

UKLA Publications LIST!



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Introduction

Introduction from Sally Dewar, Head of the Listing Transactions Department

Since April, when we published our last regular edition of List!, we have been working hard to implement an internal change programme to meet the FSA's strategic objectives – and our own. We are also preparing ourselves for the changes arising from the Listing review, the FSAP Directives and UK company law initiatives.

The consultation paper (CP) setting out amendments to the Listing Rules and implementing the Prospectus Directive will be published in October. We hope you saw the special edition of List! published in August, which set out some of the key proposals. If you didn't, you can find it on our website http://www.fsa.gov.uk/pubs/ukla/list_aug04.pdf. We do appreciate you taking the time to read and respond to our CPs and would encourage you to do so again, so that we can address any potential issues with the new rules before they are implemented in July next year.

One key area for debate during the Listing Review is the continued existence of the sponsor regime. The responses we received to CP203, which set out the options relating to the sponsor regime, were overwhelmingly in support of retaining it. Despite this concept being fairly unique across Europe, we have decided that we will retain the regime, at least in the medium term. But we will strengthen it – in terms of clarifying sponsor obligations and responsibilities in the new rules, and the supervision function and enforcement action we will pursue.

As a result, we have created a dedicated sponsor supervision team managed by Helen Butterworth. Her team will be seeking a much closer relationship with sponsors than currently exists and will be requiring sponsors to focus on their responsibility for transactions and for unusual and complex issues. Although the new rules will not come into force until July 2005, we intend to increase significantly our supervision of sponsors now and will be writing to all sponsor firms over the next few weeks to set out our new approach. We believe the changes we propose will benefit us and sponsor firms – and ultimately the market as a whole.

We have also listened to feedback from the market that we should have a better focus towards specialist teams. With this in mind, and to help us more easily identify and mitigate risks internally, we have restructured the transaction teams as follows:

Central Equity and Debt Team (“CEDT”). This team, managed by Marc Teasdale, deals with allocation and risk assessment of all transactions in the department, the central debt desk, all low-risk equity and debt transactions and is responsible for the helpdesk .

We are always looking for ways to improve and develop the helpdesk function. We now have two senior associates and a manager permanently assigned to this area, working alongside associates seconded to CEDT on a rolling six-monthly basis. We hope you have seen the benefit of this in ensuring we give consistent advice and respond to queries promptly. Going forward, we will be asking sponsors to discuss issues internally before contacting the helpdesk, in order that simple queries can be resolved within the sponsor firm and so that our

resource is focused on more complex issues. We hope that this will continue to improve our service to you.

In addition, we are looking to improve the Electronic Submission System and would be grateful for any feedback you could give us on this. Please contact Gavin Richards at gavin.richards@fsa.gov.uk with your views and ideas for improvements.

Specialist Equity and Debt Team. This team is responsible for all transactions currently falling within one of our specialist chapters and will also deal with issues surrounding new products and structures (there will be some overlap here with the other teams). Andrew McLeod manages this team, which will play an important role in the review of chapters 21, 24 and 26 of the existing Listing Rules relating to Investment Trusts, securitised derivatives and VCTs, over the next 12 months.

Complex Equity Team. This team is responsible for all medium and high-risk equity transactions not covered by the specialist equity and debt team and is managed by Sarah Carter. As part of this team's objective for the next six months, they will be aiming to focus their document review and issue resolution in high risk areas, striving to achieve quality and consistency of comments raised and working more closely with sponsors to try to improve overall transaction efficiency. The team will also be encouraging meetings with sponsors early on in high profile, complex transactions to discuss the approach taken to key technical issues and efficient timetable and proof submission management.

Complex Debt Team. Managed by Graham Walker, this team is responsible for all medium and high risk debt transactions not covered by the Specialist Equity and Debt team. The team will also be setting up a Debt User Forum, similar to the Market User Forum on equity issues we currently hold for sponsor firms. It will meet on a quarterly basis to discuss market issues, issues arising on transactions, new structures and products – all focused on the debt market. If you would like to be included in this forum, please contact Graham Walker at graham.walker@fsa.gov.uk.

We have also assigned a member of our policy and monitoring teams to each of the transaction teams to ensure that we collaborate and apply a joined-up approach to regulation.

You may notice that this edition of List! is slightly longer than usual. This is because we wanted to use this opportunity to explain our recent internal restructuring and, in particular, the new emphasis on sponsors. I would be pleased to receive feedback on any of these points, or any other suggestions on how we can improve our service to you.

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.

Sponsor Supervision

Sponsor Eligibility

We have now started the eligibility confirmation exercise for 2003/4. Any sponsor that is ineligible as a result of this exercise will remain on the sponsor register, but will not be permitted to act on transactions until it is able to satisfy the eligibility criteria. We will review the situation of ineligible sponsors when the new rules are introduced in July 2005. We do not propose to introduce any "grandfathering" provisions to the new rules and will be asking all sponsors to apply for registration under the new rules at that time. Any sponsor unable to satisfy the new admission criteria will not

be registered. We will consult on this approach in the CP on the new rules to be published in October.

Innovative structures and schemes

We have been approached recently by sponsors seeking our views on innovative structures and schemes. Issuers have sought comfort through sponsor firms, that such structures and schemes do not affect their compliance with the Listing Rules. We would like to remind sponsors of their role as experts on the Listing Rules and emphasise that we would only expect a sponsor firm to approach us once it had satisfied itself that such a scheme or structure does not breach the Listing Rules and is appropriate. We draw your attention to paragraph 2.10 of the Listing Rules, which obliges a sponsor to “ensure that an issuer is properly guided and advised as to the application or interpretation” of the Listing Rules and to do so with “due care and skill” (whether or not the sponsor has been appointed under the Listing Rules). Needless to say, there will be instances where the application of the Listing Rules is not clear. However, we would stress that a sponsor should only contact us if it has satisfied itself that the scheme or structure is not simply designed to avoid a particular rule and that it serves a bona fide purpose.

Interaction with other FSA departments

When reviewing documents, we are examining them primarily from a UKLA perspective. Our comments will not necessarily cover all FSA aspects. If by submitting the document and receiving our comments, approval of some aspect is being assumed on rules other than the Listing Rules, then this should be specifically drawn to our attention. The fact that we do not comment does not imply approval or agreement from other FSA areas. In order to clarify this situation, we will be adding a standard comment to comment sheets.

Contacting eligible employees

We will shortly be asking sponsor firms to identify an eligible employee who will be responsible for dealing with issues relating to a particular document when it is submitted. At the time the document is allocated, the named eligible employee will be contacted by the transaction manager or, in the case of very high profile or highly complex situations, a member of the senior management

team. The purpose of this call will be to discuss all of the relevant issues before we read the document.

During this phone call, we aim to discuss all aspects relating to the document – key issues (both those still outstanding and those the sponsor feels have been addressed), the transaction timetable, the parties involved and anything else, however remote, that might affect the transaction. The purpose of the call is twofold. Firstly, it should fully brief us on the transaction and any particular difficulties it involves right at the very start – saving us and the sponsor time. Secondly, we will be assessing the competence of the eligible employee and their knowledge of the transaction. Going forward, we will expect any issues, either at the outset of the transaction, or which arise during the transaction to be brought to our attention promptly by the eligible employee.

Over time, Sponsor Supervision will use the level of awareness demonstrated by eligible employees on these initial phone calls to compare how the relevant transactions subsequently play out. The team will use this to assess the overall competence of the sponsor firm and to decide matters of sponsor eligibility and appropriate levels of supervision in the future. When considering the overall competence of a sponsor firm, we will also be taking into account the nature of the calls we receive on the helpdesk. As experts on the Listing Rules, we do not expect sponsor firms to call the helpdesk with straightforward queries that can be answered in-house. This should ensure that we focus our resource more appropriately on complex issues.

Submission of documents

Sponsor Supervision would like to take the opportunity to remind sponsors of the process for submitting documents for review and approval. These are set out in paragraphs 5.9 to 5.13 of the Listing Rules.

Document review times are 20 clear business days for new applicants and transactions that are innovative or especially complicated. All other documents are reviewed on a 10 clear business day cycle. We always endeavour to ensure documents are reviewed and approved within these timescales and we will always try to be flexible with you to

help you meet your timetables, but these turnaround times are dependent upon the following:

- ***The first draft submitted must be clearly annotated against the Listing Rules appropriate for the transaction and must be substantially complete.*** If a document is submitted before it is ready for review, this will lead to substantial delays and may even result in it being rejected altogether. There is a common misconception that the UKLA runs a queuing system and that if you submit a document you somehow secure a place in the queue. This is not the case.
- ***All revisions from the original submission need to be clearly marked.*** These amendments can consist of deletions, additions and alterations to the original text must be clearly identifiable as such. It is also useful to have marked up on the document which alterations seek to address our comments although since the introduction of the Electronic Submission System we do not insist on the “red lining” indicated in paragraph 5.11. If a document is submitted and we believe revision marking has been incorrectly applied, we will not read it and will ask you to submit another version. Please bear in mind that extensive “black lining”, as a result of formatting, will delay the review process.
- ***We expect to read no more than three drafts of a document.*** If a document is submitted in good order the first time round, has been clearly marked-up to demonstrate compliance with the Listing Rules and you address our comments, we should not need to read more than three drafts of it. Please note that it is very important that we know of all changes made between the proofs we do read, but we do not need to read each proof produced.
- ***Submit all supporting documentation early.*** Paragraph 5.9 requires you to submit all supporting documentation at least 10 business days before a document is to be stamped. Most of the delays in approving documents are a result of incorrect or missing supporting documentation.

- ***Address our comments.*** We will not stamp a document until all our comments have been adequately addressed. If a comment is unclear, please do not ignore it – call the reader to discuss.
- ***Contact from other advisers.*** In rare circumstances, it may be appropriate for an issuer’s adviser, rather than the sponsor (e.g. reporting accountant), to contact us directly. However, it is a sponsor’s responsibility, as an expert on the Listing Rules, to manage the transaction and therefore the resolution of our comments. We do not expect a sponsor to pass communication with us onto other advisers, or for conference calls to become the normal method of communication.
- ***Changes to structure of transactions.*** Please note that if you change the structure of the transaction (and therefore the document) from the original submission, it will cause delays and we may treat it as a new document.
- ***If there are special concerns or deadlines involved in your transaction, let us know.*** We try to be flexible and accommodate most deadlines if at all possible, but we cannot do this if – at the outset – you don’t make us aware of your deadlines or concerns and tell us why they are important. If you later cite deadlines you’ve not told us about, we may not be able to accommodate your timetable. Please bear in mind that we are reviewing, on average, over 100 documents at any one time and that it is not our role to absorb any pressure that you may be under from your client. Unless there are exceptional circumstances, you should always allow for the full 10 or 20 days in your timetable.

Please also bear in mind that, like you, we operate with limited resources. Please try to use us effectively.

Should you have any comments or queries on the articles in this section or on Sponsor matters in general, please do not hesitate to contact Helen Butterworth at helen.butterworth@fsa.gov.uk.

Central Equity and Debt team (CEDT)

Participation of overseas shareholders in rights issues and open offers.

Issuers are reminded that where listing particulars are produced in connection with a rights issue or open offer a copy must be sent to all shareholders including overseas shareholders (paragraph 8.14).

This reflects the general requirement to treat shareholders equally (paragraph 9.16). If an issuer is prohibited from posting listing particulars – even as an information document – to certain foreign jurisdictions by local law the issuer must request a formal variation to exclude shareholders in such jurisdictions from the posting, in accordance with chapter 6 of the UKLA Guidance Manual.

In accordance with paragraph 9.16, issuers must make pre-emptive offers to all shareholders, including overseas shareholders, save that certain overseas shareholders may be excluded from the offer because of either legal problems under the laws of a particular jurisdiction, or the requirements of a regulatory body (paragraph 9.19).

However, the issuer may make the offer to shareholders in foreign jurisdictions by means of a notice in the London Gazette, provided that they have sent such shareholders a copy of the listing particulars. Making the offer to overseas shareholders by means of the London Gazette avoids any prohibitions in making an offer in certain foreign jurisdictions.

These requirements override any contrary provisions in an issuer's articles of association that exclude overseas shareholders from receiving notices or participation in pre-emptive offers.

Where issuers propose to exclude any shareholders from a rights issue or open offer, they must make a formal variation request in accordance with chapter 6 of the UKLA Guidance Manual. In the absence of an accepted variation request, we are unlikely to regard a pre-emptive offer that excluded any shareholders as truly pre-emptive. We would therefore require the listing particulars to comply with the greater disclosure requirements of Column 3 of Table I (Appendix 1 to chapter 5).

Should you have any comments or queries on the articles in this section or any general queries on CEDT matters, please do not hesitate to contact Marc Teasdale at marc.teasdale@fsa.gov.uk.

Specialist Equity & Debt

Split Capital Investment Companies

We are aware that a number of split capital investment companies are due to be wound up, in accordance with their articles. Given the unique concerns in this sector, we would urge advisers to contact us in advance to discuss any planned roll-over arrangements.

Assessing the experience of investment managers for investment companies and venture capital trusts (VCTs)

A frequent issue for our newly-formed specialist team is the assessment of an investment manager's experience under paragraphs 21.9(a) and 26.3(b). An assessment of whether an investment manager has *sufficient and satisfactory experience* under paragraphs 21.9(a) and 26.3(b) is needed either when a new investment vehicle is proposed or when a new investment manager is appointed to manage an existing investment vehicle. Listing an investment vehicle without a three-year track record is a concessionary form of listing. In effect, we allow the experience of the investment manager to substitute for the three-year trading history of the company. Companies should view the *sufficient and satisfactory experience* requirement in the light of this. It is also important to note that since the Listing Rules are not prescriptive on this subject, and because of the variety of reference investment vehicles and levels of investment management experience, an investment manager's knowledge must always be considered on a case-by-case basis.

We encourage you to submit a letter outlining the proposed investment manager's relevant experience and any special issues. It is not an absolute science and we will consider all reasonable submissions. The letter should be sent to us as early as possible during a transaction, as it is likely to be followed by a period of discussion and clarification. We have found the following to be sufficient and satisfactory experience in the past:

- **Size.** An investment manager which has managed investments worth at least 50% of the amount being raised by the new applicant. In the case of a change of investment manager for an existing investment vehicle, an investment manager which has managed investments worth at least 50% of the value of the funds under management of the relevant investment vehicle. In the past we have accepted that the value of the investment manager's funds under management for this purpose is the value of the funds under management at the beginning of the three-year period, although this was on the assumption that the value of the funds under management did not fall throughout the relevant period.
- **Type.** Management of investments that fit within the investment policy of the relevant investment vehicle.
- **Three years.** Management experience that has taken place continuously over the preceding three years.

Let's consider some examples:

1. The investment vehicle's policy is to invest in the AIM market. The proposed investment managers have continuous investment management experience going back more than three years, having managed funds worth £15 million invested in the AIM market. The investment manager therefore appears to have *sufficient and satisfactory experience* to manage an investment vehicle investing in the AIM market, provided it raised no more than £30 million. N.B. If the experience of the investment manager was in UK growth stocks rather than the AIM market, the case might be different. The investment manager's *sufficient and satisfactory experience* would depend on whether the UK growth stocks can be regarded as the same type of investments as those that the investment vehicle proposes to make.
2. The investment vehicle is a VCT whose policy is to invest in the AIM market. The proposed investment managers have continuous investment management experience of managing funds worth £15 million investing in

the AIM market going back more than three years. Whether the investment manager has *sufficient and satisfactory experience* depends on whether the investments they have managed for the last three years can be regarded as the same size of investments as those the VCT proposes to make. This would require specific analysis and discussion. If on the specific facts we were persuaded that it did, then the investment manager would have *sufficient and satisfactory experience* to manage an investment vehicle investing in the AIM market, provided it raised no more than £30 million.

3. The investment vehicle wants to invest in the AIM market. The proposed investment manager is new and does not have three years' investment management experience. However, the key individual fund manager, who will head up the investment team working on the new VCT, has continuous experience of managing funds worth £15 million invested in the AIM market going back more than three years. The new investment manager has less than the minimum three years' track record and does not have *sufficient and satisfactory experience*. However, such an investment manager can demonstrate *sufficient and satisfactory experience* through the investment management team. In this case, we would look at the collective experience of the team and assess whether the relevant individuals collectively have *sufficient and satisfactory experience*. If we were persuaded that they did, then the investment manager would have *sufficient and satisfactory experience* to manage an investment vehicle investing in the AIM market, provided it raised no more than £30 million. N.B. If the investment manager is relying on the experience of a specific individual within the investment manager's team who has a long track record of investment management, but has a small break in their three-year track record, then we may still be persuaded that there is *sufficient and satisfactory experience*. The key determinants in allowing a break in the track record are:
 - a. long relevant experience; and
 - b. the break is not significant in terms of overall track record.

Finally, we are planning a comprehensive re-draft of chapters 21, 24 and 26 in 2006. Practitioners will have a chance to comment on our proposed changes when our consultation paper comes out in 2006.

Should you have any comments or queries on the articles in this section or any general queries on Specialist Equity or Debt matters, please do not hesitate to contact Andrew McLeod at andrew.mcleod@fsa.gov.uk.

Complex Equity

Non-recommended offers

This article discusses our approach to non recommended offers. These are characterised by restrictions on access to information on the offeree business, assets or undertaking to be acquired. The general principle underpinning our approach is that where a listed offeror cannot gain access to the relevant offeree information, the offeror should seek out and publish the best information available to it. In these circumstances, the offeree information contained in listing particulars or circulars can be based on published sources. The principle is apparent in the position taken on working capital and indebtedness statements in paragraph 10.47(c). Our approach usually applies in hostile and contested situations. It is grounded in paragraphs 10.45 to 10.50 of the Listing Rules that cover these types of takeovers and mergers.

Responsibility statement

Paragraph 10.45 allows information on the offeree to be disclosed on the basis of information published (or made available) by the offeree and which the issuer is aware of and free to disclose. Accordingly, we have accepted examples of modifications to directors' responsibility statements such as:

“[Offeror’s directors and proposed directors] accept responsibility for the information contained in this document, except that the only responsibility accepted by [offeror’s directors and proposed directors] in relation to [offeree], which has been compiled from published sources [or made available], is to ensure that such information is correctly and fairly produced and presented. To

the best of the knowledge and belief of the [offeror’s directors and proposed directors] (who have taken all reasonable care to ensure that such is the case) the information contained in this document (other than the information contained in this document relating to [offeree]) is in accordance with the facts and does not omit anything likely to affect the import of such information.”

Paragraph 10.41 statements

The paragraph 10.41 statements in relation to material contracts, litigation, significant change required by the offeree are also usually modified using the phrase:

“As far as [offeror] is aware, having regard to published information...”

Pro forma financial information

In the light of the position of paragraph 10.45 on the use of published or available information, we would not normally expect to see pro forma financial information included in listing particulars or a circular where a listed offeror does not have access to the relevant offeree information. This is because it is not normally possible for the reporting accountants to confirm, as required by paragraph 12.35(b), that the information is compiled on a consistent basis with the accounting policies of the issuer. Note that paragraph 10.38(f) is usually complied with by the use of a pro forma. Therefore, in these cases we would expect narrative statements covering the expected effect of the takeover or merger on the earnings or assets and liabilities of the group.

Working capital and “28 day circular”

Paragraph 10.47(c) permits the working capital statement to be presented on the basis of the listed offeror only, rather than the combined group. The same applies to an indebtedness statement required where debt securities are being offered.

In usual circumstances, access to the offeree's records and management is granted after the offer becomes unconditional, and we treat 28 days as sufficient time for advisers to complete the work necessary to provide relevant combined group information. Therefore, paragraph 10.47 requires publication in supplementary listing particulars or

a circular within 28 days of the offer being declared wholly unconditional of a combined group working capital statement (and combined indebtedness statement where debt securities are offered). Any material change or addition to the rest of the original information should also be included within this 28 day circular. Since this 28 day circular may be published after the listing of relevant securities (in most cases, offeror consideration shares), we require the original circular or listing particulars to say the working capital (and indebtedness for debt securities) will be available on a combined basis as soon as possible.

In addition, this 28 day circular or supplementary listing particulars will usually contain an unmodified responsibility statement from the directors of the listed issuer and be circulated in the same way as the original circular or listing particulars. For document approval purposes, we would expect to receive an additional signed and dated Paragraph 5.5 letter from the listed issuer directors, as well as an updated Schedule 1A - Sponsor's Confirmation of Independence.

Revised offers

Finally, we come to hostile or contested bid situations where shareholders have approved the original terms of the offer. If the offer terms are revised or consideration increased, paragraphs 10.37 and 10.46 may require supplementary listing particulars or further shareholder approval if the revision or increase is, in the opinion of the UKLA, material. We encourage the offeror's sponsors to contact us as soon as possible to discuss the circumstances in this situation. Similarly, where a previously non-recommended offer becomes recommended – or where access to information is granted – please consult us as soon as possible to discuss timetable implications for approving the documents and what additional requirements will apply. One common additional requirement is where there is a material difference in the accounting policies between the offeror and offeree, reconciliation under paragraph 12.11 will need to be included.

Should you have any comments or queries on the articles in this section or any general queries on Complex Equity matters, please do not hesitate to contact Sarah Carter at sarah.carter@fsa.gov.uk.

Complex Debt

Debt Consultative Committee

We propose to establish a debt forum for participants in the debt market. The purpose of the forum is to enable participants to raise issues about the service we offer, general technical topics or any other relevant matters. As a regulatory body, we cannot actively market our service in the way that stock exchanges can, however, we are committed to the success of the debt market in the UK and to achieving our statutory objective of facilitating access to listed markets. We are conscious that it is very easy for market practitioners to vote with their feet and list securities in other jurisdictions.

We hope that establishing a forum will enable us to listen to our clients and make improvements that ensure we maintain harmonious relationships. We hope this will have a double benefit – once we are aware of issues that concern you, we can then set about offering a service to resolve these issues. With the impending introduction of the Prospectus Directive and the new Listing Rules in July 2005, the forum will also enable us to give regular updates on the new rules and allow participants to raise any concerns or questions about the implementation and interpretation of the new rules.

We intend to hold the first meeting in early October at the FSA offices in Canary Wharf; date and time to be confirmed. If you would like to attend, please forward your contact details to graham.walker@fsa.gov.uk.

Listed but unregulated market for specialist securities

The special policy edition of LIST! published in August 2004 contained details of our intention to provide a listed regime for specialist securities which will be admitted to an LSE platform which is not an ISD regulated market. In establishing this new market we hope to maintain the competitive position of the UK as an international market for listed securities and to maintain our current flexible approach to overseas issuers. Our intention is that the disclosure requirements for this new market will be based around the requirements of the wholesale debt disclosure requirements of the

PD. We intend to allow issuers of specialist securities of whatever denomination to follow the PD wholesale debt disclosure regime.

This should enable us to be flexible in relation to the expiry date of debt programmes ahead of the PD cut off date of 1 July 2005. The PD does not provide any flexibility to grandfather existing note programmes so all programmes which are admitted to a regulated market will have to be renewed on 1 July 2005 regardless of when the programme was last renewed.

In relation to the listed market which will be admitted to an LSE platform which is not an ISD regulated market our intention is to grandfather programmes so that they only need to be renewed once they expire. For example if a programme document was approved on 1 September 2004 under the requirements of Chapter 23, it would only need to be renewed on 1 September 2005. An issuer would still be able to list securities of the programme post 1 July 2005 without having to submit additional documentation to comply with the new market requirements. The new market requirements would only need to be addressed when the programme is renewed.

First de-linked securitisation platform

MBNA Europe Bank Ltd (MBNA) has listed in London the first de-linked securitisation platform. This is a significant new step in the securitisation market, as it enables MBNA to issue tranches of securitised credit card debt through the same vehicle, with different maturities not dependent on other tranches of securitised debt and different credit ratings. Another important advantage of establishing a programme is the speed and flexibility of issuance. MBNA now has the ability to list securities by simply filing a pricing supplement with our Listing Applications team. As pricing supplements do not require pre-vetting, in practice this means that for a security to be listed on a specific date, the pricing supplement need only be submitted by 2pm the day before the intended listing date (see paragraphs 23.36 to 23.44A).

Clifford Chance first approached us with their ideas on the programme and how they envisaged it operating in May of this year and after an initial meeting we quickly realised that the proposals for

the programme could be accommodated within the listing rules. After a second meeting whereby the disclosure requirements of the Listing Rules were fine turned and agreed we proceeded with the process of approving the document. Since approval in June, MBNA have issued three securities off the programme. Given the advantages of establishing a programme we are envisaging that other regular issuers of securities backed by mortgages, car loans and credit card debt will soon be establishing programmes. If you require any information on this process or you want to discuss our approach in relation to any existing or intended new product or structure, please feel free to contact either Gavin Richards at gavin.richards@fsa.gov.uk or Graham Walker at graham.walker@fsa.gov.uk.

Company Monitoring

Model Code

While the Model Code does not specify how long a director/relevant employee has to deal following the receipt of clearance to deal, we would expect them to carry out the dealing shortly after receiving clearance (*The Continuing Obligations Guide* recommends a limit of 24 hours). By not setting a time limit, or indeed by setting too long a limit, a company runs the risk that by the time the dealing takes place it has entered a close or prohibited period.

We routinely monitor directors' dealings announcements. We would like to remind issuers that where we become aware of an apparent breach of a company's code of dealing, we will seek an explanation as to whether all proper and reasonable steps were taken to ensure compliance.

Release of announcements under embargo

When issuers make announcements required by the Listing Rules to a Regulatory Information Service during its hours of operation, we would not expect issuers to embargo their release. Doing this effectively delays the release of information to investors and could potentially be a breach of the Listing Rules. Additionally, the greater the time period between an issuer's submission of information to a RIS and its release to the market, the greater the potential for this information to be misused.

For example: if a listed company's board were to approve its interim results at 3pm, we would expect those results to be released the same afternoon. Placing an embargo on those results until 7am the following morning would go against the obligation to release 'without delay'.

While we are aware of the convention that certain announcements should be released at 7am, this does not override the duty imposed by certain Listing Rules that issuers should make announcements without delay.

Listing Review

Financial information in prospectuses

The Prospectus Directive Regulation comes into force on 1 July 2005 and the financial information requirements will be different to those in the current Listing Rules. It is perhaps also worth noting that CESR is currently consulting on recommendations underpinning the Prospectus Directive Regulation which also cover some aspects of financial information disclosure in prospectuses. This consultation closes on 18th October and we would recommend that you review the recommendations as the FSA will be taking into account issuers' compliance with these CESR recommendations in the interpretation of the Prospectus Directive Regulation. The consultation can be found at www.cesr-eu.org.

What transitional arrangements regarding financial information disclosure might be relevant for a new applicant seeking admission to listing before 1 July 2005?

Consider the position of Company X – a new applicant seeking admission in May 2005. Company X's financial year ends on 31 December and has published consolidated UK GAAP accounts for the year ending 31 December 2004:

Under existing listing rule requirements, Company X would be required to include in its prospectus a three-year comparative table or accountants' report in a form consistent with the one it will adopt in its next annual financial statements. In accordance with Regulation (EC) 1606/2002, Company X will produce its next accounts using endorsed IFRS. In the absence of any transitional

arrangements, Company X would therefore need to include in its prospectus an accountants' report covering the years ended 2002, 2003 and 2004, prepared in accordance with IFRS.

The prospectus regulation requires equity issuers to also include audited historical financial information covering the last three years in a prospectus. However, only the last two years of audited historical financial information must be presented and prepared in a form consistent with that to be adopted in the issuer's next published annual financial statements.

The prospectus regulation also contains a transitional provision that means no issuer shall be required under the regulation to produce any IFRS information for any period earlier than 1 January 2004.

In line with the prospectus regulation requirements – and given the additional likely costs and expense of producing IFRS financial information for 2002 and 2003 (which issuers could avoid by delaying admission until after 1 July 2005) – we would be unlikely to seek any IFRS information on Company X for any period before 2004. Company X would need to produce a three-year comparative table or accountants' report under UK GAAP covering 2002, 2003 and 2004. It would also need to include audited 2004 financial information under IFRS. This information could be presented in a four-column table.

However, Company X would not be prohibited from including three-year comparative tables or an accountants' report using IFRS.

Would the requirements be different for a further issue – for example, if Company X was already listed?

Yes. The prospectus regulation does not require existing listed issuers to include IFRS information in their prospectuses until they have published their first annual accounts in accordance with Regulation 1606/02. In Company X's case, this would be the 31 December 2005 IFRS accounts.

Following the same logic for new applicants, as the prospectus regulation does not require any IFRS information in these circumstances, we would be unlikely to require companies to prepare

the comparative table or accountants' report on an IFRS basis. Company X could produce a three-year comparative table using UK GAAP, which would be familiar to investors.

If you have any queries on the new procedures, please contact CEDT by calling our helpdesk (020 7066 8333) and choosing option 2.

Payment of UKLA transaction fees

Previously, UKLA vetting fees were invoiced once the document has been received and allocated to the readers. Listing application fees were invoiced when the listing application had been approved at the listing hearing. The invoices were then payable under the FSA's usual payment terms.

In order to make our fee collection procedures more efficient from 20 September 2004 we implemented a "payment up-front system" for fee payment in respect of document vetting and listing application fees. This change in procedure was in CP04/09 which was issued in May 2004. Annual listing fees and annual sponsor fees will still continue to be invoiced in the usual manner.

How does the new system work?

Vetting fees - When a document is submitted for vetting it must be accompanied by the appropriate vetting fee. The fees are set out in Schedule 13 of the Listing Rules. The reader will not send UKLA comments on the document to the sponsor/adviser until the cheque (or a written confirmation of a BACS payment) has been received by the UKLA. Furthermore, under no circumstances will a document be approved if payment of the vetting fee is outstanding.

Listing application fees - Listing application fees (including draw-downs or tranches under debt issuance programmes and securitised derivatives - see Schedule 13 for amounts) must be submitted when the application for listing is made. Until the listing application fee is paid the listing hearing will not take place and the securities will not be listed.

BACS payments - For those issuers or advisers who use the BACS system to pay UKLA fees, a confirmation of payment (in written form) is required to be sent to us. Please note that when

making BACS payments it is important that the BACS reference refers to the fact that the payment is in respect of UKLA fees and that the identity of both the payer and the issuer is clear. The following is the form of BACS reference which is acceptable to us: **UKLAAPPFEE + NAME OF PAYER + NAME OF ISSUER**. In addition, if one BACS payment is used to cover a number of fees for the same or different issuers a breakdown of the payment must be submitted to the Listing Applications team.

Invoices - The UKLA no longer issues invoices. We no longer charge VAT on our services and therefore are not required to issue an invoice for VAT purposes. Instead a receipt of payment confirmation will be sent to the sponsor / adviser.

These processes have been slightly modified for debt issuers because of the fast turnaround of debt documents being processed through the Central Debt Desk, to ensure the continued smooth operation of the debt market. If you have any queries on the new procedures, please contact the Listing Applications team by calling our helpdesk (020 7066 8333) and choosing option 3.

Frequently asked questions

Q: How does the UKLA approach B share issues?

A: Issuers frequently return capital to shareholders by issuing redeemable B shares. The circular seeking approval for the B share issue must comply with the disclosure requirements of chapter 15.

Q: Does paragraph 12.43b apply to statements of expected synergy benefits in Class 1 Circulars and listing particulars?

A: Yes. It is common to find statements of expected synergy benefits of proposals in Class 1 Circulars and listing particulars. Where statements quantify in monetary or percentage terms, the amounts of such expected benefits, these figures should be included in the next published annual accounts. If the results for the period differ by 10%, issuers should also include an explanation of the difference.

Should you wish to provide feedback on this publication or suggest topics for discussion in future additions of List!, please contact Clare Cole at clare.cole@fsa.gov.uk.