

Chapter 5

Suspending, cancelling and restoring listing and reverse takeovers: All securities

5.2 Cancelling listing

FCA may cancel listing

5.2.1 R The FCA may cancel the *listing of securities* if it is satisfied that there are special circumstances that preclude normal regular dealings in them. [Note: article 18(2) CARD]

Examples of when FCA may cancel

5.2.2 G Examples of when the FCA may cancel the *listing of securities* include (but are not limited to) situations where it appears to the FCA that:

- (1) the *securities* are no longer admitted to trading as required by these *rules*; or
- (2) the *issuer* no longer satisfies its continuing obligations for *listing*, for example if the percentage of *shares* in public hands falls below 10% (the FCA may however allow a reasonable time to restore the percentage, unless this is precluded by the need to maintain the smooth operation of the market or to protect investors); or
- (3) the *securities' listing* has been suspended for more than six months;
- (4) the *securities* are *equity shares* with a *standard listing* issued by a *closed-ended investment fund* where the *closed-ended investment fund* no longer has a *premium listing of equity shares*.

5.2.3 G The FCA will generally seek to cancel the *listing of an issuer's equity shares or certificates representing equity securities* when the *issuer* completes a *reverse takeover*.

[Note: LR 5.6 contains further detail relating to *reverse takeovers*.]

Cancellation at issuer's request

5.2.4 R An *issuer* must satisfy the requirements applicable to it in LR 5.2.5 R to LR 5.2.11CR and LR 5.3 before the FCA will cancel the *listing of its securities* at its request.

5.2.4A G LR 5.2.4 R applies even if the *listing of the securities* is suspended.

Cancellation of listing of securities with a premium listing

5.2.5

R

Subject to ■ LR 5.2.7 R, ■ LR 5.2.10 R, ■ LR 5.2.11A R and ■ LR 5.2.12 R, an *issuer* with a *premium listing* that wishes the *FCA* to cancel the *listing* of any of its *securities* with a *premium listing* must:

- (1) send a *circular* to the holders of the relevant *securities*. The *circular* must:
 - (a) comply with the requirements of ■ LR 13.3.1 R and ■ LR 13.3.2 R (contents of all circulars);
 - (b) be submitted to the *FCA* for approval prior to publication; and
 - (c) include the anticipated date of cancellation (which must be not less than 20 *business days* following the passing of the resolution referred to in paragraph (2));
- (2) in the case of a cancellation of *listing* of *equity shares*, obtain, at a general meeting, the prior approval of a resolution for the cancellation from:
 - (a) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
 - (b) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares* of *independent shareholders* voted on the resolution;
- (2A) in the case of a cancellation of *listing* of *certificates representing shares*, obtain, at a meeting of the holders of the certificates, the prior approval of a resolution for the cancellation from:
 - (a) a majority of not less than 75% in value of the *certificates representing shares* in issue at the time of the meeting that are voted on the resolution; and
 - (b) where an *issuer* has a *controlling shareholder*, a majority in value of the *certificates representing shares* in issue at the time of the meeting that are:
 - (i) held by holders of certificates other than the *controlling shareholder*; and
 - (ii) that are voted on the resolution;
- (3) notify a *RIS*, at the same time as the *circular* is despatched to the relevant holders of the *securities*, of the intended cancellation and of the notice period and meeting; and
- (4) notify a *RIS* of the passing of the resolution in accordance with ■ LR 9.6.18 R or (as applicable) ■ LR 21.8.11 R

5.2.5A

R

[deleted]

(1) [deleted]

(2) [deleted]

5.2.6

R

[deleted]

5.2.7

R

■ LR 5.2.5 R (2) and (2A) will not apply where an *issuer* of *securities* notifies a *RIS*:

- (1) that the financial position of the *issuer* or its *group* is so precarious that, but for the proposal referred to in ■ LR 5.2.7 R (2), there is no reasonable prospect that the *issuer* will avoid going into formal insolvency proceedings;
- (2) that there is a proposal for a transaction, arrangement or other form of reconstruction of the *issuer* or its *group* which is necessary to ensure the survival of the *issuer* or its *group* and the continued *listing* would jeopardise the successful completion of the proposal;
- (3) explaining;
 - (a) why the cancellation is in the best interests of those to whom the *issuer* or its *directors* have responsibilities (including the bodies of *securities* holders and creditors, taken as a whole); and
 - (b) why the approval of shareholders or, in the case of *certificates representing shares*, holders of certificates will not be sought prior to the cancellation of *listing*; and
- (4) giving at least 20 *business days* notice of the intended cancellation.

5.2.7A

R

Where a *closed-ended investment fund* no longer has a *premium listing* of *equity shares* it must apply under ■ LR 5.2.8 R for *cancellation* of the *listing* of any other class of *listed equity shares*.

Requirements for cancellation of other securities

5.2.8

R

An *issuer* that wishes the *FCA* to cancel the *listing* of *listed securities* (other than *securities* with a *premium listing*) must notify a *RIS*, giving at least 20 *business days* notice of the intended cancellation but is not required to obtain the approval of the holders of those *securities* contemplated in ■ LR 5.2.5 R (2) or (2A).

5.2.9

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Issuers with *debt securities* falling under ■ LR 5.2.8 R must also notify, in accordance with the terms and conditions of the *issue* of those *securities*, holders of those *securities* or a representative of the holders, such as a trustee, of intended cancellation of those *securities*, but the prior approval of the holders of those *securities* in a general meeting need not be obtained.

Cancellation in relation to takeover offers: offeror interested in 50% or less of voting rights

5.2.10

R

■ LR 5.2.5 R does not apply to the cancellation of *securities* with a *premium listing* in the case of a takeover offer if:

- (1) the *offeror* or any *controlling shareholder* who is an *offeror* is interested in 50% or less of the voting rights of an *issuer* before announcing its firm intention to make its takeover offer;
- (2) the *offeror* has by virtue of its shareholdings and acceptances of its takeover offer, acquired or agreed to acquire issued *share capital* carrying 75% of the voting rights of the *issuer*; and

- (3) the *offeror* has stated in the offer document or any subsequent *circular* sent to the holders of the shares that a notice period of not less than 20 *business days* prior to cancellation will commence either on the *offeror* obtaining the required 75% as described in ■ LR 5.2.10 R (2) or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006 (Right of offeror to buy out minority shareholder).

5.2.10A **R** For the purposes of ■ LR 5.2.10 R (3), the offer document or *circular* must make clear that the notice period begins only when the *offeror* has announced that it has acquired or agreed to acquire *shares* representing 75% of the voting rights.

5.2.11 **R** Where ■ LR 5.2.10R applies, the *issuer* must notify shareholders and, in the case of *certificates representing shares*, holders of certificates:

- (1) by stating:
 - (a) that the *offeror* has reached the threshold described in ■ LR 5.2.10R(2);
 - (b) that the notice period has therefore commenced; and
 - (c) the anticipated date of cancellation, or
- (2) by stating in the explanatory letter or other material accompanying the section 979 notice:
 - (a) that the notice period has commenced; and
 - (b) the anticipated date of cancellation.

Cancellation in relation to takeover offers: offeror interested in more than 50% of voting rights

5.2.11A **R** ■ LR 5.2.5 R does not apply to the cancellation of *securities* with a *premium listing* in the case of a takeover offer if:

- (1) the *offeror* or any *controlling shareholder* who is an *offeror* is interested in more than 50% of the voting rights of an *issuer* before announcing its firm intention to make its takeover offer;
- (2) the *offeror* has by virtue of its shareholdings and acceptances of its takeover offer, acquired or agreed to acquire issued *share* capital carrying 75% of the voting rights of the *issuer*;
- (3) the *offeror* has obtained acceptances of its takeover offer or acquired or agreed to acquire *shares* from *independent shareholders* that represent a majority of the voting rights held by the *independent shareholders* on the date its firm intention to make its takeover offer was announced; and
- (4) the *offeror* has stated in the offer document or any subsequent *circular* sent to the holders of the *shares* that a notice period of not less than 20 *business days* prior to cancellation will commence either on the *offeror* obtaining the relevant shareholding and acceptances as described in ■ LR 5.2.11A R (2) to ■ (3) or on the first date of issue of

compulsory acquisition notices under section 979 of the Companies Act 2006.

5.2.11B **R** For the purposes of **■ LR 5.2.11A R (4)**, the offer document or *circular* must make clear that the notice period begins only when the *offeror* has announced that it has acquired or agreed to acquire *shares* representing 75% of the voting rights and, if relevant, has obtained acceptances of its takeover offer or acquired or agreed to acquire *shares* from *independent shareholders* that represent a majority of the voting rights held by the *independent shareholders*.

5.2.11C **R** Where **■ LR 5.2.11AR** applies, the *issuer* must notify shareholders and, in the case of *certificates representing shares*, holders of certificates:

- (1) by stating:
 - (a) that the relevant thresholds described in **■ LR 5.2.11AR(2)** to **■ (3)** have been reached;
 - (b) that the notice period has therefore commenced; and of
 - (c) the anticipated date of cancellation, or
- (2) by stating in the explanatory letter or other material accompanying the section 979 notice:
 - (a) that the notice period has commenced; and
 - (b) the anticipated date of cancellation.

5.2.11D **R** [deleted]

Cancellation as a result of schemes of arrangement etc

5.2.12 **R** **■ LR 5.2.5 R** and **■ LR 5.2.8 R** do not apply to the cancellation of *equity shares* and *certificates representing shares* as a result of:

- (1) a takeover or restructuring of the *issuer* effected by a scheme of arrangement under Part 26 of the Companies Act 2006; or
- (2) an administration or liquidation of the *issuer* pursuant to a court order under the Insolvency Act 1986, Building Societies Act 1986, Water Industry Act 1991, Banking Act 2009, Energy Act 2011 or the Investment Bank Special Administration Regulations 2011; or
- (3) the appointment of an administrator under paragraphs 14 (appointment by holder of floating charge) or 22 (appointment by company or directors) of Schedule B1 to the Insolvency Act 1986; or
- (4) a resolution for winding up being passed under section 84 of the Insolvency Act 1986; or
- (5) the appointment of a provisional liquidator by the court under section 135 of the Insolvency Act 1986; or
- (6) a company voluntary arrangement pursuant to Part 1 of the Insolvency Act 1986, subject to the time limits for the challenge of

decisions made set out in Part 1 of the Insolvency Act 1986 having expired; or

- (7) statutory winding up or reconstruction measures in relation to an *overseas issuer* under equivalent *overseas* legislation having similar effect to those set out in (1) to (6).

5.2.13

G

In determining whether the statutory winding up or reconstruction measures in relation to an *overseas issuer* under equivalent *overseas* legislation have a similar effect to those set out in ■ LR 5.2.12R (1) to ■ LR 5.2.12R (6), the FCA will in particular have regard to whether those procedures require a court order, the approval of 75% of the shareholders entitled to vote on the resolution, or a formal declaration of the *overseas issuer's* insolvency or inability to pay its debts.