Consultation Paper

203

Financial Services Authority

Review of the listing regime

October 2003

FSA®

Contents

The Financial Services Authority invites responses to this CP. Responses should reach us by 31 January 2004.

Responses may be sent using the form on the FSA's website (at www.fsa.gov.uk/consultation/203).

Alternatively, responses may be sent in writing to:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise.

1 Executive summary

1.1 When the Competent Authority for listing was transferred from the LSE to the FSA in May 2000, we agreed with HM Treasury to carry out a fundamental review of the listing regime.

1.2 The process of integrating the listing regime into our general regulatory approach is well underway. We intend to use the Listing Review to continue this process. In particular, we want to ensure that the Listing Rules are, as far as possible, consistent with the FSA Handbook, and that our risk-based approach to regulation is embedded in the UKLA.

1.3 A number of significant changes are now in progress in the EU and UK regulatory environments, including changes in company law, which provide the framework for the listing regime. It is essential that we reassess the listing regime in the light of these developments. In the context of globalised capital markets and market innovation, we want to be confident that the UK primary markets continue to be attractive to issuers and investors.

1.4 The UK has the largest and most highly developed capital market in the world outside the United States. In developing our proposals, we have taken into account the important position of the UK capital market within the European and world markets. The PwC Report commissioned by us to compare primary market regulation in different jurisdictions noted that the UK environment is perceived by market participants as having a high standard of regulation. Our work has indicated that there is no widespread appetite for any significant relaxation of the rules or approach of the UK regulator or market.

1.5 We have considered whether we should impose any higher regulatory standards than those required by the FSAP Directives (where this is permitted) or whether, in respect of eligibility criteria, differentiation should be achieved through the exchanges imposing standards for admission to their markets.

1.6 In this CP we outline our proposals for reform of the listing regime, against the background of the new regulatory framework which is being developed. We highlight those areas where we believe action should be taken to strengthen the listing regime, those where we believe the Listing Rules are no longer relevant and those areas which we believe require new rules to bridge gaps in the current regime.

What is the purpose of the Listing Review?

1.7 The Listing Review has a number of aims:

- to simplify and modernise the listing regime;
- to accommodate the impact of the changes being proposed to the European regulatory framework in which we operate and to company law;
- to ensure that the UK continues to offer a regime that provides an appropriate level of regulation, and the flexibility and transparency demanded by those wishing to raise capital on the London markets; and
- to ensure that, given the changing legal and regulatory environment, the regime we operate continues to meet our regulatory objectives.

1.8 We need to ensure that there is a clear understanding of the boundaries of the listing regime and the effect that changes to the regulatory environment will have on our ability to set and monitor rules.

Who should read this CP?

1.9 This CP will be of interest to:

- all those who participate in the capital raising process, including issuers seeking access to capital markets and their advisers; and
- investors (both institutional and retail), including those consumers whose interests are involved through institutional investors.

Consumers

This CP will be of interest to consumers as investors (directly or through institutions) in listed companies. Chapters 5 to 11 all raise issues concerned with the protection of investors.

Scope of this CP

1.10 This is a policy CP; it does not set out proposals for detailed changes to the Listing Rules. These will be presented in the third quarter of 2004.

1.11 This CP focuses mainly on equities. In the UK, a lighter touch regulatory regime applies to specialist debt securities, which is a market for sophisticated investors. We recognise the importance of the specialist debt market to the UK capital markets. Our proposals in relation to debt are in Chapter 6.

1.12 As explained in CP164[1], we brought forward the introduction of new rules relating to investment companies to deal with concerns over the split capital investment trust sector. These rules, which have now been published,[2] have not been considered separately in this CP, although we intend to review all of the rules relating to investment companies in the next phase of the Listing Review.

Key proposals

1.13 The proposed changes to the regulatory environment will have a wide-ranging effect on all participants and substantially change areas of the Listing Rules. In addition, we have identified other possible changes that we think it would be appropriate to make. The areas that would be substantially affected are summarised in paragraph 1.14 below, and set out in more detail in Chapters 5 to 11 of this CP.

1.14 Our key proposals are:

- to introduce a set of high level Listing Principles (Chapter 4) which will inform the making and understanding of our rules and be enforceable like other rules;
- to restructure the listing sourcebook so that it is consistent in format and style with the rest of the FSA Handbook, and to re-organise it into the categories of Equity, Debt and Financial Products (Chapter 4);
- to consult on the importance of retaining super-equivalent eligibility requirements for equity issuers (such as a three-year 'track record' and a 'clean'[3] working capital statement);

1. CP 164 Investment Companies (including investment trusts) Proposed changes to the Listing Rules and the Conduct of Business Rules.
2. Policy Statement - Investment Companies (including investment trusts) Changes to the Listing Rules and the Conduct of Business Rules.
3. A 'clean' working capital statement means that the issuer must be satisfied after due and careful enquiry that it has sufficient working capital for the group's present requirements, that is for at least the next 12 months from the date of publication of the relevant document.

- to consult on retaining super-equivalent eligibility requirements in relation to debt issues, including the requirement for an authorised adviser (Chapter 6);
- to require overseas issuers with a primary listing to conform to the same standards as UK issuers. Secondary listed issuers would be required to comply with the standards set by the FSAP Directives. Non-UK EU issuers would be able to obtain a secondary listing in the UK based on a prospectus approved by another EU competent authority (provided they also satisfy CARD requirements for listing). Alternatively, a non-UK EU issuer could opt for a primary listing in the UK, but would be expected to satisfy the same standards as UK issuers (Chapter 7);
- to recommend that all listed issuers comply with the OFR regulations, so that listed issuers are at the forefront of good market practice in this area (Chapter 8);
- to retain our super-equivalent continuing obligations requirements on UK companies, such as our class test regime (subject to minor amendments) requiring equity issuers to obtain shareholder approval for major transactions (Chapter 9);
- to introduce a new requirement for companies to obtain shareholder approval where an issuer intends to delist (Chapter 9);
- to streamline the Model Code once the MAD implementation measures have been finalised to reduce duplication (Chapter 9);
- to implement a more flexible approach to the presentation of financial information, so that companies may include both audited and non-audited figures, provided they disclose the source of information. We also propose to remove the requirements for prospective financial information such as profit forecasts to be 'reported on', except where such information is contained in a prospectus (Chapter 10); and
- to consult on the options of either retaining the obligation to have a sponsor for new issues and major transactions or abolishing the mandatory requirement to have a sponsor in these circumstances and leaving issuers the choice of whether or not to retain a sponsor. We intend to clarify the regime (whether compulsory or voluntary) and strengthen enforcement against those that fall short of the required standards (Chapter 11).

Next steps

1.15 After publication of this CP, we intend to hold a series of meetings in November and December with interested parties on key topics arising from the Listing Review. We anticipate that these are likely to include:

- super-equivalence;
- issues arising from the dissemination of price-sensitive information; and
- sponsors.

Please let us know if you are interested in attending one of these meetings.

1.16 After the consultation period closes on 31 January 2004 we will analyse the responses received. We plan to publish a feedback statement and a further CP with draft rules in the third quarter of 2004. Finalised rules should then be published in spring 2005 for implementation in summer 2005. This is also the earliest date that the PD is expected to be implemented in the UK. If the PD is delayed, then it is likely that we will also need to postpone the timetable for the Listing Review.

2 Introduction

2.1 This CP focuses on:

- conditions that have to be met by issuers seeking admission to the Official List – the so called eligibility criteria;
- non-disclosure based continuing obligations imposed on listed issuers, for example the rules relating to substantial transactions; and
- a number of operational issues, including the future of the sponsor regime and the introduction of a set of Listing Principles.

This CP does not consult on disclosure obligations for issuers either on admission or once admitted to the Official List. These aspects of the UK listing regime are the subject of the FSAP Directives.

2.2 The FSAP Directives will apply to all issuers admitted to trading on a Regulated Market, which in the UK means they will apply to AIM[4] issuers as well as listed issuers. This CP deals with the impact of the FSAP Directives on listed issuers only, but it is worth noting that the provisions of these directives will have this wider effect.

2.3 A basic understanding of the scope and effect of the FSAP Directives is essential to understanding this CP. A synopsis of each directive is provided in Chapter 3.

2.4 As a first step in the Listing Review, we commissioned the PwC Report to establish how UK primary market regulation compares with other major regimes around the world. In July 2002 we published a Discussion Paper (DP14), which included the Executive Summary of the PwC Report and introduced themes for future discussion. A Feedback Statement was published in January 2003.

4. We are aware of the LSE's proposals to change the status of AIM to a market that is solely exchange-regulated. The application of the FSAP Directives to AIM issuers may depend on the outcome of these proposals.

2.5 Following publication of DP14 we established four Theme Teams of market representatives to consider the themes identified in DP14.[5] The views of respondents to DP14, those serving on the Theme Teams and the Listing Review's Consultative Committee have been very helpful to us in conducting this phase of the Listing Review and in formulating the proposals in this CP.

International context

2.6 There are two basic approaches to capital market regulation:

- a disclosure based approach; and
- a merit based approach.

2.7 The disclosure based approach aims to protect investors and ensure the integrity of the market by requiring issuers to disclose all relevant information. The regulator plays no role in assessing the eligibility or suitability of the issuer for listing. This is the approach taken in the US where the SEC plays an active role in ensuring issuers disclose all relevant information, particularly in relation to financial reporting.

2.8 The merit based approach is common in Continental Europe. CARD gives European regulators the power to reject an application for listing if in their opinion *the issuer's situation is such that admission would be detrimental to investors' interests*. This means that even though a potential issuer meets all admission conditions, its application can still be rejected. In the UK, the CARD provision is set out in paragraph 1.4(a) of the Listing Rules.

2.9 In practice, absent unusual features, we assess the merits of an application to the Official List on an applicant's ability to demonstrate that its application meets the admission conditions in the Listing Rules. This means that the primary focus is on the eligibility rather than the suitability of an issuer.[6]

The role and responsibilities of the FSA as Competent Authority

2.10 Although the UKLA is an integral part of the FSA, FSMA provides a separate statutory framework within which we must operate in our capacity as Competent Authority. When admitting securities to the Official List, and ensuring that standards are met on a continuous basis through the disclosure of all relevant information, FSMA requires us to have regard to the matters set out in section 73(1) which is reproduced for convenience in Annex D.

5. A list of the representatives who made up the teams, as well as those who served on the Listing Review's Consultative Committee is provided at Annex K.
6. A comparative table of 'quality thresholds' applied in other jurisdictions can be found at Annex C.

2.11 In addition, we also have regulatory objectives agreed on an annual basis with HM Treasury. The current objectives are also set out in Annex D.

Structure of the CP

2.12 Chapter 3 provides a synopsis of the FSAP Directives. Chapter 4 deals with our proposals to introduce Listing Principles and restructure the listing sourcebook. Chapter 5 considers the options open to us in imposing requirements additional to those in the FSAP Directives.

2.13 Chapter 6 details our proposals in relation to debt issuers.

2.14 Chapter 7 deals with overseas issuers.

2.15 Chapters 8 to 11 deal with the specific areas of the listing regime that we have reviewed with the assistance of the Theme Teams. In each of these chapters we highlight issues that have arisen and propose ways of dealing with these issues. Finally, we raise specific questions for consultation.

2.16 Chapter 12 contains some initial thoughts on the cost benefit issues of our key proposals. It also highlights areas where we need further data to enable us to carry out a cost benefit analysis.

2.17 We welcome comments on the specific questions raised throughout this CP (and restated in Annex A) by 31 January 2004.

2.18 To assist respondents in understanding the next steps, we have included a timetable for the rest of the process alongside that of the FSAP Directives at Annex B. This may change due to the uncertainty surrounding the EU timetable.

2.19 We have also included other relevant material in the Annexes.

3 Regulatory framework

Regulatory framework for listed issuers

3.1 The international regulatory framework for listed companies is changing. A key driver is the FSAP. This aims to deliver a single market in financial services across the EU, through the harmonisation and modernisation of the European legislative framework. At the same time, most listed issuers are also facing the impact of the introduction of IAS from January 2005.

3.2 CARD provides the existing EU framework for listing and many of the Listing Rules are derived from the requirements and powers laid out in CARD. The FSAP Directives will establish core standards of regulation to facilitate the integration of securities trading across the EU.

3.3 The Company Law White Paper[7] published in July 2002 proposes to simplify and modernise company law. Some of the proposals in the White Paper would have an impact on listing. Others would have an indirect effect by altering the legislative framework in which the majority of listed issuers operate.

Implementation of the FSAP Directives

3.4 The FSAP Directives are being implemented using new EU legislative techniques based on a four-level approach known as the Lamfalussy Process.

- Level 1 – The directive, which sets out broad general framework principles.
- Level 2 – The technical implementing measures to be adopted by the Commission. The Commission will usually request advice from appropriate experts (often this will be CESR).
- Level 3 – The setting of regulatory standards and guidance.
- Level 4 – The improvement of enforcement of the regime being implemented by the relevant directive.

7. Modernising Company Law Command Paper 5553

3.5 The Commission has asked CESR to give technical advice on the Level 2 measures to be adopted under the FSAP Directives. One of the ways in which CESR formulates its advice is by consulting on proposed measures.

Future EU regulatory framework

3.6 Whilst the FSAP Directives all refer to *admission to trading on a regulated market* rather than *admission to listing*, none of the new directives repeals that part of CARD that requires Member States to maintain an Official List. Under the surviving provisions of CARD, we will continue to have an obligation to maintain the Official List and we will have the power, but not the obligation, to impose additional obligations on issuers whose securities are admitted to the Official List.[8]

3.7 We summarise below the key provisions of the FSAP Directives and the surviving parts of CARD. Together, these directives will form the EU regulatory framework in which listing will operate in the future.

Consolidated Admissions and Reporting Directive (CARD)

3.8 Under CARD, the minimum eligibility requirements for an issuer seeking a listing in the EU are that the issuer's projected market capitalisation is at least €1 million, and that the issuer has three years' published accounts. In addition to these conditions relating to the issuer, CARD imposes conditions on the securities for which admission is sought. These include that the whole class of security is listed, that they are freely negotiable and that 25% of the securities are in public hands.

Prospectus Directive (PD)

3.9 The PD requires a prospectus to be approved by the home Member State competent authority before:

- the admission of securities to trading on a regulated market; and
- any public offer of securities in excess of €2.5m per annum.

3.10 The PD determines the contents of a prospectus. It is a 'maximum harmonisation' directive, which means Member States may not impose directly or indirectly any additional requirements (known as super-equivalence). Issuers are only permitted to omit information in very limited circumstances.

8. This provision has not yet been linked to admission to trading on a regulated market.

3.11 The PD will allow issuers, once they have had their prospectus approved in their home Member State, to obtain a passport to have their securities admitted to trading on a regulated market in any EU jurisdiction without obtaining separate approval from that jurisdiction's competent authority. The home Member State for equity issuers is where the issuer has its *registered office*. Non-equity issuers of securities with denominations of greater than €1,000 will have more flexibility about choosing their home Member State.

3.12 The PD will apply to prospectuses for securities being admitted to trading on any regulated market in the UK (including Virt-x and AIM).

Transparency Directive (TD)

3.13 The TD seeks to harmonise the core requirements for the dissemination of information to the market. It applies to all issuers whose transferable securities are admitted to trading on a regulated market. Although still under negotiation, the TD may contain provisions on:

- quarterly reporting for equity issuers;
- interim reporting for debt issuers;
- disclosure of information about major shareholdings; and
- directors' liability for breach of reporting obligations.

3.14 In addition to covering these reporting and disclosure requirements, the TD gives Member States the power to impose additional disclosure requirements where they are the home Member State. Member States will not have the power to require additional disclosure where they are the host Member State.

3.15 The likely effect of the TD will be to amend but not repeal the provision in CARD that allows us to impose non-disclosure based continuing obligations on all issuers admitted to the Official List.

Market Abuse Directive (MAD)

3.16 The MAD seeks to harmonise Member States' approaches to tackling market abuse, in particular insider dealing and market manipulation. It will apply to all issuers whose securities are admitted to trading on a regulated market. The MAD will require:

- the dissemination of price-sensitive information as soon as possible, allowing selective disclosure of such information to persons owing a duty of confidentiality;

- the disclosure of dealings in own-securities by persons with managerial responsibility; and
- issuers to maintain 'insider lists.'

Investment Services Directive (ISD)

3.17 The ISD will require operators of regulated markets to have effective arrangements in place to check that issuers whose securities are traded on regulated markets comply with their disclosure obligations (in the PD, the MAD and the TD). It will allow investors to access regulated markets in their home jurisdiction, and will allow the regulated markets to passport screens into other jurisdictions. This, coupled with the PD, will result in both issuers and markets having a passport, and access to trading across the EU will be made easier.

International Accounting Standards (IAS)

3.18 Most UK listed issuers will have to use IAS in the preparation of consolidated financial statements for accounting periods beginning on or after 1 January 2005. The DTI announced in July 2003 that all UK companies will be permitted to use IAS in their individual and consolidated accounts from January 2005.

3.19 Although UK GAAP is closer to IAS than many other jurisdictions, there are some significant differences, including areas such as pensions, goodwill and intangibles.

3.20 The UK Accounting Standards Board (ASB) plans to introduce a number of new accounting standards as part of its programme of phased convergence to IAS. These should help to reduce the differences between the accounting standards applicable to companies applying IAS in 2005 and those that will continue using UK GAAP.

The proposed EU framework

3.21 There is a table giving an overview of the application of the FSAP Directives to different types of issuer at the end of this Chapter.

Overview of the application of the FSAP Directives on different types of issuer

Type of Issuer	Prospectus Directive	Transparency Directive	Market Abuse Directive
UK incorporated	• Issuers, other than large denomination[9] non-equity issuers (as defined by the PD), must have prospectus approved by home Member State competent authority = the FSA in the UK. • Large denomination non-equity issuers will have option to choose which Member State to submit prospectus for approval. • Once prospectus approved by the FSA, it can be passported in the EU and must be accepted by host Member State competent authorities. • Neither as home Member State nor host Member State competent authority may the FSA impose more stringent disclosure requirements than those provided in the PD.	• The FSA, as home Member State competent authority, may impose more stringent disclosure and notification requirements on the issuer and holder of securities listed on the Official List. • A host Member State may not impose additional disclosure or notification requirements than provided by the TD.	• Applies to any financial instrument admitted to trading, for which a request for admission has been made, on a regulated market in at least one Member State. • The obligations on issuers to announce inside information in Article 6 will not apply to issuers that have not requested or approved admission of their financial instruments. • Ability to impose super-equivalent requirements will vary from article to article.
Non-UK EU Registered	• EU issuers, other than large denomination non-equity issuers (as defined by the PD) must have prospectus approved by the competent authority in Member State where the issuer has its registered office.	• A home Member State may impose more stringent disclosure and notification requirements than provided for in the TD. • The FSA, as host Member State competent authority, may not impose	• Applies to any financial instrument admitted to trading, for which a request for admission has been made, on a regulated market in at least one Member State.

[9] That is, non-equity securities with denominations greater than € 1,000.

	• Once prospectus has been approved by the home Member State and certificate issued, the FSA, as host Member State, cannot impose super-equivalent disclosure requirements.	more stringent continuing disclosure requirements than provided for in the TD.	• The obligations on issuers to announce inside information in Article 6 will not apply to issuers which have not requested or approved admission of their financial instruments. • Ability to impose super-equivalent requirements will vary from article to article.
Non-EU Registered	• The PD sets out method to determine which Member State is the home Member State for the purposes of the PD. • Once the home Member State has approved prospectus it can be passported in the same way as an EU issuer approved prospectus. • The home Member State of a non-EU issuer may approve a prospectus if it complies with requirements equivalent to the PD. • Non-EU issuers with UK as home Member State that desire a secondary listing will need to comply with the PD.	• The home Member State may exempt the non-EU issuer from the disclosure and notification if there are equivalent provisions in the third country and information made available in the EU. • A host Member State cannot impose more stringent requirements on a non-EU issuer than set out in the TD. • A non-EU issuer with the UK as its home Member State will have to comply with any more stringent requirements imposed by the FSA.	• Applies to any financial instrument admitted to trading, for which a request for admission has been made, on a regulated market in at least one Member State. • The obligations on issuers to announce inside information in Article 6 will not apply to issuers which have not requested or approved admission of their financial instruments. • Ability to impose super-equivalent requirements will vary from article to article.

4 Structure of the listing rules sourcebook

Introduction

4.1 In DP14, we touched on the structure of the listing sourcebook and the option of moving to a principles-based regime. This Chapter explains our present thinking on these issues.

Listing Principles

4.2 The listing sourcebook is structured as a set of detailed rules supported by a separate volume of guidance. We believe this arrangement encourages issuers and their advisers to adopt a literal interpretation of each rule rather than promoting compliance with the overarching standards which the listing sourcebook, in its entirety, is designed to achieve. We are in favour of changing the structure of the sourcebook to recognise the high level principles that underpin the Listing Rules.

4.3 We believe the advantages of this approach would be:

- *Flexibility:* the principles should help in interpreting the rules in new or unforeseen circumstances, where prompt guidance is needed;
- *Transparency:* the principles will help to communicate clearly to issuers the standards and behaviour that we consider to be most important; and
- *Consistency:* principles will help to ensure detailed rules are applied and interpreted on a consistent basis.

4.4 The introduction of principles will help to ensure that the rules themselves can be simplified and that an appropriate balance between rules and guidance can be achieved. We are conscious that by introducing principles we may be accused of simply creating a further layer of regulation; this would be inconsistent with our stated aim of simplifying the regime. The proposed principles are rules; they are stated as principles to give them a more general and flexible application.

4.5 The proposed principles reflect the fundamental obligations of all listed companies. They will be enforceable as rules.

4.6 In considering what principles would be appropriate in a listing context, we examined those that are applied to other areas of the FSA and those used by the accountancy profession and the Panel on Takeovers and Mergers. We were also guided by the regulatory objectives as agreed with HM Treasury, which are in paragraph 1.3.9 of the UKLA Guidance Manual and are included in Annex D.

The proposed Listing Principles

4.7 An issuer must:

1. take all reasonable steps to enable its directors to understand their responsibilities and obligations under the Listing Rules;
2. take all reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with the Listing Rules, both on initial admission to listing and on a continuing basis;
3. act with integrity in its relations with holders and potential holders of its listed securities;
4. communicate information to holders and potential holders of its listed securities as required under the Listing Rules in a clear and timely manner, and take all reasonable care to ensure that such information is not misleading, false or deceptive;
5. ensure equality of treatment for all holders of the same class of its listed securities in respect of the rights attaching to such securities; and
6. deal with the Competent Authority in relation to the application of the Listing Rules in an open and co-operative manner.

4.8 In addition to these Listing Principles, the listing sourcebook would continue to set out rules and guidance, some of which expand the Listing Principles and some of which will govern specific aspects of listing.

Enforcement of Listing Principles

4.9 By including Listing Principles in the regime, we would be making the listing sourcebook consistent with the rest of the FSA Handbook. The principles included in the Handbook are enforceable as rules against firms and their directors by the FSA, but third parties (such as investors or consumers) cannot take legal action against firms for breaches of principles.

4.10 The Listing Principles will be enforceable in the same way as other Listing Rules. By their nature and purpose, it is unlikely that they would ever be

waived. Issuers will be expected to interpret the Listing Rules in line with the spirit and purpose of the Listing Principles.

Q1: Do you support the proposed move to a regime which has overarching general principles supported by specific rules and guidance?

Q2: Do you foresee any problems with the six proposed Listing Principles? Are there any gaps that you think the proposed Listing Principles fail to cover?

Restructuring the listing sourcebook

4.11 We understand from issuers that the way the sourcebook is presently structured is not user-friendly. Users have to search through the entire book to ensure that they have picked up all rules that apply to them.

4.12 Our view is that the sourcebook could be more helpfully divided into three sections namely, Equity, Debt and Financial Products. An issuer would identify which of the three categories the securities it was seeking to list falls into, and then turn to that section of the sourcebook to find all of the relevant rules. If the security has characteristics of more than one category, we intend to apply a 'building block' approach to ensure that the relevant requirements from each section are added to the requirements in the core section. For example, a security may have features that fall mainly into the Equity section, but may also have some other features that would require additional protections from the Financial Products section to be applied. We believe this will simplify the sourcebook and give it the flexibility that it currently lacks.

Equity

4.13 Equity securities are defined in the PD as including:

shares and other transferable securities equivalent to shares in companies as well as any other type of transferable securities giving the right to acquire any of the aforementioned securities, as a consequence of them being converted or the rights conferred by them being exercised, provided that securities of the latter type are issued by the issuer of the underlying shares or by an entity belonging to the group of the said issuer

4.14 We propose to locate the rules relating to GDRs (where the underlying security is an equity) in the equity section of the sourcebook. Consistent with our proposed approach to secondary listing by overseas companies (see Chapter 7), we propose that the eligibility and continuing obligations requirements for GDRs will be set at no higher a level than that which is required to satisfy the FSAP Directives.

Debt

4.15 Chapter 6 contains our proposals on:

- the effects of the FSAP Directives on the debt listing regime;
- the eligibility and continuing obligations requirements for specialist and non-specialist debt issues; and
- the requirement to retain an authorised adviser.

Financial Products

4.16 Our view is that the Listing Rules for financial products should be set out in a separate section. This is because financial products pose different risks from those posed by either equity or debt. We would include provisions within these rules to protect investors that would not be appropriate for other listed products.

4.17 In revising our rules for financial products, we will build on our new rules for investment companies that are in the Policy Statement following CP164[10]. We are also conscious that authorised collective investment schemes (CISs) share a number of common characteristics with listed investment companies and that there may be opportunities for the Listing Rules in this area to be aligned more closely to rules applying to these schemes. One of the objectives of CP185 *The CIS Sourcebook – A new approach* has been to construct a regime of product regulation for CISs that delivers appropriate protection for investors. If such schemes are to list their shares, any additional Listing Rules designed to protect shareholders may be unnecessary. In fact the removal of certain Listing Rules may encourage more schemes to list in the UK.

4.18 We also propose to include Chapter 24 issues (securitised derivatives) under this heading.

Q3: Do you believe the Listing Rules in this area should be more closely aligned with the rules applying to CISs?

Q4: If so, do you agree that additional rules are unnecessary for schemes subject to the CIS Sourcebook?

10. Policy Statement – Investment Companies (including investment trusts) Changes to the Listing Rules and the Conduct of Business Rules

Summary

4.19 If we restructure the listing sourcebook along the lines set out above, an issuer would simply need to identify which of the three categories the securities that it was seeking to list falls into, and then turn to that section of the sourcebook to find all the relevant rules. A 'building block' approach will apply to securities that have characteristics of more than one category to ensure that all relevant Listing Rules are complied with.

4.20 This approach will remove the need for specialist chapters, as property companies, mineral companies and scientific research companies would also be catered for under one of the three sections. It would also allow us to differentiate clearly between issuers of debt and financial products, if we feel this is necessary.

4.21 As stated in DP14, we are committed to integrating the listing sourcebook into the FSA Handbook. The new listing sourcebook will be presented in a style that is consistent with other FSA sourcebooks. This will mean that the Guidance Manual will no longer be a stand-alone document but will be incorporated into the sourcebook.

Q5: Do you support the proposed move to a 'building-block' structure for the sourcebook? If not, please explain your objections.

Q6: Do you agree with the three sections that we are proposing? Are there any gaps that you feel we have failed to cover or would have expected to see covered? Do you foresee any problems with the proposed new structure for the sourcebook?

5 Super-equivalence

Introduction

5.1 In the UK, to be 'listed,' means to be admitted to the Official List maintained by the UKLA. It is entirely optional and no issuer is under any obligation to be listed. However, the LSE stipulates listing as an eligibility requirement for admission to its main market.

5.2 We have used the Listing Rules to impose higher standards than are required by European legislation (known as super-equivalent requirements) on listed issuers by:

- setting additional eligibility criteria for issuers seeking admission to the Official List for the first time; and
- imposing additional continuing obligations on issuers once they are listed (these include the class test regime, compliance with the Model Code and corporate governance standards).

5.3 The PD establishes a common standard for prospectuses that all issuers seeking admission to trading on a regulated market in the EU must meet. As the PD is a maximum harmonisation directive, we will not be able to impose any additional requirements in the Listing Rules in relation to the contents of prospectuses.

5.4 The TD prevents us from imposing additional disclosure-based continuing obligation requirements on issuers that have the UK as a host Member State. For most non-UK EU issuers we will be the host Member State competent authority.

5.5 The FSAP Directives (other than the PD) do not prevent us from imposing some super-equivalent requirements on issuers admitted to the Official List. The super-equivalent requirements that could be imposed under CARD include:

- eligibility criteria for listing, including the requirement for a sponsor to be appointed on an application for admission and related confirmations provided by them to us;
- non-disclosure-based continuing obligations (e.g. shareholder pre-emption rights); and
- enhanced disclosure-based continuing obligations for issuers with the UK as their home Member State.

5.6 We have examined each of the existing super-equivalent Listing Rules and assessed them against the aims of the Listing Review to simplify and modernise the regime, and also against our own regulatory objectives.

5.7 We have also compared each one with the requirements that are likely to be imposed by the FSAP Directives. If the new EU standards satisfy our objectives and the requirements of section 73(1) of FSMA, there will be no need for us to impose additional requirements in the Listing Rules in the future. We must also not overlook the fact that one advantage of being able to impose a common EU standard is simplicity and clarity across the EU. The table at the end of this Chapter highlights the effects of the FSAP Directives on the listing regime.

5.8 We recognise that there is a difficult balancing exercise in deciding whether to retain super-equivalent requirements in the UK. On the one hand, requirements that are too onerous will deter issuers from seeking admission to the Official List and could drive them to other jurisdictions. On the other hand, simply adhering to the European standard could result in the reduction of the UK's status as a high quality regulatory environment.

Eligibility for listing

5.9 The UK is the only EU Member State in the PwC study in which an independent regulator, rather than the exchange (or its subsidiary), has responsibility for imposing additional eligibility criteria and for assessing eligibility for listing.

5.10 If we are to retain eligibility requirements in the Listing Rules over and above those dictated by CARD and the FSAP Directives, we need to ensure that they provide additional investor protection and be satisfied that their removal would damage market confidence.

5.11 We are legally required to retain the minimum eligibility criteria for listing set by CARD. The Listing Rules have the following eligibility requirements, some of which are super-equivalent to the CARD requirements. An issuer must:

- have been in existence for at least three years and earned revenue throughout that period (a three year 'track record');
- have a market capitalisation of £700,000 at listing;
- have unqualified accounts;
- have a clean working capital position;
- have directors and senior management who collectively possess appropriate expertise and experience for the management of the group's business;
- if it is an issuer with a controlling shareholder, be able to demonstrate that it can carry out business independently of such shareholder; and
- have control over a majority of its assets.

5.12 If an issuer is unable to meet these criteria, it may still be admitted to the Official List (under paragraph 3.6A) provided that investors have the necessary information to make an informed judgement. This has resulted in the development of specialist chapters for issuers that do not satisfy all the criteria mentioned above.

5.13 We now consider the detailed eligibility requirements for equity issuers.

Three-year track record

5.14 CARD requires an applicant for listing to have three years' published accounts. The Listing Rules build on the CARD requirement by requiring a three-year revenue-earning track record. We believe that this gives a reliable indication of the maturity of a business.

5.15 The PD will require an issuer to disclose three years' accounts or prepare audited accounts for such shorter period as the issuer has been in operation.

Unqualified accounts

5.16 The Listing Rules require that for a company to be admitted to the Official List, the accounts disclosed in a prospectus must be unqualified and without reference to a matter of fundamental uncertainty. This requirement may be relaxed, provided that we are satisfied that the qualification or reference to a matter of fundamental uncertainty does not relate to a matter of significance to investors.

5.17 If we were to remove our requirements for a three-year track record and unqualified accounts, investors would be responsible for their own assessment of the financial position of an issuer based on the information provided. If investors are unwilling to buy securities offered by an issuer which has disclosed qualified accounts or does not have a three-year track record, market forces should drive issuers only to seek a listing when they can provide an unqualified report and have a revenue-earning track record. We also believe that the removal of these requirements may help address the inaccurate perception that we assess the suitability rather than the eligibility of potential issuers.

Q7: What are your views on moving towards a requirement for three years' accounts, rather than a three-year track record and unqualified accounts?

5.18 The Listing Rules require issuers to have a projected market capitalisation on listing of at least £700,000. This level was set in 1984 and has not been revised since. We have considered the benefits of increasing the level of this requirement.[11] However, we do not feel this requirement either enhances market confidence or adds significantly to investor protection. So we propose to leave it for market operators to decide whether they wish to impose a higher market capitalisation requirement.

Working capital statement

5.19 The PD will require issuers to make a working capital statement in their prospectuses. This would state that the issuer has sufficient working capital and, if not, how it proposes to provide the additional working capital needed. This mirrors the current requirement for issuers which already have securities admitted to the Official List.

5.20 For issuers coming to the Official List for the first time, the Listing Rules require a 'clean' working capital statement. This means the issuer must be satisfied, after due and careful enquiry, that it has sufficient working capital available for at least the next 12 months. The intention is to reassure investors that no major change will be needed in the financing of the business in the short term, at a time when the market does not yet have enough knowledge about the business itself.

5.21 We believe that issuers seeking entry to the Official List should have sufficient working capital for at least their first year of listing. However, we accept that the same amount of due diligence will be conducted by an issuer in preparing a working capital statement whether or not the resulting statement is clean.

11. A higher market capitalisation requirement is set in some other countries. The comparative table in Annex C summarises the requirements of other jurisdictions.

We accept that this due diligence, along with the resulting disclosure by the issuer, as required by the PD, may offer sufficient investor protection without imposing the additional requirement for that statement to be clean.

5.22 If we were to relax our eligibility requirements, issuers without sufficient working capital would be required by the PD to disclose this to investors in their prospectuses. The onus would be on investors to interpret the working capital statement and decide whether they were satisfied with the issuer's proposals for the provision of additional working capital.

Q8: Do you consider that we should relax or maintain our requirement that issuers provide a clean working capital statement?

Expertise and experience of directors and senior management

5.23 We deter inappropriate candidates by requiring individuals to publish credentials proving they have appropriate expertise. If we consider the experience or expertise of directors and senior management to be inadequate, we discuss this with the sponsor.

5.24 The PD will require issuers to provide information in the prospectus about their directors and senior managers that will enable investors to assess an individual's experience, qualifications and levels of compensation, as well as their relationship with the issuer.

5.25 We believe that this directive requirement, together with the enhanced corporate governance standards to be introduced under the revised Combined Code (please see Annex F), can satisfactorily replace the provisions in paragraphs 3.8 and 3.9 of the Listing Rules.

5.26 In addition, we propose in Chapter 8 of this CP that we should have the power to disqualify directors from being directors of listed companies for serious breaches of the Listing Rules. It follows that we would not accept such directors as directors of new applicant issuers during the disqualification period.

Q9: What are your views on whether the Listing Rules' requirement for the disclosure of directors' experience and expertise should be replaced by the provisions in the PD and by enhanced UK corporate governance standards?

Independence

5.27 It is rare that we refuse to list an issuer simply because it fails to satisfy the requirement to be carrying on, as its main activity, an independent business either by itself or through one or more of its subsidiaries. Rather, we look to see how a lack of independence will be managed. We believe that it is more important that an issuer that has a controlling shareholder is capable of carrying on its business independently of that shareholder. There are already separate rules to provide this protection on a continuing basis, and the introduction of overarching principles, as set out in Chapter 4 – in particular Listing Principle 2 relating to systems and controls – will enhance this protection.

5.28 Provided that the proposed Listing Principles are introduced into the listing regime, and that the continuing obligations of issuers offer appropriate protection, we do not believe that this condition for admission to the Official List remains valid. So we propose to remove it.

Control over assets

5.29 We have taken the view that a conventional trading company must control its business and assets to be eligible for listing. This means that if it invests in other companies it must hold mainly majority stakes.

5.30 However, having made exceptions to this requirement, and having provided different rules for investment companies, we now question the value of retaining such a rule. So we propose that, in future, issuers that do not control the majority of their assets should still be regarded as eligible for listing.

Q10: What are your views on whether the requirements for independence and control over the majority of assets held should be repealed?

Summary

5.31 If the EU core standards are accepted, an equity issuer seeking admission to the Official List will be required to meet the minimum eligibility criteria set by CARD (a minimum market capitalisation of £700,000 and three-years' published accounts). They will also have to satisfy the PD disclosure requirements.

5.32 In considering whether we should adopt the EU standards without imposing super-equivalent requirements, we have also considered whether higher standards could be more appropriately imposed by other means. Should we impose higher standards than those set by CARD and the PD or should the

imposition of higher standards be left to exchanges? The UK could follow the European model of leaving differentiation to the exchanges, which could then set different eligibility criteria for their different markets.

Financial Products

5.33 We have consulted recently, in CP164[12], on the rules in relation to investment companies which will be included in the Financial Products section of the new listing sourcebook. We therefore do not intend to consult on this further in this CP, although we intend to review all of the rules, including those relating to financial products, in the next phase of the Listing Review.

Continuing obligations

5.34 As well as considering the case for super-equivalence at the point of admission to the Official List, we have carefully examined our continuing obligations regime. The TD will allow us to impose super-equivalent continuing disclosure obligations on issuers that have the UK as their home Member State, but not on those that have the UK as their host Member State. The TD does not prevent us from imposing non-disclosure based-continuing obligation requirements on all issuers listed in the UK.

5.35 Many of our continuing obligations are super-equivalent to the existing EU requirements and will be similarly so under the FSAP Directives. In some areas we are unique in the additional requirements we impose, for example in reinforcing shareholders' rights by means of class tests.

5.36 Whilst we accept that the FSAP Directives provide a robust baseline standard, we think super-equivalent continuing obligation requirements for the UK, imposed and enforced by an independent regulator, have merit for a number of reasons:

- market confidence is enhanced by high standards and investors are attracted to markets where they feel that these standards are transparent and enforced;
- whilst individual exchanges could in theory set these standards themselves, commercial organisations could find it difficult to enforce such standards if it would affect their profitability. There is also a danger that regulation will become fragmented and inconsistent; and
- we feel that it is more reassuring for investors and issuers for these standards to be set and monitored by an independent regulator.

12. CP 164 Investment Companies (including investment trusts) Proposed changes to the Listing Rules and the Conduct of Business Rules.

5.37 It could be argued that the EU standards are sufficient. However, we also need to take into account that the UK has a different legal and corporate structure to many European countries. For example, we do not have a dual board structure. Therefore some of the checks provided by the continuing obligations regime in the UK, and not by our company law or corporate structure, exist to ensure that protections provided by other means in the EU are still present in the UK.

5.38 Respondents to DP 14 and our Theme Team on this issue expressed strong support for our continuing obligations regime, in particular on class tests and the Model Code. There was also widespread support for more robust standards in areas such as corporate governance. There is more detail on specific continuing obligations in Chapter 9.

Key provisions of the FSAP Directives compared with existing UK requirements

	EU Framework	Existing UK requirements	Comment
Key elegibility requirements for listing	CARD: • projected market capitalisation of at least €1m; and • three-years published accounts (or shorter period if information necessary for investors to arrive at an informed judgement is available).	Chapter 3 Listing Rules • CARD market capitalisation requirement (the UK requirement is for £700,000); and • a three-year track record, rather than simply three-years accounts. An issuer must present a revenue earning track record for the **business** that it is bringing to the Official List, rather than the statutory entity.	These provisions are unchanged by the new directives.
Disclosure on admission	Prospectus Directive: Requirements for equity issuers:- • up to three years accounts, if they exist. If they do not, the issuer must disclose whatever they do have; • a working capital statement (may be qualified); • risk factors; • details of the directors and senior management; • controlling shareholders; and • a 'comply or explain' disclosure of	Chapters 3, 5 & 6 Listing Rules:[13] • disclosure of unqualified accounts; • a clean working capital adequacy statement; • experience and expertise of directors; and • independence from a controlling shareholder.	The PD is maximum harmonisation. The PD requirements will therefore replace the UK requirements for prospectuses. Although the impact on prospectuses for equity issues will be minimal, the PD will alter the structure and composition of prospectuses for securities of specialist issuers/the types of issues

[13] These are largely based on the Listing Particulars Directive provisions of CARD, which are repealed by the PD.

	the issuers' compliance with their home country's corporate governance code.		made under Chapters 17 to 27 of the Listing Rules.
Continuing disclosure Obligations	Transparency Directive • likely to introduce quarterly reporting for all equity issuers; • half-yearly reporting for some debt issuers; • controlling shareholder disclosures; and • shareholder notifications.	Chapters 9, 10, 11 12 and 16 of the Listing Rules • half-yearly reporting by equity issuers; • class test driven disclosures; • controlling shareholder disclosures; • a 'comply or explain' disclosure of UK issuers' compliance with the Combined Code annually, as part of a company's report and accounts.	The FSA will be able to impose super-equivalent disclosure requirements on issuers with the UK as their home Member State. The FSA will be unable to impose super-equivalent disclosure requirements on issuers with the UK as their host Member State. The TD allows all competent authorities to impose non-disclosure continuing obligations on all listed issuers in their jurisdiction.
	Market Abuse Directive • dissemination of price-sensitive information as soon as possible; • disclosure of dealings in own-securities by persons with managerial responsibility; and	• general obligation of disclosure of price-sensitive information; • selective disclosure of price-sensitive information to 'advisers'; and	We will consider whether it is desirable and practical to have Listing Rules that go beyond the provisions of the MAD.

	• selective disclosure to persons owing a duty of confidentiality is permitted.	• Chapter 16 disclosures including Model Code disclosures	
Other (non-disclosure) continuing obligations	Market Abuse Directive • requirement for issuers to maintain 'insider lists'	Chapters 9, 10 and 16 of the Listing Rules • pre-emption rights for existing shareholders; • shareholder approval for certain classified transactions; and • prohibition of dealings in Chapter 16 and the Model Code.	

6 Debt[14]

6.1 The listed debt market in London is divided between specialist and non-specialist securities. Under the Listing Rules, a security that is *bought and traded by a limited number of investors who are particularly knowledgeable in investment matters* is a *specialist security*. Non-specialist securities are products that are aimed at, or are more likely to be bought by, retail investors.

6.2 The specialist debt market is an important sector of London's financial market. Chapter 23 of the Listing Rules was introduced to facilitate the listing of these securities in London and to promote London as a truly international financial centre. A more relaxed listing regime applies to specialist security issuers on the grounds that investors in these securities do not require the level of protection that might be appropriate for less knowledgeable investors.

6.3 In contrast to the specialist debt market, the listed non-specialist debt market in the UK is effectively non-existent. Consequently, the listing regime for non-specialist debt has received very little attention over the years. There are a number of factors that have contributed to make non-specialist debt an unattractive option for an issuer wishing to raise additional finance. The additional eligibility and disclosure requirements over and above European directive requirements have combined with the UK investors' lack of appetite for debt products to ensure that this market has remained insignificant.

6.4 The PD requires uniform disclosure of information for specified security types within prospectuses across the EU. The TD will leave us with the ability to impose ongoing disclosure obligations above core standards, but only for issuers that have the UK as their home Member State. However, we will continue to be able to shape listing eligibility criteria and non-disclosure continuing obligations, and it is in these areas where we seek your views.

6.5 The definition of debt securities in the PD is very narrow. In addition, the scope of the wholesale debt category (that is, debt securities with a per unit

14. We propose to locate the rules relating to GDRs (where the underlying security is an equity) within the equity part of the listing rules sourcebook. Please see paragraph 4.14.

denomination of €50,000 or more) is also narrower than the UK specialist debt security definition. We have considered whether it would be appropriate to narrow the scope of the UK listing regime to be consistent with the PD. Given the size and importance of the specialist debt security market to London, we are of the view that it would not be appropriate to do so. We do not propose to bring in any additional eligibility or continuing obligation criteria that would jeopardise this listed market in the future.

Two-tier structure

6.6 We propose to retain our two-tier structure, based on the security to be listed and the type of investor that would normally buy and trade that security. The Listing Rules differentiate between specialist and non-specialist investors. We propose to retain this distinction as we feel that it is clearly understood in the market.

6.7 In applying this definition, and in determining which criteria would apply, we will be asking two simple questions:

- Who is the security aimed at in the primary market?
- Once listed, who is expected to buy and trade the security?

6.8 We recognise that our two-tier structure does not reflect the distinction drawn in the PD. However, we think it likely that any security that satisfies the PD test will also satisfy the 'specialist security' test. Under this categorisation, securities with a per unit denomination of €50,000 or more (the PD definition) are likely to be a subset of the listed specialist securities regime.

Eligibility proposals

6.9 The Listing Rules require a specialist debt issuer to have a two-year trading record supported by audited accounts covering that period, which must be a period ended not more that 18 months before the date of the prospectus. If the issuer does not have a two-year trading record, a shorter period will be accepted if the issuer has the benefit of an unconditional irrevocable guarantee, or the issue is fully secured. The PD requires two years' accounts or, if the issuer has been in operation for less than two years, it requires audited accounts for that shorter period.

6.10 If we were to remove our requirement for a two-year track record for specialist debt products, investors would be responsible for their own assessment of the financial position of the issuer on the information provided.

6.11 For non-specialist issues, we believe that eligibility criteria offer non-specialist investors a level of protection, which specialist investors do not require.

6.12 Currently, the eligibility and disclosure requirements for non-specialist debt securities reflect in large part the equity requirements. Consequently, non-specialist debt issuers have to produce a three-year trading record supported by unqualified accounts and a clean working capital statement to be eligible. They are also required to produce a working capital statement for each new or further issue once listed regardless of the debt security being listed.

6.13 The requirement to produce a clean working capital statement imposes a significant cost burden and is, we believe, one of the key reasons why issuers are not attracted to this market. As the PD does not require a working capital statement in a prospectus for any debt security, we do not think it appropriate to continue with this eligibility criterion.

6.14 We also propose to remove the requirement that accounts are unqualified. This means that an issuer will need to have a two-year trading record supported by audited accounts, which must be for a period not more than 6 months before the date of the prospectus.

6.15 Otherwise, we propose that the eligibility criteria for non-specialist debt securities should be unchanged.

Authorised advisers

6.16 The Listing Rules require that an authorised adviser be appointed for specialist issues. A sponsor is required for non-specialist issues to advise the issuer on the application of the Listing Rules when submitting documentation for approval by us. In line with our review of the sponsor regime (Chapter 11), we have reviewed what value is added by the appointment of an authorised adviser to a transaction.

6.17 Over the last few years there has been a significant increase in the use of law firms to act as agents on behalf of authorised advisers. Law firms are our principal points of contact on virtually all specialist debt documents. Our dealings with the authorised adviser are essentially limited to the provision of signed letters to support the listing application process. Given the specialist nature of these documents and the need for a significant level of legal input, this has proved to be highly effective for our purposes.

6.18 Accordingly, we propose that authorised advisers should no longer be required on an application for the admission of specialist debt securities to the Official List. This will not affect the way documents are submitted to us, as we anticipate that debt documents will continue largely to be handled by law firms. We believe that this will give an issuer a greater choice when appointing an adviser to act on its behalf in respect of an application to list.

6.19 A table comparing current eligibility requirements with our proposals is in Annex E.

Continuing obligations

6.20 Disclosure-based continuing obligations will largely come within the scope of the TD and the MAD, but we do not envisage any great changes to the current requirements. For further information on the implementation of the TD and the MAD, please see Chapter 9.

Q11: Do you support our proposal not to follow the PD definition of debt securities in relation to eligibility and continuing obligation requirements?

Q12: What are your views on dropping the requirement for a two-year track record for specialist issues?

Q13: What are your views on removing the requirement for a working capital statement and accepting a two-year record in relation to non-specialist debt securities?

Q14: Do you think that the authorised adviser regime should be retained for specialist debt issues?

7 Overseas issuers

The overseas issuer regime

7.1 If an overseas issuer wants its shares to be admitted to the Official List in the UK, it has a choice of applying for either a primary or a secondary listing. Alternatively, if the securities are normally to be bought and traded by a limited number of more sophisticated investors, the issuer can create GDRs and list those under separate rules.[15] We are concerned that the range of listing regimes adds little but complexity. We do not believe that the regulatory distinctions between primary equity listing, secondary equity listing and GDRs are appreciated by investors.

7.2 There are a number of benefits to issuers in having their securities traded in the UK. These include access to capital, transparent and liquid markets and high quality trading services. However, for many issuers the main attraction is the heightened international profile and visibility that being listed in the UK can bring. Companies from emerging markets are particularly attracted to being admitted to the Official List for many reasons, including the high standards of corporate governance that ultimately lower the cost of capital.

7.3 The requirements for overseas issuers seeking a primary listing are very similar to those for UK issuers admitted to the Official List.

7.4 Paragraph 17.4 of the Listing Rules sets out which of the Listing Rules an issuer with a secondary listing must comply with, and which exemptions apply. The issuer need not, for example, comply with the continuing obligations, rules governing substantial transactions, rules on financial information or rules on circulars, purchase of own securities or most of the requirements for directors (including compliance with the Model Code).

15. Only 4% of the Official List are overseas issuers with a primary listing, 14% are secondary listings and 6% are GDRs. The remaining 76% are UK issuers.

Retaining a separate regime for overseas issuers

7.5 We believe that to satisfy our regulatory objectives and, in particular, our objective of formulating and enforcing Listing Rules that *facilitate access to listed markets for a broad range of enterprises*, we should continue to maintain a differentiated regime for overseas issuers. Our objective of providing an appropriate level of protection for investors in listed securities is also important.

7.6 Given the need to maintain a single Official List, we are concerned to ensure that the differentiated regulatory regimes are clearly distinguishable.

7.7 We set out below our proposals for amendments to the listing regime for overseas issuers.

Overseas issuers with a primary listing

7.8 The rules for overseas issuers with a primary listing are similar to those for UK issuers, but with several notable exceptions:

- accounts can be accepted in local GAAP rather than in US, UK GAAP or IAS;
- there is no obligation to provide a 'comply or explain' statement with regard to the Combined Code;
- they are not required to comply with our pre-emption rights requirements; and
- the requirement for information about directors can be adjusted to take account of the local laws of the issuer concerned.

In principle, to preserve the value of a primary listing, we believe that concessions for overseas issuers should be minimised.

Financial reporting

7.9 Whilst UK issuers must report their financials in UK GAAP, we accept other standards for overseas issuers, provided we are satisfied that the financials have been prepared to an appropriate standard to protect the interests of investors. Our initial view is that this concession should not be retained.

7.10 With the introduction of IAS (see Chapter 10), there will be consistency amongst all EU listed issuers that produce consolidated accounts. We believe that it is in the interests of investors for there to be consistency between all equity issuers with primary listings. So, we propose that overseas non-EU issuers should be required to report in either IAS or US GAAP. We are aware

that this proposal may have a significant impact on some issuers and that CESR is proposing differentiated financial reporting requirements for prospectuses.

Corporate governance

7.11 A second area where concessions are made to overseas companies is corporate governance. Unlike UK issuers (see Chapter 8), overseas issuers with primary listings are not required to comply with the provisions of the Combined Code or to explain why it is not appropriate for them to do so. In future, we believe overseas issuers with a primary listing should be required to 'comply or explain' against the Combined Code. This will help investors judge whether the issuer is meeting appropriate standards.

Pre-emption rights

7.12 In addition, overseas issuers are not presently required to comply with the Listing Rules' requirements on pre-emption rights. These rights are based on company law, but are reinforced and extended by the Listing Rules. We believe that pre-emption rights are a fundamental shareholder right associated with holding a primary listed security, and that any issuer with a primary listing should provide its shareholders with this protection. We think overseas issuers with a primary listing should comply with the Listing Rules requirements on pre-emption rights or provide appropriate alternative protections to its shareholders.

Summary

7.13 Our proposals would mean that the level of regulation for overseas primary listed issuers would increase bringing them into line with listed UK issuers.

Q15: Do you agree with our proposals to tighten the rules for overseas issuers with primary listings so that these are brought into line with those applicable to listed UK issuers?

Q16: In particular, do you think overseas issuers with a primary listing should be required to 'comply or explain' against the Combined Code?

Q17: What are your views on whether overseas issuers with a primary listing should be required to report in IAS or US GAAP rather than local GAAP?

Q18: Do you agree that in future overseas issuers with a primary listing should be required to comply with the Listing Rules on pre-emption rights for shareholders or provide alternative protections?

Q19: We also invite comment on whether there are any other areas of company law or practice that you consider are fundamental to shareholder protection.

Overseas issuers with a secondary listing

7.14 Secondary listings are often undertaken to raise the profile of the overseas issuer rather than immediately to raise capital, and are not always especially liquid. However, we believe that the maintenance of a strong overseas listed market in the UK is encompassed by our regulatory objectives. We firmly believe that we should retain a secondary tier of listing.

7.15 Our main concern is that the difference between the level of regulation imposed on issuers with a secondary listing and those with a primary listing is not immediately apparent to investors or potential investors.

7.16 The FSAP Directives will apply to all issuers whose securities are admitted to trading on a regulated market. Therefore issuers with a secondary listing in the UK will in future have to meet slightly higher standards of regulation. The MAD and the TD will oblige issuers to make certain disclosures which they are not required to do at present, for example on any dealings by individuals in managerial positions. We think these standards are sufficient and so do not propose any super-equivalent provisions.

7.17 To make it easier for potential investors to identify which issuers have a primary listing and which have a secondary listing, we are considering indicating the distinction on our website. This should help to clarify the different levels of disclosures and protections that investors can expect from issuers with different listings.

Financial reporting

7.18 Presently, issuers seeking a secondary listing can produce their financial information using local GAAP, as long as they can make certain confirmations about the GAAP used and standards of audit applied. As with non-EU issuers with a primary listing, it would be consistent with the proposal to move to a global GAAP if secondary listed issuers were required to use either IAS or US GAAP. These issuers would also be required to use IAS or US GAAP subsequently for reporting purposes. However, this could mean that some significant issuers are refused access to our markets. We want to know the market's view on the extent to which non-EU issuers with, or seeking, secondary listings should have to conform to European requirements.

Non-UK EU issuers

7.19 Following implementation of the FSAP Directives, we anticipate that non-UK EU issuers, with a prospectus approved by their home Member State competent authority, that comply with the basic CARD requirements for listing will be able to obtain a secondary listing in the UK.

7.20 We also believe that it should be possible for non-UK EU issuers to opt for a primary listing in the UK if they want to do so. Issuers would simply have to be prepared to subject themselves to the more stringent regime for primary listed issuers.

Q20: Do you agree with our proposal to retain secondary listings?

Q21: Do you believe that the argument for comparability of data is sufficiently strong for us to introduce a requirement for equity issuers with a secondary listing to use either IAS or US GAAP?

Q22: Do you agree with our proposals for non-UK EU issuers?

8 Corporate governance

Introduction

8.1 As part of the Listing Review, we examined the role we play in maintaining corporate governance standards. In DP14 we highlighted the following issues:

- the interaction of the Combined Code with the Listing Rules;
- directors' conflicts of interest, which can arise when directors serve on several different boards; and
- the value of the Model Code in the new regulatory framework, which includes the FSA's Code of Market Conduct and the MAD. (Our proposals on the Model Code are in Chapter 9).

8.2 Our proposals need to be considered within the wider international context. The issue of corporate governance and best practice is being discussed within the EU and there have also been developments in the USA post-Enron.

8.3 We set out the relevant developments in Annex F.

Role of the FSA in setting standards of corporate governance

8.4 The DTI's White Paper *Modernising Company Law* proposed that a new body, the Standards Board, be established. It was proposed that this body could be given responsibility for keeping the Combined Code under review and take on enforcement powers via the proposed Reporting Review Panel.

8.5 The Government has not indicated a timetable for the introduction of legislation to create a Standards Board. Until the status of the role of the Standards Board is determined, we will continue to require all listed companies to follow the Combined Code's 'comply or explain' approach to corporate governance, since we believe this is the most appropriate way to encourage best practice.

The 'comply or explain' approach

8.6 The Listing Rules require each issuer to explain to its shareholders how it has implemented the Combined Code's principles and why compliance with particular aspects of the Combined Code is not appropriate for them. Our work with the Theme Teams and responses to DP14 have shown that there is considerable support for the 'comply or explain' approach to ensure good corporate governance practice within companies and meaningful reporting to investors. In addition, this approach is felt to be sufficiently flexible to allow for the different characteristics, circumstances and needs of different types of company – in particular SMEs.

8.7 The PD requires issuers to provide a 'comply or explain' statement in prospectuses against their home corporate governance code. This means that the retention of the requirement to provide such a statement annually will not significantly increase the regulatory burden on issuers above the European requirement.

Role taken by auditors in relation to the Combined Code

8.8 Auditors currently sign off an issuer's statement of compliance/explanation of non-compliance in relation to only seven of the provisions of the Combined Code.

8.9 In the context of the revision of the Combined Code and the related discussions regarding its implementation, it is recognised that it would be appropriate to review this position and we understand that the APB is considering the approach to be taken. We are keen to ensure that investors are clear as to which provisions are subject to auditor review and which are not. The necessary adjustments to the Listing Rules will be made once the position is clarified.

Corporate governance provisions in the Listing Rules

8.10 Although discussions on corporate governance tend to focus on the Combined Code, the listing regime contains a number of other rules that have significant corporate governance effects. These cover such areas as:

- ensuring that there is appropriate expertise and experience within senior management;
- arrangements to ensure that directors are free of conflicts of interest between duties to their companies and private interests;

- rules relating to the ability of companies to act independently when they have controlling shareholders; and
- rules relating to directors' dealings set out in the Model Code (see Chapter 9).

8.11 To emphasise the importance we place on good corporate governance and to help users of the Listing Rules understand what requirements the rules place on them, we propose to gather our existing requirements together into a single chapter of the Listing Rules.

Conflicts of interest

8.12 Paragraph 3.9 of the Listing Rules requires companies applying for listing to ensure that each director is free from conflicts of interest between his or her duties to the company and his or her private interests or other duties, unless the company can demonstrate that arrangements are in place to manage any conflicts. This is not a continuing obligation and the Listing Rules do not provide any guidance on how to deal with such conflicts.

8.13 Concern that conflicts of interest may arise when directors serve on several different boards was highlighted in DP14. Some respondents felt that the demands of such responsibilities can affect directors' ability to act in the best interests of the company concerned.

8.14 The PD includes a requirement similar to the Listing Rules. While this deals with the issue of actual conflicts of interest on admission to trading it does not deal with:

- conflicts of interest which arise after the initial admission to trading; or
- an issuer's responsibility for setting and applying clear guidelines for managing conflicts of interest.

8.15 We think that some concerns over the management of conflicts will be addressed by the Listing Principles set out earlier in Chapter 4 – particularly Listing Principles 1 and 2. Listed companies will be required to put appropriate procedures in place for dealing with conflicts, should they arise. This will provide both directors and shareholders with clarity and certainty whilst avoiding an overly rigid or prescriptive approach.

8.16 However, given that paragraph 3.9 is not a continuing obligation, we would also need to couple Listing Principles 1 and 2 with a subsidiary rule. This rule would impose a continuing obligation on an issuer to ensure that each of its directors is free of conflicts between duties owed to it and private interests and other duties, unless it can demonstrate that arrangements are in place to avoid detriment to its interests.

Q23: Do you agree that the introduction of Listing Principles 1 and 2 (coupled with a subsidiary rule) will provide sufficient investor protection or would you like to see more prescriptive rules or guidance as to what systems and procedures we consider appropriate?

Disqualification of directors as directors of listed companies

8.17 We can fine or publicly censure a director or former director of a listed issuer, where that individual was knowingly involved in a breach by that issuer of the Listing Rules. We believe that in serious cases it would be helpful for us to be able to disqualify directors from being directors of listed companies for such breaches of the Listing Rules.[16]

8.18 The DTI has the power to apply to court to disqualify directors, where the court is satisfied that a director's conduct makes him unfit to be part of a company's management. This can include matters such as misfeasance, breach of fiduciary duty and responsibility for the causes of insolvency. The OFT and a number of public utilities authorities have similar powers to seek to have directors disqualified, or to accept an undertaking that a person will not act as a director.

8.19 In relation to authorised firms, we already have a similar power to withdraw approval or to obtain a prohibition order where a person is not fit and proper to work in a particular role in the financial services industry or at all. Similar considerations apply where a director's conduct is so inappropriate that he is no longer fit to be the director of a listed company.

8.20 None of these powers apply to breaches of the Listing Rules. We believe that the power for the FSA to disqualify could be appropriate where a director has been involved in a serious breach of the Listing Rules, making him unfit to be involved in the management of a listed company.[17] This would enable us, having carried out the investigation, to bring disqualification proceedings ourselves in appropriate cases. The options for the disqualification proceedings could include:

- bringing the case through the Regulatory Decisions Committee/tribunal process (as with prohibition orders);
- the FSA applying directly to court for a disqualification order (similar to the DTI's disqualification power); or
- by the case being referred to the DTI, to apply to court for disqualification under their powers.

16 We also note that the Winter Report recommended greater use of the power to disqualify directors, and considered that it was a powerful and effective deterrent. A synopsis of the Winter Report is provided in Annex F.

17 Whether the power to disqualify a director from being a director of a listed company will extend to directors of non-UK companies will depend on a number of factors including developments in EU law.

8.21 If the FSA is given disqualification powers similar to the DTI's powers or if cases are brought through the DTI, it is arguable that the powers should extend to the ability to disqualify a person from being a director of any company, not just a listed company.

Q24: Would you favour our having the power to disqualify a director of a listed company, where he has been involved in a serious breach of the Listing Rules? Do you have any views on whether this power should be exercised through the tribunal process or through the court?

The Operating and Financial Review (OFR)

8.22 In the White Paper, *Modernising Company Law,* the Government proposed to make it mandatory for all economically significant companies to produce an OFR as part of their annual financial statements. It is currently best practice for all listed companies to do this. The OFR should cover a range of both financial and non-financial matters that are relevant to investors.

8.23 The Government is still considering the responses to the White Paper but has announced that the requirement for an OFR will be implemented using existing powers in the Companies Act 1985. It will publish a draft regulation on the OFR for consultation in due course.

8.24 We do not regulate the content of OFRs, nor do we (or would we) have responsibility for enforcement. We do not intend to introduce a Listing Rule requiring issuers to have an OFR. However, we support the DTI's intention to make the OFR mandatory and believe that all listed companies should adopt it.

Social, Environmental and Ethical (SEE) reporting

8.25 There are two overriding obligations in the Listing Rules that are relevant to SEE reporting:

- a prospectus must contain all information investors and their advisers reasonably require and expect to find for the purposes of making an informed assessment of an issuer; and
- all price-sensitive information must be released to the market without delay.

These requirements apply to all matters that may affect an issuer's business, including SEE matters.

8.26 We have received a substantial number of comments from market participants, investor groups and environmental interest groups on this issue. These indicate that there is a demand for us to require more SEE reporting.

8.27 This has led to calls for us to consider incorporating the Association of British Insurers Disclosure Guidelines on Social Responsibility into the Listing Rules in a similar way to that of the Combined Code i.e. to extend the 'comply or explain' requirement to these guidelines. We believe that, as a matter of best practice, listed issuers should comply with these guidelines, but it is not appropriate for us to require compliance under the Listing Rules.

8.28 We recognise that SEE information is desirable for investors and that it increases transparency. However, this is already provided for in the Company Law White Paper, which states that the OFR should include both financial and non-financial information. Further, it states that where relevant to an assessment of the company's business, the OFR shall *include information on the company's impact on the environment and the wider community.*[18]

8.29 The PD requires equity issuers to disclose in a prospectus *a description of any environmental issues that may affect the issuer's utilisation of tangible fixed assets*. To ensure these risks are adequately explained in documents submitted to us we intend to seek advice from the Environment Agency as and when appropriate.

Codes of conduct

8.30 In discussing social and ethical issues, we have also been asked to consider the place of codes of conduct that prescribe standards of ethical behaviour expected from issuers and their employees.

8.31 Research has shown that the majority of the larger listed issuers have codes of conduct, although these are not always published on their websites.

8.32 In the US, as a consequence of the Sarbanes Oxley Act 2002, the NYSE listing rules now state that listed issuers must publish codes of business conduct and ethics.

8.33 While we support issuers adopting codes of conduct, particularly those that detail how employees should deal with potential conflicts of interest, we do not consider it appropriate for the Listing Rules to make them a mandatory requirement. Codes of conduct in general cover issues that are outside the remit of the Listing Rules. However, we believe it would be appropriate for the FRC (if it retains responsibility for the Combined Code) to consider in any future development of the Combined Code, whether issuers should be required to publish and maintain a code of conduct as a matter of good corporate governance.

18 Modernising Company Law, page 38.

Difficulties arising from the split between legal and beneficial ownership of securities

8.34 Specialist institutions, such as custodians, depositories and nominees, play a key role in the efficient holding, transfer and recording of shares. However, their role as intermediaries has resulted in a growing separation between the legal ownership of shares (the name on the register) and the beneficial owner (the 'real' owner). This may result in difficulties such as shareholder communications (notices of AGMs and similar documents) being sent to the legal holders of shares but not to the beneficial holders. This means that the beneficial owners may not be able to exercise their full shareholder rights and this can undermine good corporate governance.

8.35 We have been asked to consider this issue in the context of corporate governance in the Listing Review. Whilst we recognise that this is of importance to beneficial owners of shares, this is a matter that goes wider than listed companies. We do not intend to introduce new rules imposing additional obligations on issuers in this area. The DTI are considering this issue as part of the reform of company law. In parallel, there are signs that the increasing use of new technology may be starting to provide a market driven solution without the need for legislative intervention.

9 Continuing obligations

Introduction

9.1 We recognise that many of the Listing Rules that impose continuing obligations on issuers will be super-equivalent to the MAD and the TD. The TD will allow us to continue to impose super-equivalent disclosure obligations on issuers with the UK as their home Member State, but not on issuers for whom the UK is a host Member State. The MAD is not a maximum harmonisation directive and is not expected to be implemented in the UK until October 2004. It is therefore too early to say what super-equivalent provisions will be allowed. The FSA will be consulting on the implementation of the MAD in the second quarter of 2004.

9.2 There is further information on the TD and the MAD in Chapter 3.

9.3 In this Chapter, we consider existing continuing obligation requirements and highlight those super-equivalent rules we would like to keep, should this be possible going forward. There is a brief outline of our proposals on other continuing obligations requirements in Annex G. If you have any comments on the issues raised in Annex G, we would like to hear from you.

Class test regime

9.4 The class test regime in Chapter 10 of the Listing Rules:

- gives shareholders the opportunity to exercise an active influence over an issuer when it proposes entering into a transaction that could change a shareholder's reasonable expectation of the issuer; and
- ensures that appropriate disclosure is made to the market when transactions are undertaken.

9.5 The UK is the only European jurisdiction that enhances shareholders' rights by requiring issuers to put proposed major transactions and transactions with related parties (Class 1 transactions) to a shareholder vote.

9.6 Nevertheless, there are some aspects of the Class 1 regime that we wish to examine further to ensure that our rules continue to work in the best interests of the market.

Shareholder votes on Class 1 transactions and the costs of compliance

9.7 A minority of respondents to DP14 questioned the need for a shareholder vote on a Class 1 transaction. They pointed to the relatively low level of shareholder participation in votes on Class 1 transactions and the fact that few transactions that are put to shareholder vote are rejected. This is likely to be the result of:

- the fact that a proposal will be put to a vote is an effective check on ill-considered transactions;
- shareholders trusting directors' decisions; and/or
- passivity on the part of investors.

9.8 This apparent lack of shareholder involvement makes the costs of compliance with the regime more keenly felt by issuers. The costs include:

- producing a Class 1 circular and holding the general meeting; and
- the competitive disadvantage caused by uncertainty and delay to the transaction while shareholder approval is being sought.

9.9 Possible amendments to the regime include:

- dropping the requirement for a shareholder vote in relation to individual transactions, whilst retaining the requirement to publish a Class 1 circular;
- allowing companies to seek shareholder approval in advance for all transactions within a clearly defined strategy for a period of 12 months; or
- allowing individual shareholders to give the directors a discretion to exercise voting powers on their behalf for a period of 12 months.[19]

These could be of particular benefit to SMEs and companies with a concentrated shareholder base. They could allow shareholders to reward well run companies with clear strategies by giving the board greater flexibility in the way that it executes strategy.

19 The last two alternatives would have company law and/or Takeover Code implications that may make them impractical to implement.

9.10 However, the Listing Review has highlighted the importance of a shareholder vote on major transactions. The threat that shareholders could vote down undesired transactions, or put them to intense public scrutiny, forces companies to examine all such proposals in terms of their impact on shareholders.

9.11 We therefore propose keeping a requirement for a shareholder vote on each Class 1 transaction. In addition, we think there are benefits in maintaining the information flow to shareholders and to potential investors that Class 1 circulars provide. We do not think that the costs of producing a circular and holding a general meeting outweigh these benefits.

Q25: Do you agree that we should maintain a requirement for shareholder approval of Class 1 transactions?

Thresholds and criteria for Class 1 transactions

9.12 The thresholds and criteria for Class 1 transactions exist to catch transactions that could change a shareholder's reasonable expectations of the issuer in which they have invested.

9.13 We believe that it is possible for issuers to enter into transactions that can change a shareholder's understanding of an issuer without needing to seek shareholder approval. This means that the class test regime no longer fully meets its purpose.

9.14 We consider those transactions which should be caught are those that are:

- outside the ordinary course of business; and
- change a shareholder's economic interest in the assets and/or liabilities of the issuer. This change in economic interest is regardless of whether the assets or liabilities are recognised on the issuer's balance sheet.[20]

9.15 This change clarifies our position in relation to joint ventures. We treat entering into a joint venture as:

- a disposal of a share of the assets and liabilities put into the joint venture; and
- the acquisition of a share of the assets and liabilities put into the joint venture by the joint venture partner.

9.16 In addition, such an approach would result in 'DLC combinations' being classifiable. By 'DLC combinations' we mean structures that create a merger through a series of contractual arrangements between two listed companies.

20 For the purposes of this Chapter an asset means the right or other access to the future economic benefits controlled by the entity as a result of past transactions or events. Liability means the obligations of an entity to transfer economic benefits as a result of past transactions or events.

The agreements render the 'combined operation' as one economic entity with a joint economic interest in assets of the combined operation and with two shareholder bases, even though there is generally no change in legal ownership of the assets. These arrangements are commonly referred to as 'dual listed company' structures.[21] We already treat DLCs as classifiable, although to date this has been done only on an individual guidance basis.

9.17 It is important that our approach does not capture transactions that should not be classifiable at all. Securitisations and other structured finance operations have the potential to fall within our approach. We are keen not to limit the options available to issuers to raise finance. We therefore do not propose to include securitisations in which the flow of funds from the revenue generating assets is expected to match the cost of servicing the debt instruments backed by those assets. So long as the assets generate the relevant revenue, the assets are not at risk. It is only in the event of default that the assets become at risk, which is the same as any secured debt finance.

9.18 The only securitisations that should be subject to classification are those structures in which all the profits generated by the assets are maintained within the structure for distribution to bondholders or security holders, whether or not an event of default has occurred. This structure falls within our approach as shareholders are losing an economic interest in the assets.

9.19 Due to the constantly developing nature of the securitisation market, we do not propose to draft rules for any specific structure, as this would only create problems as the market evolves. We will create general principles to capture securitisation transactions where the entire economic interest in the assets is being transferred to a third party as described above. We anticipate that we will need to issue guidance on the operation of the general principles.

9.20 Having applied the above considerations to decide whether the transaction is classifiable, we would then apply quantitative criteria similar to those currently used in Chapter 10 of the Listing Rules.

Q26: Do you support our proposed extension to the Class 1 regime? How do you think securitisations should be treated under any new regime? Are there are any other kinds of transactions that you consider should be caught or not caught by this new approach?

Q27: We welcome views on the quantitative criteria that should be applied to classifiable transactions.

21 This should not be confused with a company that has a dual listing, which is where one company is listed in two jurisdictions.

Cancellation of Listing

9.21 An issuer wishing to cancel the listing of its equity securities must notify a RIS and send a circular to the holders of those equity securities, giving at least 20 business days' notice of the intended cancellation. The circular is for information only and no shareholder vote is required.

9.22 We are concerned that the present regime does not provide adequate protection to minority shareholders, who may be forced to sell their shares at a price they consider to be unfairly low, or to hold unlisted securities. This is of particular concern where there has been no compulsory acquisition of the minority's shares or where there has been no formal offer. We are proposing to require shareholder approval as a general rule before delisting.

9.23 While minority shareholders need adequate protection, they must not dictate an issuer's strategy by wielding disproportionate power to their economic interest. We are also conscious of the additional costs that such a change could impose on issuers, including the ongoing compliance costs of maintaining a listing if its shareholders do not approve the delisting.

9.24 We propose to introduce a requirement that any issuer that wants to delist voluntarily must first obtain the prior approval of 75% of its shareholders in general meeting.

9.25 In offer situations where an offeror has made clear its intention to delist the target in the offer document, and the offeror receives acceptances from 75% of shareholders, we would not require an additional approval to delist.

9.26 A successful scheme of arrangement may also lead to cancellation of listing. In such cases, where shareholder approval and the sanction of the court have been obtained, we do not think it would be appropriate to obtain additional shareholder approval for the delisting.

9.27 We will also not require a shareholder vote to delist in circumstances where the issuer is moving to another quoted market. Minority investors in these circumstances will still have a market for their shares.

Q28: What are your views on our proposals to strengthen shareholders' rights where a company intends to cancel its listing?

The dissemination of price-sensitive information (PSI)

Introduction

9.28 Chapter 9 of the Listing Rules sets out the general obligations on issuers to disclose information to the market, their shareholders and potential shareholders. In our pre-consultation there was strong support for the dissemination of PSI regime.

9.29 In future the MAD and the TD will govern the disclosure of PSI. The disclosure of PSI will also be informed by Listing Principles 2 and 4. In particular, Listing Principle 2 will require issuers to have systems and controls in place to ensure the prompt release of PSI.

9.30 The MAD will result in paragraphs 9.1 and 9.2 of the Listing Rules (the key rules relating to the dissemination of PSI) being replaced. Under the MAD, inside information means:

information of a precise nature which has not been made public, relating directly or indirectly, to one or more issuers of financial instruments or one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

9.31 Article 6 of the MAD provides that:

- issuers of financial instruments must make public as soon as possible inside information which directly concerns them;
- an issuer may *under his own responsibility* delay the public disclosure of inside information to protect *his legitimate interests* provided such omission would not be likely to mislead the public and it ensures the confidentiality of the information; and
- when an issuer discloses inside information to a third party it is not required to make that information public if the person receiving the information owes a duty of confidentiality.

9.32 Below we highlight the main differences between the MAD and the Listing Rules.

Information to be announced

9.33 The Listing Rules (paragraphs 9.1 and 9.2) require an issuer to disclose PSI. PSI is defined as information that is not public knowledge and which may lead to substantial movement in the price of an issuer's listed securities. The criminal insider dealing provisions of the CJA use a very similar definition for inside information. The market abuse regime in FSMA deals with the misuse of information that is not generally available to those using the market.

The MAD uses a single definition, similar to the existing concept of PSI in the Listing Rules and the CJA, which triggers the restrictions on the use of such information and disclosure obligations for issuers. We are considering the potential impact of this change and how we could adapt our rules without undue disruption to the UK market.

Timing of announcements

9.34 The Listing Rules require issuers to announce all PSI *without delay*. The MAD requires an issuer to announce all inside information *as soon as possible*. Further guidance on interpretation should be given as part of the Level 2 and 3 implementation of the MAD. We believe that the change of definition will have little impact on current practice as the body of knowledge in the market regarding the announcement of PSI will be applicable to the MAD definition.

Delays in the disclosure of PSI

9.35 The Listing Rules limit the situations where an issuer can delay announcing PSI to:

- impending developments;
- matters in the course of negotiation; or
- where the FSA grants derogation from the requirement to announce.

9.36 Under the MAD, an issuer may *under his own responsibility* delay disclosure of inside information, provided that such omission would not be likely to mislead the public. An issuer may also disclose inside information to a person who owes a duty of confidentiality.

9.37 The practical effect of the MAD in this area is not yet clear. We will issue further guidance as part of the MAD implementation in due course.

Selective disclosure

9.38 At present, when an issuer delays disclosure of impending developments or matters in the course of negotiation, it may selectively disclose this information to advisers. We are aware that, in general, current market practice is to disclose information to a wider group of persons than those who could be classed as 'advisers', for instance, ratings agencies and analysts. This practice is strictly prohibited by the Listing Rules.

9.39 As the MAD permits selective disclosure to persons owing a duty of confidentiality, its scope is different from that provided by the Listing Rules. In light of the differences between the Listing Rules and the MAD, we will provide additional guidance when the MAD implementation measures have been finalised.

Share buy-backs

9.40 The MAD also impacts share buy-backs. Under the MAD, market manipulation is defined as including:

transactions or orders to trade:

- *which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or*
- *which secure … the price of one or several financial instruments at an abnormal or artificial level,*

unless the person who entered into the transactions or orders to trade establishes that his reasons for doing so are legitimate and that those actions conform to accepted market practices on the regulated market concerned.

9.41 There is potential for share buy-backs to be considered abusive, either through the manipulation of the share price or through the use of inside information when undertaking buy-back transactions. Certain share buy-backs are safe-harboured in the MAD, but no safe harbours for buy-backs of debt are included.

9.42 We envisage that rules will be required for:

- the buy-back of debt;
- the conduct of share buy-backs where these are made outside the provisions of the safe harbours; and
- determining what amounts to an *accepted market practice*.

As there is not yet sufficient clarity at the European level, we are unable to put forward specific proposals for any amendments to the Listing Rules. This area will be considered in our consultation on the implementation of the MAD.

The Model Code

Introduction

9.43 The Model Code restricts the freedom of directors and certain employees of listed issuers (and those persons connected to them) to deal in their company's securities. Dealing restrictions are also imposed by statute (the CJA and FSMA) and the general law. The Model Code imposes restrictions beyond those laid down by the law, the aim being to ensure that directors do not abuse, and do not place themselves under suspicion of abusing, PSI that they may have or are thought to have. In other words, it seeks to ensure that directors cannot even be suspected of insider dealing; it deals with perception, whereas other regimes (the MAD, COMC and CJA) all deal with actions based on actual knowledge.

9.44 Participants at our roundtable meeting examining the implications of the MAD for the Model Code generally supported the Model Code because of its unique focus on perception rather than on action. The roundtable provided an opportunity to reassess the Model Code as a whole and the following issues were considered:

- the difficulties caused by the definition of *relevant employees* including, identifying those employees particularly for large international issuers and the fact that it captures employees far down the managerial hierarchy;
- that clearance to deal has to be given by a designated director, rather than by the company secretary who may be in a better position to consider dealing requests;
- that where dealing is permitted in exceptional circumstances, the announcement obligation could alert the market to the fact that the issuer is in a prohibited period;
- the anomaly that arises from the requirement for a director to advise all connected persons and investment managers that they cannot deal. It has been suggested that by notifying an investment manager of a prohibited period the director is in fact disseminating PSI;
- the need to expand and clarify the exceptions to the definition of dealing;
- the need for further guidance in applying the Model Code, particularly in relation to employee share option schemes; and
- the need for the Model Code not to duplicate or be more unduly onerous than the MAD provisions.

Summary

9.45 The Model Code is unique in addressing concerns over market abuse and insider dealing from the angle of perception, rather than tackling actual dealings. Therefore whilst the MAD will have an impact on the UK regulatory framework, of which the Model Code is part, it will not in itself negate the role played by the Model Code. The focus of our review will be on streamlining the Model Code, on addressing the issues already raised and any further issues that the introduction of the MAD will give rise to. We have recently amended the Model Code to cover certain synthetic instruments, specifically spreadbets and other contracts for differences referenced to movements in the price of an issuer's securities.

Q29: What issues would you like us to address in streamlining the Model Code?

Q30: What are your views on giving the company secretary the role of giving clearance/approval to deal?

10 Financial Information

Introduction

10.1 There has been considerable discussion amongst various organisations about financial information since DP14 was published. We have contributed to those reviews and we do not intend to duplicate ground already covered elsewhere. For example, we will not consult on issues related to auditor independence as the Co-ordinating Group on Audit and Accounting Issues and Sir Robert Smith's report covered these issues. With regard to financial information, we acknowledge the work of both the ICAEW and the APB and strongly support the ASB's work on the OFR. In this Chapter, we outline some proposals to simplify the rules for financial information.

Key proposals

10.2 Financial information is an area where the market itself is an effective regulator: issuers are swiftly punished by movements in their share price for ill-thought out or ill-presented disclosures of financial information. It is likely that the threat of market reaction, as much as the requirements of regulation, dissuade issuers from releasing misleading or inaccurate financial information.

10.3 We want to provide a framework in which listed issuers are encouraged to publish accurate and timely financial information. We wish to discourage issuers from holding back information which could be of interest to investors for fear of the adverse effect this could have on their share price, either at the time of disclosure or in the future.

10.4 In addition to any specific rules, issuers will at all times have to comply with Listing Principle 4 (see Chapter 4). This requires issuers to communicate information to investors, as required under the Listing Rules, in a clear and timely manner, and take reasonable care to ensure that such information is not misleading, false or deceptive.

10.5 We do not want to move towards a more prescriptive regime. We believe that there is a risk that more prescription encourages issuers to follow the letter of the rules rather than their spirit. Our aim is to avoid a 'tick-the-box' approach while at the same time ensuring that issuers feel secure disclosing information to the market.

10.6 We therefore propose introducing two simple overriding concepts that we will apply to all disclosures of financial information by issuers, other than pro forma information:

- if issuers disclose financial information, the source of the information should be made clear in an accompanying statement. In the case of information derived from sources other than audited accounts, this statement should also include an indication that the information disclosed is unaudited; and
- all financial information should be capable of subsequent comparison to actual published results. Consequently, if unaudited information is disclosed, issuers must ensure that investors are subsequently able to compare such disclosure to equivalent information published in quarterly, interim and annual accounts.

10.7 An issuer will only be obliged to disclose comparable information in subsequent audited annual accounts to the extent that they have chosen to publish unaudited information previously. Issuers will not be required to make similar unaudited disclosures in subsequent years as a result of choosing to do so once: it will be within the issuer's discretion each year.

Q31: Do you agree with our proposal enabling issuers to publish additional information, provided that the source of such information is fully disclosed and it is made clear whether or not such information is unaudited and that there is subsequent comparability?

Financial information outside an accountant's report or comparative table

10.8 In January 2000, we repealed paragraph 12.36 of the Listing Rules which prevented the disclosure of any financial information in documents issued by listed companies which was not taken from published accounts, a comparative table or an accountant's report. This requirement was replaced by paragraph 2.20 of the Listing Rules which allows the disclosure of any financial information in prospectuses or Class 1 circulars, so long as the issuer can confirm such information has been taken from its own accounting records after due and careful enquiry.

10.9 This relaxation of the original rule means that disclosure of additional financial information under paragraph 2.20 is restricted to information on an existing issuer or its subsidiaries. It is based on a private confirmation process between the issuer and ourselves, which is not transparent to investors. Our consultation to date has shown that many market participants believe that paragraph 2.20 prevents disclosure of information that investors might find useful, for example post year-end trading information on an acquisition target.

10.10 We propose to remove paragraph 2.20. We believe that it will be effectively replaced by the introduction of the two key overriding concepts in paragraph 10.6 above.

Q32: Do you agree that the introduction of the two overriding concepts will adequately replace paragraph 2.20? If not, what do you think the current requirements add and what alternative might be introduced?

Disclosure of non-statutory figures

10.11 Many issuers choose to disclose non-statutory figures in announcements alongside figures that have been taken from audited sources. Issuers choose to do this because they feel that statutory figures can be considerably affected by accounting adjustments that do not relate directly to annual operating performance, such as goodwill amortisation. Issuers may be attempting to provide investors with figures in a form that the issuer believes investors (or analysts) are already using (e.g. EBITDA[22]). Alternatively, issuers may believe such figures provide a fairer picture of underlying performance than the statutory figures do because they show 'normalised' profits.

10.12 We believe that issuers should be free, within reason, to release whatever financial information they believe is appropriate, provided that they comply with the two overriding concepts of sourcing and comparability, and provided that investors are given enough information to assess adequately the value of the financial information they are reading.

10.13 We believe that where issuers do include non-statutory figures in announcements such figures must be presented in a balanced fashion. By 'balanced' we mean that issuers will be expected not to give undue prominence to the non-statutory figures and not to be selective when choosing which numbers are presented, so that the presentation of information should not be designed to give an overly favourable impression to the reader. A 'balanced' presentation should also mean that issuers provide investors with all necessary information to understand the context and the relevance of such figures, including reconciliation with the statutory number provided.

22 Earnings before interest, tax, depreciation and amortisation.

Q33: Do you agree that companies should be allowed to disclose non-statutory figures alongside statutory ones, or do you think such disclosures should only be allowed if the disclosures are audited?

Working capital

10.14 In DP14 we asked for views on the working capital statement and whether there was scope to relax the requirements, or whether we should abolish the working capital requirement altogether. The overwhelming response supported maintaining a working capital requirement. Our proposals are in Chapter 5.

Pro forma financial information

10.15 Responses to DP14 indicated that market participants are largely satisfied with the way in which the Listing Rules treat pro forma financial information, at least so far as this is defined in the Listing Rules. CESR has consulted on the treatment of pro forma financial information and its proposals are similar to the Listing Rules requirements.

10.16 We do not see any value in consulting further on this subject at this stage.

Prospective financial information (PFI)

10.17 Present reporting requirements ensure that any issuer wishing to make profit forecasts or estimates (prospective financial information) must carry out appropriate due diligence before doing so.

10.18 The reporting process does not and could never provide independent verification of the accuracy of forecasts. Instead it focuses on due process rather than accuracy. We feel this is not always understood by investors and leads to more reliance being placed on the reporting process than is actually warranted.

10.19 The requirements are felt by some to deter many issuers from releasing useful PFI because of the costs and inconvenience associated with the reporting process.

10.20 The PD requires that PFI disclosed in a prospectus is reported on. Where the information is not contained in a prospectus, we propose abolishing the reporting requirement on PFI, including forecasts and estimates.

10.21 The rationale behind this is as follows:

- the removal of reporting requirements from the Listing Rules should ensure that there is no obstacle to issuers making statements representing PFI over and above the general duty of care which would exist in any event;
- the removal of the reporting requirement should improve the flow, and above all the speed, of release of information from issuers to their shareholders, ensuring investors are acting on the most up to date information available;
- there is a general market appetite for the release of such information;
- increasingly PFI either underlies, or its disclosure is required by, accounting standards both in the UK and internationally; and
- a removal of the Listing Rules requirements should not be accompanied by a significant rise in the release of ill-considered forecasts because of the existence of alternative safeguards. These include market self-regulation, the provisions of the MAD and Listing Principle 4.

10.22 We want to encourage the development of a procedure for producing PFI and we will issue guidance on the minimum characteristics we expect published PFI to have. This guidance could then be updated, adapted and appropriately supplemented by developments in the professional arena. The guidance will cover a wider range of PFI than the 'forecasts and estimates' dealt with in the Listing Rules.

10.23 Where possible, we want PFI to be directly comparable to subsequent results. We therefore propose to keep a requirement that all significant differences between PFI and actual results are explained to shareholders when audited accounts are published. This would be consistent with the introduction of the overriding concept of comparability set out in paragraph 10.6 above.

10.24 We also propose to introduce a requirement that issuers update investors on their progress towards a published forecast. The updates could take the form of reporting by exception, but issuers would remain free to clarify or to issue revised PFI if they felt this to be necessary. We do not intend to prevent positive commentary on progress made against published PFI.

10.25 We do not believe that any of these steps represents onerous additional requirements. PFI should be released in a form that is familiar to shareholders and it is in issuers' interests to keep the market informed of progress (or lack of progress) towards published PFI at the earliest possible opportunity. In any case, responsible issuers will already be producing the required information to satisfy this requirement as part of their existing reporting regime.

10.26 The ICAEW has published useful guidance, to which we contributed, for use by directors on the preparation of PFI. We hope that the accounting profession will be encouraged to develop further guidance on compiling, and giving comfort on, such information if the 'compilation report' is removed.

Q34: Do you think that the requirement to report on forecasts should be removed where the information is not disclosed in a prospectus?

Historical financial information

10.27 The concept that underpins Chapter 12 of the Listing Rules is that a track record presented in public company documentation, whether for an issuer or for the target of an acquisition, should be in a reliable and consistent format. 'Reliable' has traditionally equated to audited. Chapter 12 specifies two ways of presenting financial information that satisfies this underlying principle: a comparative table or an accountant's report.

10.28 These two formats have evolved from the restrictions company law places on the information an audit report can or must cover, and the uses to which an audit report may be put. The formats also build on, and demonstrate compliance with, some of the eligibility for listing criteria in Chapter 5.

10.29 The proposals in the PD may mean that, although the content of financial information to be presented on flotation may be predetermined, the format of that presentation might not. Even if the PD does suggest particular formats for the presentation of financial information, it is unlikely these will be restricted to the two presently used in the UK.

10.30 Other than the practical impact of company law, we do not believe there is an overwhelming argument supporting the requirement to present financial information in any particular way, so long as the underlying principles of reliability, relevance and consistency are satisfied.

10.31 We recognise that even if the requirements were dropped, many issuers may still choose to present track records in the form of either a comparative table or an accountant's report since these two formats have proved to be adequate in most circumstances. We want to be able to accommodate other formats, should these develop subsequently in the PD, to assist overseas issuers seeking to list in the UK and to accommodate any changes in company law.

10.32 The present approach focuses on form rather than substance, and consistent with our proposals in other areas we want to redress this emphasis. We believe a move away from prescriptive formats by requiring issuers to present historical financial information in an appropriate way that meets the guidelines should introduce a 'substance over form' approach.

10.33 We propose amending the requirements of Chapter 12 to remove reference to comparative tables and accountant's reports. This will allow issuers to present financial information, both on themselves and on their investments, in any way they consider appropriate provided that such information:

- provides all information that is necessary to investors;
- is internally consistent;
- is appropriate in the circumstances;
- is subject to appropriate independent verification; and
- meets other requirements relating to financial information (e.g. preparation in line with IAS).

10.34 The proposed rule will be supplemented by guidance, which will illustrate how these requirements might be satisfied in the majority of circumstances. The level of our guidance will depend upon the PD implementation measures.

10.35 We believe this proposal will allow us to maintain a flexible and even handed regime that will allow innovation in the presentation of historical financial information.

Q35: Do you agree that the proposed approach will continue to allow appropriate information to be released to investors? Is the list of key attributes that financial information must possess adequate or are there other elements you believe should be included?

Quarterly reporting

10.36 The standard UK regime requires publication of six monthly interim and annual results. The TD proposes the introduction of quarterly reporting in all European capital markets, bringing them into line with practice in the US.

10.37 Under the current proposals (which may change), the TD will require issuers to publish key financial highlights for the first and third quarters, consisting of net turnover, profit or loss before or after tax and a net financial position, complete with comparatives and year to date figures, within 60 days of the quarter end. Issuers will also be required to publish half yearly results consisting of a condensed set of financial statements in line with IAS 39 (or such other standards as the EU Council should specify) within 60 days of the period end and a full set of annual accounts within 90 to 120 days of the year end.

10.38 Issuers will only be obliged to audit the full year accounts. In relation to the other quarters, issuers will be required to state either that the quarterly results have not been audited or reviewed or alternatively to reproduce any report along with the quarter's results.

10.39 The TD requirements would effectively replace our rules on interim results and preliminary results, as issuers will be required to produce their annual accounts on the same or shorter time scale to the one currently set for the production of preliminary announcements.

Significant change

10.40 Under paragraph 6.E.8 of the Listing Rules, issuers must give a description of any significant change in their financial or trading position since the end of the last financial period for which either audited financial statements or interim financial statements have been published. If there has been no significant change since the last published figures, this can be a negative statement. It is anticipated that the PD implementing measures will retain this requirement.

10.41 Under paragraph 10.41 of the Listing Rules, the requirements of paragraph 6.E.8 are also applicable to Class 1 circulars. These may be issued in circumstances where a prospectus is not. We want to know if the market thinks there are any benefits in retaining the significant change statement for Class 1 circulars.

10.42 In our experience most significant change statements are negative or link into disclosure elsewhere in the circular, such as interim financial statements or the Chairman's letter. This means that there are very few significant change statements that actually provide additional information to investors.

10.43 If a quarterly reporting regime is introduced, the intervals between the publication of reliable updates on the financial information of issuers will be shortened. This could mean that the requirement to disclose significant changes is no longer necessary since the financial information contained in circulars would be increasingly current. Therefore, the periods in which investors could be acting on out of date financial information would be shorter.

10.44 Our consultation to date has also shown that many issuers are confused as to the meaning of the term 'significant' in this context. Issuers in the UK are more familiar with the terms 'material' or 'materially adverse' because these are more widely used in our legal and accounting professions.

10.45 This confusion has been exacerbated by the fact that to provide relevant details of any changes which an issuer has identified, some issuers feel they would need to disclose forward looking information which could be interpreted as a profit forecast. As covered earlier in this Chapter, profit forecasts have their own reporting obligations. If our proposals on PFI are accepted, this will no longer be the case except in the case of PFI in a prospectus.

10.46 This confusion may have led to the requirement to disclose significant changes being applied inconsistently, or worse, could have led to issuers delaying disclosure until they felt their obligation to disclose was in response to clearer circumstances.

10.47 We do not anticipate the requirement for a significant change statement in the FSAP Directives will change. However, we consider:

- that this is an opportunity to start a discussion with a view to developing a consensus as to what is encompassed by the term 'significant' in this context. Responses we receive will help us formulate guidance in the future; and
- depending on the form of quarterly reporting introduced, if any, the requirement for a significant change statement in Class 1 circulars may no longer add any significant investor protection and we may remove this requirement.

Q36: What are your views on removing the requirement for a significant change statement in Class 1 circulars, if quarterly reporting is introduced?

Q37: What do you think should be meant, in this context, by the word 'significant'?

International Accounting Standards (IAS)

10.48 From January 2005, all EU companies with securities admitted to trading on a regulated market will be required to produce their annual consolidated accounts in line with IAS. The International Accounting Standards Board issued a standard (IFRS 1) on First Time Adoption of International Financial Reporting in June 2003, and this has clarified the method for implementing the transition from local GAAP to IAS.

10.49 The Listing Rules require that the three-year record for a new applicant is presented in a way that is consistent with the accounting policies that will be adopted going forward. The current requirement for a three-year track record would require companies wanting to list after 2005 to provide a three-year comparable record under IAS. In relation to the implementation of the PD, CESR is consulting on the requirements for current issuers in the transition period and new issuers preparing prospectuses after IAS implementation. CESR's preferred option is for issuers to present at least the two most recent years' accounts under IAS and have the option to present the third year's accounts in local GAAP.

10.50 The DTI consulted last year on the extent to which IAS should apply to issuers which do not produce consolidated accounts (solo companies), and announced in July 2003 that all companies will be permitted to use IAS in their individual and consolidated accounts from January 2005. This means that all listed companies that do not have subsidiaries will have the option to use IAS or UK GAAP from 2005.

10.51 The issue for us is whether that option should be removed by amending the Listing Rules to require all listed companies to use IAS. This would have the obvious advantage of maximising comparability between listed companies, and would be consistent with our long-term objective of a single set of globally international standards. However, there are other issues to be taken into account.

10.52 First, the great majority of solo companies are investment trusts, which prepare their accounts in accordance with the relevant Statement of Recommended Practice (SORP). If they were required to use IAS, they would no longer be able to apply the SORP, and there is no equivalent standard in the IAS literature. There would be a risk of inconsistent accounting in the sector, although it should be noted that the minority of investment trusts that have subsidiaries will have to face that problem as they will be required to use IAS.

10.53 Secondly, it has been argued that there may be tax implications if companies are required to use IAS in their solo accounts. The Listing Rules should not be driven by tax considerations, and the ASB's programme of phased convergence to IAS will have similar tax implications.

10.54 Finally, there are cost-benefit arguments. As the ASB converges to IAS there will be relatively few differences between the two systems, and market forces are likely to drive companies towards IAS without the need for a change to the Listing Rules. However, there would still be arbitrage opportunities as long as there are any significant differences between the regimes.

Q38: We would welcome your views on whether the Listing Rules should require issuers that do not have subsidiaries (solo companies) to prepare their accounts in accordance with IAS.

11 Sponsors

Introduction

11.1 This Chapter describes the sponsor regime and the criticisms that have been made of it. It explains how EU developments will influence possible solutions and sets out two options for the future.[23]

11.2 FSMA empowers us to require an issuer to have a sponsor in certain circumstances. Whilst issuers remain primarily responsible for their compliance with the Listing Rules, sponsors assist by advising them on their obligations. They also help us meet our regulatory obligations by providing us with assurances that issuers have complied with the Listing Rules.

11.3 There are currently 88 sponsors (mainly FSMA authorised firms), which vary from the large investment banks to smaller corporate finance houses, as well as a number of accounting firms.

11.4 Whilst an issuer is not required to use a sponsor on all transactions, it is required to use one on major transactions such as an IPO or a Class 1 transaction. We provide a list of the responsibilities of sponsors under the Listing Rules in Annex H. We have also set out in Annex H the kind of work that sponsors typically undertake to fulfil their responsibilities.

11.5 Responses to DP14 and discussions with stakeholders have revealed polarised views on the value of sponsors. A minority would like to abolish the present regime, but the majority considers that the regime plays an important role, especially for new issues, in the listing framework because a sponsor:

- has specific expertise, drawn from its involvement in previous issues, which helps to streamline and standardise practice;

23 In considering the sponsor regime we have also considered the regime for authorised advisers. Our proposals in this area can be found in Chapter 6.

- has an on-going relationship with the issuer which puts it in a good position to ensure the issuer's compliance with the Listing Rules;
- has to satisfy the FSA that it has sufficient expertise to advise on the Listing Rules which helps to ensure higher standards;
- will often already be involved in a transaction as financial adviser, and so there are cost efficiencies if it also undertakes the role of sponsor;
- oversees the due diligence process and provides an effective challenge to forecasts and statements made by the issuer; and
- has a continuing interest in maintaining its on-going reputation in future transactions and is unlikely to put this at risk.

11.6 Those who favour abolition of the requirement to have a sponsor do so for three reasons:

- the sponsor is not a feature of most other capital markets, notably the US and this has not hindered capital raising in those markets;
- if the UK regime is out of step with practice in the rest of the world this could limit the development and competitiveness of the UK capital raising market; and
- whether or not sponsors are cost-effective should be a matter of issuer choice and should not be imposed by the regulator.

Issues with the sponsor regime

11.7 The Listing Review has highlighted a number of difficulties with the regime.

Access

11.8 Although we receive a number of new applications for admission to the list of sponsors each year, we are concerned by the perception of some stakeholders that sponsors are a 'closed shop' and that the eligibility criteria deter potential new entrants to the sponsor market.

Conflicts of interest

11.9 Although the Listing Rules contain independence requirements, we recognise that conflicts occur. There are two types of conflicts which may arise under the sponsor regime:

- conflicts due to the dual role performed by the sponsor. A firm that is acting as sponsor on a transaction usually undertakes other roles on the same transaction. For example a firm may act as sponsor, broker, book runner, underwriter, lead manager; and

- conflicts due to sponsors having an economic or ownership interest in the issuer that they are advising.

Sponsors acting as intermediaries

11.10 Because the sponsor often acts as an intermediary between the issuer and ourselves, there is a danger that the issuer may lose a sense of its own primary responsibility for compliance with the Listing Rules.

Regulation of sponsors

11.11 Where we place reliance on the work of another person, we must have arrangements in place to verify the completeness of that work. The arrangements for regulating sponsors are implemented under the Listing Rules rather than under the FSMA authorised firm regime. We separately authorise and supervise the sponsor activities of authorised firms.

11.12 We have a small team dedicated to sponsor regulation but we recognise we need to do further work in this area, in terms of the number of visits which we do, the way reviews are carried out and how the regime is enforced.

Options for the future

Impact of the PD

11.13 As the PD is a maximum harmonisation directive, we will not be able to require an issuer to use a sponsor when preparing its prospectus for admission to trading. However, we can require an issuer seeking admission to or admitted to the Official List to retain a sponsor in relation to areas that are not covered by the PD, for example:

- to provide us with assurances that the Listing Rules have been complied with on IPOs and major transactions;
- to provide working capital confirmations; and
- to advise an issuer on the Listing Rules where they are in breach of the Listing Rules.

11.14 We have identified two options for the future of the sponsor regime:

Option 1 Retain the requirement to have a sponsor on new issues and major transactions.

Option 2 Abolish the obligation to retain a sponsor and permit issuer choice.

11.15 Irrespective of which option is chosen we intend to clarify the sponsor regime.

Option 1: Retain the current regime

11.16 The first option retains the present requirement to have a sponsor for new issues and major transactions but clarifies the regime. A sponsor's involvement on a transaction enhances the marketability of the securities, and provides comfort to investors, and to us, that the Listing Rules have been complied with. Our proposals to clarify the regime can be found from paragraph 11.23 of this Chapter.

Option 2: Abolish the requirement for a sponsor and provide issuer choice

11.17 The second option abolishes the requirement for a sponsor and allows issuers to decide whether they want to use a sponsor, to use other external advisers or rely on their own expertise. Issuers would be able to assess the relative merits of retaining a sponsor on a transaction - by - transaction basis. If an issuer decides to retain a sponsor we would expect the sponsor to comply with the clarified regime.

11.18 We can see considerable attractions in this option. It allows the choice of whether or not sponsors are cost-effective to be left to the market and not be imposed by the regulator. It would also be clear that the primary responsibility for compliance with the Listing Rules rests with the issuer, and is not blurred by the presence of an intermediary. The issuer would be responsible for providing us with the necessary comfort letters confirming that the relevant due diligence had been undertaken.

11.19 But we recognise that if the requirement to use a sponsor is abolished, there would be an increased risk that:

- the Listing Rules may not be complied with;
- due diligence may be inadequate; and
- those issuers that are in most need of a sponsor's guidance might be the least likely to choose to engage one. These issuers may also cut corners in relation to compliance with their continuing obligations under the Listing Rules.

11.20 If this option were adopted we would need to provide additional guidance to issuers on our expectations of the work required, to reduce the risk of failure and avoid the creation of a two-tier market. We would also need to take enforcement action against issuers that cut corners to emphasise that such conduct is not acceptable.

11.21 This option will have resource and operational implications for us. Where documents are submitted without a sponsor the regulatory risk profile of the transaction will increase. This may necessitate a more extensive review of the documentation by a senior member of the UKLA staff to ensure that the Listing Rules have been compiled with. Where extra costs are incurred in the vetting process we would expect to recover these from issuers. Transaction timetables could also be affected, particularly where issuers or their advisers had failed to undertake the necessary preparatory work satisfactorily, for example where a draft prospectus is sent to us prematurely.

11.22 A more robust approach to the vetting process would be coupled with subsequent enforcement action against those that fail to comply with the standards imposed by the Listing Rules.

The new regime

11.23 Measures to clarify the regime apply to both options. Our main proposals for reform are detailed below.

Greater access

11.24 We are keen to promote competition amongst sponsors and to widen the pool of such advisers. To do this, and in response to criticisms of the regime, we have reviewed the eligibility criteria.

11.25 We require a sponsor to have at least four eligible employees and to satisfy us that it is competent to perform the role of a sponsor. Eligibility of employees is assessed on initial application to become a sponsor and on an ongoing basis. The eligibility criteria are in paragraph 4.6 of the UKLA Guidance Manual.

11.26 To ensure that the eligibility criteria are not unnecessarily restrictive, we would like to assess whether:

- the requirement to have at least four eligible employees on application to become a sponsor is too high. This requirement was increased from two in 1999;
- any other experience should be used to assess an employee's eligibility and added to the list of *significant transactions* in paragraph 4.6.5 of the Guidance Manual; and
- in relation to a sponsor's ongoing eligibility, there is a need to amend the number of *significant transactions* that an employee needs to have advised on to three transactions in the last thirty-six months on a rolling basis.

11.27 In keeping with our belief that the role played by sponsors should be opened up, we would prefer to use the term 'expert adviser' rather than 'sponsor' to describe the regime (compulsory or voluntary) in the revised Listing Rules, although in this Chapter for ease of reference, we continue to use the term 'sponsor'.

Conflicts of interest

11.28 We outline our concerns about conflicts of interest in paragraph 11.9 above. One solution would be to prevent an issuer from retaining a firm to act as sponsor if the issuer engages it in another capacity on the same transaction; or if the sponsor has an economic interest in the issuer.

11.29 However, cost savings and efficiencies from having the same adviser undertake the necessary due diligence would be lost. We do not regard this as a viable option.

11.30 Our preferred solution to deal with the first type of conflict is for the transaction team to continue to perform due diligence, but for a senior member of the sponsor's staff, not operationally involved in the transaction, to independently review the work.We propose to deal with the conflict of interest caused by a sponsor having an economic interest in the issuer by requiring the sponsor to make a full disclosure of its interest in a statement to us.

11.31 Our Guidance Manual (paragraph 4.14) contains guidance on how we assess the independence requirement where a sponsor has an economic interest in the issuer. We plan to introduce a clearer definition of when a sponsor would no longer be considered independent. We propose that the level be set at 50% (excluding securities held by exempt fund managers and exempt market makers). Whatever level we decide on will be fixed and waivers will not be considered.

11.32 We are also considering introducing a requirement that a sponsor give a confirmation of independence, similar to the Schedule 1A confirmation in the prospectus, for each transaction.

Regulation of sponsors

11.33 It has been suggested that we consider integrating the regulation of sponsors with that of the approved person/authorised firm regime. It was argued that this would avoid duplication of regulation, so reducing costs for firms acting in a number of different capacities. We have concluded that sponsors should continue to be regulated through the Listing Rules because:

- although many authorised persons act as sponsors, the activities that are being regulated are to a very large degree distinct;

- the market has confidence in the current regime although certain elements might be improved; and
- the regime is more flexible because changes can be made by amendments to the Listing Rules.

11.34 We recognise that we need to supervise and monitor sponsors more closely in the future. We will continue to use the following regulatory tools (amongst others) in our regulation of sponsors:

- reliance upon the advisers' quality assurance arrangements;
- desk based review;
- on-site transaction reviews (due diligence file reviews);
- communication with the industry on thematic problems;
- private warning letters to individual firms acting as sponsors; and
- going forward, enforcement proceedings against firms and individual advisers particularly where senior management have failed to supervise adequately more junior staff.

11.35 To ensure effective regulation of sponsors in the future, we have requested that HM Treasury grant us the power to impose financial penalties on sponsors. This will increase the range of our enforcement responses and bring the sanctions that can be imposed on sponsors in line with other regulated entities.

Code of Practice

11.36 We believe that it would be helpful to clarify the standards that we expect of sponsors. We are proposing the introduction of additional guidance in the form of a Code of Practice for sponsors – see Annex I[24]. The Code sets out behaviour and practices that we would expect sponsors to follow. New entrants to this market will find such a Code particularly helpful.

11.37 The Code would not form part of the Listing Rules. Rather, it would have the status of guidance. It is not intended to be exhaustive or prescriptive, and compliance with it would not necessarily mean that a sponsor has fulfilled its responsibilities under the Listing Rules (although it would clearly be relevant to whether it has).

11.38 We expect the Code to maintain, and for some firms, raise standards. This could make the UK markets more attractive to investors and reduce the risk premium. Since the Code will set out current market practice, costs should be minimal.

11.39 As part of clarifying the regime we will review the comfort letters that sponsors give to us as part of the next phase of the Listing Review.

24 In the revised Listing Rules, this would be known as the Code of Practice for Expert Advisers on the Listing Rules

Summary

11.40 The debate centres on whether the regulator should impose a requirement to use a sponsor, or whether this should be left to issuer choice.

11.41 If issuers and investors consider that a sponsor adds value, then both parties are likely to benefit from the lower risk premium demanded by the investor when a sponsor is involved.

11.42 If, on the other hand, the benefits of the sponsor regime can be provided in an alternative way that does not damage the market and investor confidence, then giving issuers the choice whether or not to engage a sponsor should provide greater flexibility and open up the market to increased competition.

11.43 Whichever option we choose, we believe that the sponsor regime needs to be clarified.

Q39: What are your views on the proposed options for the sponsor regime?

Q40: Would you welcome the choice for issuers of whether or not to use a sponsor? What difficulties do you foresee with this option?

Q41: What is your view on the possible consequences of us needing to spend more time on transactions and recovering our costs accordingly?

Q42: In relation to the eligibility criteria for sponsors:

- do you think that the requirement for four eligible employees is too stringent?
- what other experience do you think should be added to the list of significant transactions?
- what are your views on reducing the requirement for an eligible employee's experience to three significant transactions in thirty-six months on a rolling basis?

Q43: Do you agree with our proposals addressing conflicts of interest?

Q44: What are your views on the Code of Practice for sponsors on the Listing Rules?

12 Cost benefit issues

Introduction

12.1 Sections 155 and 157 of FSMA require us to carry out a cost-benefit analysis (CBA) of proposed rules and guidance. As this paper does not propose draft rules, we are not required to prepare a CBA. However, we are setting out our initial thoughts on the potential costs and benefits of our key proposals.

12.2 We appreciate that we will need to undertake and publish a full cost benefit analysis together with proposed draft rules. We will need to consider both the individual and overall impact of the costs and benefits to issuers, advisors, investors and the FSA. In some cases, as explained below, we do not hold sufficient data to enable us to undertake analysis, and it is therefore important that we obtain data through this consultation and test our thinking with our stakeholders.

12.3 In some cases (e.g. sponsors) we already have sufficient data to put forward when we propose rules and guidance. We have highlighted those areas where we do not have sufficient data and would be grateful for any data you could provide. This information will help us to evaluate the overall impact of our key proposals.

Structure of the listing sourcebook (Chapter 4)

12.4 The introduction of Listing Principles will clarify what we consider to be the fundamental obligations of issuers. The introduction of a new structure to the rulebook will entail costs related to publication of the new sourcebook, training stakeholders in its use, and amendments to our internal procedures.

12.5 The introduction of a simpler structure for the sourcebook with three distinct product categories will provide clarity and flexibility for both issuers and investors. Issuers will be able to bring new products to market more quickly as new chapters will not be needed each time a new product is created.

Q45: What costs do you believe you would incur as a result of such restructuring? How would you value the benefits?

Super-equivalent eligibility criteria (Chapter 5)

12.6 We have a number of super-equivalent eligibility criteria: the two key ones being, the three-year track record, and a clean working capital statement requirement.

12.7 The three-year track record gives comfort to an investor as to the maturity of the business being brought to market (as opposed to the PD requirement of three years' of accounts). The associated costs are those of exclusion as this precludes issuers from listing even though they may meet PD requirements.

12.8 The benefits of a clean working capital statement (against the PD requirement for an explanation where sufficient capital is not available) are that it is more readily understandable and gives some reassurance to the investor. There are costs related to exclusion and possible investor detriment if the explanation provided is less effective in protecting investors. While there are significant costs linked to producing a working capital statement, we are unsure as to the additional costs that the production of a clean statement requires.

Q46: We would appreciate any data you could provide on the costs of producing a working capital statement, including whether the costs would reduce significantly if the statement was not required to be clean. What additional costs do you consider would be incurred by a requirement for a three – year track record as opposed to three years' accounts?

Debt (Chapter 6)

12.9 We propose to retain a differentiated regime for specialist debt securities. The PD will govern prospectus contents requirements for debt issues. In addition we propose that the Listing Rules contain separate requirements for eligibility and continuing obligations.

12.10 The benefit will be the lighter regulation of the specialist debt securities market, which has seen rapid growth. We wish to encourage that growth but, by diverging from the definitions used in the PD, we could potentially isolate the UK and threaten London's position.

12.11 Our proposal to remove the need for a clean working capital statement for non-specialist debt should reduce costs for issuers and encourage the development of a market, which to date has been non-existent. The clean working capital statement has been considered a barrier to entry to this market. By removing the requirement for a working capital statement we are

placing the UK on the same footing as other EU Member States where a retail debt market already exists.

Q47: Do you agree with the benefits of a differentiated regime? What costs do you foresee in the event of our not providing a separate regime? Do you agree with our assessment of the benefits of removing the working capital statement requirement for non-specialist issues? Could you evaluate those benefits?

Overseas issuers (Chapter 7)

12.12 The costs of requiring both primary and secondary listed non-EU issuers to present their accounts in IAS or US GAAP rather than local GAAP are hard to quantify as they will vary according to the systems used by the issuer, their current standards and the availability of resources.

12.13 By requiring primary listed overseas issuers to provide a 'comply or explain' statement against the Combined Code such issuers will need to understand UK standards. This does not necessarily mean that overseas issuers will be required to raise their standards and hence their costs. Costs for such issuers will be related to the need to familiarise themselves with the Combined Code.

Q48: We would appreciate any data you could provide as to the likely costs to overseas issuers and any possible detriment to the London market of these proposals.

Class tests (Chapter 9)

12.14 The costs of producing circulars are clear, but it is not easy to quantify the cost to issuers caused by the uncertainty that surrounds the transaction until shareholder approval is obtained. This cost may be particularly relevant in bid situations where rival bidders are overseas or private companies that are not subject to our rules. However, we know that the requirement for shareholder approval on Class 1 transactions is seen as important by both issuers and investors.

Q49: We would be grateful for any data which might value the benefits of class tests (for example how would an investor value a share where such rights were not available). What information can you provide us with as to the costs of compliance with the class test regime?

Cancellation of listing (Chapter 9)

12.15 A number of recent publicised cases have highlighted concerns with the delisting regime. Minority shareholders may be forced to sell their shares at a price they consider to be unfairly low, or to hold unlisted securities. Our proposal has the following costs:

- the cost of holding the EGM;
- costs associated with continuing to abide by the Listing Rules in the period between the announcement of the EGM and the meeting; and
- the on-going costs of compliance with the Listing Rules if shareholder approval is not obtained.

12.16 The percentage of shareholder resolutions that are not passed is small and therefore the costs of having to maintain a listing are very unlikely to be considered of significance.

Q50: We are satisfied with the data we have but would welcome any comments on the CBA argument.

Financial information (Chapter 10)

12.17 The removal of the reporting requirement on PFI (that is not produced in a prospectus) will reduce costs for issuers and will encourage greater disclosure which will be of benefit to all.

Q51: What do you estimate to be the costs of the reporting requirements on PFI?

Sponsors (Chapter 11)

12.18 We have a significant amount of data which shows that the direct costs of the sponsor regime are a very small proportion of the overall costs of raising capital. We believe that both issuers and the FSA benefit from the services provided by the sponsor.

12.19 In some cases, larger issuers that undertake transactions on a regular basis may feel that they have no need for additional advice; in other cases, where a transaction is complex or where an issuer is new to the market, such advice will be more important. The proposal to allow issuers to choose when they use a sponsor will enable them to control their costs on a case by case basis.

12.20 Where an issuer decides not to use a sponsor the regulatory risk profile of the transaction will increase. We will be obliged to do more work and our costs, and hence those of the issuer concerned, will rise.

Questions

Principles

Q1: Do you support the proposed move to a regime which has overarching general principles supported by specific rules and guidance?

Q2: Do you foresee any problems with the six proposed Listing Principles? Are there any gaps that you think the proposed Listing Principles fail to cover?

Q3: Do you believe the Listing Rules in this area should be more closely aligned with the rules applying to CISs?

Q4: If so, do you agree that additional rules are unnecessary for schemes subject to the CIS Sourcebook?

Q5: Do you support the proposed move to a 'building block' structure for the sourcebook? If not, please explain your objections.

Q6: Do you agree with the three sections that we are proposing? Are there any gaps that you feel we have failed to cover or would have expected to see covered? Do you foresee any problems with the proposed new structure of the sourcebook?

Super-equivalence

Q7: What are your views on moving towards a requirement for three years' accounts, rather than a three-year track record and unqualified accounts?

Q8: Do you consider that we should relax or maintain our requirement that issuers provide a clean working capital statement?

Q9: What are your views on whether the Listing Rules' requirement for the disclosure of directors' experience and expertise should be replaced by the provisions in the PD and by enhanced UK corporate governance standards?

Q10: What are your views on whether the requirements for independence and control over the majority of assets held should be repealed?

Debt

Q11: Do you support our proposal not to follow the PD definition of debt securities in relation to eligibility and continuing obligation requirements?

Q12: What are your views on dropping the requirement for a two-year track record for specialist issues?

Q13: What are your views on removing the requirement for a working capital statement and accepting a two-year track record in relation to non-specialist debt issues?

Q14: Do you think that the authorised adviser regime should be retained for specialist debt issues?

Overseas Issuers

Q15: Do you agree with our proposals to tighten the rules for overseas issuers with primary listings so that these are brought into line with those applicable to listed UK issuers?

Q16: In particular, do you think overseas issuers with a primary listing should be required to 'comply or explain' against the Combined Code?

Q17: What are your views on whether overseas issuers with a primary listing should be required to report in IAS or US GAAP rather than local GAAP?

Q18: Do you agree that in future overseas issuers with a primary listing should be required to comply with the Listing Rules on pre-emption rights for shareholders or provide appropriate alternative protections?

Q19: We also invite comment on whether there are any other areas of company law or practice that you consider are fundamental to shareholder protection.

Q20: Do you agree with our proposal to retain secondary listings?

Q21: Do you believe that the argument for comparability of data is sufficiently strong for us to introduce a requirement for equity issuers with a secondary listing to use either IAS or US GAAP?

Q22: Do you agree with our proposals for non-UK EU issuers?

Corporate Governance

Q23: Do you agree that the introduction of Listing Principles 1 and 2 (coupled with a subsidiary rule) will provide sufficient investor protection or would you like to see more prescriptive rules or guidance as to what systems and procedures we consider appropriate?

Q24: Would you favour our having the power to disqualify a director of a listed company, where he has been involved in a serious breach of the Listing Rules? Do you have any views on whether this power should be exercised through the tribunal process or through the court?

Continuing Obligations

Q25: Do you agree that we should maintain a requirement for shareholder approval of Class 1 transactions?

Q26: Do you support our proposed extension to the Class 1 regime? How do you think securitisations should be treated under the new regime? Are there any other kinds of transactions that you consider should be caught or not caught by this new approach?

Q27: We welcome views on the quantitative criteria that should be applied to classifiable transactions.

Q28: What are your views on our proposals to strengthen shareholders' rights where a company intends to cancel its listing?

Q29: What issues would you like us to address in streamlining the Model Code?

Q30: What are your views on giving the company secretary the role of giving clearance/approval to deal?

Financial Information

Q31: Do you agree with our proposal enabling issuers to publish additional information provided that the source of such information is fully disclosed and it is made clear whether or not such information is unaudited and that there is subsequent comparability?

Q32: Do you agree that the introduction of the two overriding concepts will adequately replace paragraph 2.20? If not, what do you think the current requirements add and what alternative might be introduced?

Q33: Do you agree that companies should be allowed to disclose non-statutory figures alongside statutory ones, or do you think such disclosures should only be allowed if the disclosures are audited?

Q34: Do you think that the requirement to report on forecasts should be removed where the information is not disclosed in a prospectus?

Q35: Do you agree that the proposed approach will continue to allow appropriate information to be released to investors? Is the list of key attributes that financial information must possess adequate or are there other elements you believe should be included?

Q36: What are your views on removing the requirement for a significant change statement in Class 1 circulars, if quarterly reporting is introduced?

Q37: What do you think should be meant, in this context, by the word 'significant'?

Q38: We would welcome your views on whether the Listing Rules should require issuers that do not have subsidiaries (solo companies) to prepare their accounts in accordance with IAS.

Sponsors

Q39: What are your views on the proposed options for the sponsor regime?

Q40: Would you welcome the choice for issuers of whether or not to use a sponsor? What difficulties do you foresee with this option?

Q41: What is your view on the possible consequences of us needing to spend more time on transactions and recovering our costs accordingly?

Q42: In relation to the eligibility criteria for sponsors:

- do you think that the requirement for four eligible employees is too stringent?
- what other experience do you think should be added to the list of significant transactions?
- what are your views on reducing the requirement for an eligible employee's experience to three significant transactions in thirty-six months on a rolling basis?

Q43: Do you agree with our proposals addressing conflicts of interest?

Q44: What are your views on the Code of Practice for sponsors on the Listing Rules?

Cost Benefit Issues

Q45: What costs do you believe you would incur as a result of such restructuring? How would you value the benefits?

Q46: We would appreciate any data you could provide on the costs of producing a working capital statement, including whether the costs would reduce significantly if the statement was not required to be clean. What additional costs do you consider would be incurred by a requirement for a three-year track record as opposed to three year's accounts?

Q47: Do you agree with the benefits of a differentiated regime? What costs do you foresee in the event of our not providing a separate regime? Do you agree with our assessment of the benefits of removing the working capital statement requirement for non-specialist issues? Could you evaluate those benefits?

Q48: We would appreciate any data you could provide as to the likely costs to overseas issuers and any possible detriment to the London market of these proposals.

Q49: We would be grateful for any data which might value the benefits of class tests (for example how would an investor value a share where such rights were not available). What information can you provide us with as to the costs of compliance with the class test regime?

Q50: We are satisfied with the data we have but would welcome any comments on the CBA argument.

Q51: What do you estimate to be the costs of the reporting requirements on PFI?

Annex B

Timetable for the Listing Review and key dates for EU directives[25]

	Listing Review	Directives
October 03	CP on Listing Review published	MAD - Commission produces Level 2 text for 1st Mandate
November 03	Annual Listing Conference[26] Roundtables	Expected adoption of PD
December 03	Roundtables	
January 04	Consultation period ends for Listing Review CP	
April/May 04		MAD - Commission produces Level 2 text for 2nd Mandate
June 04	FSA consultation on MAD implementation measures published	
August 04	CP on proposed rules and guidance to be published	
October 04		ISD – Proposal adopted by Commission MAD implementation deadline
December 04		PD – implementation Level 3 (proposed)
January 05		Implementation IAS
March 05	Final rules and guidance published	
May 05	Revised rules and guidance implemented	Expected implementation of PD

[25] The TD is currently under negotiation and the implementation timetable has not been set.

[26] The FSA Annual Listing Conference will take place on 5 November 2003 at the Queen Elizabeth II Conference Centre. For further information please contact City and Financial on 01483 720 707.

Annex C: 'Quality thresholds' applied in other jurisdictions

	London Official List	United States NYSE	France Premier Marche	Holland	Germany	Hong Kong	Australia
Minimum period of existence	3 years, with explicit exemptions for certain types of companies	3 years, unless entity qualifies under global market capitalisation criteria or other specific exemptions	3 years	3 years	3 years, although if in best interest of issuer or public can be shorter	3 years	3 full years, although ASX has discretion to agree shorter period under assets test
Minimum operating history	3 years with explicit exceptions for certain types of companies	3 years where company qualifies under earnings or operating cashflow tests	None explicit	3 years trading record during which it must have a significant market share or proved its right to a place in the relevant market by providing a particular product or service Shorter track record for new economy companies and large scale projects	None explicit	3 years trading record under substantially the same management A shorter track record for natural resource exploration companies and newly formed project companies In exceptional circumstances 2 years may be acceptable	Main business activity at date of admission must be the same as it was for the last 3 full financial years
Minimum net assets criteria	None	No specific criteria under any of the quantitative	None	Shareholders' equity of at least €5 million	If the probable market capitalisation	No specific criteria. However, an entity other	Under assets test route, at admission the entity must have net tangible assets of $2

Annex C

	London Official List	United States NYSE	France Premier Marche	Holland	Germany	Hong Kong	Australia
		standards		If profit requirements not met, then shareholders' equity requirement increases to €15, €30 and €50 million respectively if net profit only shown in 2, 1 or none of the last five financial years	cannot be estimated, equity capital of DM2.5 million required	than an investment company whose assets consist wholly or substantially of cash or short dated securities will normally be not regarded as suitable for listing	million (after costs of fund raising), of which less than half should be in cash or a market capitalisation of $10 million
Minimum profitability criteria	None	Aggregate pre tax earnings over the last three years of $6.5 million achievable either as most recent year $2.5 million and each of two preceding years of $2 million, or most recent year $4.5 million and profits in all three years No profit requirements under operating cash flow	None	Basic criteria of profitability in 3 out of last 5 years If less than 3 years out of 5, then lock up rules and greater size and market capitalisation criteria	None	Profit for the most recent year of HK$20 million, and for the two preceding years, HK$30 million in aggregate	Under profits test route, aggregated profit from continuing operations for last 3 full years must have been at least $1 million Profits for 12 months to a date no more than 2 months before the date of admission to exceed $400,000 and directors to state that the entity is continuing to earn profit

	London Official List	United States NYSE	France Premier Marche	Holland	Germany	Hong Kong	Australia
		standard where market capitalisation >$500 million and revenues in last year of $100 million & aggregate operating cash flow for last three years of $25 million No profit requirements for with $1 billion market capitalisation and revenue in last year of $100 million					
Minimum market value of securities to be listed	£700,000	Market value of publicly held shares of at least $60,000,000 for companies that list at the time of their IPO and at least $100,000,000 for other companies	Market capitalisation is expected to be at least €1 billion	If profit in only 2, 1 or none of the previous five financial years, then market capitalisation of €50, €100 or €150 million respectively required	Probable market capitalisation of DM2.5 million	HK$100 million at a time of listing, and the market capitalisation of securities held by public of at least HK$50 million	None explicit, unless under asset test and net assets do not exceed $2 million (in which case market capitalisation of $10 million required)

Annex D

The UK regulatory framework for Competent Authority functions

1. When exercising its general functions the UKLA must have regard to the following in accordance with FSMA Part VI, s 73 (1)

   - the need to use its resources in the most efficient and economic way;
   - the principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of that burden or restriction;
   - the desirability of facilitating innovation in respect of listed securities;
   - the international character of capital markets and the desirability of maintaining the competitive position of the United Kingdom;
   - the need to minimise the adverse effects on competition of anything done in the discharge of those function;
   - the desirability of facilitating competition in relation to listed securities.

2. The UKLA also has objectives agreed with HM Treasury each year. These objectives are publicly available and are on the HM Treasury web-site and the UKLA web-site. The regulatory objectives of the FSA in its capacity as the Competent Authority are to formulate and enforce listing rules that:

   - provide an appropriate level of protection for investors in listed securities;
   - facilitate access to listed markets for a broad range of enterprises;
   - seek to maintain the integrity and competitiveness of UK markets for listed securities.

3. In pursuing these objectives the UKLA will at all times have regard to the general duty set out in section 73(1) FSMA (see paragraph 1 above).

4. The UKLA and HM Treasury also agree operational objectives each year that are more task specific. These objectives are also publicly available.

5. When carrying out its general functions the UKLA will have regard to the factors and objectives set out above. The UKLA will also consider the following aims:

    - to provide issuers with ready access to the listed market for their securities while protecting investors;
    - to promote investor confidence in standards of disclosure, in the conduct of issuers' affairs and in the market as a whole by the Listing Rules, and in particular the continuing obligations regime;
    - to ensure that listed securities should be brought to the market in a way that is appropriate to their nature and number and which will facilitate an open and efficient market for trading in those listed securities;
    - to ensure that an issuer makes full and timely disclosure about itself and its listed securities, at the time of listing and subsequently;
    - to ensure that holders of listed equity securities should be given adequate opportunity to consider in advance and vote upon major changes in the company's business operations and matters of importance concerning the company's management and constitution.

Debt Eligibility Requirements

This table compares current debt eligibility requirements with our proposed eligibility requirements.

	Current Requirements		Proposed Requirements	
	Specialist	**Non-specialist**	**Specialist**	**Non-specialist**
Definition	A security that is bought and traded by a limited number of investors who are particularly knowledgeable in investment matters	All investors who do not fall into the specialist category	A security that is bought and traded by a limited number of investors who are particularly knowledgeable in investment matters. Securities with a denomination of €50,000 will also fall within this category	All investors who do not fall into the specialist category
Financial Information for Eligibility	2 years supported by audited accounts, which must not be for a period more than 18 months before the date of the document	3 years supported by audited accounts, which must not be for a period more than 6 months before the date of the document. (Two years are only required to be disclosed in the listing document)	2 years supported by audited accounts, which must not be for a period more than 18 months before the date of the document OR, subject to the outcome of the review, 2 years' accounts	2 years supported by audited accounts, which must not be for a period more than 6 months before the date of the document
Unqualified / qualified accounts	Can be qualified but qualification must be disclosed	Two years' accounts must be unqualified	Accounts can be qualified.	Accounts can be qualified
Working Capital	No requirement	Yes, sufficient for at least the next 12 months from the date of the document	No requirement	No requirement
Authorised Adviser / Sponsor	Authorised Adviser required	Sponsor required	No requirement	Sponsor required subject to the review of the sponsor regime.

Corporate Governance

Introduction

1. Corporate governance was defined in the Cadbury Report[27] *as the system by which companies are directed and controlled*. Good corporate governance gives companies a competitive advantage as investors are more likely to invest with confidence in a company that can show itself to be properly and efficiently managed. Shareholders, directors and auditors each has a role to play. Shareholders appoint the directors and the auditors and satisfy themselves that the issuer meets acceptable standards of corporate governance. Directors set strategic aims, decide policy and establish systems and controls. Auditors provide an objective check for shareholders, primarily in the area of financial reporting and controls.

2. Corporate Governance in the UK has continued to develop since the Cadbury Report was published. In 1998, the Hampel Report combined the Cadbury recommendations and those of the Greenbury Report on disclosure of directors' remuneration with its own principles on governance into the Combined Code.

3. The Combined Code is not part of the Listing Rules and it is not directly subject to our investigation and enforcement regime. The Combined Code is annexed to the Listing Rules, and paragraph 12.43A of the Listing Rules requires issuers incorporated in the UK to disclose their compliance with the Combined Code or, if they choose not to comply, to explain why not. This is known as the 'comply or explain' approach.

4. In practice, we review a sample of annual reports to ensure that a corporate governance statement has been made. We do not investigate the sufficiency or accuracy of the statement, since we consider that these matters are primarily for investors to judge.

27 Report of the Committee on the Financial Aspects of Corporate Governance, December 1992.

The revised Combined Code

5. On 23 July 2003, the FRC published the agreed text of the revised Combined Code[28]. The revised Combined Code is based on Derek Higgs' review of the role and effectiveness of non-executive directors and Sir Robert Smith's report on audit committees. The revised Combined Code will come into effect for reporting years beginning on or after 1 November 2003.

6. Some of the provisions of the Higgs review have been made into supporting principles in the revised Combined Code to allow greater flexibility in implementation. The Listing Rules requirement (paragraph 12.43A) for companies to make a corporate governance statement in their annual reports will need to be amended to cover the requirements of the revised Combined Code. A consultation paper on this rule change will be published at around the same time as this CP.

Co-ordinating Group on Audit and Accounting Issues (CGAA)

7. The Joint DTI and Treasury Co-ordinating Group on Audit and Accounting Issues (CGAA) was established to ensure that the effectiveness of UK systems of financial reporting and audit regulation was reviewed thoroughly by the appropriate regulators. In the wake of the collapse of Enron and other high profile corporate failures, the aim was to make sure that the framework for financial reporting in the UK was sufficiently robust. The CGAA published its Final Report on 29 January 2003.

8. The CGAA recommended greater transparency in the field of auditing: both in terms of auditors of listed companies providing more information on their policies and procedures, and listed companies disclosing in more detail in their annual report the information they provide about non-audit services provided by their statutory auditor.

9. The work of the CGAA will be complemented by:

   - legislation that the DTI intends to bring forward in a short Companies Bill as soon as parliamentary time allows. This Bill will include measures to enhance powers to investigate companies, update the regulation of the accountancy profession and to require companies to disclose non-audit services provided by their auditors;
   - the introduction of the requirement for certain companies to produce an OFR; and
   - changes to the regulatory regime of the accountancy and audit professions.

28 The text of the revised Combined Code can be accessed at www.frc.org.uk/publications

Enforcement of Accounting Standards

10. The CGAA recommended that the FSA should have a greater role in the enforcement process. The CGAA recommended a more pro-active approach to the enforcement of accounting standards. The CGAA recommended that the FRRP and the FSA should develop and agree a Memorandum of Understanding (MOU) to clarify their respective roles and responsibilities in this process. The MOU is in the process of being finalised.

Sarbanes-Oxley Act

11. The Sarbanes-Oxley Act 2002 was the recent US response to corporate malfeasance. It reflects a legislative, prescriptive approach to corporate governance. The Act imposes requirements on all SEC-registered companies (both US and non-US) and on management and advisers of such companies. This means that the Act has extra-territorial effect. The Act includes provisions relating to certification of accounts, codes of ethics for certain officers, the banning of certain loans to management, reports on the effectiveness and adequacy of internal controls and procedures for financial reporting and governance, and a ban on the provision by auditors of certain non-audit services.

The Winter Report and the EU Company Law and Corporate Governance Action Plan

12. In November 2002, the High Level Group of Company Law Experts presented the Final Report of the Group on a Modern Regulatory Framework for Company Law in Europe. The Group's mandate included the review of a number of issues related to corporate governance: the role of non-executive and supervisory directors, management remuneration, the responsibility of management for financial statements, and auditing practices.

13. In general, the Winter Report recommended that the EU should not strive to create a single European code of corporate governance because of the differences in underlying company law and other conditions that dictate company governance.

14. A key recommendation of the Winter Report was that listed companies in the EU should be required to make a coherent, descriptive statement in their annual accounts covering the key elements of their corporate governance structure and practices. They should refer to a national code on corporate governance or company law with which they comply, or in relation to which they explain deviations.

15. In May 2003, the EU Commission published its Action Plan on Company Law and Corporate Governance. The Plan largely follows the Winter Report, and accepts in many areas the UK approach to corporate governance (for example, it endorses the 'comply or explain' approach).

29 Communication from the Commission to the Council and the European Parliament: Modernising Company Law and enhancing Corporate Governance in the European Union – A Plan to Move Forward

Continuing Obligations – other policy areas

Profits test

1. The profits test is one of the five tests that are applied in order to assess the relative size of issuers and the transactions they are proposing to enter into. We are finding that this test sometimes produces anomalous results. We intend, therefore, to amend our definition of profits to reflect changes in GAAP. In addition, we will continue to monitor IAS to ensure that the profits test works with the other tests to give an accurate reflection of the size of an issuer.

Break fees and indemnities

2. The classification for indemnities and break fees includes a profits test as one of the criteria. As stated above, we believe that the profits test is no longer reliable. We have been accepting an alternative test of 1% of market capitalisation.

3. We intend to amend the rules to reflect current practice and use 1% of market capitalisation rather than 25% of the average of the past three year's profits. In most circumstances we believe it will be unnecessary for an issuer to enter into a break fee of greater than 1%. However to introduce an absolute prohibition could prove too inflexible.

4. There is one area where we consider 1% of current market capitalisation is not an appropriate amount. In offer situations where the break fee being entered into is in relation to an issuer acquiring another listed company, we propose a special application of this rule. As offers for listed companies are generally made at a premium to the current market price, we believe that a break fee entered into by an offeree should be permissible up to an amount equal to 1% of the offer value, rather than the current market capitalisation. This is consistent with the Takeover Panel's approach.

Related party transactions

5. Further to our consideration of whether there is a continuing need for shareholder votes in relation to Class 1 transactions in general (see Chapter 9), we reviewed whether, in the case of transactions with related parties, the level at which a shareholder vote is required is appropriate or whether this, together with the requirement for a fair and reasonable opinion, is excessive regulation.

6. During our Theme Team discussions, we explored the idea of raising the level at which a shareholder vote is required to the same as that for non-related party transactions (25%), whilst retaining the requirement for a fair and reasonable opinion. The consensus was that the opinion would have to confirm that the proposed transaction was being entered into on the same terms that it would have been had it been on a truly arm's length basis. The Theme Team indicated that in most, if not all, related party transactions it would be difficult for an adviser to provide such an opinion because the very nature of related party transactions means that they are difficult to value.

7. Our view is that we should not make any significant change to the existing related party regime. We will be considering relaxing the regime so that a transaction will not be treated as a related party transaction where an issuer can prove to us that the related party does not, and can be seen not, to exercise significant influence over the issuer.

Share buy-back circulars

8. Under our rules an issuer is required to include a working capital statement in any circular seeking approval for the buy-back of more than 15% of its shares. Whilst we recognise that 15% is a significant amount for an issuer to buy-back, we question whether the risk faced by investors in these situations justifies the additional costs of producing a working capital statement. We propose raising the limit at which an issuer must include the additional information in their circular to 25%, thereby bringing it in line with Class 1 circulars.

9. We also intend to deal with the inconsistency between the way we treat special dividends and the way we treat B share buy-backs. At present we require a working capital statement and a detailed circular for the latter, but not for the former. We propose removing B share buy-backs from the scope of the Chapter 15 regime where these have the same effect as a special dividend.

Reverse takeovers

10. The Listing Rules require an issuer that wishes to undertake a reverse takeover to prepare a Class 1 circular. In addition, if the issuer wishes to be

listed following completion of the takeover, it must prepare listing particulars as if it were a new applicant.

11. The Listing Review found that there is broad agreement that the current provisions relating to reverse takeovers should be continued. So we do not propose to amend the current requirements.

Pre-emption rights

12. The Listing Rules reinforce shareholder pre-emption rights based on company law. We believe that pre-emption rights are a fundamental shareholder right associated with holding a primary listed security and that any issuer with a primary listing should provide its shareholders with this protection.

13. We propose to retain the rules that protect shareholder rights in this way. In addition, in Chapter 7, we are proposing that non-UK companies which have a primary listing be required to comply with the Listing Rules requirements on pre-emption or provide alternative protection to investors.

Flyers accompanying approved documents

14. We are proposing to relax our position on the flyers which companies sometimes choose to issue together with circulars or prospectuses required under the Listing Rules. To date, we have permitted flyers that contain only factual information. This is an area that will be affected by the PD's provisions on investment advertisements. CESR will be mandated to consult on the issues surrounding these, and we do not intend to duplicate that consultation. We will revisit the publication of flyers in due course.

List of sponsor responsibilities under the Listing Rules

SPONSOR RESPONSIBILITY	SPONSOR WORK UNDERTAKEN
Para 2.9(a) In the case of any application for listing which requires the production of listing particulars, the sponsor must satisfy itself, to the best of its knowledge and belief, having made due and careful enquiry of the issuer and its advisers, that the issuer has satisfied all applicable conditions for listing and other relevant requirements of the Listing Rules	Preparation and co-ordination of listing particulars; research on the history of the issuer, the nature of its business, financial information, accounting systems and controls; research on the directors and other key officers, evaluate quality of management; The majority of the information required is collated by commissioning a long form report which is prepared by the reporting accountant. This report is then discussed in detail with the directors and the reporting accountant and where necessary further work is requested to be performed by the reporting accountant to satisfy the sponsor about any outstanding issues. Review of information prepared by other advisers, including working capital report, profit forecast, verification notes; meetings with the directors, significant shareholders, and other advisers; obtain letters of support/confirmation from other advisers.
Para 2.9 (b) Submit confirmation of independence – Schedule 1A	Have adequate systems and controls to identify conflicts of interest; identify possible conflicts in terms of material interests; consider whether conflict can be managed/whether there are effective Chinese walls; prepare letter of confirmation
Para 2.9 (c) Provide information or explanation to the UKLA for the purpose of verifying whether Listing Rules have been complied with by issuer	Depends on nature of information/explanation requested. Likely to involve review of issuer documentation, discussions/meetings with issuer
Para 2.9 (d) Take all reasonable steps to ensure that a confirmation or declaration required to be provided to the UKLA by a sponsor under the Listing Rules is correct and complete in all material respects	Depends on nature of confirmation/declaration required. Likely to involve work under paras 2.9(a)/2.9(b)

Annex H

Para 2.9 (e) Advise the UKLA in writing without delay of its resignation or dismissal, giving details of any relevant facts or circumstances	Prepare letter without delay
Para 2.10 Where a sponsor gives guidance or advice to an issuer in relation to the application or interpretation of the Listing Rules, the sponsor: **(a)** should ensure that the issuer is properly guided and advised as to the application or interpretation of the relevant Listing Rules; and **(b)** should provide that service with due care and skill	Ensure that sufficient experienced staff are available. Procedures for quality control of advice and appropriate supervision. Discussions/meetings with issuer
Para 2.12 - Provide schedule 4A confirming that listing conditions have been satisfied	Work required under para 2.9(a), 2.13, 2.15-2.17, 2.20, 25.5, 25.12
Para 2.13 - Sponsor must be satisfied, before any application for listing is made which requires listing particulars, that directors have had explained to them by the sponsor or other appropriate professional adviser, the nature of their responsibilities and obligations as directors of a listed issuer under the Listing Rules	Meeting/presentation with directors and/or with lawyers, brokers etc. Record advice, guidance given
Para 2.14 - Confirm para 2.13 in relation to new director, if UKLA so requests	See work required for para 2.13

Para 2.15 - Sponsor must obtain written confirmation from the issuer that the directors have established procedures which provide are reasonable basis for them to make proper judgements as to the financial position and prospects of the issuer and its group and be satisfied that this confirmation has been given after due and careful enquiry by the issuer	Discussions and meetings with directors and accounting staff; review directors' documentation relating to issuer's procedures and controls; obtain written confirmation from issuer; obtain letters of comfort from advisers. In practice this work is supported by requesting a commentary on the procedures and controls in place by the reporting accountant, and a comfort letter from the reporting accountant in relation to whether the directors have made due and careful enquiry. The issuer documents its procedures and controls in the form of a board memo, which the directors adopt.
Paras 2.16-2.17 - Sponsor must confirm that accountants' report is not required in specific situations	Discussions with the reporting accountant
Para 2.18 - Sponsor must obtain written confirmation from issuer that working capital is adequate	Discussions and meetings with directors, accounting staff and reporting accountant and review of detailed financial projections and supporting documentation prepared by the directors. Obtain copies of and review letters from persons or institutions providing finance. In practice, this work is supported by requesting a commentary on the working capital documentation by the reporting accountant, and a comfort letter in relation to whether the directors have made due and careful enquiry. The reporting accountant will also be likely to be requested to seek the relevant letters from the providers of finance.
Para 2.19 - Sponsor must report that profit forecast has been made after due and careful enquiry by the issuer	Review profit forecast and related financial statements; discussions and meetings with directors and other accounting staff, and the auditors or the reporting accountants providing a report under Listing Rule 12.24
Para 2.20 - Sponsor must obtain written confirmation from issuer that financial information has been properly extracted	Review financial information and source accounting records, discussions and meetings with directors and accounting staff. Obtain written confirmation from the issuer and seek a comfort letter from the reporting accountant confirming the accurate extraction of the information.
Para 2.21 – Various miscellaneous sponsor services	Depends on nature of sponsor service required

Code of Practice for Expert Advisers on the Listing Rules[30]

a The purpose of this Code is to give guidance to expert advisers on the standards expected by the FSA when carrying out their responsibilities. This Code is intended to provide guidelines, not to encourage a rigid 'tickbox' approach. An expert adviser needs to exercise its judgement in each case, and the nature and extent of work and advice required will vary between transactions. Compliance with this Code does not necessarily indicate that an expert adviser has satisfied the requirement of due care and skill under the Listing Rules, although it will be a relevant factor in that determination.

1. An expert adviser should satisfy itself that the directors of the issuer understand the nature and extent of their responsibilities under the Listing Rules. This is likely to involve (prior to listing) a presentation to the directors on the Listing Rules, supplemented by appropriate written material and further explanations as required. An expert adviser retained by the issuer on a continuing basis should provide further updates as necessary, when there are material changes to the Listing Rules.

2. An expert adviser should be closely involved with the preparation of the prospectus or similar document submitted to the FSA to ensure the Listing Rules have been complied with in full and that the appropriate disclosures have been made. An expert adviser should carry out appropriate due diligence to satisfy itself that an issuer has satisfied all applicable conditions for listing and all other relevant requirements of the Listing Rules. This may include:

    - research on the history of the issuer, the nature of its business, financial information and accounting systems and controls. Underlying information and analysis is normally obtained by commissioning a long form report from the reporting accountant;

30 The term 'expert adviser' rather than 'sponsor' will be used in the revised Listing Rules (see paragraph 11.27.

- research on the directors of the issuer and other key officers, and an evaluation of the quality of management;
- review of information prepared by other advisers, such as accountant's report, working capital report, accountant's report on a profit forecast given under paragraph 12.24 of the Listing Rules and verification notes;
- meeting with the issuer's directors, significant shareholders (as appropriate) and with other advisers such as the reporting accountant and lawyers;
- conducting a detailed risk analysis of the issuer and its products or services and ensuring that adequate risk disclosures are made.

3. An expert adviser should satisfy itself that it has adequate resources to fulfil its responsibilities under the Listing Rules, in particular that staff are competent and experienced to provide advice. Less experienced staff should be appropriately supervised.
4. An expert adviser should inform the FSA, in a timely manner, of any issues which should be brought to the FSA's attention.
5. An expert adviser should deal with all enquiries raised by the FSA promptly and efficiently.
6. An expert adviser should keep adequate records of all steps taken to discharge its responsibilities under the Listing Rules.
7. An expert adviser should ensure that a senior independent member of staff reviews the assurances provided to the FSA.
8. An expert adviser should accompany the issuer at any meetings with the FSA, unless otherwise requested.

Rules, Regulations and Regulators: Who's Who

	Who	Responsible for	Contact
Financial Services Authority (FSA)	The FSA, acting as the Competent Authority, is referred to as the UK Listing Authority (UKLA) and maintains the Official List. FSMA imposes this requirement on the FSA and gives the necessary powers to the Competent Authority.	• Applications for listing; • Suspension and cancellation of listing; • Approval of documents relating to applications for listing and other applications; • The approval of sponsors and regulation of sponsors in relation to the application of the Listing Rules; • Investigation of breaches of the Listing Rules and certain offences under FSMA; • The imposition of financial penalties on issuers, directors and former directors and the issue of public statements censuring an issuer, director, former director or sponsor for breaches of the Listing rules; • Making rules under part VI of FSMA; • Enforcement of the Combined Code (Principles of Good Governance and Code of Best Practice) by adopting a 'comply or explain' approach set out by Listing Rule 12 43A; and • Giving general guidance in relation to Part VI of FSMA.	25 The North Colonnade, Canary Wharf, London, E14 5HS +44 (0)20 7066 1000 www.fsa.gov.uk
The Financial Reporting Council (FRC)	The Financial Reporting Council (FRC) with its subsidiaries, the Accounting Standards Board (ASB) and the Financial Reporting Review Panel (FRRP) together make up an	• The content of the Combined Code and ensuring it satisfies the current market; and • providing general policy guidance to its operational bodies, the ASB and the FRRP.	Holborn Hall 100 Gray's Inn Road London WC1X 8AL

Annex J

	organisation whose purpose is to promote and secure good financial reporting.		+44 (0) 207 611 9700 http://www.frc.org.uk
The Financial Reporting Review Panel (FRRP)	Commonly referred to as 'the panel', the FRRP is a subsidiary of the FRC, although it still maintains its independence in exercising its functions of reviewing the accounting practice of public companies and large private companies.	• In cases brought to its attention, examining apparent departures from the accounting requirements of the Companies Act 1985, including applicable accounting standards, and if necessary seeking an order from the court to remedy them. • The CGAA recommended that the FRRP and the FSA should develop and agree a Memorandum of Understanding (MOU) to clarify their respective roles in the enforcement process. This is being finalised.	Holborn Hall 100 Gray's Inn Road London WC1X 8AL 44 (0)20 7611 9750 http://www.frrp.org.uk

The Accounting Standards Board (ASB)	The ASB, a subsidiary of the FRC collaborates with accounting standard-setters from other countries and the International Accounting Standard Board (IASB) in order to ensure that its standards are developed with due regard to international developments.	• Issuing accounting standards. • Making, amending and withdrawing accounting standards.	Holborn Hall 100 Gray's Inn Road London WC1X 8AL +44 (0)20 7404 8818 +44 (0)20 7611 9700 http://www.asb.org.uk
Auditing Practices Board (APB)	The Auditing Practices Board (APB) APB Ltd is a currently a subsidiary of the Accountancy Foundation.	• Developing and issuing standards for auditors in the United Kingdom and Republic of Ireland. • Publishing statements of the principles and procedures with which auditors must comply in the conduct of audits, and other explanatory material to assist in their interpretation and application.	The Auditing Practices Board 117 Houndsditch London EC3A 7BT +44 (0)20 7293 7931 http://www.accountancyfoundation.com/auditing_practices_board/index.cfm
The Panel on Takeovers and Mergers ('the Panel')	The Panel on Takeovers and Mergers is the regulatory body that administers the City Code on Takeovers and Mergers. It is concerned with takeovers of public companies, whether listed or unlisted which are resident in the United Kingdom. Its remit also extends to certain private companies.	• Ensuring the fair conduct of a takeover bid from the point of view of shareholders. The Code is not concerned with the financial or commercial advantages or disadvantages of a takeover. These are matters for the company and its shareholders. Wider questions of public interest are dealt with by the Competition Commission, the Office of Fair Trading, the Department of Trade and Industry or the European Commission.	PO Box No. 226 The Stock Exchange Building London EC2P 2JX +44 (0) 20 7382 9026 http://www.thetakeoverpanel.org.uk

London Stock Exchange (LSE)	The London Stock Exchange is a recognised investment exchange under UK law and operates alongside the Listing Rules to provide the markets and means of raising capital for UK and international companies. Their regulation gives protection to investors as well as giving companies and others suitable access to capital – maintaining the integrity of the primary market for capital raising and the secondary market for trading securities.	• Developing and operating a main market which is open to larger companies worldwide and also AIM which is a global market for young and growing companies. • Vetting new applicants for membership. • Monitoring trading on the markets. • Providing services to aid trading. • Conducting preliminary investigation into cases of insider dealing and market abuse.	Old Broad St London EC2N 1HP +44 (0) 20 7797 1000 http://www.londonstockexchange.com

Members of Consultative Committee and Theme Teams

The Consultative Committee was chaired by Ken Rushton, Director of Listing, and included the following organisations:

Representative body	Member
Accountancy Foundation Review Board	Colin Reeves
Arbuthnot Securities	Nicholas Donaldson
Association of British Insurers	Michael McKersie
Association of Private Client Investment Managers and Stockbrokers	Catriona Shaw/David Maxwell
BP	David Jackson
Cazenove & Co	Christopher Smith
Confederation of British Industry	Rod Armitage
Cinven	Andrew Joy
Citigroup	Patrick Drayton
Corporate Governance Forum	Paul Lee
Department of Trade and Industry (Observer)	Robert Burns
Deutsche Bank	James Agnew
Dresdner Kleinwort Wasserstein	Jim Hamilton
Financial Services Authority	Gay Huey Evans
Freshfields Bruckhaus Deringer	Charles ap Simon/Tim Jones
HM Treasury (Observer)	David Lawton
Hoare Govett	Andrew Chapman
HSBC	Ralph Barber
International Primary Market Association	Mary Hustings

KPMG	Neil Austin
Lexicon Partners	Sir Laurie Magnus
Linklaters	Lachlan Burn
London Investment Banking Association	John Serocold
London Stock Exchange	Patrick Morton
Manganese Bronze Holdings	Jamie Borwick
M & G Investment Management	Huw Jones
National Association of Pension Funds	Martyn Hole
Norton Rose	Margaret Coltman
Panel on Takeovers and Mergers	Robert Ogilvy-Watson
Pensions Investment Research Consultants	Alan MacDougall
PricewaterhouseCoopers	Tom Troubridge
ProShare	Diane Hay
Prudential	Peter Maynard
Quoted Companies Alliance	Christopher Searle
Schroders Asset Management (formerly at Barclays Bank)	Howard Trust
SG Investment Management	Ian Salter

Theme Teams Members [31]

Sponsor Theme Team

David Kappler, Chair	Cadbury Schweppes
David Blackwood	ICI
Philip Cowdy	Deutsche Bank
Alistair Defriez	UBS Warburg
Nick Donaldson/Tim Goodwood	Arbuthnot Securities
Huw Jones	M&G Investment Management
Jonathan Lang/Andrew Croxford	Allen & Overy
Annette Lawless	Rio Tinto
Alex Reynolds	Dresdner Kleinwort Wasserstein

Financial Information Theme Team

Stephen Anstee	
William Brown	Friends Ivory & Sime
Steven Cowden	Reed Elsevier
Kevin Desmond	PricewaterhouseCoopers
Richard Fleck	Herbert Smith/Auditing Practices Board
Robert Hodgkinson	Institute of Chartered Accountants in England & Wales
Nichola Miller	Panel on Takeovers and Mergers
Nigel Sleigh-Johnson	ICAEW
Ann Simon	Mirada Solutions

Corporate Governance Theme Team

Jonathan Bates/Merlin Underwood	Institutional Design
Simon Bicknell	GlaxoSmithKline

[31] FSA employees participated in all of the Theme Teams.

Peter Butler/Paul Lee	Hermes Pensions Management
Anthony Carey	Robson Rhodes
Paul Clarke	Fuller, Smith & Turner
Richard Fleck	Herbert Smith
Jeff Harris	Alliance Unichem
David Jackson	BP
Vanessa Knapp	Freshfields Bruckhaus Deringer
Charles Mayo	Simmons & Simmons
Richard Nelson	Institute of Internal Auditors
Stephen Rigby	Norton Rose

Continuing Obligations Theme Team

Gill Ackers	Brunswick
James Agnew	Deutsche Bank
Patricia Alsop	William Baird
Nigel O'Connor	Institute of Public Relations
Lucy Fergusson/Steven Turnbull	Linklaters
Liz Hewitt	3i
Rosemary Martin/ Miriam McKay	Reuters
Peter Montagnon	Association of British Insurers
Robert Ogilvy-Watson	Panel on Takeovers and Mergers
Les Pugh/Andrew Jones	Makinson Cowell
Giles Sanderson	Financial Dynamics
William Underhill	Slaughter & May
Stuart Valentine	Securities Institute

Glossary

AIM	The Alternative Investment Market of the LSE
APB	Auditing Practices Board, the body which establishes auditing standards and currently a subsidiary of the Accountancy Foundation
ASB	Accounting Standards Board, the body which issues accounting standards and a subsidiary of the FRC
CARD	Consolidated Admissions and Reporting Directive. CARD consolidated the Listing Particulars Directive, Admission to Listing Directive, Interim Reports Directive and the Major Shareholding Directive in July 2001
CESR	Committee of European Securities Regulators, formerly known as FESCO
CIS	Collective Investment Scheme
CJA	The Criminal Justice Act 1993
COMC	The Code of Market Conduct issued by the FSA for the purpose of giving guidance to market participants to help determine whether or not their behaviour amounts to market abuse
Combined Code	The Combined Code on Corporate Governance, containing the Code of Best Practice issued by the FRC and any revision or amendment thereof
Competent Authority	The authority designated under Schedule 8 of FSMA as responsible for admitting securities to, and for removing securities from, the Official List; for the time being, the FSA in its capacity as such
CP	Consultation Paper

DP14	Discussion Paper 14 Review of the listing regime published in July 2002
FRC	Financial Reporting Council which, with its subsidiaries the ASB and the FRRP make up an organisation whose purpose is to promote and secure good financial reporting
FRRP	Financial Reporting Review Panel, which examines apparent departures from the accounting requirements of the Companies Act 1985, including applicable accounting standards
FSA	Financial Services Authority, the Competent Authority in the UK
FSAP	Financial Services Action Plan which aims to deliver a single market in financial services in the EU
FSAP Directives	The ISD, the MAD, the PD and the TD to be implemented as part of the FSAP
FSMA	Financial Services and Markets Act 2000
GAAP	Generally Accepted Accounting Principles
GDR	Global Depository Receipt, a listed certificate representing an underlying security (usually a share)
home Member State	The Member State which is the home Member State of an issuer as defined by the relevant FSAP Directive
host Member State	A Member State which is not the home Member State of the issuer as defined by the relevant FSAP Directive
IAS	International Accounting Standards, which is used in the CP as a generic term to cover all accounting standards issued by the International Accounting Standards Board
ICAEW	Institute of Chartered Accountants in England and Wales
ISD	Investment Services Directive which is due to replace the Investment Services Directive (93/22/EC) regulating the minimum framework for the authorisation, behaviour and conduct of business of securities firms and markets, including exchanges
Listing Review	The FSA's review of the listing regime of which this CP forms a part
Listing Rules	The Listing Rules of the UKLA
LSE	London Stock Exchange plc
MAD	The Market Abuse Directive (03/6/EC) which harmonises rules on the prevention of insider dealing and market manipulation in regulated and unregulated markets

Model Code	The model code on directors' dealings in securities, as set out in the appendix to Chapter 16 of the Listing Rules
Official List	The list maintained by the FSA in its role as Competent Authority for listing, in accordance with section 74(5) of FSMA for the purposes of Part VI of FSMA
OFR	The Operating and Financial Review
OFT	Office of Fair Trading
PD	The Prospectus Directive which was adopted in July 2003, is designed to provide a single passport for issuers of securities so that, once an issue of securities meets prospectus requirements in one EU country, the securities can be publicly offered throughout the EU or admitted to trading on a regulated market
PSI	Price-sensitive information
PwC Report	The report commissioned by the FSA from PricewaterhouseCoopers entitled Primary Market Comparative Regulation Study – Key themes. (See Annex A to DP14)
Regulated Market	A regulated market that comes within the provisions of Article 16 of the Investment Services Directive (93/22/EC). In the UK the following markets are Regulated Markets: the Domestic Equity Market, the European Equity Market, the Gilt Edged and Sterling Bond Market and AIM (all of which are operated by LSE), LIFFE, EDX, Virt-x, the International Order Book, the International Retail Service
RIS	Regulatory Information Service, a service by which issuers disclose information to the public
SEC	US Securities and Exchange Commission
SMEs	Small and Medium size Enterprises
super-equivalent provisions	Provisions of the Listing Rules that are in addition to the requirements imposed by CARD and the FSAP Directives
TD	Transparency Directive proposed by the European Commission in March 2003, which imposes continuing disclosure requirements on issuers including financial reporting and disclosure of major shareholdings
UKLA	UK Listing Authority

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