ACT

Technical Committee

FSA Review of the UK Listing Regime
Summary of consultation paper and Act response

The FSA published a consultation paper (cp203) in October 2003 containing wide ranging and radical proposals for reforming the Listing Regime for equity, debt and financial products.

The review aimed to simplify and modernise the Listing Regime and at the same time to accommodate the impact of changes being proposed to the European regulatory framework. Its implications cross the boundaries into the legal, company secretarial, and financial accounting disciplines, but also impinges on the Treasurer's capital raising process in the debt and equity markets.

At this stage the consultation paper was seeking views on policy. The proposals for detailed changes will not be presented until third quarter of 2004 in the form of a further consultation paper. Finalised rules should then be published in spring 2005 for implementation that summer.

Summary of proposals

The key areas for change that are covered by the consultation are:

• to introduce a set of high level Listing Principles which will inform the making and understanding of the 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;

• to consult on the importance of retaining super-equivalent (meaning requiring higher standards than are required by European legislation) eligibility requirements for equity issuers such as a three-year 'track record' and a 'clean' working capital statement;

• to consult on retaining super-equivalent eligibility requirements in relation to debt issues, including the requirement for an authorized adviser;• 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 EU's Financial Services Action Plan 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 Consolidated Admissions and reporting Directive 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;

• to recommend that all listed issuers comply with the OFR (Operating and Financial review) regulations, so that listed issuers are at the forefront of good market practice in this area;

• 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;

• to introduce a new requirement for companies to obtain shareholder approval where an issuer intends to delist;

• to streamline the Model Code once the MAD (Market Abuse Directive) implementation measures have been finalised to reduce duplication;

• 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. It is also proposed 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; 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. The FSA intend to clarify the regime (whether compulsory or voluntary) and strengthen enforcement against those that fall short of the required standards.

Summary of ACT response

The ACT was generally supportive of the purpose and general direction of the proposals which were to simplify and modernise the listing regime and to accommodate the effects of European regulation, whilst at the same time not detracting from the reputation of the London markets through diluting the effectiveness of regulation here.

The ACT supported an introduction of overarching principles which would provide a substance over form approach that would supplement the detailed rules. Other significant changes proposed that we supported were:

- Relaxation to the requirement for a working capital statement on equity issues so that full cover of forecast cash needs was not essential and instead the issuer could explain how it proposed to cover any shortfalls
- Removal of a need for any working capital statement for non-specialist debt issues
- Dropping the two year track record required for specialist bond issues and instead changing to '2 years or since start of operations if shorter'.
- Maintaining the requirements for approval by shareholders of Class 1 transactions.
- Extending the scope of Class 1 transactions to include other types of transactions where the shareholder's investment is to be significantly changed or diluted eg certain securitisations.
- A new requirement for shareholder approval prior to delisting.
- A proposal to enable issuers to publish additional and unaudited financial information as long as this is clearly indicated and it is capable of subsequent comparison to actual published results.

On certain other points the FSA was open in seeking views on various options. The representations were to support the following:

- Retention of the requirement on equity issues and Class 1 transactions to have a sponsor.
- Retention of the need to include a significant change statement in Class 1 circulars even if companies move on to a quarterly reporting schedule.

On just a few points we took a slightly different stance from the FSA proposals or we felt it necessary to extend our comments beyond the specifics raised by them, including:

- Our belief that if the reporting requirements on Prospective Financial Information were to be relaxed there was still a real need for a form of audit reasonableness test to avoid such statements becoming merely wish lists.
- A strong view that there was a need to amend the listing rules to allow the disclosure of price sensitive information to credit rating agencies under a confidentiality agreement, notwithstanding that this was already an accepted practice in the market.
- A recommendation that further consideration be given to the distinction between specialist and non-specialist debt issues and the rules applicable to each. This is needed because additional rules are being introduced to distinguish wholesale and non wholesale debt issues under the Prospectus Directive and in any case the UK rules for non-specialist debt are so onerous that these retail type issues are rarely made in the London market.

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