

Chapter 5

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

5.4A Transfer between listing categories

Application

5.4A.1

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This section applies to an *issuer* that wishes to transfer the category of its *listing* from:

- (1) a *standard listing (shares)* to a *premium listing (commercial company)*; or
- (2) a *standard listing (shares)* to a *premium listing (closed-ended investment fund)*; or
- (2A) a *standard listing (shares)* to a *premium listing (sovereign controlled commercial company)*; or
- (2B) a *standard listing (certificates representing certain securities)* to a *premium listing (sovereign controlled commercial company)*; or
- (2C) a *standard listing (shares)* to a *standard listing (open-ended investment company)*; or
- (2D) a *standard listing (open-ended investment company)* to a *standard listing (shares)*; or
- (2E) a *standard listing (open-ended investment company)* to a *premium listing (commercial company)*; or
- (2F) a *standard listing (open-ended investment company)* to a *premium listing (sovereign controlled commercial company)*; or
- (3) a *premium listing (commercial company)* to a *standard listing (shares)*; or
- (4) a *premium listing (closed-ended investment fund)* to a *premium listing (commercial company)*; or
- (5) a *premium listing (commercial company)* to a *premium listing (closed-ended investment fund)*; or
- (5A) a *premium listing (commercial company)* to a *standard listing (open-ended investment company)*; or
- (6) a *premium listing (closed-ended investment fund)* to a *standard listing (shares)*;

- (7) a *premium listing* (commercial company) to a *premium listing* (sovereign controlled commercial company); or
- (8) a *premium listing* (sovereign controlled commercial company) to a *premium listing* (commercial company); or
- (9) a *premium listing* (closed-ended investment fund) to a *premium listing* (sovereign controlled commercial company); or
- (10) a *premium listing* (sovereign controlled commercial company) to a *premium listing* (closed-ended investment fund); or
- (11) a *premium listing* (sovereign controlled commercial company) to a *standard listing* (shares); or
- (12) a *premium listing* (sovereign controlled commercial company) to a *standard listing* (certificates representing certain securities); or
- (13) a *premium listing* (sovereign controlled commercial company) to a *standard listing* (open-ended investment company).

5.4A.2 G An *issuer* will only be able to transfer a *listing* of its *equity shares* from a *premium listing* (closed-ended investment fund) to a *standard listing* (shares) if it has ceased to be a *closed-ended investment fund* (for example if it has become a commercial company) or if it continues to have a *premium listing* of a class of *equity shares*. This is because ■ LR 14.1.1R(1) provides that ■ LR 14 does not apply to *equity shares* of a *closed-ended investment fund* without a *premium listing* of *equity shares*.

5.4A.2A G An *issuer* will only be able to transfer a *listing* of its *equity shares* from a *standard listing* (open-ended investment company) to a *standard listing* (shares) if it has ceased to be an *open-ended investment company* (for example if it has become a commercial company). This is because ■ LR 14.1.1R(1A) provides that ■ LR 14 does not apply to *equity shares* of an *open-ended investment company*.

Initial notification to the FCA

- 5.4A.3** R
- (1) If an *issuer* wishes to transfer the category of its *listing* it must notify the *FCA* of the proposal.
 - (2) The notification must be made as early as possible and in any event not less than 20 business days before it sends the *circular* required under ■ LR 5.4A.4 R (2)(a) or publishes the announcement required under ■ LR 5.4A.5 R (2).
 - (3) The notification must include:
 - (a) an explanation of why the *issuer* is seeking the transfer;
 - (b) if a *sponsor's* letter is not required under ■ LR 8.4.14R(1), an eligibility letter setting out how the *issuer* satisfies each *listing rule* requirement relevant to the category of *listing* to which it wishes to transfer;
 - (c) a proposed timetable for the transfer; and

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- (d) if an announcement is required to be published under
■ LR 5.4A.5R (2), a draft of that announcement.

Shareholder approval required in certain cases

- (1) This rule applies to a transfer of the *listing* of:
- (a) *equity shares with a premium listing into or out of the category of premium listing (closed-ended investment fund); or*
 - (b) *equity shares with a premium listing out of the category of premium listing (commercial company); or*
 - (c) *equity shares or certificates representing shares with a premium listing out of the category of premium listing (sovereign controlled commercial company) into the category of standard listing (shares) or standard listing (certificates representing certain securities) or standard listing (open-ended investment company).*
- (2) The *issuer* must:
- (a) send a *circular* to the holders of the *equity shares* or the *certificates representing shares*, as applicable;
 - (b) notify a *RIS*, at the same time as the *circular* is despatched to the relevant holders of the *equity shares* or the *certificates representing shares* (as applicable), of the intended transfer and of the notice period and meeting date; and
 - (c) [deleted]
 - (d) notify a *RIS* of the passing of the resolution required under (3) below.
- (3) (a) In the case of a transfer of the *listing* of *equity shares* with a *premium listing* into or out of the category of *premium listing (closed-ended investment fund)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; or
- (b) in the case of a transfer of the *listing* of *equity shares* with a *premium listing (commercial company)* into the category of *standard listing (shares)* or *standard listing (open-ended investment company)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from:
- (i) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
 - (ii) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares of independent shareholders* voted on the resolution; or
- (c) in the case of a transfer of the *listing* of *equity shares* with a *premium listing (commercial company)* into the category of *premium listing (sovereign controlled commercial company)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from:
- (i) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and

- (ii) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares of independent shareholders* voted on the resolution; or
- (d) in the case of a transfer of the *listing of equity shares* with a *premium listing (sovereign controlled commercial company)* into the category of *standard listing (shares)* or *standard listing (open-ended investment company)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from:
 - (i) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
 - (ii) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares of independent shareholders* voted on the resolution; or
- (e) in the case of a transfer of the *listing of certificates representing shares* with a *premium listing (sovereign controlled commercial company)* into the category of *standard listing (certificates representing certain securities)*, the *issuer* must obtain, at a meeting of the holders of the certificates, the prior approval of a resolution for the transfer from:
 - (i) 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
 - (ii) 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:
 - (A) held by holders of certificates other than the *controlling shareholder*; and
 - (B) that are voted on the resolution.

Announcement required in other cases

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- (1) This rule applies to any transfer of a *listing of equity shares* or *certificates representing shares* other than a transfer referred to in ■ LR 5.4A.4 R (1).
- (2) The *issuer* must publish an announcement on a *RIS* giving notice of its intention to transfer its listing category.

Approval and contents of circular

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The *circular* referred to in ■ LR 5.4A.4 R must:

- (1) comply with the requirements of ■ LR 13.1, ■ LR 13.2 and ■ LR 13.3;
- (2) be approved by the *FCA* before it is circulated or published; and
- (3) include the anticipated transfer date (which must be not less than 20 business days after the passing of the resolution under ■ LR 5.4A.4 R).

Approval and contents of announcement

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The announcement referred to in ■ LR 5.4A.5 R (2) must:

- (1) contain the same substantive information as would be required under ■ LR 13.1 and ■ LR 13.3 if it were a *circular* but modified as necessary so it is clear that no vote of holders of the relevant *securities* is required; and
- (2) include the anticipated transfer date (which must be not less than 20 business days after the date the announcement is published).

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The announcement must be approved by the *FCA* before it is published.

Specific information required in circular or announcement

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Information required under ■ LR 13.3.1R(1) (Contents of all circulars) to be included in the *circular* or announcement should include an explanation of:

- (1) the background and reasons for the proposed transfer;
- (2) any changes to the *issuer's* business that have been made or are proposed to be made in connection with the proposal;
- (3) the effect of the transfer on the *issuer's* obligations under the *listing rules*;
- (4) how the *issuer* will meet any new eligibility requirements, for example working capital requirements, that the *FCA* must be satisfied of under ■ LR 5.4A.12 R (3); and
- (5) any other matter that the *FCA* may reasonably require.

Applying for the transfer

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If an *issuer* has initially notified the *FCA* under ■ LR 5.4A.3 R it may apply to the *FCA* to transfer the *listing* of its *securities* from one category to another. The application must include:

- (1) the *issuer's* name;
- (2) details of the *securities* to which the transfer relates;
- (3) the date on which the *issuer* wishes the transfer to take effect;
- (4) a copy of any *circular*, announcement or other document on which the *issuer* is relying;
- (5) if relevant, evidence of any resolution required under ■ LR 5.4A.4 R;
- (6) if an agent is making the application on the *issuer's* behalf, confirmation that the agent has the *issuer's* authority to do so;
- (7) the name and contact details of the person at the *issuer* (or, if appropriate an agent) with whom the *FCA* should liaise in relation to the application; and

- (8) a copy of any announcement the *issuer* proposes to notify to a *RIS* informing the market that the transfer has taken place.

Issuer must comply with eligibility requirements

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- (1) An *issuer* applying for a transfer of its *securities* must comply with all eligibility requirements that would apply if the *issuer* was seeking admission to *listing* of the *securities* to the category of *listing* to which it wishes to transfer.
- (2) For the purposes of applying the eligibility requirements referred to in (1) to a transfer then, unless the context otherwise requires, a reference in such a requirement:
- (a) to the admission of *securities* is to be taken to be a reference to the transfer of the *securities*; and
 - (b) to a *prospectus* or *listing particulars* is to be taken to be a reference to the *circular* or announcement.

Approval of transfer

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If an *issuer* applies under ■ LR 5.4A.10 R, the *FCA* may approve the transfer if it is satisfied that:

- (1) the *issuer* has complied with ■ LR 5.4A.4 R or ■ LR 5.4A.5 R (whichever is relevant);
- (2) the 20 business day period referred to in ■ LR 5.4A.6 R or ■ LR 5.4A.7 R (whichever is relevant) has elapsed; and
- (3) the *issuer* and the *securities* will comply with all eligibility requirements that would apply if the *issuer* was seeking admission to *listing* of the *securities* to the category of *listing* to which it wishes to transfer.

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The *FCA* will not generally reassess compliance with eligibility requirements (for example ■ LR 6.7.1R (Working capital)) if the *issuer* has previously been assessed by the *FCA* as meeting those requirements under its existing *listing* category when its *securities* were *listed*.

When transfer takes effect

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- (1) If the *FCA* approves a transfer of a *listing* then it must announce its decision on a *RIS*.
- (2) The transfer becomes effective when the *FCA*'s decision to approve is announced on the *RIS*.
- (3) The *issuer* must continue to comply with the requirements of its existing category of *listing* until the decision is announced on the *RIS*.
- (4) After the decision is announced the *issuer* must comply with the requirements of the category of *listing* to which it has transferred.

Obligations under the Act and Prospectus Rules

- 5.4A.15 **G** An *issuer* may take steps, in connection with a transfer, which require it to consider whether a *prospectus* is necessary, for example, if the *company* or its capital is reconstituted in a way that could amount to an *offer of transferable securities to the public*. The *issuer* and its advisers should consider whether obligations under the *Act* and the *prospectus rules* may be triggered.

Transfer as an alternative to cancellation

- 5.4A.16 **G** There may be situations in which an *issuer's* business has changed over a period of time so that it no longer meets the requirements of the applicable *listing* category against which it was initially assessed for *listing*. In those situations, the *FCA* may consider cancelling the *listing* of the *equity shares* or suggest to the *issuer* that, as an alternative, it applies for a transfer of its *listing* category.
- 5.4A.17 **G** There may be situations in which an *issuer* with a *listing* of *securities* in the category of *premium listed (sovereign controlled commercial company)* no longer has a *sovereign controlling shareholder*. In those situations, the *FCA* may consider cancelling the *listing* of the *securities* or suggest to the *issuer* that, as an alternative, it applies for a transfer of its *listing* category.