

Chapter 5

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

5.6 Reverse takeovers

Application

5.6.1 **R** 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 **R** ■ 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

5.6.3 **R** 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

5.6.4 **R** 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 **G** 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, the *FCA* may agree with the *shell company* that a suspension is not required if the *FCA* is satisfied that:

- (1) there is sufficient publicly available information about the proposed transaction; or
- (2) where the *shell company* is an *issuer* which falls within ■ LR 5.6.5AR(2), the *shell company* has sufficient measures in place to protect investors and so that the smooth operation of the market is not temporarily jeopardised.

5.6.9 **G** ■ LR 5.6.10G to ■ LR 5.6.18FR 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 Annex 1 Section 10 (Trend information) of the *PR Regulation* (see **PRR Appendix 2**) 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.

Reverse takeover by a shell company which falls within LR 5.6.5AR(2): other circumstances where a suspension is not required

5.6.18A

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The FCA will generally be satisfied that a *shell company* which falls within ■ LR 5.6.5AR(2) has sufficient measures in place to protect investors and so that the smooth operation of the market is not temporarily jeopardised such that a suspension is not required where the following conditions are met:

- (1) at the date of *admission* the aggregate gross cash proceeds received by the *shell company* in consideration for the *listed shares* issued by it to *public shareholders* was at least £100 million;
- (2) the *shell company* has adequate binding arrangements in place with an independent third party to ensure that the aggregate gross cash proceeds received in consideration for any *listed shares* that it has issued, or issues, to *public shareholders* are protected from being used for any purpose other than:
 - (a) to provide the consideration for a *reverse takeover* which has been approved by:
 - (i) its board in accordance with (4); and
 - (ii) its *public shareholders* in accordance with (5);
 - (b) to redeem or purchase *listed shares* held by *public shareholders* following the exercise of the right to be redeemed or purchased referred to in (7);
 - (c) to be distributed to *public shareholders* if that a *reverse takeover* has not been completed by the date specified in (3); or
 - (d) to return capital to *public shareholders* in the event of a winding up of the *company*,

provided that a specified amount or proportion of such proceeds may be excluded from the amount which is protected, and may be retained to be used by the *shell company* to fund its operations, where that amount or proportion has been disclosed in the *prospectus* published in relation to the *admission to listing* of the *shell company's shares*;

- (3) the *shell company's constitution*:
 - (a) provides that if the *shell company* has not completed a *reverse takeover* on or before the date which is 24 *months* from the date of *admission* it will:
 - (i) cease operations on the date which is 24 *months* from the date of *admission*; and
 - (ii) distribute the amount protected and referred to in (2) to *public shareholders* as soon as possible after the date specified in (i);
 - (b) may provide that the period of 24 *months* referred to in (a) can be extended for a further period of up to 12 *months* provided that any such extension is approved by the *public shareholders* of the *shell company* before the end of the period referred to in (a);
 - (c) may provide that the period of 24 *months* referred to in (a), or the extended period referred to in (b), can be extended for a

further period of up to 6 *months* where, before the end of the period referred to in (a) or (b), as applicable:

- (i) the approval of shareholders for a *reverse takeover* has been obtained but the *reverse takeover* has not completed;
- (ii) a general meeting to obtain the approval of shareholders for a *reverse takeover* has been convened;
- (iii) the *shell company* has made an announcement that:
 - (A) a general meeting to obtain the approval of shareholders for a *reverse takeover* will be convened for a date which is specified in the announcement; and
 - (B) a notice to convene the general meeting referred to in (A) will be sent to shareholders within a specified time following the announcement; or
- (iv) an agreement for a *reverse takeover* has been entered into but the *reverse takeover* has not been completed and the *shell company* has not made an announcement in accordance with (iii),

provided that any such extension is notified to a *RIS* before the end of the period referred to in (a) or (b), as applicable.

(4) the *shell company's constitution*:

provides that the *shell company* must obtain the approval of its board for a *reverse takeover* before it is entered into; and

ensures that the following do not take part in the board's consideration of the *reverse takeover* and do not vote on the relevant board resolution:

- (i) any *director* who is, or an *associate* of whom is, a *director* of the *target* or of a *subsidiary undertaking* of the *target*; and
- (ii) any *director* who has a conflict of interest in relation to the *target* or a *subsidiary undertaking* of the *target*;

(5) the *shell company's constitution*:

(a) provides that the *shell company* must obtain the approval of its shareholders for a *reverse takeover* either:

- (i) before the transaction is entered into; or
- (ii) if the transaction is expressed to be conditional on that approval, before it is completed; and

(b) ensures that any *founding shareholder*, *sponsor* or *director* does not vote on the relevant resolution;

(6) the *shell company's constitution* provides that where any *director* has a conflict of interest in relation to the *target* or a *subsidiary undertaking* of the *target*, the *shell company* must publish, in sufficient time before shareholder approval for a *reverse takeover* is sought, a statement by the board that:

- (a) the proposed transaction is fair and reasonable as far as the *public shareholders* of the *shell company* are concerned; and
- (b) the *directors* have been so advised by an appropriately qualified and independent adviser;

(7) the holders of the *listed shares* have the right to require the *shell company* to redeem or otherwise purchase their *shares* for a pre-determined amount, which is exercisable:

at the discretion of the holder prior to completion of a *reverse takeover*; and

whether or not the holder voted in favour of the *reverse takeover* on any shareholder resolution to approve the transaction;

(8) the *shell company* has disclosed the matters set out in (2) to (7) in the *prospectus* published in relation to the *admission to listing* of the *shell company's shares*.

5.6.18B

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In ■ LR 5.6.18AG:

(1) "*founding shareholder*" means a shareholder who founded or established a *shell company*;

(2) "*public shareholder*" means a shareholder who is not a *founding shareholder*, a *sponsor* or a *director*;

(3) "*sponsor*" means a person who provides any of the following to a *shell company*:

- (a) capital or other finance to support the operating costs of the *shell company*;
- (b) financial, advisory, consultancy or legal services;
- (c) facilities or support services; or
- (d) any other material contribution to the establishment and ongoing operation of the *shell company*.

5.6.18C

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(1) In order for the *FCA* to be satisfied for the purposes of ■ LR 5.6.8G(2), the *shell company* must provide a written confirmation from the board to the *FCA* that:

- (a) the conditions set out in ■ LR 5.6.18AG have been met; and
- (b) the conditions set out in ■ LR 5.6.18AG(2) to (7) will continue to be met until a *reverse takeover* is completed.

(2) The *shell company* must provide to the *FCA* evidence of the basis upon which it considers that it meets the conditions set out in ■ LR 5.6.18AG, if requested to do so.

5.6.18D

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(1) Where the *FCA* has agreed that a suspension is not necessary as a result of the *shell company* meeting the conditions set out in ■ LR 5.6.18AG and having provided the written confirmation set out in ■ LR 5.6.18CR, the *shell company* must make an announcement of the *reverse takeover*.

(2) The announcement must include:

- (a) a description of the business carried on by the *target*;

- (b) hyperlinks to all relevant publicly available information on the *target*;
 - (c) all material terms of the proposed transaction, including the expected dilution effect on *public shareholders* from *securities* held by *directors, sponsors or founding shareholders*, or from new *securities* issued or expected to be issued as part of the transaction;
 - (d) the proposed timetable for the transaction;
 - (e) an indication of how the *target* has been, or will be assessed and valued by the *shell company*, with reference to any selection and evaluation process for prospective target companies set out in the *prospectus* published in relation to the *admission to listing* of the *shell company's shares*; and
 - (f) any other material details and information which the *shell company* is aware of, or ought reasonably to be aware of, about the *target* or the proposed transaction that an investor in the *shell company* needs to make a properly informed decision.
- (3) If any of the information set out in (2) is not known when the announcement required by (1) is made:
- (a) the announcement required by (1) must also identify the information set out in (2) which has not been included in that announcement; and
 - (b) the *shell company* must make an announcement of such information as soon as it is known or the *shell company* becomes, or ought reasonably have become, aware of it and in any event in sufficient time before shareholder approval for the *reverse takeover* is sought.

5.6.18E **R** An announcement made for the purposes of **LR 5.6.18DR** must be published by means of an *RIS*.

5.6.18F **R** The *shell company* must contact the *FCA* as soon as possible if at any time after the written confirmation referred to in **LR 5.6.18CR** has been provided to the *FCA* any of the conditions set out in **LR 5.6.18AG(2)** to (7) are no longer met to request a suspension of *listing*.

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 (closed-ended investment fund)* to a *standard listing (shares)* should note ■ LR 5.4A.2 G which sets out limitations resulting from the application of ■ LR 14.1.1R(1)(application of the *listing rules* to a *company* with or applying for a *standard listing* of *shares*).
- 5.6.28A** **G** An *issuer* wishing to transfer a *listing* of its *equity shares* from a *standard listing (open-ended investment company)* to a *standard listing (shares)* should note ■ LR 5.4A.2AG which sets out limitations resulting from the application of ■ LR 14.1.1R(1A) (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.