

Chapter 5

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



5.6 Reverse takeovers

Application

5.6.1

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This section applies to an *issuer* with:

- (1) a *premium listing*;
- (2) a *standard listing (shares)*; or
- (3) a *standard listing of certificates representing equity securities*.

Categories of reverse takeover to which this section does not apply

5.6.2

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■ LR 5.6 does not apply where an *issuer* acquires the *shares* or *certificates representing equity securities* of a *target* with the same category of *listing* as the *issuer*.

Class 1 requirements

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Notwithstanding the effect of ■ LR 5.6.2 R, an *issuer* with a *premium listing* must in relation to a *reverse takeover* comply with the requirements of ■ LR 10.5 (Class 1 requirements) for that transaction.

Definitions

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A *reverse takeover* is a transaction, whether effected by way of a direct acquisition by the *issuer* or a subsidiary, an acquisition by a new *holding company* of the *issuer* or otherwise, of a business, a *company* or assets:

- (1) where any *percentage ratio* is 100% or more; or
- (2) which in substance results in a fundamental change in the business or in a change in board or voting control of the *issuer*.

When calculating the *percentage ratio*, the *issuer* must apply the *class tests* and ■ LR 10.2.10R (Aggregating transactions).

5.6.5

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For the purpose of ■ LR 5.6.4R (2), the *FCA* considers that the following factors are indicators of a fundamental change:

- (1) the extent to which the transaction will change the strategic direction or nature of its business; or

- (2) whether its business will be part of a different industry sector following the completion of the transaction; or
- (3) whether its business will deal with fundamentally different suppliers and end users.

5.6.5A **R** A *shell company* is an issuer whose:

- (1) assets consist solely or predominantly of cash or short-dated securities; or
- (2) predominant purpose or objective is to undertake an acquisition or merger, or a series of acquisitions or mergers.

Requirement for a suspension

5.6.6 **R** A *shell company*, or in the case of a *shell company* with a *premium listing*, its sponsor, must contact the FCA as early as possible:

- (1) before announcing a *reverse takeover* which has been agreed or is in contemplation, to discuss whether a suspension of *listing* is appropriate; or
- (2) where details of the *reverse takeover* have leaked, to request a suspension.

5.6.7 **G** Examples of where the FCA will consider that a *reverse takeover* is in contemplation include situations where:

- (1) the *shell company* has approached the *target's* board;
- (2) the *shell company* has entered into an exclusivity period with a *target*; or
- (3) the *shell company* has been given access to begin due diligence work (whether or not on a limited basis).

5.6.8 **G** Generally, when a *reverse takeover* between a *shell company* and a *target* is announced or leaked, there will be insufficient publicly available information about the proposed transaction and the *shell company* will be unable to assess accurately its financial position and inform the market accordingly. In this case, the FCA will often consider that suspension will be appropriate, as set out in **LR 5.1.2G** (3) and **(4)**. However, if the FCA is satisfied that there is sufficient publicly available information about the proposed transaction it may agree with the *shell company* that a suspension is not required.

5.6.9 **G** **LR 5.6.10 G** to **LR 5.6.18 R** set out circumstances in which the FCA will generally be satisfied that a suspension is not required.

Reverse takeover by a shell company: target admitted to a regulated market

5.6.10 **G** The *FCA* will generally be satisfied that there is sufficient information in the market about the proposed transaction if:

- (1) the *target* has *shares or certificates representing equity securities* admitted to a *regulated market*; and
- (2) the *shell company* makes an announcement stating that the *target* has complied with the disclosure requirements applicable on that *regulated market* and providing details of where information disclosed pursuant to those requirements can be obtained.

5.6.11 **R** An announcement made for the purpose of ■ LR 5.6.10G (2) must be published by means of an *RIS*.

Reverse takeover by a shell company: target subject to the disclosure regime of another market

5.6.12 **G** The *FCA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction if the *target* has *securities* admitted to an investment exchange or trading platform that is not a *regulated market* and the *shell company*:

- (1) confirms, in a form acceptable to the *FCA*, that the disclosure requirements in relation to financial information and *inside information* of the investment exchange or trading platform on which the *target's securities* are admitted are not materially different from the *disclosure requirements*; and
- (2) makes an announcement to the effect that:
 - (a) the *target* has complied with the disclosure requirements applicable on the investment exchange or trading platform to which its securities are admitted and provides details of where information disclosed pursuant to those requirements can be obtained; and
 - (b) there are no material differences between those disclosure requirements and the disclosure requirements under *DTR*.

5.6.13 **R** Where a *shell company* has a *premium listing*, a written confirmation provided for the purpose of ■ LR 5.6.12G (1) must be given by the *shell company's sponsor*.

5.6.14 **R** An announcement made for the purpose of ■ LR 5.6.12G (2) must be published by means of an *RIS*.

Reverse takeover by a shell company: target not subject to a public disclosure regime

5.6.15 **G** Where the *target* in a *reverse takeover* by a *shell company* is not subject to a public disclosure regime, or if the *target* has *securities* admitted on an investment exchange or trading platform that is not a *regulated market* but

the *shell company* is not able to give the confirmation and make the announcement contemplated by ■ LR 5.6.12 G, the *FCA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction such that a suspension is not required where the *shell company* makes an announcement containing:

- (1) financial information on the *target* covering the last three years. Generally, the *FCA* would consider the following information to be sufficient:
 - (a) profit and loss information to at least operating profit level;
 - (b) balance sheet information, highlighting at least net assets and liabilities;
 - (c) relevant cash flow information; and
 - (d) a description of the key differences between the *shell company's* accounting policies and the policies used to present the financial information on the *target*;
- (2) a description of the *target* to include key non-financial operating or performance measures appropriate to the *target's* business operations and the information as required under ■ PR Appendix 3 Annex 1 item 12 (Trend information) for the *target*;
- (3) a declaration that the *directors* of the *shell company* consider that the announcement contains sufficient information about the business to be acquired to provide a properly informed basis for assessing its financial position; and
- (4) a declaration confirming that the *shell company* has made the necessary arrangements with the *target* vendors to enable it to keep the market informed without delay of any developments concerning the *target* that would be required to be released were the *target* part of the *shell company*.

5.6.16 **R** An announcement made for the purpose of ■ LR 5.6.15 G must be published by means of an *RIS*.

5.6.17 **R** Where a *shell company* has a *premium listing*, a *sponsor* must provide written confirmation to the *FCA* that in its opinion, it is reasonable for the *shell company* to provide the declarations described in ■ LR 5.6.15G (3) and ■ (4).

5.6.18 **R** Where the *FCA* has agreed that a suspension is not necessary as a result of an announcement made for the purpose of ■ LR 5.6.15 G the *shell company* must comply with the obligation under article 17(1) of the *Market Abuse Regulation* on the basis that the *target* already forms part of the enlarged *group*.

Cancellation of listing

5.6.19 **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*.

5.6.20 **G** ■ LR 5.6.23 G to ■ LR 5.6.29 G set out circumstances in which the *FCA* will generally be satisfied that a cancellation is not required.

5.6.21 **R** Where the *issuer's listing* is cancelled following completion of a *reverse takeover*, the *issuer* must re-apply for the *listing* of the *shares* or *certificates representing equity securities* and satisfy the relevant requirements for *listing*, except that for an *issuer* with a *premium listing*, ■ LR 6.2.1R(3) and ■ LR 6.2.4R(2) will not apply in relation to the *issuer's* accounts.

5.6.22 **G** Notwithstanding ■ LR 5.6.21 R, financial information provided in relation to the *target* will need to satisfy ■ LR 6.2.1R(3) and ■ LR 6.2.4R(2).

Acquisitions of targets from different listing categories: issuer maintaining its listing category

5.6.23 **G** Where an *issuer* acquires the *shares* or *certificates representing equity securities* of a *target* with a different *listing* category from its own and the *issuer* wishes to maintain its existing *listing* category, the *FCA* will generally be satisfied that a cancellation is not required on completion of a *reverse takeover* if:

- (1) the *issuer* will continue to be eligible for its existing *listing* category following completion of the transaction;
- (2) the *issuer* provides an eligibility letter setting out how the *issuer* as enlarged by the acquisition satisfies each *listing rule* requirement that is relevant to it being eligible for its existing *listing* category; and
- (3) the *issuer* makes an announcement or publishes a *circular* explaining:
 - (a) the background and reasons for the acquisition;
 - (b) any changes to the acquiring *issuer's* business that have been made or are proposed to be made in connection with the acquisition;
 - (c) the effect of the transaction on the acquiring *issuer's* obligations under the *listing rules*;
 - (d) (where appropriate) how the acquiring *issuer* will continue to meet the eligibility requirements referred to in ■ LR 5.6.21 R; and
 - (e) any other matter that the *FCA* may reasonably require.

5.6.24 **R** An announcement or circular published for the purpose of ■ LR 5.6.23 G must be published by means of an *RIS*.

5.6.25 **R** An eligibility letter prepared for the purposes of ■ LR 5.6.23 G must be provided to the *FCA* not less than 20 *business days* prior to the announcement of the transaction referred to in ■ LR 5.6.24 R.

5.6.26 **R** Where an *issuer* has a *premium listing*, the eligibility letter provided for the purposes of ■ LR 5.6.23 G must be provided by a *sponsor*.

Acquisitions of targets from different listing categories: issuer changing listing category

- 5.6.27** G The *FCA* will generally be satisfied that a cancellation is not required on completion of a *reverse takeover* if the *target* is *listed* with a different *listing* category from that of the *issuer* and the *issuer* wishes to transfer its *listing* to a different *listing* category in conjunction with the acquisition and the *issuer* as enlarged by the relevant acquisition complies with the relevant requirements of ■ LR 5.4A to transfer to a different *listing* category.

- 5.6.28** G An *issuer* wishing to transfer a *listing* of its *equity shares* from a *premium listing (investment company)* to a *standard listing (shares)* should note ■ LR 5.4A.2 G which sets out limitations resulting from the application of ■ LR 14.1.1 R (application of the *listing rules* to a *company* with or applying for a *standard listing* of *shares*).

- 5.6.29** G Where an *issuer* is applying ■ LR 5.4A in order to avoid a cancellation as contemplated by ■ LR 5.6.27 G, the *FCA* will normally waive the requirement for shareholder approval under ■ LR 5.4A.4R (2)(c) where the *issuer* is obtaining separate shareholder approval for the acquisition.