

**DISCLOSURE RULES AND TRANSPARENCY RULES SOURCEBOOK  
(CORPORATE GOVERNANCE RULES) INSTRUMENT 2008**

**Powers exercised**

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):

- (1) section 73A (Part 6 rules);
- (2) section 89O (Corporate governance rules);
- (3) section 96 (Obligations of issues of listed securities);
- (4) section 101 (Part 6 rules: general provisions);
- (5) section 138 (General rule-making power);
- (6) section 156 (General supplementary powers);
- (7) section 157(1) (Guidance); and
- (8) Schedule 7 (The Authority as Competent Authority for Part VI).

B. The rule-making powers listed above are specified for the purpose of section 153(2) (Rule-making instruments) of the Act.

**Commencement**

C. This instrument comes into force on 29 June 2008.

**Amendments to the Handbook**

D. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex C

**Notes**

E. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

F. This instrument may be cited as the Disclosure Rules and Transparency Rules Sourcebook (Corporate Governance Rules) Instrument 2008.

By order of the Board  
26 June 2008

## Annex A

### Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

<u>Audit Directive</u>	<u>Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.</u>
<u>corporate governance rules</u>	<u>(in accordance with section 89O(1) of the Act) rules for the purpose of implementing, enabling the implementation of or dealing with matters arising out of or related to, any Community obligation relating to the corporate governance of issuers who have requested or approved admission to trading of their securities and about corporate governance in relation to such issuers for the purpose of implementing, or dealing with matters arising out of or related to, any Community obligation. The corporate governance rules are located in chapters 1B, 4 and 7 of DTR.</u>
<u>Fourth Company Law Directive</u>	<u>Council Directive 78/660/EEC on the annual accounts of certain types of companies as amended by, amongst other instruments, Directive 2006/46/EC of the European Parliament and of the Council of 14 June 2006.</u>
<i>issuer</i>	...  (2A) (in chapters 1A, <u>1B</u> , 4, 6 <u>and</u> 7 of DTR) a legal entity governed by private or public law, including a State, whose securities are admitted to trading on a <i>regulated market</i> , the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented;  ...
<i>share</i>	...  (3) (in DTR and LR, and in FEES where relevant to DTR or LR) (in accordance with section 744 of the Companies Act 1985) a share in the share capital of a <i>company</i> , and includes:  (a) stock (except where a distinction between shares and stock is express or implied); <del>and</del>  (b) <i>preference shares</i> ; and

- (c) in chapters 4, 5, 6 and 67 of *DTR* a convertible share.

...

statutory auditor

a statutory auditor as that term is defined in section 1210 of the Companies Act 2006.

## Annex B

### Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

9.2.6A G *A listed company, whose securities are admitted to trading on a regulated market, should consider its obligations under DTR 4 (Periodic financial reporting), DTR 5 (Vote holder and issuer notification rules), ~~and DTR 6 (Access to information)~~ and DTR 7 (Corporate governance).*

...

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

...

(5) a statement of how the *listed company* has applied the ~~principles~~ Main Principles set out in Section 1 of the *Combined Code*, in a manner that would enable shareholders to evaluate how the principles have been applied.

...

## Annex C

### Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new chapter after DTR 1A. The text is not underlined.

#### **1B Introduction (Corporate governance)**

##### **1B.1 Application and purpose (Corporate governance)**

Purpose: Audit committees

- 1B.1.1 G The purpose of the requirements in *DTR 7.1* is to implement parts of the *Audit Directive* which require *issuers* that are required to appoint a *statutory auditor* to appoint an audit committee or have a body performing equivalent functions.

Application: Audit committees

- 1B.1.2 R Except as set out in *DTR 1B.1.3R*, *DTR 7.1* applies to an *issuer*:
- (1) whose *transferable securities* are *admitted to trading*; and
  - (2) which is required to appoint a *statutory auditor*.

Exemptions

- 1B.1.3 R *DTR 7.1* does not apply to:
- (1) any *issuer* which is a *subsidiary undertaking* of a *parent undertaking* where the *parent undertaking* is subject to *DTR 7.1*, or to requirements implementing Article 41 of the *Audit Directive* in any other *EEA State*;  
  
[Note: Article 41.6(a) of the *Audit Directive*]
  - (2) any *issuer* the sole business of which is to act as the issuer of *asset-backed securities* provided the entity makes a statement available to the public setting out the reasons for which it considers it is not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee;  
  
[Note: Article 41.6(c) of the *Audit Directive*]
  - (3) a *credit institution* whose *shares* are not *admitted to trading* and which has, in a continuous or repeated manner, issued only *debt securities* provided that:

- (a) the total nominal amount of all such *debt securities* remains below 100,000,000 Euros; and
- (b) the *credit institution* has not been subject to a requirement to publish a prospectus in accordance with section 85 of the *Act*.

[**Note:** Article 41.6(d) of the *Audit Directive*]

Purpose: Corporate governance statements

- 1B.1.4 G The purpose of the requirements in *DTR 7.2* is to implement parts of the *Fourth Company Law Directive* and the *Seventh Company Law Directive* (including those Directives as applied to banking and insurance companies) which require companies to publish a corporate governance statement.

Application: Corporate governance statements

- 1B.1.5 R Except as set out in *DTR 1B.1.6R*, *DTR 7.2* applies to an *issuer*:
- (1) whose *transferable securities* are *admitted to trading*; and
  - (2) which is a company within the meaning of section 1(1) of the Companies Act 2006.

Exemption

- 1B.1.6 R The *rules* in *DTR 7.2.2R*, *7.2.3R* and *7.2.7R* do not apply to an *issuer* which has not issued *shares* which are *admitted to trading* unless it has issued *shares* which are traded on an *MTF*.

[**Note:** Article 46a(3) of the *Fourth Company Law Directive*]

## **1B.2 Modifying rules and consulting the FSA**

- 1B.2.1 R The *rules* and *guidance* provisions in *DTR 1A.2* are deemed to apply to *corporate governance rules* as they apply to *transparency rules*.

Amend the following as shown.

Auditing of financial statements

- 4.1.7 R ...
- (3) ...

[**Note:** article 4(4) of the *TD*]

- (4) An issuer which is a UK-traded non-EEA company within the

meaning of section 1241 of the Companies Act 2006 must ensure that the *person* who provides the audit report is:

- (a) on the register of third country auditors kept for the purposes of regulation 34 of the Statutory Auditors and Third Country Audit Regulations 2007 (SI 2007/3494); or
- (b) eligible for appointment as a *statutory auditor* under section 1212 of the Companies Act 2006; or
- (c) an EEA auditor within the meaning of section 1261 of the Companies Act 2006.

**[Note: Article 45(4) of the *Audit Directive*]**

Insert the following new chapter after DTR 6. The text is not underlined.

## **7 Corporate governance**

### **7.1 Audit committees**

Audit committees and their functions

- 7.1.1 R An *issuer* must have a body which is responsible for performing the functions set out in *DTR 7.1.3R*. At least one member of that body must be independent and at least one member must have competence in accounting and/or auditing.
- 7.1.2 G The requirements for independence and competence in accounting and/or auditing may be satisfied by the same member or by different members of the relevant body.
- 7.1.3 R An *issuer* must ensure that, as a minimum, the relevant body must:
  - (1) monitor the financial reporting process;
  - (2) monitor the effectiveness of the *issuer's* internal control, internal audit where applicable, and risk management systems;
  - (3) monitor the statutory audit of the annual and consolidated accounts;
  - (4) review and monitor the independence of the *statutory auditor*, and in particular the provision of additional services to the *issuer*.
- 7.1.4 R An *issuer* must base any proposal to appoint a *statutory auditor* on a recommendation made by the relevant body.  
**[Note: Article 41.3 of the *Audit Directive*]**
- 7.1.5 R The *issuer* must make a statement available to the public disclosing which body carries out the functions required by *DTR 7.1.3R* and how it is

composed.

[**Note:** Article 41.5 (part) of the *Audit Directive*]

- 7.1.6 G An *issuer* may include the statement required by *DTR 7.1.5R* in any statement it is required to make under *DTR 7.2* (Corporate governance statements).
- 7.1.7 G In the *FSA's* view, compliance with provisions A.1.2, C.3.1, C.3.2 and C.3.3 of the *Combined Code* will result in compliance with *DTR 7.1.1R* to *7.1.5R*.

## **7.2 Corporate governance statements**

- 7.2.1 R An *issuer* to which this section applies must include a corporate governance statement in its directors' report. That statement must be included as a specific section of the directors' report and must contain at least the information set out in *DTR 7.2.2R* to *7.2.7R* and, where applicable, *DTR 7.2.10R*.
- 7.2.2 R The corporate governance statement must contain a reference to:
- (1) the corporate governance code to which the *issuer* is subject; and/or
  - (2) the corporate governance code which the *issuer* may have voluntarily decided to apply; and/or
  - (3) all relevant information about the corporate governance practices applied beyond the requirements under national law.

[**Note:** Article 46a(1)(a) first paragraph of the *Fourth Company Law Directive*]

- 7.2.3 R
- (1) An *issuer* which is complying with *DTR 7.2.2R* (1) or (2) must:
    - (a) state in its directors' report where the relevant corporate governance code is publicly available; and
    - (b) to the extent that it departs from that corporate governance code, explain which parts of the corporate governance code it departs from and the reasons for doing so.
  - (2) Where *DTR 7.2.2R*(3) applies, the issuer must make its corporate governance practices publicly available and state in its directors' report where they can be found.
  - (3) If an issuer has decided not to apply any provisions of a corporate governance code referred to under *DTR 7.2.2R*(1) and (2), it must explain its reasons for that decision.



[**Note:** Article 46a(1)(a) second paragraph and Article 46a(1)(b) of the *Fourth Company Law Directive*]

7.2.4 G A *listed company* which complies with LR 9.8.6R(6) (the comply or explain rule in relation to the *Combined Code*) will satisfy the requirements of DTR 7.2.2R and 7.2.3R.

7.2.5 R The corporate governance statement must contain a description of the main features of the *issuer's* internal control and risk management systems in relation to the financial reporting process.

[**Note:** Article 46a(1)(c) of the *Fourth Company Law Directive*]

7.2.6 R The corporate governance statement must contain the information required by paragraph 13(2)(c), (d), (f), (h) and (i) of Schedule 7 to the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) (information about share capital required under Directive 2004/25/EC (the Takeover Directive)) where the *issuer* is subject to the requirements of that paragraph.

[**Note:** Article 46a(1)(d) of the *Fourth Company Law Directive*]

7.2.7 R The corporate governance statement must contain a description of the composition and operation of the *issuer's* administrative, management and supervisory bodies and their committees.

[**Note:** Article 46a(1)(f) of the *Fourth Company Law Directive*]

7.2.8 G In the *FSA's* view, the information specified in provisions A.1.1, A.1.2, A.4.6, B.2.1 and C.3.3 of the *Combined Code* will satisfy the requirements of DTR 7.2.7R.

7.2.9 R An *issuer* may elect that, instead of including its corporate governance statement in its directors' report, the information required by DTR 7.2.1R to DTR 7.2.7R may be set out:

- (1) in a separate report published together with and in the same manner as its annual report. In the event of a separate report, the corporate governance statement must contain either the information required by DTR 7.2.6R or a reference to the directors' report where that information is made available; or
- (2) by means of a reference in its directors' report to where such document is publicly available on the *issuer's* website.

[**Note:** Article 46a(2) first and second sentence of the *Fourth Company Law Directive*]

7.2.10 R Subject to *DTR 7.2.11R*, an *issuer* which is required to prepare a group directors' report within the meaning of section 415(2) of the Companies Act 2006 must include in that report a description of the main features of the group's internal control and risk management systems in relation to the process for preparing consolidated accounts. In the event that the *issuer* presents its own annual report and its consolidated annual report as a single report, this information must be included in the corporate governance statement required by *DTR 7.2.1R*.

[**Note:** Article 36(2)(f) of the *Seventh Company Law Directive*]

7.2.11 R An *issuer* that elects to include its corporate governance statement in a separate report as permitted by *DTR 7.2.9R(1)* must provide the information required by *DTR 7.2.10R* in that report.

TP 1 Disclosure and transparency rules

Sourcebook - Transitional Provisions

(1)	(2) Material to which the Transitional provisions applies	(3)	(4) Transitional provision	(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...					
<u>5A</u>	<u><i>DTR 4.1.7R(4)</i></u>	R	<u><i>DTR 4.1.7R(4)</i> shall have effect as follows:  <i>An issuer whose financial year begins before 29 June 2008 must comply with <u>DTR 4.1.7R(4)</u> as of the beginning of its next financial year.</i></u>	<u>From 29 June 2008</u>	<u>29 June 2008</u>
...					
<u>14</u>	<u>All of <i>DTR</i> chapter 7</u>	R	<u><i>DTR 7</i> shall have effect as follows:  <i>An issuer whose financial year begins before 29 June 2008 must comply with <u>DTR 7</u> as of the beginning of its next financial year.</i></u>	<u>From 29 June 2008</u>	<u>29 June 2008</u>