

UKLA Publications LIST!



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Introduction

This is the second special policy edition of List! The first was in October 2003 at the time of the publication of CP203, which set out our initial policy proposals for the new Listing Regime. Since then our policy has developed and we feel it appropriate to update you on progress made. We also want to let you know that we intend to publish our second consultation paper in the Autumn, with proposed new listing rules and guidance. We would encourage you to review the consultation paper in detail, as your feedback is much appreciated. In particular, if there are specific areas where you would like additional guidance, please let us know.

Of particular note is the possibility of allowing issuers of certain debt securities to have those securities admitted to the Official List and traded on a market segment operated by the LSE. Such issuers would not have to prepare financial information in accordance with International Financial Reporting Standards (IFRS) providing their financial information is prepared to a sufficiently high standard to protect investors.

We are also taking this opportunity to mention two other issues. The first is an update on the Transparency Directive, to be implemented by the end of 2006, and the final article sets out our views on how listed companies should interact with analysts.

We welcome your feedback on the articles published, and ideas for further publications.

The next edition of List! will be published in late September and will cover changes in our

departmental structure and the Sponsor Supervision regime, assessing Investment Managers' eligibility, and our approach to hostile takeovers.

Guidance

In this newsletter we have tried to give broad coverage of topical issues of both a technical and non-technical nature. We are limited in the way we can address technical matters by the requirements of the Financial Services and Markets Act 2000, which restricts the scope for issuing guidance without prior consultation. It is important to understand that the contents of this newsletter are not intended to be guidance as contemplated by the Act, and the contents should neither be interpreted, nor relied upon, as guidance. You should refer to the UKLA Guidance Manual to the Listing Rules for general guidance and, where you need individual guidance, you should approach us. Technical explanations given in this newsletter are illustrative only and are intended to give an indication of how the UKLA may expect certain issues to be addressed.

Update on the Listing Review Background/Timing

Since the publication of CP203 in October we have been working hard to complete this phase of the Listing Review. We have considered the 74 detailed responses we received to the questions asked in the CP and are drafting a feedback statement as well as new rules and guidance implementing the Prospectus Directive and updating our rules.

We aim to publish new rules and guidance for consultation this Autumn. The deadline for implementation of the Prospectus Directive is 1 July 2005. Further consultation will be required to implement the Transparency Directive and, as flagged in CP 203, to update the rules for investment entities which are likely to be implemented in 2006.

On 18 June 2004 we launched a joint consultation exercise with HM Treasury to implement the Market Abuse Directive (“MAD”). The implementation of MAD has resulted in a number of changes to the Listing Rules, particularly in relation to the disclosure of inside information, insider lists and directors dealings. The consultation period for this CP ends on 18 September and we urge you to read it and respond.

As there was widespread support for the delisting proposals they were fast tracked and formed part of the Miscellaneous CP 04/8. The consultation period for this CP ended on 19 July.

Key Propositions

Shares

We are considering the responses but in relation to shares we currently expect to:

- a) introduce listing principles to inform the making and understanding of the Listing Rules and these will be enforceable as rules;
- b) retain the eligibility requirements relating to working capital, the three year track record and ownership of assets and remove the requirements which are more appropriately dealt with by disclosure, such as those relating to directors and controlling shareholders;
- c) retain the class test and related party regimes;
- d) streamline the model code;
- e) retain a compulsory sponsor regime for certain transactions and strengthen supervision and enforcement of the sponsor regime;
- f) align the requirements for secondary listed issuers with those in the directives;

- g) align the requirements for overseas primary listed issuers more closely with those for domestic issuers acknowledging that there are areas where it is inappropriate for overseas primary listed issuers to comply fully with Listing Rules, particularly where there is a strong domestic company law element; and
- h) adopt a more flexible approach to the presentation of financial information within the constraints of the Prospectus Directive.

Debt/specialist securities

Respondents supported the existing UK debt regime and urged us not to embellish or add to the directive requirements for the debt market. Accordingly our general policy line on debt, which is admitted to trading on regulated markets, is to apply the eligibility, disclosure and continuing obligations standards provided in the CARD, the Market Abuse Directive, the Prospectus Directive and, in due course, the Transparency Directive (together the “Directives”).

The UK is an attractive destination for overseas issuers, particularly issuers of listed specialist debt securities. The current regime achieves a delicate balance between providing an appropriate level of protection for investors in listed securities; facilitating access to listed markets for a broad range of enterprises; and seeking to maintain the integrity and competitiveness of UK markets for listed securities.

We recognise the importance to the UK of a competitive and appropriately regulated debt market. Market participants and trade bodies consistently told us that issuers and investors think it is important that this market is a listed market, which subjects the issuer to the rigour of the Listing Rules, rather than simply admitting debt securities to a non-listed platform. Consequently, we have been discussing with the London Stock Exchange how to maintain an environment which is conducive for both investors in, and issuers of, debt securities.

The Directives apply directly to issuers admitted to trading on regulated markets. Other than the public offer requirements of the Prospectus Directive, which have wider effect, they do not apply to market segments which do not constitute a regulated market. In light of this, we considered introducing a new condition for official listing that would require officially listed securities to be admitted to trading on a regulated market, which would be more onerous than the existing CARD obligations. We are not convinced of the merit of any such new requirement. Rather, the favoured proposal would allow issuers of securities currently within the ambit of chapter 23 to seek to admit such securities to the official list of the UK Listing Authority and to trading on a market segment operated by the LSE, rather than admitting to a regulated market.

Issuers of securities seeking to admit such securities to such a market would be required to produce listing particulars and would be governed by appropriate continuing obligation requirements. Our starting point would be to apply the appropriate provisions from the Directives to establish the initial and continuing obligations for the securities in question. However, to reflect current policy, we would not require financial information and the accounts to be prepared to IFRS as long as they were prepared to accounting standards appropriate for investor protection.

Transparency Directive

As you may know, the Transparency Directive was agreed in principle on the 13th April of this year and is now being translated.

We anticipate that it will be published in the Official Journal late this year, with an implementation deadline around the end of 2006.

Background

The Directive deals with the continuing obligations imposed on issuers who have their securities admitted to trading on a regulated market. It aims to establish minimum obligations for these issuers,

leaving it open to each member state as the issuers' home competent authority, to impose additional obligations in certain circumstances.

The Directive deals with the following broad areas.

- A) **Financial information:** It requires all issuers to produce annual financial reports. Issuers of shares and debt securities (as defined in the directive) must produce half-yearly financial reports, and issuers of shares must produce interim management statements. It also sets out the standard to which most of this information must be prepared.
- B) **Major shareholding notifications:** It requires holders of shares and other financial instruments (as defined in the directive) to make a notification of their holdings when they move across certain thresholds.
- C) **Other requirements:** It sets out other types of information that issuers must disclose, such as notification of shareholder or bondholder meetings and changes to the terms and conditions of a security
- D) **Dissemination and storage of regulated information:** It requires all information disclosable under the Directive, as well as information disclosable under Article 6 of the Markets Abuse Directive (MAD), to be disseminated on a pan-European basis, as well as centrally stored. It also requires member states to establish guidelines to make public access easier to information that is disclosable under MAD and the Prospectus directive.

CESR level 2

The Directive has a number of implementing measures, including the assessment of whether other accounting standards are equivalent to IFRS. Mandates for this work were issued on 29th June, and interested parties had until the 29th July to submit comments to CESR. For more details please see: www.cesr-eu.org.

Issuers' interaction with analysts

During our recent consultations on analysts' conflicts of interests (CPs 171 and 205), a number of intermediaries and their trade associations told us that they face significant issuer pressure to ensure 'positive' coverage; some issuers tend to downgrade relations with firms, or 'freeze out' particular analysts, if they consider research coverage negative. Firms and trade bodies asked us to consider changing the Listing Rules or Guidance to address this issue, saying that subjecting analysts or firms to our rules on conflicts, while leaving the issuing firms unsupervised here, is unfair and does not lead to effective enforcement of our principles.

We have concluded that it is not now appropriate to address this issue specifically in the Listing Rules, although we continue to keep them under review. But we take this issue very seriously, and so there are risks for issuers indulging in this kind of behaviour.

We believe that our recent, important, changes on the topic of analysts' conflicts in our Conduct of Business sourcebook for authorised firms, will help intermediaries stand up to pressure from issuers. One change is new guidance (in COB 2.2.4A, which came into force on 1 July) making clear that an offer or agreement to issue favourable research is an example of offering or accepting an inducement which is likely to be contrary to the firm's duties to its clients, and in conflict with our rules. We have also stated in new COB 7.16.12 that firms issuing research and holding it out as objective or impartial, should not permit issuers to review drafts, except to check the facts. In other words, issuers should not be shown research recommendations before publication. Of course, intermediaries are under their usual obligation under our Principles for Businesses to ensure that any research they publish is clear, fair and not misleading. To the extent that issuer pressure results in misleading research, firms risk breaching this FSA Principle as well as potentially engaging in market abuse.

For issuers to cultivate favoured analysts or banks, or to freeze out perceived sources of negative news, is unacceptable behaviour. Issuers should

not develop special relationships with selected analysts or take measures to keep analysts "in line." Such measures are detrimental to market confidence and investor protection and of concern to us. Issuers should bear in mind the Listing Rules about selectively disclosing inside information, and the risk of committing market abuse by, for example, giving a false or misleading impression of the value of their securities.

On the analysts' side, we note that the Association for Investment Management and Research (AIMR) and the National Investor Relations Institute (NIRI) are consulting on an ethical code of conduct for issuer-analyst relations. We welcome moves towards higher standards in this area, while recognising that self-regulation always has limited coverage and enforceability. For this reason, we would encourage analysts on the receiving end of this kind of behaviour, to complain to their management or to us.