

# LIST!

January 2003

## Introduction

### Introduction from Ken Rushton, Director of the UK Listing Authority

Welcome to this first edition of List! In our Discussion Paper on the “Review of the Listing Regime” published in July last year we asked if you would welcome a newsletter. The overwhelming response was positive and you told us you would like to be kept up to date on new developments. We intend to publish List! at least three times a year subject to there being sufficient news to communicate.

This first edition is published during a difficult time for our markets. Corporate failures and accounting scandals in the US have had a global impact on market confidence. The UKLA is participating in the debate on what needs to be done to raise accounting and auditing standards, as well as improve corporate governance, so that investors are adequately protected. More details are due to be announced by the Government over the next few weeks.

Following recent concerns over split capital investment trusts (Splits) we will be publishing a Consultation Paper in the week beginning 13 January which proposes a number of new Listing Rules requirements for Chapter 21 Investment Entities. These include a requirement for clear risk warnings to be included in prospectuses. The CP will be published on [www.fsa.gov.uk/ukla](http://www.fsa.gov.uk/ukla) and responses are due by 7 April 2003. The CP also includes a proposed extension to the Model Code on directors’ dealings to cover contracts for differences, including spread betting.

As a direct result of our review of Splits, going forward we will expect all issuers to disclose more information in listing particulars about the risks of investing in the issue as well as the benefits. The requirement to disclose risk factors in prospectuses is likely to become a legal

requirement once the Prospectus Directive is enacted (expected mid 2004) but we believe you should start now.

I should mention that over recent weeks we have seen another upsurge in media and investor concern over tardy or misleading announcements of price-sensitive information by issuers. We had observed a general improvement in disclosure standards during most of 2002 although, recently, a growing number of cases have been referred for investigation to our Enforcement Division.

We have a new senior management team in UKLA. I am pleased that Sally Dewar has rejoined the UKLA as Head of the Equity and Capital Markets Group. Sally succeeds Iain Wright, who has moved on to become a Head of Department in the FSA’s Major Financial Groups Division (MFGD). Sally is supported in her new role by Phil Tinkler, who will act as her deputy. Also, Kevin Ludwick has joined the UKLA as Head of Policy & Compliance. Kevin formerly worked as Head of the Europe & Japan Department in MFGD.

## 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 none of the contents of this newsletter are 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 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.

## ECMG Technical Team – a new approach

Following market feedback, we have streamlined our Equity & Capital Markets Group helpdesk and document allocation operations.

Gavin Richards and Lee Alam have been appointed supervisors of the Technical Team, with responsibility for the management of the helpdesk and the central allocation of debt and equity documents. In particular, we hope to improve helpdesk turnaround times and the speed with which documents are allocated to readers.

### Helpdesk

Where possible, the helpdesk will provide verbal responses to routine queries. However, advisors may be asked to send us queries in writing if they relate to unusual or complex issues, or involve requests for variations from the Listing Rules. Whilst we appreciate the burden this places on issuers and advisors, we feel this is essential to ensure queries are focused and properly explained so that reliable and consistent advice can be given. The UKLA associate responsible for a written query will provide an early indication of an expected response time.

So we can improve helpdesk response times, we would like to remind our readers that the role of the helpdesk is to deal with specific technical queries on proposed transactions. Unfortunately, a large amount of the helpdesk's time is spent dealing with speculative queries or is being used as a learning tool for inexperienced advisors. This inevitably reduces the resources available for other queries, which are often time critical.

**The helpdesk number for ECMG queries is 020 7943 0333 option 2**

### Central allocation and high level reviews

The Technical Team is now responsible for the central allocation of all document submissions. It is also responsible for the initial assessment of key issues on a transaction. These changes will allow us to allocate documents promptly to readers and identify key problems at the beginning of the transaction.

Please send new document submissions to either Gavin or Lee, and please note that documents submitted after 5:30pm will be booked in as received the following day.

## Technical - profit forecasts and estimates

In this section, which we intend to make a regular feature of List!, we give worked examples of certain Listing Rules.

Our rules on profit forecasts and estimates are in paragraphs 12.21 to 12.27 of the Listing Rules. The rules cover how we define a forecast or estimate, and set out the reporting requirements that apply to such statements when they are included in listing particulars, a class 1 acquisition circular or a refinancing or reconstruction circular.

Companies should bear in mind the requirements of paragraphs 12.21 to 12.27 when making any public announcement that contains statements about their future performance. This is because they apply to any outstanding and previously published forecast or estimate. They should make sure that any statement they publish about their future performance is not a forecast if it is not intended to be.

We are often presented with situations where statements made by companies in previous announcements are caught by the profit forecast rules when the companies come to prepare listing particulars or class 1 circulars. This often leads to delays in approving documents as the statements will need to be reported on by the company's auditor and sponsor, under paragraph 12.24 (this requirement is modified by paragraph 23.11(p) for debt issuers).

To avoid this, companies and their advisers should bear in mind that we will consider any statement to be a profit forecast which “*expressly or by implication states a minimum or maximum for the likely level of profits or losses for a period subsequent to that for which the audited accounts have been published, or contains data from which a calculation of an approximate figure for future profits or losses can be made...even if no particular figure is mentioned and the word 'profit' is not used*” (see paragraph 12.23).

In practice this covers a broad range of statements of future performance. In particular it should be noted that paragraph 12.23 covers statements about “*losses*” as well as about “*profits*”, and that neither word needs to be used at all. For example, where the word “*results*” or “*earnings*” is used, the UKLA may still take the view that there is a forecast or estimate if it is apparent that the market interprets this as profit. It is likely that earnings per share will be viewed as a profit forecast. Revenue figures may be a profit forecast

if that allows a calculation of profit. This is most likely to be the case where an issuer has previously published details of its profit margins. Statements of performance against market expectations may also be forecasts if there is a clear market consensus of expectation that allows a calculation of a floor or ceiling on forecast profits.

It should also be noted that paragraph 12.23 refers to a “*period*”, and not to reporting period or other defined length of time. So it is possible that a comment limited to a month may be still construed as a forecast. Such forecasts can be more inconvenient for issuers than a comment about a year because of paragraph 12.26, which states:

*‘The period of the forecast or estimate should normally be to the end of the issuer’s accounting period; if it is not, then it must be in respect of a period for which the results will be published or the issuer must make a new forecast for such a period’*

We should make it clear that in a class 1 acquisition situation, a forecast by the target should also be reported on under paragraphs 12.24 and 12.25, under the issuer’s accounting policies. The reporting requirement is extended to the target by reference to paragraph 10.41.

Finally, companies are reminded that their responsibility for the forecasts appearing in documents does not end with the publication of the document. Paragraph 12.43(b) requires companies to explain any difference between actual and forecast results if that difference is 10% or more of the original estimate.

## Prospectus Directive - update

The Council text of the Prospectus Directive was agreed at ECOFIN (Meeting of Finance Ministers) last November. The main differences between the revised text adopted by the Commission and the compromise reached at that meeting were:

- Member States can apply their own national regime for certain types of issues of securities (small offers made by SMEs and small offers made by credit institutions in general). This will be of some assistance to OFEX.
- Flexibility for issuers when choosing the authority to approve their prospectuses for covered warrants and non-equity securities (linked to a lower threshold for the minimum individual denomination).

- A new explicit exemption from producing a prospectus where the securities are already admitted to trading on another regulated market (subject to an 18 month history).
- The requirement annually to update the registration document has been reduced. Prospectuses were to be divided into three parts, a registration document setting out all the information about the issuer, a securities note setting out all the information about the security and a summary. It is now a requirement to produce a document annually that sets out where all the announcements made by the issuer during the previous 12 months can be found.

The requirement that all public offer and admission prospectuses are approved by a competent authority remains. Currently, public offer prospectuses, other than those prospectuses in connection with an application to the Official List, are not approved by the FSA, so this will mean a change to the current situation in the UK.

The original text posed significant risks to the markets in the EU, in particular the wholesale markets. Overall, the final position is a much better proposal and the risks to the efficient functioning of the capital markets in the UK and the rest of the EU are substantially reduced. Whether the Directive results in a reduction in the cost of capital for companies will to a certain extent depend upon the implementing measures that are put forward by the Commission.

The Commission has asked CESR (the Committee of European Securities Regulators) for advice on some aspects of the Directive. CESR continues to consult with the industry before offering that advice (it is currently consulting on wholesale debt and derivative prospectus requirements). We continue to encourage you to read and respond to these consultation papers (see their website at [www.europefesco.org](http://www.europefesco.org)).

## Listing Review

We have received approximately 60 responses to the Discussion Paper on the Listing Review, which was published in July 2002. These are available for inspection at the Document Viewing Facility at 25 The North Colonnade. Copies of the Discussion Paper are also available on the UKLA website at [www.fsa.gov.uk/ukla/review\\_regime.html](http://www.fsa.gov.uk/ukla/review_regime.html).

In the main the respondents have said that the current regime works well, although they accept that due to developments in Europe and proposed changes to company law in the UK, changes will need to be made. Whilst we are pleased to note that participants are generally happy with the current regime, our intention is to simplify the rules and to modernise the regime.

The work of the four 'theme teams' (the working groups set up to discuss corporate governance, corporate communications/continuing obligations, financial information and the sponsor regime) is well under way, and the feedback from the participants has been extremely constructive. The consultative committee (representatives from sponsor firms, issuers, a variety of retail and institutional investor organisations, legal and accountancy experts) has met twice to date and its discussions have been very productive.

The Listing Review is, of course, taking account of the progress and likely outcome of the work on the European directives referred to above.

We will publish a feedback statement on the Listing Review discussion paper shortly, followed by a further high level consultation paper in summer 2003.

## **Directors' remuneration and document publication**

We will shortly be sending a letter to the market dealing with the overlap of requirements under paragraph 12.43A(c) of the Listing Rules (which specifies details of directors' remuneration to be included in the annual report) and The Directors' Remuneration Report Regulations 2002, which the Government brought into effect from 1 August 2002. There are two areas where the Listing Rules continue to require the disclosure of additional information beyond that in the Regulations. These are paragraphs 12.43A(c)(v) and 12.43A(c)(ix)(b) on directors' pensions.

The letter will also include a reminder on issuers' obligations to notify a regulatory information service once a document has been submitted for publication at the UKLA's Document Viewing Facility.

**Copies of the letter will be available at [www.fsa.gov.uk/ukla](http://www.fsa.gov.uk/ukla).**

## **Accounting matters**

### **Operating and financial review**

The UKLA participated in the Accounting Standards Board's updating of its 1993 Statement published on 9 January. We encourage all listed companies to have regard to this Statement when preparing their next annual reports.

**For details of how to get a copy call 01908 230 344.**

### **Preliminary Announcements**

Our requirements for the contents of preliminary announcements are set out in paragraph 12.40(a) of the Listing Rules, and the Accounting Standards Board's Statement on preliminary announcements provides useful guidance. Last May, IOSCO issued a press release regarding the use of non-GAAP earnings measures in reports to shareholders (which can be found in the document library on [www.iosco.org](http://www.iosco.org)). Such measures are sometimes referred to as "pro forma". Issuers need to consider whether publishing non-GAAP earnings without giving sufficient prominence to the GAAP numbers may give a misleading presentation of financial performance.

### **Changes to listing fees**

We are proposing a number of changes to the structure and level of listing fees so that we achieve a greater degree of consistency between the fees we charge and the cost and complexity of the work we do.

The FSA will be publishing a consultation paper on fees later this month (copies will be available on the UKLA website). There will be four main proposals for listing fees:

- Transactions will be split into four categories, according to the type of review and approval work undertaken, with a higher fee for more complex structures. The most complex transactions will be category 1, and the least complex will be category 4. Category 1 will include listing particulars for retail new applicants, securitisations, and new applicant depository receipt issuers. Category 2 will cover all other listing particulars including those for further equity issues, bond issues, MTN and securitised derivative programmes. Category 3 will include class 1 and related party circulars. Category 4 will include any

other vetted transaction that does not fall into the other categories, including cancellation circulars and supplementary listing particulars for new information and for credit and index-linked notes.

- The full vetting fee will be paid on submission of the first draft of the document.
- We will charge a small fee for the listing of MTN tranches.
- There will be an increase in the annual listing fee – the first for at least six years.

## Market User Forum

We set up the Market User Forum in October 2001 to widen communications with the market. The Forum is an informal group, currently made up of 17 market participants, including sponsors, lawyers and an issuer. Meetings take place three or four times a year.

The Forum's purpose is to assist in the development of our services. In particular it provides views on both specific and general procedural issues that are of interest or importance to the market as a whole. Topics discussed by the Forum include electronic document submission, the document approval process and sponsor visits.

We aim to take views from a broad cross-section of the market and so membership of the Forum will be changed in 2003.

**If you have any specific questions on the Market User Forum, please email either Jill Kwan ([jill.kwan@fsa.gov.uk](mailto:jill.kwan@fsa.gov.uk)) or Bruce Rayfield ([bruce.rayfield@fsa.gov.uk](mailto:bruce.rayfield@fsa.gov.uk)).**

## UKLA publications now in handy sizes

On 1 October, the FSA appointed The Stationery Office to manage all its publications including the UKLA Sourcebook, and related subscriptions. The Stationery Office recently sent out renewal notices to all current subscribers to the UKLA Sourcebook. The new subscriptions will be annual rolling subscriptions for all rule and guidance changes.

In addition to the A4 size UKLA Sourcebook, The Stationery Office will also be offering an A5 sized Listing Rules and an A5 sized Guidance Manual, to be sold separately, for £100 each. These will be available from February.

**For details on UKLA publications call The Stationery Office on 0845 608 2372.**

## Whistleblowing under the Public Interest Disclosure Act 1998 (PIDA)

PIDA protects workers who meet the tests laid down in the Act for making disclosures of certain information in the public interest, related to their workplace. It also allows such individuals to bring a legal claim for victimisation and makes special provision for disclosures to bodies prescribed for the purpose under the Act. The UKLA is the prescribed body under PIDA for "the listing of securities on a stock exchange; prospectuses on offers of transferable securities to the public".

**The FSA's contact details for workers wishing to blow the whistle about malpractice in such matters are 020 7676 9200 and [whistle@fsa.gov.uk](mailto:whistle@fsa.gov.uk). For more information about whistleblowing see [www.fsa.gov.uk/whistle/](http://www.fsa.gov.uk/whistle/).**

## Contacts

**If you have queries on any of the above items, you can contact us on our helpline number, which is 020 7943 0333.**

## Feedback

We would welcome feedback on this edition of List! and any suggestions for improvements or items to be included in future editions. **Please email us at: [ukla.publications@fsa.gov.uk](mailto:ukla.publications@fsa.gov.uk)**

**If you would like to receive future editions of List! by email please send an email to the above address with the message "subscribe to List!".**