the specific features of the business and operating models of mineral companies, the Listing Rules offer a concessionary route to premium listing for mineral companies that would not otherwise be eligible for premium listing under LR 6.

LR 6.10.1R exempts a mineral company from the three year track record requirement under LR 6.2.1R(1) where the applicant has been operating for a shorter period. Such an applicant must produce published or filed historical financial information since the inception of its business activities. The financials must comply with LR 6.2.1R (2), (3), (4), LR 6.2.4R and LR 6.2.6R for the period to which the historical financial information is published or filed.

LR 6.10.2R also exempts a mineral company from LR 6.3.1R. An applicant mineral company does not, therefore, have to have historical financial information which (1) demonstrates a revenue earning track record and (2) puts prospective investors in a position to make an informed assessment of the business for which admission is sought.

Mineral companies will need to ensure: that the historical financial information (to the extent available) will represent at least 75% of the applicant's business; that it will be carrying on an independent business and meet the relevant requirements if they have a controlling shareholder.

Under LR 6.6.1R a mineral company must demonstrate it exercises operational control over the business it will be carrying on as its main activity. However, there is a concession in LR 6.10.3R from LR 6.6.1R where a mineral company cannot demonstrate compliance with LR 6.6.1R because it does not hold controlling interests in the majority of the properties, fields, mines or other assets in which it has invested. If a mineral company is unable to demonstrate that it controls interests for the majority of its assets under LR 6.10.3R (2) it must demonstrate that it has a reasonable spread of direct interests in mineral resources and rights to participate actively in their extraction.

This rule is intended to ensure the listed company has a substantive, operational business while recognising the common practice of co-venturing in resources industries. Our view has been that the 'reasonable spread' test should not be understood to require risk diversification in the manner in which an investment entity would be expected to spread risk. LR 6 is not intended for the listing of pure financial holdings or diversified investments; the latter may be able to be listed under LR 15. We will make a subjective assessment of all the applicant's non-controlling interests to reach a decision on whether the reasonable spread requirement has been met.

One factor we may take into account is geographical spread of interests. In addition to assessing whether the reasonable spread requirement is satisfied, we will also assess whether the mineral applicant has, in relation to each non-controlling interest, rights to participate actively in extraction. This may be through voting rights or through other rights which give it influence in decisions about the timing and method of extracting resources. We may request analysis of the contractual agreements in place for each asset, such as operating/farm out agreements, license agreements, agreements with local governments as well as relevant national legislative requirements. Among other things, we may take the following factors into account: the operatorship role of the applicant, their right to participate and influence operating/management committee decisions, rights to appoint directors and veto rights. We find it helpful when advisers submit information that they detail each interest in resources, provide the terms of the relevant contractual agreement and show the significance of each asset by value.

When we assess whether the applicant has controlling interests in a majority by value of properties, we typically look at the details of the underlying agreements (partnership/joint venture), group structure diagrams showing the title to assets, influence of the national legislation over the applicant's control, accounting treatment of the rights in assets and sponsor's assessment of the value of each asset.

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 LRs governing related party transactions, as set out in Chapter 11, will apply post admission. The holding structures and joint venture arrangements used by certain mineral companies mean that compliance with the LR governing related parties can be complex.

Where the applicant or its sponsor have concerns about complying with any of the specific premium listing criteria, including the ability to rely on the concession, they can get individual guidance on how a particular rule applies in accordance with LR 1.2.5G and Chapter 9 of our Supervision Manual (SUP).

### Scientific research based companies

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#### **Ref: UKLA/TN/422.2 – current technical note to be replaced by proposed UKLA/TN/422.3**

The Listing Rules offer a concessionary route to premium listing for scientific research based companies that do not have a three-year track record and so would not otherwise be eligible for premium listing under LR 6. However, as this route is a concession from the requirement for a three-year track record, which we view as being a fundamental eligibility condition, any applicant relying on this route would have to be able to satisfy all of the conditions of LR 6.1.12R. We would view any waiver of these conditions as being an effective waiver of the requirement for a three-year track record, and so we would very rarely grant a waiver.

Applicants should consider the guidance in LR 6.1.3EG when determining whether they are able to meet the requirement for a three-year track record. However, we also recognise that this question depends, to an extent, on the applicant's business model and how it intends to generate revenues in future. So we would recommend that this is clearly set out in the initial eligibility submission.

## Appendix 3

# Technical Note for consultation on classifying transactions

### Classification tests

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#### Ref: UKLA/TN/302.1 2 – Guidance Consultation

LR 10.1.3R and LR 10 Annex 1

#### Classifying joint venture arrangements (LR 10.1.3R)

When a listed issuer with a premium listing enters into a joint venture, it must classify this transaction under LR 10. We would expect the issuer to classify both sides to the transaction, so that both the disposal into the joint venture and the acquisition of an interest in the joint venture are classified.

To illustrate the approach, here is a basic example:

Listed issuer (L) intends to set up a joint venture with partner (P). Both L and P will transfer a subsidiary to a new company (newco) in return for a 50% interest in newco. The disposal of a subsidiary to newco should be classified by L in the normal way by applying the profits, gross assets and consideration to market capitalisation tests. As the disposal will result in deconsolidating the subsidiary from L's accounts, the profits and gross assets tests must be run on a 100% basis.

Separately, L should also classify the acquisition of a 50% interest in newco. If this interest will not be consolidated into L's accounts, the only tests applicable would be the gross assets test and the consideration to market capitalisation test.

We recognise that this is a simple example and, in reality, joint venture arrangements can be complex. The classification will depend on the facts of each case, including the value added by each partner and further funding commitments etc. As such, we would urge issuers and their advisers to contact the UKLA us to discuss the correct application of the class tests to their specific transaction.

Please note that, as this is effectively one transaction, we would not expect these two sets of class tests to be aggregated, but the highest result from the tests will determine the overall classification of the transaction.

### Classifying company/assets being acquired out of administration (LR 10 Annex 1)

It is often the case, where a business is acquired from liquidators or out of administration, that the company has not prepared accounts for some time and it may be unclear whether the issuer is acquiring a business or just assets. The issuer normally faces two problems: what numbers to use for the purposes of the class tests and which of the various class tests are relevant.

Relevant class tests depend on what the company is acquiring. If the issuer is acquiring a business then all tests are relevant. However, it is less clear when the issuer acquires assets, as often with an asset acquisition the profits test would not be relevant as there is not a relevant profit stream to measure.

The issuer and its advisers may need to consider the type of assets being acquired and whether or not on a look-through basis the issuer has effectively acquired the business. Often, for tax reasons, sales are structured as asset purchases despite the intention being for the issuer to operate the newly acquired entity as a business. In such circumstances it may be appropriate for the transaction to be treated as an acquisition of a business. Indications that the company is acquiring a business might be, for example, employee transfer and the transfer of contracts and licences. However, this is not an exhaustive list and we would encourage issuers to fully consider the substance and commercial reality of the acquisition, regardless of the strict legal form.

With regards to the financials to be used as a basis for the class tests, issuers should use figures obtained from the most recent set of accounts available for the target. Where these are significantly out of date, we would be happy to discuss alternative sources and the appropriateness of the tests where the results are considered anomalous. However, advisers are reminded that we would often consider the best indicator of the size of the business to be the accounts immediately before the company going into administration. In addition these accounts are often audited and considered to be more reliable than management information.

We would suggest that in circumstances where issuers are acquiring businesses or assets out of administration that they contact the UKLA us as early as possible to discuss the issue.

### Assessing whether an item is exceptional a one-off cost for the profits test (LR 10 Annex 1 4R)

~~Paragraph 4R in LR 10 Annex 1 sets out the methodology to calculate the profits test and clearly states that profits mean profits after deducting all charges except tax (profits before tax or PBT). the Profit Before Tax Therefore generally the (PBT) figure should be used when calculating the profits test. The treatment of exceptional items is to disclose them separately in the profit and loss account, as a line entry below the operating profit figure but above PBT. Therefore, adjusting the profit figure used for calculating the profits test by removing for exceptional items one-off costs is a modification of the applicable Listing Rule. and, as such, issuers and their advisers should always consult the UKLA-us before relying on such an adjusted figure except where the Listing Rules expressly state that they are not required to do so.~~

To help issuers and their advisers, including sponsor firms, we set out below our approach to assessing whether the profit figure used to calculate the profits test may be adjusted. Premium listed issuers and their sponsor should also take these matters into consideration when deciding whether the issuer may rely on the Listing Rules' concession to modify the figures used to calculate the profits test in paragraph 13R in LR 10 Annex 1 without having to consult us first. Paragraph 13R of LR 10 Annex 1 permits a premium listed issuer to make certain adjustments to the profits figure without prior consultation with us. Issuers relying on this concession will need to obtain guidance from a sponsor under LR 8.2.2R because the transaction is or could amount to a class 1 or reverse takeover.

When considering whether to accept arguments that ~~exceptional one-off costs~~ items should be excluded from profits, we make our decision on a case-by-case basis and take into account the specific circumstances of the issuer. Our decision-making process is informed by an understanding of whether or not the ~~exceptional~~ item in question is a genuine one-off cost, ~~if the item appears in the issuer's audited accounts as an exceptional item~~, and the sponsor's view on whether, under the circumstances, the item should be treated as exceptional such.

~~In assessing whether the item is a genuine one-off cost, we may consider how the item has been presented in the accounts. However, just because an item is has been presented as 'exceptional' a one-off cost in an issuer's accounts does not mean we will agree that it should be adjusted for in the profits test. We would also be unlikely to accept an argument that it is appropriate to adjust for an item if the issuer's accountants have not treated it as an exceptional item.~~

We will consider if the cost appeared in previous profit and loss accounts and whether there will be a similar charge in the following year's profit and loss account. ~~We are unlikely to consider items~~ Items that are a reoccurring feature of an issuer's business or are in the ordinary course of business are ~~unlikely to be considered by the UKLA as exceptional a genuine one off~~ even if they appear in the issuer's accounts as an exceptional or extraordinary item. For this reason, we are very unlikely to accept arguments that it is appropriate to adjust for goodwill and impairment charges. If an issuer wishes to adjust for ~~exceptional~~ items associated with restructuring ~~they, and where applicable their sponsor~~, sponsors will need to satisfy themselves demonstrate that it the cost is genuinely a 'one off' and not part of an ongoing restructuring strategy. Costs incurred in a restructuring that spans more than one financial period may not be one-off.

Sponsors should address each of the above issues when making a written query about the appropriate measure of profit, particularly when asking ~~the UKLA us~~ to agree that a transaction is a class 2 transaction that would be a class 1 transaction if PBT were the profit figure used.

#### **Waiving the consideration to market capitalisation test (LR 10 Annex 1 paragraph 5R)**

We have regarded a company's market capitalisation as significant in assessing the size and importance of a particular transaction. We are generally not minded to allow enterprise value to be used as a substitute test – the key reasons are:

- a. the market capitalisation test is the primary indicator of a listed company's size as at the date of the transaction;
- b. it is the only test which does not use historic financial information;
- c. if the company was to be sold or become the subject of a takeover offer, the market capitalisation is the starting point for valuation; and
- d. arguments that market capitalisation is anomalous are inherently flawed as, if the market is valuing companies incorrectly, this would suggest full information is not in the market.

We will continue to assess each request as it arises; however, we believe that our general approach continues to be appropriate.

**Class tests – figures used to classify assets and profits****LR 10 Annex 1 paragraph 8R(3))**

LR 10 Annex 1 paragraph 8R(3) states the class test numbers must be adjusted, where applicable, for post-balance sheet transactions completed during the relevant financial period (i.e. the period used as the basis of calculation for the class tests) and for subsequent completed transactions for the issuer and the target. ~~In relation to both issuer and target, adjustment must be made for transactions since the last year end~~ These adjustments are required for transactions which are class 2 or larger. We would not for instance expect adjustments to be made for transactions which have been announced but not yet completed.

~~We also apply this approach in relation to transactions completed during the last financial year for both issuer and target. If we did not take this approach it would produce an anomalous result whereby a transaction that occurred shortly after the year end would be adjusted for, but one that occurred shortly before the year end would not.~~

To illustrate our approach, here is an example:

Listed issuer A is considering acquiring company B. A's latest published annual audited accounts are to 31 December 2011 and B has a year end of 31 March 2012. A completed a class 2 acquisition of target C, after its year end, in February 2012. The figures for A must be adjusted before the class tests are performed so that the latest audited 12 month profit and asset figures for C are added to the profits and assets of A as extracted from the 31 December 2011 audited accounts.

If, however, A had disposed of C after its year end we would expect A's financial information to be adjusted so that 12 months of profits and assets for C are deducted from A's profits and assets before the class test is performed.

If B had disposed of its subsidiary D, prior to its year end, the profits for B must be adjusted by removing all profits for D from the full year profits for B to 31 March 2012. B's year-end balance sheet will already reflect this disposal and no further adjustment needs to be made.

However, if B had acquired E before its year end those profits for E that have already been consolidated should be subtracted from B's figures and the latest audited 12 months profits for E should be added back. B's latest balance sheet will already reflect this acquisition and no further adjustment needs to be made.

## Appendix 4

# Technical notes for consultation on cash shells, special purpose acquisition companies and reverse takeovers

### Cash shells and special purpose acquisition companies (SPACs)

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#### Ref: UKLA/TN/420.2 – Guidance Consultation

LR 5; LR 6; LR 14 and LR 7.2.1R

The terms 'cash shell' and 'SPAC' are not defined in the Listing Rules. However, we note the following points about how these terms are broadly understood, how these types of issuers meet the eligibility requirements for listing shares and when the listing may be suspended if a reverse takeover is announced or leaked (as cash shells and SPACs will be shell companies under LR 5.6.5AR).

#### *The terms 'cash shell' and 'SPAC'*

##### **Cash shells**

'Cash shell' is a term often used for companies whose assets consist wholly or predominantly of cash (or potentially short dated securities). A listed issuer may be a cash shell because it has been admitted to the Official List as a commercial company but has subsequently disposed of all or a majority of its assets and currently operates only residual business activities, if any. These types of issuers may have been admitted to the Official List with either a premium listing (pursuant to Chapter 6 of the Listing Rules) or a standard listing (pursuant to Chapter 14 of the Listing Rules). Cash shells may or may not have a strategy to seek an acquisition opportunity or to develop a business as a start-up. So there is some overlap between cash shells and SPACs.

##### **SPACs**

We understand the term special purpose acquisition company or 'SPAC' to mean a new company incorporated to identify and acquire a suitable business opportunity or opportunities. It may also be referred to as a 'search fund'.

Its initial funds are usually raised through an IPO on a stock market or through a fundraising undertaken before the IPO. After IPO, its cash resources are used to identify acquisition opportunities, finance the due diligence costs and potentially fund or part fund the acquisition of a suitable business to invest in.

The issuer may have raised significant funds to finance these activities. However, this is not always the case and we note that many such issuers are microcap companies listing with a market capitalisation of around £1 million.

### Eligibility for listing

When these types of issuers are listed, they are most typically, but not always, listed under Chapter 14 of the Listing Rules which sets out requirements for the standard listing of shares.

An applicant which is a cash shell or SPAC would not meet the eligibility requirements for premium listing. This is because it would not have an independent business and a financial track record that meets the requirements of LR 6 (additional requirements for premium listing, commercial companies). It would also not normally have a policy of investing its assets to spread investment risk in accordance with the requirements of LR 15 (closed-ended investment funds). A cash shell or SPAC can list under LR 14 provided it is not an 'investment entity' as defined in the Listing Rules (LR 14.1.1R and Glossary).

Cash shells that have previously been admitted to premium listing and remain premium listed should note LR 5.4A.16G which will apply to them. This states that there may be situations where an issuer's business has changed over time so that it no longer meets the requirements of the applicable listing category which it was initially assessed for listing. In those situations, we may consider cancelling the listing of the equity shares or suggest to the issuer that, as an alternative, it applies for the transfer of its listing category.

We therefore encourage such issuers to consider whether to apply to us for their listing to be cancelled, or to transfer to standard listing (LR 14), and to contact us to discuss this.

### Reverse takeovers

Listed cash shells and SPACs are caught by the provisions on reverse takeovers that apply to a 'shell company' in LR 5.6.5AR. This is because a shell company is a listed issuer whose assets consists solely or predominantly of cash or short dated securities, or whose predominant purpose or objective is to undertake an acquisition or merger or a series of acquisitions or mergers.

Also, the acquisition by a cash shell or SPAC of a target is a reverse takeover according to the definition in LR 5.6.4R and the related guidance in LR 5.6.5G. In particular, the percentage ratios are likely to be 100% or more because, in applying the class tests, the cash and short dated securities held by the cash shell or SPAC must be excluded in calculating its assets and market capitalisation (paragraph 8R(5) in LR 10 Annex 1). Also, the transaction is likely in substance to result in a fundamental change in the business or a change in board or voting control of the issuer.

The classification of the transaction as a reverse takeover under the Listing Rules is important because a cash shell or SPAC will be subject to the rebuttable presumption that, where a reverse takeover is announced or leaked, there will be insufficient publicly available information in the market that will often lead to the suspension of listing in the context of a reverse takeover. We refer to this as the 'rebuttable presumption of suspension'. In this case the issuer or, if the issuer is premium listed, its sponsor, is required to contact us as early as possible to discuss whether a suspension is appropriate (before announcing a reverse takeover which has been agreed or is in contemplation) or to request a suspension (where details of the reverse takeover have leaked).

Also, we will generally seek to cancel the listing of an issuer's equity shares when the issuer completes a reverse takeover (LR 5.2.3G).

We discuss these points below.

**Suspending listing**

We may suspend, with effect from such time as we may determine, the listing of any securities if the smooth operation of the market is, or may be, temporarily jeopardised or it is necessary to protect investors (LR 5.1.1R(1)).

**Rebuttable presumption of suspension**

The Listing Rules create a rebuttable presumption that certain types of issuer will be suspended upon announcement or leak of a reverse takeover as there will be insufficient publicly available information in the market.

When suspending, we will rely on the general suspension power set out under LR 5.1.1R(1) which is supported by examples of when we may suspend listing in LR 5.1.2G. These include where it appears to us that the issuer cannot accurately assess its financial position and inform the market accordingly in LR 5.1.2G(3) or there is insufficient information in the market about a proposed transaction in LR 5.1.2G(4).

Although LR 5.1.2G(4) refers only to a 'proposed transaction', we would consider this to refer to situations where information has been announced or leaked in relation to transactions under contemplation, as well as those where the terms have been agreed.

**Early engagement on reverse takeovers**

LR 5.6.8G highlights that, in the case of a reverse takeover for the types of issuer referred to in LR 5.6.5AR, we will often consider that a suspension will be appropriate, unless we are satisfied that there is sufficient publicly available information about the proposed transaction.

We would like to remind issuers of the need to ensure that they consider Listing Principle 2, which requires issuers to deal with us in an open and co-operative manner, when considering the appropriate time to contact us.

Early engagement with us is particularly important in circumstances where the issuer intends to pursue the transaction or has reached a stage where the transaction can be described as being in contemplation (LR 5.6.7G). A decision to suspend can have a significant market impact and so early engagement, preferably before the point where a reverse transaction can be considered in contemplation, is essential.

**Timing of the announcement**

LR 5.6.7G sets out examples of when we will generally consider a potential reverse transaction sufficiently advanced to trigger an announcement and that a suspension may be appropriate. However, we know that at times the situation may not be as clear cut as set out in these examples. There may be situations where there has been a purely speculative leak and a potential suspension would be inappropriate.

We also recognise that competitive auction processes are often difficult to fit into this framework, so we are happy to discuss the specifics of each case with issuers or their advisers. In making a decision about whether it is appropriate to consider suspension, we would expect the issuer to apply a similar rationale as they would when considering the announcement requirements under the Market Abuse Regulation (MAR). We would not, for example, expect the issuer to request a suspension where the transaction is too speculative to trigger an announcement under MAR.

**Timing of suspension, cancellation and readmission**

When a reverse takeover is announced, we may suspend listing if we believe, having considered the information in the market on the target at the time, that there is or may be a disorderly

market or it is necessary to protect investors. We will follow this approach in the case of acquisitions by shell companies because our experience is that share prices in these types of issuers can experience a lot of volatility and price spikes around the time of a proposed transaction.

As noted above, LR 5.2.3G makes it clear that we will generally cancel the listing of a company's equity shares when it completes a reverse takeover. UK-regulated markets follow suit and will cancel the admission to trading. So if the issuer wants to remain listed and admitted to trading, it will need to apply to us to be re-admitted to listing as well as making appropriate arrangements with the operator of the relevant market about its readmission to trading.

The application for re-admission to a regulated market is most likely to trigger the requirement for the issuer to publish a further prospectus. We may suspend listing pending publication of that prospectus if we believe, having considered the information in the market on the target at the time, that there is or may be a disorderly market or it is necessary to protect investors. We will follow this approach in the case of acquisitions by a cash shell or SPAC.

The cash shell or SPAC may apply for its enlarged share capital to be listed under LR 6 when it has completed the acquisition. Alternatively, it may wish to apply to be listed under LR 14. We will assess eligibility in the usual way and if re-admitted under LR 6, the usual rules for premium-listed commercial companies will apply.

## Listing Principle 2 Dealing with the FCA in an open and cooperative manner

### Ref: UKLA/TN/209.23 – Guidance Consultation

LR 7.2.1 R and LR 1.2.5 G

LP 2 requires issuers to deal with the FCA in an open and cooperative manner. This obligation is broader than simply requiring issuers to ensure that they deal with ~~us~~ the FCA in an open and cooperative manner on ongoing matters. In particular, LP 2 requires issuers to approach ~~us~~ the FCA in relation to significant transactions. However, it is not necessary for issuers to contact ~~us~~ the FCA in relation to all transactions. The following provides an indication of the factors that should be considered and examples of transactions that could be considered significant.

It is not possible to describe all the factors that should be taken into account when trying to ascertain whether to contact ~~us~~ the FCA. However, the following considerations are likely to be relevant.

- **Is there a role for the FCA?** Issuers should consider the need for timely disclosure to ~~us~~ the FCA in circumstances where ~~we have~~ the FCA has a regulatory role to perform before the transaction can proceed. Examples of where ~~we~~ the FCA will have a role to play include providing guidance on the interpretation of a rule, waiving or modifying the application of a rule, or making a decision on whether a suspension is appropriate.
- **Is the decision time-critical?** Where an issuer is aware that a decision will need to be made by a certain point in time – for example, making an announcement before the market opens – issuers should ensure that they contact ~~us~~ the FCA well in advance of the event.
- Does the timing of contact allow for ~~us~~ the FCA to disagree with the proposed approach?

- Issuers should ensure that they allow, within their timetable, sufficient time for ~~us~~ the FCA to consider the substantive matter presented and to form a view. This is particularly important in circumstances where the timetable cannot be delayed if ~~we~~ the FCA disagrees with an issuer's position, due to an immovable event, such as insolvency or a need for a suspension before the market opens.

Based on the above considerations, examples of the types of transactions where we would expect an issuer to carefully consider the timing of initial contact with ~~us~~ the FCA include reverse takeovers where this contact is required under LR 5.6.6R, and class 1 disposals by issuers in severe financial distress. However, a reverse takeover by a premium listed issuer or routine class 1 transaction with a limited role for ~~us~~ the FCA before the submission of the circular is unlikely to require early contact.

In circumstances where an issuer is unclear on whether LP 2 applies, LR 1.2.5G offers general guidance, highlighting that an issuer should consult the FCA 'at the earliest possible stage' if there is any doubt about how a Listing Rule applies in a particular situation.

### Special purpose acquisition companies (SPACs)

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**Ref: ULA/TN/420.1 – current technical note to be replaced by proposed UKLA/TN/420.2**

LR 5; LR 6; LR 14

We understand the term special purpose acquisition companies or SPAC to indicate a new company incorporated by a high-profile entrepreneur/promoter to identify and acquire a suitable business opportunity. Its initial funds are raised through an IPO on a stock market. These are then used to fund the acquisition of a suitable business to invest in.

The term is not defined. However, based on that broad understanding, we would make the following observations about SPACs:

- i. A SPAC does not initially have an independent business so cannot be listed under LR 6; nor will it have a policy of investing its assets to spread investment risk so it cannot list under LR 15 either. However, a SPAC can list under LR 14 provided it is not an 'investment entity' as defined in the Listing Rules (LR 14.1.1R and Definitions).
- ii. The acquisition by the SPAC of the target is a reverse takeover. LR 5 applies to LR 14 companies and LR 5.2.3G makes it clear that we generally will cancel the listing of a company's equity shares when it completes a reverse takeover, creating the requirement for the company to be readmitted. Because UK-regulated markets follow suit and require re-admission, this will trigger the production of a second prospectus.
- iii. As with all announcements of reverse takeovers, we may suspend listing pending publication of the second prospectus if we believe, having considered the information in the market on the target at the time, that there is or may be a disorderly market or it is necessary to protect investors. We will follow this approach in the case of acquisitions by a cash shell, or where the acquisition would fundamentally change the nature or strategic direction of the issuer. In these situations we would suspend the issuer's equity shares until a prospectus on the new group had been published.

- iv. The SPAC may apply for its enlarged share capital to be listed under LR 6 on completion of the acquisition if it wishes. Alternatively, it may wish to re-list under LR 14. We will assess eligibility in the usual way and if re-admitted under LR 6, the usual rules for premium-listed commercial companies will apply once that happens.

## Reverse Takeovers

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### Ref: UKLA/TN/306.2 – proposed to be deleted

LR 5.1.2G(4), LR 5.6.7G, LR 5.6.8G and LR 7.2.1R

#### Early engagement on reverse takeovers

LR 5.6.8G highlights that, in the case of a reverse takeover, the FCA will often consider that a suspension is necessary. In cases where there is doubt about whether a suspension will be required, the FCA will need to consider whether or not a suspension is appropriate.

We would like to remind issuers of the need to ensure that they consider LP 2, which requires issuers to deal with the FCA in an open and co-operative manner, when considering the appropriate time to contact the FCA.

Early engagement is particularly important in circumstances where the issuer intends to pursue the transaction or has reached a stage where the transaction can be described in contemplation (LR 5.6.7G). A decision to suspend an issuer can have a significant market impact and, as such, we consider that early engagement, preferably before the point where a reverse transaction can be considered in contemplation, is essential.

#### Timing of the announcement

The Listing Rules create a rebuttable presumption that an issuer will be suspended upon announcement or leak of a reverse takeover. When suspending, we will rely on the general suspension powers set out under LR 5. LR 5.1.2G(4) refers only to a 'proposed transaction'. However, we would consider this to refer to situations where information has been announced or leaked in relation to transactions under contemplation, as well as those where the terms have been agreed.

LR 5.6.7G sets out examples of when the UKLA will generally consider a potential transaction sufficiently advanced to trigger a potential suspension requirement. However, we appreciate that at times the situation may not be as clear cut as set out in these examples and there may be situations where there has been a purely speculative leak where a potential suspension would be inappropriate.

We are also aware that competitive auction processes are often difficult to fit into this framework, so we are happy to discuss the specifics of each case with issuers or their advisers. In making a decision about whether it is appropriate to consider suspension, we would expect an issuer to apply a similar rationale, as they would when considering the announcement requirements under the Disclosure and Transparency Rules. We would not, for example, expect an issuer to request a suspension where the transaction in question is too speculative to trigger an announcement under the continuing obligations regime.

# Appendix 5

## Draft Handbook text

**LISTING RULES SOURCEBOOK AND FEES MANUAL (REDESIGNATION AND MISCELLANEOUS AMENDMENTS) INSTRUMENT 2017**

**Powers exercised**

- A. The Financial Conduct Authority (the “FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
  - (2) section 96 (Obligations of issuers of listed securities);
  - (3) section 137A (The FCA’s general rules);
  - (4) section 137T (General supplementary powers);
  - (5) section 139A (Power of the FCA to give guidance); and
  - (6) paragraph 23 (Fees) of Part 3 (Penalties and Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [*date*].

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Fees manual (FEES) is amended in accordance with the table set out in Annex B to this instrument.
- F. (1) The Listing Rules sourcebook (LR) is amended as follows:
- (a) except for the items in (c), each provision of LR listed in column (1) of the table in Annex C is redesignated to form new sections in Chapter 6 of LR in accordance with the corresponding entry in column (2) of the table in Annex C;
  - (b) the text in LR 6.1.2AR (Definition of controlling shareholder) has been moved to form an expanded existing definition in the Glossary and in LR Appendix 1 (Relevant definitions);
  - (c) the items listed as ‘Deleted’ in column (2) of the table in Annex C are deleted from LR so that LR 6 reads as set out in Part 1 of Annex D to this instrument;

- (d) the provisions in (a) designated as “Restated text” in column (3) of the table in paragraph F(2) are restated with amended cross-references so that they read as set out in Part 1 of Annex D to this instrument;
- (e) the provisions in (a) designated as “Amended text” in column (3) of the table in paragraph F(2) are amended in accordance with Part 1 of Annex D to this instrument;
- (f) the FCA makes the rules and gives the guidance designated as “New text” in column (3) of the table in paragraph F(2) in accordance with Part 1 of Annex D to this instrument;
- (g) all the above provisions are combined so that they appear in the appropriate numerical order; and
- (h) LR is additionally amended in accordance with Part 2 of Annex D and Part 3 of Annex D to this instrument.
- (2) The table referred to in paragraph F(1)(d) to (f) is as follows:

<b>Table of Origin</b>		
<b>(1) LR</b>	<b>(2) Current location in LR (where applicable)</b>	<b>(3) How dealt with in this instrument</b>
LR 6.1.1R	LR 6.1.1R and 6.1.1AR	Amended text
LR 6.1.2G	LR 6.1.2G	Amended text
LR 6.2.1R	LR 6.1.3R(1)(a) to (c) and LR 6.1.3BR(1)	Amended text
LR 6.2.2G	LR 6.1.3CG	Amended text
LR 6.2.3R	LR 6.1.3DR(1), (2) and (4)	Amended text
LR 6.2.4R	LR 6.1.3R(1)(d) and (e)	Amended text
LR 6.2.5G	LR 6.1.3AG	Restated text
LR 6.2.6R	LR 6.1.3R(2)	Restated text
LR 6.3.1R(1)	N/A	New text
LR 6.3.1R(2)	LR 6.1.3BR(2)	Amended text
LR 6.3.2G	LR 6.1.3EG	Amended text
LR 6.4.1R	LR 6.1.4R	Amended text
LR 6.4.2G	LR 6.1.4AG	Amended text
LR 6.4.3G	LR 6.1.4AG(1) to (3)	Amended text
LR 6.5.1R	N/A	New text
LR 6.5.2G	LR 6.1.4AG	Amended text
LR 6.5.3G(1)	LR 6.1.4AG(4)	Amended text
LR 6.5.3G(2)	LR 6.1.4AG(6)	Amended text
LR 6.5.3G(3)	N/A	New text
LR 6.5.4R	LR 6.1.4BR(1) and LR 6.1.4DR	Amended text
LR 6.5.5R	LR 6.1.4CR	Amended text
LR 6.6.1R	N/A	New text
LR 6.6.2G	LR 6.1.4AG	Amended text
LR 6.6.3G(1)	N/A	New text

LR 6.6.3G(2) and (3)	LR 6.1.4AG(5)(a) and (b)	Amended text
LR 6.7.1R	LR 6.1.16R	Restated text
LR 6.8.1R	LR 6.1.22R(1)	Restated text
LR 6.8.2R	LR 6.1.22R(2)	Restated text
LR 6.9.1R(1)	LR 6.1.28R	Amended text
LR 6.9.1R(2)	LR 6.1.4BR(2)	Amended text
LR 6.9.2R	LR 6.1.25	Restated text
LR 6.10.1R	LR 6.1.8R	Amended text
LR 6.10.2R	LR 6.1.9R	Amended text
LR 6.10.3R	LR 6.1.10R	Amended text
LR 6.11.1R	LR 6.1.11R	Restated text
LR 6.11.2R	LR 6.1.12R	Amended text
LR 6.12.1R	N/A	New text
LR 6.12.2R	N/A	New text
LR 6.13.1R	LR 6.1.26R	Amended text
LR 6.13.2G	LR 6.1.27G	Amended text
LR 6.14.1R	LR 6.1.19R(1)	Amended text
LR 6.14.2R	LR 6.1.19R(2) and (3)	Amended text
LR 6.14.3R	LR 6.1.19(4)	Restated text
LR 6.14.4G	LR 6.1.20BG	Restated text
LR 6.14.5G	LR 6.1.20AG	Restated text
LR 6.15.1R	LR 6.1.21R	Amended text

## Notes

- G. In Annex D to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

## Citation

- H. This instrument may be cited as the Listing Rules Sourcebook and Fees Manual (Redesignation and Miscellaneous Amendments) Instrument 2017.

By order of the Board  
[date]

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definition in the appropriate alphabetical position. The text is new and is not underlined.

*shell company* as defined in LR 5.6.5AR.

Amend the following definitions as shown.

*controlling shareholder* ~~as defined in LR 6.1.2AR~~ means any *person* who exercises or controls on their own or together with any *person* with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the *company*. For the purposes of calculating voting rights, the following voting rights are to be disregarded:

- (1) any voting rights which such a *person* exercises (or controls the exercise of) independently in its capacity as: bare trustee, investment manager, collective investment undertaking or a *long-term insurer* in respect of its linked long-term business if no *associate* of that *person* interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such *person* confers or collaborates with such an *associate* which also acts in its capacity as investment manager, collective investment undertaking or *long-term insurer*); or
- (2) any voting rights which a *person* may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:
  - (a) underwriting the issue or sale of *securities*; or
  - (b) placing *securities*, where the *person* provides a firm commitment to acquire any *securities* which it does not place; or
  - (c) acquiring *securities* from existing shareholders or the *issuer* pursuant to an agreement to procure third-party purchases of *securities*;

and where the conditions below are satisfied:

- (i) the activities set out in (2)(a) to (c) are performed in the ordinary course of business;
- (ii) the securities to which the voting rights attach are held for a consecutive period of 5 trading days or less, beginning with the first trading day on which the securities are held;
- (iii) the voting rights are not exercised within the period the securities are held; and
- (iv) no attempt is made directly or indirectly by the person to intervene in (or attempt to intervene in) or exert (or attempt to exert) influence on the management of the issuer within the period the securities are held.

*group* ...

(4) (in LR):

- (a) (except in ~~LR 6.1.4AG, LR 6.1.19R, LR 6.1.20BG~~ LR 6.4.3G, LR 6.5.3G, LR 6.14.3R, LR 6.14.4G, LR 8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R and LR 18.2.9AG) an issuer and its subsidiary undertakings (if any); and
- (b) (in ~~LR 6.1.4AG, LR 6.1.19R, LR 6.1.20BG~~, LR 6.4.3G, LR 6.5.3G, LR 6.14.3R, LR 6.14.4G, LR 8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R and LR 18.2.9AG), as defined in section 421 of the Act.

...

*independent director* a director whom ~~a new~~ an applicant or listed company has determined to be independent under the UK Corporate Governance Code.

Delete the following definition. The text is not shown struck through.

*new applicant* (in LR) an applicant that does not have any class of its securities already listed.

## Annex B

### Amendments to the Fees manual (FEES)

- (1) The table referred to in paragraph E of this instrument is as follows.
- (2) The reference in column (2) of this Annex B is replaced with the reference in column (3) in the provision listed in column (1).
- (3) Where a reference in column (2) appears in the provision listed in column (1) more than once, all references set out in column (2) are replaced with the reference in column (3) in the provision listed in column (1).

<b>Cross reference updates</b>		
<b>(1) FEES section where cross-reference appears</b>	<b>(2) Cross-reference to be amended</b>	<b>(3) New cross-reference</b>
FEES 3 Annex 12R	LR 6.1.1AR	LR 6.1.1R(1) or (2)

## Annex C

### Re-numbering of LR

- (1) The table referred to in paragraph F(1)(a) and (b) of this instrument is as follows.
- (2) Where a reference in the table in this Annex C is to a sub-section only, the whole of the sub-section listed in column (1) is re-numbered as set out in column (2). The module, chapter and section of each provision is re-numbered as set out in column (2); otherwise the numbering of the paragraphs in the re-numbered section remains the same.

<b>Table of Destination</b>	
<b>(1) LR current location</b>	<b>(2) LR and Glossary destination (if applicable)</b>
LR 6.1.1R	LR 6.1.1R
LR 6.1.1AR	LR 6.1.1R
Applicant must satisfy requirements in this chapter	
LR 6.1.2G	LR 6.1.2G
Definition of controlling shareholder	
LR 6.1.2AR	Glossary, LR Appendix 1
Historical financial information	
LR 6.1.3R(1)(a) to (c)	LR 6.2.1R(1) to (3)
LR 6.1.3R(1)(d) to (e)	LR 6.2.4R
LR 6.1.3R(2)	LR 6.2.6R
LR 6.1.3AG	LR 6.2.5G
LR 6.1.3BR(1)	LR 6.2.1R(2)
LR 6.1.3BR(2)	LR 6.3.1R(2)
LR 6.1.3CG	LR 6.2.2G
LR 6.1.3DR(1), (2) and (4)	LR 6.2.3R
LR 6.1.3DR(3)	LR 6.2.4R(2)
LR 6.1.3EG	LR 6.3.2G
Independent business	
LR 6.1.4R	LR 6.4.1R
LR 6.1.4AG(1) to (3)	LR 6.4.2G and LR 6.4.3G
LR 6.1.4AG(4) and (6)	LR 6.5.3G(1) and (2)
LR 6.1.4AG(5)	LR 6.6.3G(2) and (3)
LR 6.1.4BR(1)	LR 6.5.4R
LR 6.1.4BR(2)	LR 6.9.1R(2)
LR 6.1.4CR	LR 6.5.5R
LR 6.1.4DR	LR 6.5.4R
Mineral companies	
LR 6.1.8R	LR 6.10.1R
LR 6.1.9R	LR 6.10.2R
LR 6.1.10R	LR 6.10.3R
Scientific research based companies	
LR 6.1.11R	LR 6.11.1R

LR 6.1.12R	LR 6.11.2R
Other cases where the FCA may modify accounts and track record requirements	
LR 6.1.13G	Deleted
LR 6.1.14G	Deleted
LR 6.1.15G	Deleted
Working capital	
LR 6.1.16R	LR 6.7.1R
LR 6.1.17G	Deleted
LR 6.1.18G	Deleted
Shares in public hands	
LR 6.1.19R(1)	LR 6.14.1R
LR 6.1.19R(2) and (3)	LR 6.14.2R
LR 6.1.19R(4)	LR 6.14.3R
LR 6.1.19R(5)	LR 6.14.2R(3)
LR 6.1.20AG	LR 6.14.5G
LR 6.1.20BG	LR 6.14.4G
Shares of a non-EEA company	
LR 6.1.21R	LR 6.15.1R
Warrants or options to subscribe	
LR 6.1.22R(1)	LR 6.8.1R
LR 6.1.22R(2)	LR 6.8.2R
Pre-emption rights	
LR 6.1.25R	LR 6.9.2R
Externally managed companies	
LR 6.1.26R	LR 6.13.1R
LR 6.1.27G	LR 6.13.2G
Voting on matters relevant to premium listing	
LR 6.1.28R	LR 6.9.1R(1)

## Annex D

### Amendments to the Listing Rules sourcebook

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

#### Part 1: restructuring of LR 6 with amendments

The following text is designated as set out in the table in paragraph F(2) of this instrument and is not underlined.

#### 6 Additional requirements for premium listing (commercial company)

##### 6.1 Application

- 6.1.1 R This chapter applies to an *applicant* for the *admission of equity shares to premium listing (commercial company)* except where:
- (1) the *applicant* meets the following conditions:
    - (a) it has an existing *premium listing (commercial company)* of *equity shares*;
    - (b) it is applying for the *admission of equity shares* of the same *class* as the *shares* that have been admitted to *premium listing*; and
    - (c) it is not entering into a transaction classified as a *reverse takeover*; or
  - (2) the following conditions are met:
    - (a) a *company* has an existing *premium listing (commercial company)* of *equity shares*;
    - (b) the *applicant* is a new holding company of the *company* in (a); and
    - (c) the *company* in (a) is not entering into a transaction classified as a *reverse takeover*.

Applicant must satisfy requirements in this chapter

- 6.1.2 G An *applicant* to whom this chapter applies must satisfy the requirements in this chapter (in addition to those in *LR 2*).

## 6.2 Historical financial information requirements

### Content of historical financial information

- 6.2.1 R An *applicant* must have published or filed historical financial information that:
- (1) covers at least three years;  
[**Note:** article 44 of the *CARD*]
  - (2) represents at least 75% of the *applicant's* business for the period in (1);
  - (3) unless *LR 5.6.21R* applies, has a latest balance sheet date that is not more than:
    - (a) six months before the date of the *prospectus* or *listing particulars* for the relevant *shares*; and
    - (b) nine months before the date the *shares* are *admitted to listing*; and
  - (4) includes the consolidated accounts for the *applicant* and all its *subsidiary undertakings*.
- 6.2.2 G
- (1) In determining what amounts to 75% of the *applicant's* business for the purpose of *LR 6.2.1R(2)*, the *FCA* will consider the size, in aggregate, of all of the acquisitions that the *applicant* has entered into during the period required by *LR 6.2.1R(1)* and up to the date of the *prospectus* or *listing particulars*, relative to the size of the *applicant* as enlarged by the acquisitions.
  - (2) In ascertaining the size of the acquisitions relative to the *applicant* for the purposes of *LR 6.2.1R(2)*, the *FCA* will take into account factors such as the assets, profitability and market capitalisation of the businesses.
  - (3) The figures used should be the latest available for the acquired entity and the *applicant* as enlarged by the acquisition or acquisitions.
- 6.2.3 R Where an *applicant* has made an acquisition or series of acquisitions such that its own consolidated financial information is insufficient to meet the 75% requirement in *LR 6.2.1R(2)*, there must be historical financial information relating to the acquired entity or entities which has been published or filed and that:
- (1) covers the period from at least three years prior to the date under *LR 6.2.1R(3)* up to the earlier of:

- (a) the date in *LR 6.2.1R(3)*; or
- (b) the date of acquisition by the *applicant*;
- (2) is prepared and presented in a form that is consistent with the accounting policies adopted in the financial information required by *LR 6.2.1R*; and
- (3) is in aggregate with its own historical financial information and represents at least 75% of the enlarged *applicant's* business for the period in *LR 6.2.1R(1)*.

#### Audit requirements for historical financial information

- 6.2.4 R The historical financial information in *LR 6.2.1R* and *LR 6.2.3R* must:
- (1) have been audited or reported on in accordance with the standards acceptable under item 20.1 of Annex I of the *PD Regulation*; and
  - (2) not be subject to a *modified report*, unless the circumstances set out in *LR 6.2.5G* apply.
- 6.2.5 G The *FCA* may accept that *LR 6.2.4R(2)* has been satisfied where a *modified report* is present only as a result of:
- (1) the presence of an emphasis-of-matter paragraph which arises in any of the earlier periods required by *LR 6.2.1R* and the opinion on the final period is unmodified; or
  - (2) the opinion on the historical financial information for the final period under *LR 6.2.1R* includes an emphasis-of-matter paragraph with regard to going concern and *LR 6.7.1R* (Working capital) is complied with.
- 6.2.6 R An *applicant* must:
- (1) take all reasonable steps to ensure that the *person* providing the opinion in *LR 6.2.4R(1)* is independent of it; and
  - (2) obtain written confirmation from the *person* providing the opinion in *LR 6.2.4R(1)* that it complies with guidelines on independence issued or approved by its national accountancy or auditing bodies.

### 6.3 Revenue earning track record requirement

- 6.3.1 R The historical financial information required under *LR 6.2.1R* and *LR 6.2.3R* must:
- (1) demonstrate that the *applicant* has a revenue earning track record;

and

- (2) put prospective investors in a position to make an informed assessment of the business for which *admission* is sought.
- 6.3.2 G (1) The purpose of *LR* 6.2.1R(2), *LR* 6.2.3R, and *LR* 6.3.1R is to ensure that the *applicant* has representative financial information throughout the period required by *LR* 6.2.1R(1) and *LR* 6.2.3R and to assist prospective investors to make a reasonable assessment of what the future prospects of the *applicant's* business might be. Investors are then able to consider the *applicant's* historical financial information in light of its particular competitive advantages, the outlook for the sector in which it operates and the general macro economic climate.
- (2) The *FCA* may consider that an *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 *applicant's* business has one or more of the following characteristics:
- (a) a business strategy that places significant emphasis on the development or marketing of products or services which have not formed a significant part of the *applicant's* historical financial information;
  - (b) the value of the business on *admission* will be determined, to a significant degree, by reference to future developments rather than past performance;
  - (c) 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;
  - (d) there is no record of consistent revenue, cash flow or profit growth throughout the period of the historical financial information;
  - (e) the *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*;
  - (f) it has significant levels of research and development expenditure or significant levels of capital expenditure.

## 6.4 Independent business

- 6.4.1 R An *applicant* must demonstrate that it carries on an independent business as

its main activity.

- 6.4.2 G *LR 6.4.1R* is intended to ensure that the protections afforded to *holders of equity shares* by the *premium listing* requirements are meaningful.
- 6.4.3 G Factors that may indicate that an *applicant* does not satisfy *LR 6.4.1R* include situations where:
- (1) a majority of the revenue generated by the *applicant's* business is attributable to business conducted directly or indirectly with one *person* or *group*; or
  - (2) the *applicant* cannot demonstrate that it has access to financing other than from one *person* or *group*; or
  - (3) the *applicant* does not have:
    - (a) strategic control over the commercialisation of its products; or
    - (b) strategic control over its ability to earn revenue; or
    - (c) freedom to implement its business strategy.

## 6.5 Controlling shareholders

- 6.5.1 R An *applicant* with a *controlling shareholder* must demonstrate that, despite having a *controlling shareholder*, the *applicant* is able to carry on an independent business as its main activity.
- 6.5.2 G *LR 6.5.1R* is intended to ensure that the protections afforded to *holders of equity shares* by the *premium listing* requirements are meaningful.
- 6.5.3 G Factors that may indicate that an *applicant* does not satisfy the requirement in *LR 6.5.1R* (even where the agreement in *LR 6.5.4R* is in place) include:
- (1) an *applicant* has granted or may be required to grant security over its business in connection with the funding of a *controlling shareholder* or a member of a *controlling shareholder's group*; or
  - (2) a *controlling shareholder* (or any *associate* thereof) appears to be able to influence the operations of the *applicant* outside its normal governance structures or via material shareholdings in one or more significant *subsidiary undertakings*; or
  - (3) a *controlling shareholder* appears to be able to exercise improper influence over the *applicant*; or
  - (4) an *applicant* cannot demonstrate that it has access to financing other than from a *controlling shareholder* (or an *associate* thereof).

- 6.5.4 R An *applicant* with a *controlling shareholder* upon *admission* must have in place a written and legally binding agreement with its *controlling shareholder* which is intended to ensure that the *controlling shareholder* complies with undertakings that:
- (1) transactions and arrangements with the *controlling shareholder* (and/or any of its *associates*) will be conducted at arm's length and on normal commercial terms;
  - (2) 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
  - (3) neither the *controlling shareholder* nor 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*.
- 6.5.5 R An *applicant* with more than one *controlling shareholder* is not required to enter into a separate agreement with each *controlling shareholder* if:
- (1) the *applicant* reasonably considers, in light of its understanding of the relationship between the relevant *controlling shareholders*, that a *controlling shareholder* can procure the compliance of another *controlling shareholder* and that *controlling shareholder's associates* with the undertakings in LR 6.5.4R; and
  - (2) the agreement, which contains the undertakings in LR 6.5.4R, entered into with the relevant *controlling shareholder* also contains:
    - (a) a provision in which the *controlling shareholder* agrees to procure the compliance of a non-signing *controlling shareholder* and its *associates* with the undertakings in LR 6.5.4R; and
    - (b) the name of such non-signing *controlling shareholder*.

## 6.6 Control of the business

- 6.6.1 R An *applicant* must demonstrate that it exercises operational control over the business it carries on as its main activity.
- 6.6.2 G LR 6.6.1R is intended to ensure that the protections afforded to holders of *holders of equity shares* by the *premium listing* requirements are meaningful.
- 6.6.3 G Factors that may indicate that an *applicant* does not satisfy the requirement in LR 6.6.1R include where the *applicant's* business consists principally of holding *shares* in entities that it does not control, including entities where

the *applicant*:

- (1) owns a minority holding of *shares*; or
- (2) is only able to exercise negative control; or
- (3) exercises control subject to contractual arrangements which could be altered without the *applicant's* agreement or could result in a temporary or permanent loss of control.

## 6.7 Working capital

- 6.7.1 R An *applicant* must satisfy the *FCA* that it and its *subsidiary undertakings* (if any) have sufficient working capital available for the *group's* requirements for at least the next 12 months from the date of publication of the *prospectus* or *listing particulars* for the *shares* that are being admitted.

## 6.8 Warrants or options to subscribe

- 6.8.1 R The total of all issued *warrants* to subscribe for *equity shares* or *options* to subscribe for *equity shares* must not exceed 20% of the issued *equity share capital* (excluding *treasury shares*) of the *applicant* as at the time of issue of the *warrants* or *options*.
- 6.8.2 R For the purpose of the 20% limit in *LR* 6.8.1R, rights under *employees' share schemes* are not included.

## 6.9 Constitutional arrangements

- 6.9.1 R An *applicant* must have in place a constitution that allows it to comply with the *listing rules*, in particular:
- (1) *LR* 9.2.21R to vote on matters relevant to *premium listing*; and
  - (2) for an *applicant* with a *controlling shareholder*, *LR* 9.2.2ER and *LR* 9.2.2FR concerning the election and re-election of *independent directors*.

### Pre-emption rights

- 6.9.2 R If the law of the country of its incorporation does not confer on *shareholders* rights which are at least equivalent to *LR* 9.3.11R, an *overseas company* applying for a *premium listing* must:
- (1) ensure its constitution provides for rights which are at least equivalent to the rights provided in *LR* 9.3.11R (as qualified by *LR*

9.3.12R); and

- (2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation.

## 6.10 Specialist companies: mineral companies

- 6.10.1 R Where a *mineral company* applies for the *admission* of its *equity shares* to a *premium listing* and cannot comply with the minimum three-year period required in LR 6.2.1R(1) because it has been operating for a shorter period:
- (1) the *mineral company* must have published or filed historical financial information since the inception of its business; and
- (2) the following apply to the *mineral company* only with regard to the period for which it has published or filed historical financial information pursuant to (1):
- (a) LR 6.2.1R(2), LR 6.2.1R(3) and LR 6.2.1R(4) (content of historical financial information); and
- (b) LR 6.2.4R and LR 6.2.6R (audit requirements for historical financial information).
- 6.10.2 R LR 6.3.1R (revenue earning track record) does not apply to a *mineral company* that applies for the *admission* of its *equity shares* to a *premium listing*.
- 6.10.3 R (1) This *rule* applies if the *mineral company* applies for the *admission* of its *equity shares* to *premium listing* and cannot comply with LR 6.6.1R (control of business) because the *mineral company* does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested.
- (2) The *mineral company* must demonstrate that it has a reasonable spread of direct interests in mineral resources and has rights to participate actively in their extraction, whether by voting or through other rights which give it influence in decisions over the timing and method of extraction of those resources.

## 6.11 Specialist companies: scientific research based companies

- 6.11.1 R Where a *scientific research based company* applies for the *admission* of its *equity shares* to a *premium listing* and cannot comply with the minimum three-year period required in LR 6.2.1R(1) because it has been operating for a shorter period:
- (1) the *scientific research based company* must have published or filed

historical financial information since the inception of its business;  
and

- (2) the following apply to the *scientific research based company* only with regard to the period for which it has published or filed historical financial information under (1):
  - (a) *LR 6.2.1R(2)*, *LR 6.2.1R(3)* and *LR 6.2.1R(4)* (content of historical financial information); and
  - (b) *LR 6.2.4R* and *LR 6.2.6R* (audit requirements for historical financial information).

6.11.2 R If the *scientific research based company* does not comply with either *LR 6.2.1R(1)* (minimum period for historical financial information) or *LR 6.3.1R* (revenue earning track record), it must:

- (1) demonstrate its ability to attract funds from sophisticated investors prior to the marketing at the time of *listing*;
- (2) intend to raise at least £10 million pursuant to a marketing at the time of *listing*;
- (3) 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 *equity shares* which have been issued in the six months before *listing*);
- (4) have as its primary reason for *listing* the raising of finance to bring identified products to a stage where they can generate significant revenues; and
- (5) demonstrate that it has a three year record in laboratory research and development including:
  - (a) details of patents granted or details of progress of patent applications; and
  - (b) the successful completion of, or the successful progression of, significant testing of the effectiveness of its products.

## 6.12 Specialist companies: property companies

6.12.1 R Where a *property company* applies for the *admission* of its *equity shares* to a *premium listing* and cannot comply with *LR 6.3.1R* because it does not have a revenue earning track record:

- (1) the *property company* must demonstrate that it has three years of development of its real estate assets represented by increases of the gross asset value of its real estate assets:

- (a) evidenced by the historical financial information required by *LR 6.2.1R*; and
    - (b) supported by a published *property valuation report*; or
  - (2) the *property company* must demonstrate that 75% of the gross asset value of an *applicant's* real estate assets, as supported by a published *property valuation report*, are revenue generating at the point in time when the application for *admission* of the *equity shares* to a *premium listing* is made.
- 6.12.2 G For the purposes of *LR 6.12.1R*, the *property valuation report* should be published in the *applicant's prospectus*.
- 6.12.3 R Where a *property company* is relying on *LR 6.12.1R(2)* and cannot comply with *LR 6.2.1R(1)* because it has been operating for a shorter period:
- (1) the *property company* must have published or filed historical financial information since the inception of its business; and
  - (2) the following apply to the *property company* only with regard to the period for which it has published or filed historical financial information under (1):
    - (a) *LR 6.2.1R(2)*, *LR 6.2.1R(3)* and *LR 6.2.1R(4)* (content of historical financial information); and
    - (b) *LR 6.2.4R* and *LR 6.2.6R* (audit requirements for historical financial information).

### 6.13 Externally managed companies

- 6.13.1 R An *applicant* must satisfy the *FCA* that:
- (1) the discretion of its board to make strategic decisions on behalf of the *applicant* has not been limited or transferred to a *person* outside the *applicant's group*; and
  - (2) its board has the capability to act on key strategic matters in the absence of a recommendation from a *person* outside the *applicant's group*.
- 6.13.2 G In considering whether an *applicant* has satisfied *LR 6.13.1R*, the *FCA* will consider, among other things, whether the board of the *applicant* consists solely of *non-executive directors* and whether significant elements of the strategic decision-making of or planning for the *applicant* take place outside the *applicant's group*, for example with an *external management company*.

## 6.14 Shares in public hands

6.14.1 R Where an *applicant* is applying for the *admission* of a *class* of *equity shares* to *premium listing*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.

[**Note:** article 48 of the *CARD*]

6.14.2 R For the purposes of *LR* 6.14.1R:

- (1) account may also be taken of holders in one or more states that are not *EEA States*, if the *shares* are listed in the state or states;
- (2) a sufficient number of *shares* will be taken to have been distributed to the public when 25% of the *shares* for which application for *admission* has been made are in public hands; and
- (3) *treasury shares* are not to be taken into consideration when calculating the number of *shares* of the *class*.

[**Note:** article 48 of the *CARD*]

6.14.3 R For the purposes of *LR* 6.14.1R and *LR* 6.14.2R, *shares* are not held in public hands if they are:

- (1) held, directly or indirectly by:
  - (a) a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
  - (b) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
  - (c) the trustees of any *employees' share scheme* or pension fund established for the benefit of any *directors* and *employees* of the *applicant* and its *subsidiary undertakings*; or
  - (d) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
  - (e) any *person* or *persons* in the same *group* or *persons* acting in concert who have an interest in 5% or more of the *shares* of the relevant class;
- (2) subject to a lock-up period of more than 180 calendar days.

[**Note:** article 48 of the *CARD*]

6.14.4 G When calculating the number of *shares* for the purposes of *LR* 6.14.3R(1)(e), holdings of *investment managers* in the same *group* where investment decisions are made independently by the individual in control of

the relevant fund and those decisions are unfettered by the *group* to which the *investment manager* belongs will be disregarded.

- 6.14.5 G (1) The *FCA* may modify *LR* 6.14.1R to accept a percentage lower than 25% 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.

[**Note:** article 48 of the *CARD*]

- (2) In considering whether to grant a modification, the *FCA* may take into account the following specific factors:

- (a) *shares* of the same *class* that are held (even though they are not listed) in states that are not *EEA States*;
- (b) the number and nature of the public shareholders; and
- (c) in relation to *premium listing (commercial companies)*, whether the expected market value of the *shares* in public hands at *admission* exceeds £100 million.

## 6.15 Shares of a non-EEA company

- 6.15.1 R The *FCA* will not admit *shares* of an *applicant* incorporated in a *non-EEA State* that are not listed either in its country of incorporation or in the country in which a majority of its *shares* are held, unless the *FCA* is satisfied that the absence of the listing is not due to the need to protect investors.

[**Note:** article 51 of the *CARD*]

...

## Part 2: additional amendments to the Listing Rules sourcebook (LR)

In this part, underlining indicates new text and striking through indicates deleted text.

### 5 **Suspending, cancelling and restoring listing and reverse takeovers: All securities**

...

#### 5.6 **Reverse takeovers**

...

~~Definition~~ Definitions

...

- 5.6.5A R A shell company is an issuer whose:
- (1) assets consist solely or predominantly of cash or short-dated securities; or
  - (2) predominant purpose or objective is to undertake an acquisition or merger, or a series of acquisitions or mergers.

## Requirement for a suspension

- 5.6.6 R ~~An issuer~~ A shell company, or in the case of ~~an issuer~~ a shell company with a *premium listing*, its *sponsor*, must contact the *FCA* as early as possible:
- (1) before announcing a *reverse takeover* which has been agreed or is in contemplation, to discuss whether a suspension of *listing* is appropriate; or
  - (2) where details of the *reverse takeover* have leaked, to request a suspension.
- 5.6.7 G Examples of where the *FCA* will consider that a *reverse takeover* is in contemplation include situations where:
- (1) the ~~issuer~~ shell company has approached the *target's* board;
  - (2) the ~~issuer~~ shell company has entered into an exclusivity period with a *target*; or
  - (3) the ~~issuer~~ shell company has been given access to begin due diligence work (whether or not on a limited basis).
- 5.6.8 G Generally, when a *reverse takeover* between a shell company and a target is announced or leaked, there will be insufficient publicly available information about the proposed transaction and the ~~issuer~~ shell company will be unable to assess accurately its financial position and inform the market accordingly. In this case, the *FCA* will often consider that suspension will be appropriate, as set out in *LR* 5.1.2G(3) and (4). However, if the *FCA* is satisfied that there is sufficient publicly available information about the proposed transaction it may agree with the ~~issuer~~ shell company that a suspension is not required.
- 5.6.9 G *LR* 5.6.10G to *LR* 5.6.18R set out circumstances in which the *FCA* will generally be satisfied that a suspension is not required.

Reverse takeover by a shell company: Target admitted to a regulated market

- 5.6.10 G ...

- (2) the ~~issuer~~ shell company makes an announcement stating that the *target* has complied with the disclosure requirements applicable on that *regulated market* and providing details of where information disclosed pursuant to those requirements can be obtained.

...

Reverse takeover by a shell company: Target subject to the disclosure regime of another market

- 5.6.12 G The *FCA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction if the *target* has *securities* admitted to an investment exchange or trading platform that is not a *regulated market* and the ~~issuer~~ shell company:

...

- 5.6.13 R Where ~~an issuer~~ a shell company has a *premium listing*, a written confirmation provided for the purpose of LR 5.6.12G(1) must be given by the ~~issuer's~~ shell company's sponsor.

...

Reverse takeover by a shell company: Target not subject to a public disclosure regime

- 5.6.15 G Where the *target* in a *reverse takeover by a shell company* is not subject to a public disclosure regime, or if the *target* has *securities* admitted on an investment exchange or trading platform that is not a *regulated market* but the ~~issuer~~ shell company is not able to give the confirmation and make the announcement contemplated by LR 5.6.12G, the *FCA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction such that a suspension is not required where the ~~issuer~~ shell company makes an announcement containing:

- (1) ...

...

- (d) a description of the key differences between the ~~issuer's~~ shell company's accounting policies and the policies used to present the financial information on the *target*;

...

- (3) a declaration that the *directors* of the ~~issuer~~ shell company consider that the announcement contains sufficient information about the business to be acquired to provide a properly informed basis for assessing its financial position; and

- (4) a declaration confirming that the ~~issuer~~ shell company has made the

necessary arrangements with the *target* vendors to enable it to keep the market informed without delay of any developments concerning the *target* that would be required to be released were the *target* part of the ~~issuer~~ shell company.

...

5.6.17 R Where ~~an issuer~~ a shell company has a *premium listing*, a *sponsor* must provide written confirmation to the *FCA* that in its opinion, it is reasonable for the ~~issuer~~ shell company to provide the declarations described in *LR* 5.6.15G(3) and (4).

5.6.18 R Where the *FCA* has agreed that a suspension is not necessary as a result of an announcement made for the purpose of *LR* 5.6.15G the ~~issuer~~ shell company must comply with the obligation under article 17(1) of the *Market Abuse Regulation* on the basis that the *target* already forms part of the enlarged *group*.

...

## 8 Sponsors: Premium listing

...

### 8.4 Role of a sponsor: transactions

...

8.4.2 R ...  
 (5) the *directors* of the *applicant* have a reasonable basis on which to make the working capital statement ~~required by *LR* 6.1.16R~~ which demonstrates that *LR* 6.7.1R is satisfied.

...

8.4.8 R ...  
 (3) the *directors* of the *applicant* have a reasonable basis on which to make the working capital statement required by ~~*LR* 6.1.16R~~ or a qualified working capital statement in accordance with *LR* 6.1.17G (as the case may be) to be included in the *applicant's prospectus* or *listing particulars* and submitted to the *FCA* in accordance with *LR* 3.3.2R(2).

...

## 9 Continuing obligations

...

### 9.2 Requirements with continuing application

...

## Independent business

- 9.2.2A R (1) A *listed company* must carry on an independent business as its main activity at all times.
- (2) ~~Where a *listed company* has a *controlling shareholder*, it must have in place at all times: [deleted]~~
- (a) ~~a written and legally binding agreement which is intended to ensure that the *controlling shareholder* complies with the independence provisions set out in LR 6.1.4DR; and~~
- (b) ~~a constitution that allows the election and re-election of *independent directors* to be conducted in accordance with the election provisions set out in LR 9.2.2ER and LR 9.2.2FR.~~
- 9.2.2AA G LR 6.4.3G provides guidance on factors that may indicate that a *listed company* is not carrying on an independent business.

Controlling shareholders

- 9.2.2AB R A *listed company* with a *controlling shareholder* must demonstrate that, despite having a *controlling shareholder*, the *listed company* is still able to carry on an independent business as its main activity at all times.
- 9.2.2AC G LR 6.5.3G provides guidance on factors that may indicate that a *listed company* with a *controlling shareholder* is not carrying on an independent business.
- 9.2.2AD R 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 undertakings in LR 6.5.4R; and
- (2) a constitution that allows the election and re-election of *independent directors* to be conducted in accordance with LR 9.2.2ER and LR 9.2.2FR (election provisions).
- 9.2.2B R In order to comply with ~~LR 9.2.2AR(2)(a)~~ LR 9.2.2ADR(1), where a *listed company* will have more than one *controlling shareholder*, the *listed company* will not be required to enter into a separate agreement with each *controlling shareholder* if:
- (1) the *listed company* reasonably considers, in light of its understanding of the relationship between the relevant *controlling shareholders*, that a *controlling shareholder* can procure the compliance of another *controlling shareholder* and that *controlling shareholder's associates*

with the ~~independence provisions contained in the relevant agreement~~ undertakings in LR 6.5.4R; and

(2) the agreement, which contains the ~~independence provisions set out undertakings in LR 6.1.4DR~~ LR 6.5.4R, entered into with the relevant controlling shareholder also contains:

(a) a provision in which the *controlling shareholder* agrees to procure the compliance of a non-signing *controlling shareholder* and its *associates* with the ~~independence provisions contained within the agreement~~ undertakings in LR 6.5.4R; and

...

9.2.2C R Where as a result of changes in ownership or control of a *listed company*, a *person* becomes a *controlling shareholder* of the *listed company*, the *listed company* will be allowed:

(1) a period of not more than 6 months from the event that resulted in that *person* becoming a *controlling shareholder* to comply with ~~LR 9.2.2AR(2)(a)~~ LR 9.2.2ADR(1); and

(2) in the case of a *listed company* which did not previously have a *controlling shareholder*, until the date of the next annual general meeting of the *listed company*, other than an annual general meeting for which notice:

...

to comply with ~~LR 9.2.2AR(2)(b)~~ LR 9.2.2ADR(2).

9.2.2D G In complying with ~~LR 9.2.2AR(2)(b)~~ LR 9.2.2ADR(2), a *listed company* may allow an existing *independent director* who is being proposed for re-election (including any such *director* who was appointed by the board of the *listed company* until the next annual general meeting) to remain in office until any resolution required by LR 9.2.2FR has been voted on.

9.2.2E R Where ~~LR 9.2.2AR(2)~~ LR 9.2.2ADR applies, the election or re-election of any *independent director* by shareholders must be approved by:

...

...

9.2.2G R A *listed company* must comply with the ~~independence provisions contained in any agreement entered into under LR 6.1.4BR(1)~~ undertakings in LR 6.5.4R or ~~LR 9.2.2AR(2)(a)~~ LR 9.2.2ADR(1) at all times.

9.2.2H G In addition to the annual confirmation required to be included in a *listed company's* annual financial report under LR 9.8.4R(14), the FCA may request information from a *listed company* under LR 1.3.1R(3) to confirm or

verify that an ~~independence provision contained in any agreement entered into under LR 6.1.4BR(1) undertaking in LR 6.5.4R or LR 9.2.2AR(2)(a) LR 9.2.2ADR(1) or a procurement obligation (as set out in LR 6.1.4CR(2)(a) LR 6.5.5R(2)(a) or LR 9.2.2BR(2)(a)) contained in an agreement entered into under LR 6.1.4BR(1) LR 6.5.4R or LR 9.2.2AR(2)(a) LR 9.2.2ADR(1) is being or has been complied with.~~

#### Control of business

- 9.2.2I R A listed company must exercise operational control over the business it carries on as its main activity at all times.
- 9.2.2J G LR 6.6.3G provides guidance on factors that may indicate that a listed company is not exercising operational control over the business it carries on as its main activity.
- 9.2.2K R (1) This rule applies where a mineral company does not hold controlling interests in a majority (by value) of the properties, fields, mines or other assets in which it has invested.
- (2) The mineral company is not required to comply with LR 9.2.2IR where it can demonstrate the factors set out in LR 6.10.3R(2).

...

#### Notifications to the FCA: notifications regarding continuing obligations

- 9.2.23 R A listed company must notify the FCA without delay if it does not comply with any continuing obligation set out in LR 9.2.2AR, LR 9.2.2ABR, LR 9.2.2ADR, LR 9.2.2ER, LR 9.2.2FR, LR 9.2.15R or LR 9.2.21R.

#### Notifications to the FCA: notifications regarding compliance with independence provisions

- 9.2.24 R A listed company must notify the FCA without delay if:

...

- (2) it becomes aware that an ~~independence provision contained in an agreement entered into under LR 6.1.4BR(1) undertaking in LR 6.5.4R or LR 9.2.2AR(2)(a) LR 9.2.2ADR(1)~~ has not been complied with by the controlling shareholder or any of its associates; or
- (3) it becomes aware that a procurement obligation (as set out in LR 6.1.4CR(2)(a) LR 6.5.5R(2)(a) or LR 9.2.2BR(2)(a)) contained in an agreement entered into under ~~LR 6.1.4BR(1) LR 6.5.4R or LR 9.2.2AR(2)(a) LR 9.2.2ADR(1)~~ has not been complied with by a controlling shareholder.

...

## 9.8 Annual financial report

...

## Information to be included in annual report and accounts

- 9.8.4 R In addition to the requirements set out in *DTR* 4.1 a *listed company* must include in its annual financial report, where applicable, the following:

...

- (14) a statement made by the board:

- (a) that the *listed company* has entered into any agreement required under ~~*LR 9.2.2AR(2)(a)*~~ *LR 9.2.2ADR(1)*; or
- (b) where the *listed company* has not entered into an agreement required under ~~*LR 9.2.2AR(2)(a)*~~ *LR 9.2.2ADR(1)*:

...

- (c) that:

- (i) the *listed company* has complied with the ~~independence provisions included in any agreement entered into under *LR 6.1.4BR(1)*~~ undertakings in *LR 6.5.4R* or *LR 9.2.2AR(2)(a)* *LR 9.2.2ADR(1)* during the period under review;
- (ii) so far as the *listed company* is aware, the ~~independence provisions included in any agreement entered into under *LR 6.1.4BR(1)*~~ undertakings in *LR 6.5.4R* or *LR 9.2.2AR(2)(a)* *LR 9.2.2ADR(1)* have been complied with during the period under review by the *controlling shareholder* or any of its *associates*; and
- (iii) so far as the *listed company* is aware, the procurement obligation (as set out in ~~*LR 6.1.4CR(2)(a)*~~ *LR 6.5.5R(2)(a)* or *LR 9.2.2BR(2)(a)*) included in any agreement entered into under ~~*LR 6.1.4BR(1)*~~ *LR 6.5.4R* or *LR 9.2.2AR(2)(a)* *LR 9.2.2ADR(1)* has been complied with during the period under review by a *controlling shareholder*; or

- (d) where an ~~independence provision included in any agreement entered into under *LR 6.1.4BR(1)*~~ undertaking in *LR 6.5.4R* or *LR 9.2.2AR(2)(a)* *LR 9.2.2ADR(1)* or a procurement obligation (as set out in ~~*LR 6.1.4CR(2)(a)*~~ *LR 6.5.5R(2)(a)* or *LR 9.2.2BR(2)(a)*) included in any agreement entered into under ~~*LR 6.1.4BR(1)*~~ *LR 6.5.4R* or *LR 9.2.2AR(2)(a)* *LR 9.2.2ADR(1)* has not been complied with during the period under review:

...

- (ii) a brief description of the background to and reasons for failing to comply with the relevant ~~independence provision~~ undertaking or procurement obligation that enables shareholders to evaluate the impact of non-compliance on the *listed company*.

...

9.8.4B G Where a *listed company's* annual financial report contains a statement of the type referred to in LR 9.8.4R(14)(b) or (d), the *FCA* may still take any action it considers necessary in relation to the underlying breach by the *listed company* of ~~LR 9.2.2AR(2)(a)~~ LR 9.2.2ADR(1) or LR 9.2.2GR.

...

**10 Significant transactions: Premium listing**

...

**Annex 1G The Class Tests**

...			
<b>Figures used to classify assets and profits</b>			
8R	...		
	(3)	(a)	The figures of the <i>listed company</i> must be adjusted to take account of <u>transactions completed during the period to which the figures referred to in (1) or (2) relate, and</u> subsequent completed transactions, which have been notified to a <i>RIS</i> under LR 10.4 or LR 10.5.
		(b)	The figures of the target company or business must be adjusted to take account of <u>transactions completed during the period to which the figures referred to in (1) or (2) relate, and</u> subsequent completed transactions, which would have been a <i>class 2 transaction</i> or greater when classified against the target as a whole.
	...		
...			
<b><u>The Profits Test: Anomalous Results</u></b>			
12R	<u>Paragraph 13R applies to a <i>company</i> that has a <i>premium listing</i> of <i>equity shares</i> where:</u>		
	(1)	<u>the calculation under the profits test produces a <i>percentage ratio</i> of 25% or more and this result is anomalous; and</u>	

	(2)	<u>the transaction is not a <i>related party transaction</i>.</u>	
<u>13R</u>	<u>A company that has a <i>premium listing</i> of equity shares may:</u>		
	(1)	<u>where each of the other applicable <i>percentage ratios</i> are less than 5%, disregard the profits test for the purposes of classifying the transaction; or</u>	
	(2)	<u>make the following adjustments to the calculation under the profits test:</u>	
	(a)	<u>where any of the following costs are genuinely one-off costs, the figures used to classify profits of the <i>listed company</i>, or the target company or business, may be adjusted for:</u>	
		(i)	<u>costs incurred by the <i>listed company</i>, or target company or business, in connection with the <i>listed company</i>, or target company or business' initial public offering; or</u>
		(ii)	<u>closure costs incurred by the <i>listed company</i>, or target company or business, that are not part of an on-going restructuring that will occur over more than one financial period;</u>
	(b)	<u>where a <i>listed company</i>, or target company or business, has completed an initial public offering, the figures used to classify profits of the <i>listed company</i>, or target company or business, may be adjusted for interest charges incurred under private ownership prior to completion of the initial public offering provided that these interest charges:</u>	
		(i)	<u>have been incurred under facilities that were repaid as part of the initial public offering capital restructuring; and</u>
		(ii)	<u>are substituted in the calculation of the profits test with the interest charges that would have been incurred under the new facilities for the relevant period.</u>
<u>14G</u>	<u>Any adjustments made in accordance with paragraph 13R(2) should be applied equally to both the <i>listed company</i>, and target company or business, where applicable, to ensure a like-for-like comparison is being undertaken.</u>		
<u>15G</u>	<u>A company that has a <i>premium listing</i> of equity shares does not have to consult the FCA in accordance with paragraph 10G or 11G before relying on paragraph 13R.</u>		

...

## 11 Related party transactions: Premium listing

### 11.1 Related party transactions

Application

...

11.1.1A R Where a *company* has a *premium listing* and:

...

- (2) it becomes aware that a *controlling shareholder* or any of its *associates* is not in compliance with an ~~independence provision contained in an agreement entered into under LR 6.1.4BR(1)~~ undertaking in LR 6.5.4R or LR 9.2.2AR(2)(a);

...

...

**Appendix 1 Relevant definitions**

**App 1.1 Relevant definitions**

1.1.1 ...

...

<i>controlling shareholder</i>	as defined in <del>LR 6.1.2AR</del> means any <i>person</i> who exercises or controls on their own or together with any <i>person</i> with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the <i>company</i> . For the purposes of calculating voting rights, the following voting rights are to be disregarded:		
	(1)	<u>any voting rights which such a <i>person</i> exercises (or controls the exercise of) independently in its capacity as: bare trustee, investment manager, collective investment undertaking or a long-term insurer in respect of its linked long-term business if no <i>associate</i> of that <i>person</i> interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such <i>person</i> confers or collaborates with such an <i>associate</i> which also acts in its capacity as investment manager, collective investment undertaking or long-term insurer); or</u>	
	(2)	<u>any voting rights which a <i>person</i> may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:</u>	
		(a)	<u>underwriting the issue or sale of <i>securities</i>; or</u>
		(b)	<u>placing <i>securities</i>, where the <i>person</i> provides a firm commitment to acquire any <i>securities</i> which it does not place; or</u>
		(c)	<u>acquiring <i>securities</i> from existing shareholders or the <i>issuer</i> pursuant to an agreement to procure third-party purchases of <i>securities</i>;</u>

			and where the conditions below are satisfied:
		(i)	<u>the activities set out in (2)(a) to (c) are performed in the ordinary course of business;</u>
		(ii)	<u>the securities to which the voting rights attach are held for a consecutive period of 5 trading days or less, beginning with the first trading day on which the securities are held;</u>
		(iii)	<u>the voting rights are not exercised within the period the securities are held; and</u>
		(iv)	<u>no attempt is made directly or indirectly by the person to intervene in (or attempt to intervene in) or exert (or attempt to exert) influence on the management of the issuer within the period the securities are held.</u>
...			
<i>group</i>	(1)		(except in <i>LR 6.1.4AG, LR 6.1.19R, LR 6.1.20BG, LR 6.4.3G, LR 6.5.3G, LR 6.14.3R, LR 6.14.4G, LR 8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R and LR 18.2.9AG</i> ) an issuer and its subsidiary undertakings (if any); and
	(2)		(in <i>LR 6.1.4AG, LR 6.1.19R, LR 6.1.20BG, LR 6.4.3G, LR 6.5.3G, LR 6.14.3R, LR 6.14.4G, LR 8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R and LR 18.2.9AG</i> ), as defined in section 421 of the Act.
...			
<i>independent director</i>			a director whom <del>a new</del> an applicant or listed company has determined to be independent under the <i>UK Corporate Governance Code</i> .
...			
<i>new applicant</i>			<del>an applicant that does not have any class of its securities already listed.</del>
...			
<i>share</i>			...
<i>shell company</i>			as defined in <i>LR 5.6.5AR</i> .
...			

**Part 3: Cross-reference amendments to the Listing Rules sourcebook (LR)**

- (1) The table referred to in paragraph F of this instrument is as follows.
- (2) The reference in column (2) of this Annex E is replaced with the reference in column (3) in the provision listed in column (1);
- (3) Where a reference in column (2) appears in the provision listed in column (1) more than once, all references set out in column (2) are replaced with the reference in column (3) in the provision listed in column (1).

<b>Cross reference updates</b>		
<b>(1) LR section where cross-reference appears</b>	<b>(2) Cross-reference to be amended</b>	<b>(3) New cross-reference</b>
5.4A.13G	LR 6.1.16R	LR 6.7.1R
5.6.21R	LR 6.1.3R(1)(b) and LR 6.1.3R(1)(e)	LR 6.2.1R(3) and LR 6.2.4R(2)
5.6.22G	LR 6.1.3R(1)(b) LR 6.1.3R(1)(e)	LR 6.2.1R(3) LR 6.2.4R(2)
8.4.1R	LR 6.1.1AR	LR 6.1.1R(1) or LR 6.1.1R(2)
8.4.7R	LR 6.1.1AR	LR 6.1.1R(1) or LR 6.1.1R(2)
9.2.15R	LR 6.1.19R	LR 6.14.1R to LR 6.14.3R
9.2.15AG	LR 6.1.19R	LR 6.14.1R
11.1.1AR(3)	LR 6.1.4CR(2)(a) LR 6.1.4BR(1)	LR 6.5.5R(2)(a) LR 6.5.4R
13.5.27CR	LR 6.1.3AG	LR 6.2.5G
15.2.1R(2)(a)	LR 6.1.3R(1)(d) LR 6.1.3R(1)(e)	LR 6.2.4R (1) LR 6.2.4R (2)
15.2.1R(2)(b)	LR 6.1.3R(2)	LR 6.2.6R
15.2.1R(2)(c)	LR 6.1.16R to LR 6.1.25R and LR 6.1.28R	LR 6.7.1R, LR 6.9.1R(1), LR 6.9.2R, LR 6.14.1R to LR 6.14.6G, and LR 6.15.1R.
16.2.1R	LR 6.1.22R	LR 6.8.1R to LR 6.8.2R



**Financial Conduct Authority**



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