

LISTING RULES SOURCEBOOK (AMENDMENT NO 8) INSTRUMENT 2012

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on 1 October 2012.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Listing Rules Sourcebook (Amendment No 8) Instrument 2012.

By order of the Board
27 September 2012

Annex A

Amendments to the Glossary of definitions

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

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

break fee arrangement (in LR) an arrangement falling within the definition in LR 10.2.6AR.

Amend the following as shown.

associate (1) (in LR) (in relation to a *director, substantial shareholder, or person exercising significant influence*, who is an individual):

- (a) that individual's spouse, civil partner or child (together "the individual's family");
- (b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an *occupational pension scheme* or an *employees' share scheme* which does not, in either case, have the effect of conferring benefits on persons all or most of whom are related parties;
- (c) any *company* in whose *equity securities* the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:
 - (i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
 - (ii) to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters;
- (d) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual's family are

directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:

- (i) a voting interest greater than 30% in the partnership;
or
- (ii) at least 30% of the partnership.

For the purpose of paragraph (c) ...

break fee ~~(in LR) a fee payable by a listed company if certain specified events occur which have the effect of materially impeding a transaction or causing the transaction to fail.~~

class 3 transaction ~~(in LR) a transaction classified as a class 3 transaction under LR 10.~~

Annex B

Amendments to the Listing Rules sourcebook (LR)

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

Overseas company applying for a premium listing

2.2.15 R ~~If the law of the country of its incorporation does not confer on *shareholders* rights which are at least equivalent to LR 9.3.11R, an *overseas company* applying for a *premium listing* must:~~

- ~~(1) ensure its constitution provides for rights which are at least equivalent to the rights provided for in LR 9.3.11R (as qualified by LR 9.3.12R); and~~
- ~~(2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation. [deleted]~~

...

Cancellation in relation to takeover offers

5.2.10 R LR 5.2.5R does not apply to the cancellation of *equity shares* with a *premium listing* when in the case of a takeover offer:

- (1) the *offeror* has by virtue of its shareholdings and acceptances of the offer, acquired or agreed to acquire issued *share* capital carrying 75% of the voting rights of the *issuer*; and
- (2) the *offeror* has stated in the offer *document* or any subsequent *circular* sent to the *security* holders that a notice period of not less than 20 *business days* prior to cancellation will commence either on the *offeror* attaining the required 75% as described in LR 5.2.10R(1) 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 G For the purposes of LR 5.2.10R(2), 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.

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Pre-emption rights

6.1.25 R If the law of the country of its incorporation does not confer on *shareholders* rights which are at least equivalent to LR 9.3.11R, an *overseas company*

applying for a premium listing must:

- (1) ensure its constitution provides for rights which are at least equivalent to the rights provided for in LR 9.3.11R (as qualified by LR 9.3.12R); and
- (2) be satisfied that conferring such rights would not be incompatible with the law of the country of its incorporation.

...

Discounts not to exceed 10%

- 9.5.10 R (1) If a listed company makes an open offer, placing, vendor consideration placing, offer for subscription of equity shares or an issue out of treasury (other than in respect of an employees' share scheme) of a class already listed, the price must not be at a discount of more than 10% to the middle market price of those shares at the time of announcing the terms of the offer for an open offer or offer for subscription of equity shares or at the time of agreeing the placing for a placing or vendor consideration placing (as the case may be).
- (2) In paragraph (1), the middle market price of *equity shares* means the middle market quotation for those *equity shares* as derived from the daily official list of the *London Stock Exchange* or any other publication of an *RIE* showing quotations for *listed securities* for the relevant date.
- (2A) If a listed company makes an open offer, placing, vendor consideration placing or offer for subscription of equity shares during the trading day it may use an appropriate on-screen intra-day price derived from another market.

...

- 9.5.10A G On each occasion that the listed company plans to use an on-screen intra-day price it should discuss the source of the price in advance with the FSA. The FSA may be satisfied that there is sufficient justification for its use if the alternative market has an appropriate level of liquidity and the source is one that is widely accepted by the market.

...

Meaning of "transaction"

- 10.1.3 R In this chapter (except where specifically provided to the contrary) a reference to a transaction by a *listed company*:

...

- (3) excludes a transaction ~~of a revenue nature~~ in the ordinary course of business;

...

...

Classifying transactions

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- 10.2.2 R Except as otherwise provided in this chapter, transactions are classified as follows:

- (1) ~~*Class 3 transaction: a transaction where all percentage ratios are less than 5%;*~~ [deleted]

...

...

Indemnities and similar arrangements

- 10.2.4 R (1) ...
- (2) Paragraph (1) does not apply to a *break fee arrangement* (see *LR 10.2.6AR*, *LR 10.2.6BG* and *LR 10.2.7R* which ~~deals deal~~ with break fees fee arrangements).

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Break fees fee arrangements

- 10.2.6A R An arrangement is a *break fee arrangement* if the purpose of the arrangement is that a compensatory sum will become payable by a *listed company* to another party (or parties) to a proposed transaction if the proposed transaction fails or is materially impeded and there is no independent substantive commercial rationale for the arrangement.
- 10.2.6B G (1) The following arrangements will meet the definition of *break fee arrangements* in *LR 10.2.6AR* (although this list is not intended to be exhaustive): ‘no shop’ and ‘go shop’ type provisions, which require payment of a sum to a party in the event the seller finds an alternative purchaser; a requirement to pay another party’s wasted costs in the event a transaction fails; non refundable deposits.
- (2) In contrast, payments in the nature of damages (whether liquidated or unliquidated) for a breach of an obligation with an independent substantive commercial rationale, for example the typical business protection covenants that will apply between exchange and completion of a share or asset acquisition agreement or co-operation and information access obligations relating to obtaining merger or

other clearances, are not *break fee arrangements*.

- 10.2.7 R (1) ~~A *break fee* or *break fees*~~ Sums payable pursuant to *break fee arrangements* in respect of a transaction are to be treated as a *class 1 transaction* if the total value of ~~the fee or the fees in aggregate~~ those sums exceeds:
- (a) if the *listed company* is being acquired, 1% of the value of the *listed company* calculated by reference to the offer price; and
 - (b) in any other case, 1% of the market capitalisation of the *listed company*.
- (1A) The total value of sums payable pursuant to *break fee arrangements* for the purpose of paragraph (1) is the sum of:
- (a) any amounts paid or payable pursuant to *break fee arrangements* in relation to the same transaction or in relation to the same target assets or business in the 12 months prior to the date the most recent arrangements were agreed unless those arrangements were approved by shareholders; and
 - (b) the aggregate of the maximum amounts payable pursuant to *break fee arrangements* in relation to the transaction;
- save that if the arrangements are such that a particular sum will only become payable in circumstances in which another sum does not, the lower sum may be left out of the calculation of the total value.

...

...

Aggregating transactions

- 10.2.10 R (1) ...
- (2) Paragraph (1) does not apply in relation to ~~*break fees*~~ a *break fee arrangement* (see LR 10.2.6AR, LR 10.2.6BG and LR 10.2.7R which deal with *break fee arrangements*).

LR 10.3 (Class 3 requirements) is deleted in its entirety. The deleted text is not shown struck through.

Amend the following as shown.

Material change to terms of transaction

- 10.5.2 R If, after the production of a circular and obtaining shareholder approval but before the completion of a class 1 transaction or a reverse takeover, there is a material change to the terms of the transaction, the listed company must comply again separately with LR 10.5.1R in relation to the transaction.

...

Supplementary circulars

- 10.5.4 R (1) If a listed company becomes aware of a matter described in (2) after the publication of a circular that seeks shareholder approval for a transaction expressly requiring a vote by the listing rules, but before the date of a general meeting, it must, as soon as practicable:
- (a) advise the FSA of the matters of which it has become aware; and
 - (b) send a supplementary circular to holders of its listed equity shares providing an explanation of the matters referred to in (2).
- (2) The matters referred to in (1) are
- (a) a material change affecting any matter the listed company is required to have disclosed in a circular; or
 - (b) a material new matter which the listed company would have been required to disclose in the circular if it had arisen at the time of its publication.
- (3) The listed company must have regard to LR 13.3.1R(3) when considering the materiality of any change or new matter under LR 10.5.4R(2).
- 10.5.5 G LR 13 applies in relation to a supplementary circular. It may be necessary to adjourn a convened shareholder meeting if a supplementary circular cannot be sent to holders of listed equity shares at least 7 days prior to the convened shareholder meeting as required by LR 13.1.9R.

...

Joint ventures

- 10.8.9 G ...
- (5) Where an issuer enters into a joint venture exit arrangement which takes the form of a put or call option and exercise of the option is solely at the discretion of the other party to the arrangement, the transaction should be classified at the time it is agreed as though the option had been exercised at that time.

10 Annex 1G The Class Tests

Class tests

...

The Profits test

- 4R (1) The profits test is calculated by dividing the profits attributable to the assets the subject of the transaction by the profits of the *listed company*.
- (2) For the purposes of paragraph (1), profits means:
- profits after deducting all charges except taxation; and
 - for an acquisition or disposal of an interest in an undertaking referred to in paragraph 2R (3)(a) or (b) of this Annex, 100% of the profits of the undertaking (irrespective of what interest is acquired or disposed of).
- (3) If the acquisition or disposal of the interest will not result in consolidation or deconsolidation of the *target* then the profits test is not applicable.

4AG The amount of loss is relevant in calculating the impact of a proposed transaction under the profits test. A *listed company* should include the amount of the losses of the *listed company* or *target* i.e. disregard the negative when calculating the test.

The Consideration test

...

- (3A) If the total consideration is not subject to any maximum (and the other class tests indicate the transaction to be ~~a class 3 transaction~~ a transaction where all *percentage ratios* are less than 5%) the transaction is to be treated as a *class 2 transaction*.

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Figures used to classify assets and profits

8R ...

- (3) (a) The figures of the *listed company* must be adjusted to take account of subsequent completed transactions which have been notified to a *RIS* under *LR 10.4* or *LR 10.5*.
- (b) The figures of the target company or business must be adjusted to take account of subsequent completed transactions which would have been a *class 2 transaction* or greater when classified against the target as a whole.

...

Adjustments to figures

11G Where a *listed company* wishes to make adjustments to the figures used in calculating the class tests pursuant to 10G they should discuss this with the *FSA* before the class tests crystallise.

...

Definition of “related party transaction”

11.1.5 R In *LR*, a “*related party transaction*” means:

- a transaction (other than a transaction ~~of a revenue nature~~ in the ordinary course of business) between a *listed company* and a *related party*; or
- an arrangement (other than an arrangement in the ordinary course of

business) pursuant to which a *listed company* and a *related party* each invests in, or provides finance to, another undertaking or asset; or

- (3) any other similar transaction or arrangement (other than a transaction ~~of a revenue nature~~ in the ordinary course of business) between a *listed company* and any other *person* the purpose and effect of which is to benefit a *related party*.

...

Requirements for related party transactions

...

- 11.1.7A R If, after obtaining shareholder approval but before the completion of a related party transaction, there is a material change to the terms of the transaction, the listed company must comply again separately with LR 11.1.7R in relation to the transaction.
- 11.1.7B G The FSA would (amongst other things) generally consider an increase of 10% or more in the consideration payable to be a material change to the terms of the transaction.
- 11.1.7C R A listed company must comply with LR 10.5.4R in relation to a related party transaction.

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Aggregation of transactions in any 12 month period

- 11.1.11 R (1) If a *listed company* enters into transactions or arrangements with the same *related party* (and any of its *associates*) in any 12 month period and the transactions or arrangements have not been approved by shareholders the transactions or arrangements, including transactions or arrangements falling under LR 11.1.10R, or small related party transactions under LR 11 Annex 1.1R(1), must be aggregated.

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11 Annex 1R Transactions to which related party transaction rules do not apply

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Directors' indemnities and loans

- 5 (1) A transaction that consists of:
- (a) ...
 - (b) ...
 - (c) a loan or assistance to a *director* by a *listed company* or any of its *subsidiary undertakings* if the terms of the loan or assistance are in accordance with those specifically permitted to be given to a *director* under section 204, ~~or 205~~ or 206 of the Companies Act 2006.
- (2) ...

...

12.2 Prohibition on purchase of own securities

- 12.2.1 R A *listed company* must not purchase or redeem (or make any early redemptions of) its own *securities* and must ensure that no purchases in its *securities* are effected on its behalf or by any member of its *group* during a *prohibited period* unless:
- (1) prior to the commencement of the *prohibited period* the *company* has put in place a buy-back programme where in which the dates and quantities of *securities* to be traded during the relevant period are fixed and have been disclosed in a notification made in accordance with LR 12.4.4R; or
 - (2) prior to the commencement of the *prohibited period* the *company* has put in place a buy-back programme managed by an independent third party which makes its trading decisions in relation to the *company's securities* independently of, and uninfluenced by, the *company*; or

...

...

Purchases of 15% or more

- 12.4.2 R Purchases by a *listed company* of 15% or more of any *class* of its *equity shares* (excluding *treasury shares*) pursuant to a general authority by the shareholders must be by way of a *tender offer* to all shareholders of that *class*.
- 12.4.2A R Purchases of 15% or more of any class of its own *equity shares* may be made by a *listed company*, other than by way of a *tender offer*, provided that the full terms of the *share* buyback have been specifically approved by shareholders.

...

Notification of capitalisation issues and of sales, transfers and cancellations of treasury shares

...

- 12.6.4 R Any sale for cash, transfer for the purposes of or pursuant to an *employees' share scheme* or cancellation of *treasury shares* ~~by a *listed company*~~ that represents over 0.5% of the *listed company's share capital* must be notified to a *RIS* as soon as possible and in any event by no later than 7:30 a.m. on the *business day* following the calendar day on which the sale, transfer or cancellation occurred. The notification must include:

...

...

Incorporation by reference

- 13.1.3 R Information may be incorporated in a *circular* issued by a *listed company* by reference to relevant information contained in:
- (1) ~~a~~ an approved prospectus or listing particulars of that listed company; or
 - (2) any other published *document* of that listed company that has been filed with the *FSA*.

...

Sending information to holders of listed equity shares

- 13.1.9 R A supplementary *circular* must be sent to holders of *listed equity shares* no later than 7 days prior to the date of a meeting at which a vote which is expressly required under the *listing rules* will be taken.
- 13.1.10 G It may be necessary for a convened shareholder meeting to be adjourned to comply with LR 13.1.9R.

...

Circulars not requiring approval

- 13.2.2 R A *circular* does not need to be approved under LR 13.2.1R if:
- (1) it is of a type referred to in LR 13.8, or only relates to a proposed change of name, or, ~~in any other case, the FSA has agreed that it does not need to be approved~~ is an information-only *circular* which does not relate to a shareholder vote, other than of a type referred to in LR 13.4.3R(3);
 - (2) it complies with LR 13.3 and also, if it is a *circular* referred to in LR 13.8, any relevant requirements in that section; and
 - (3) neither it, nor the transaction or matter to which it relates, has unusual features.
- 13.2.2A G The FSA may agree to waive the requirement for approval of a *circular* in circumstances other than those set out in LR 13.2.2R.

...

Sending approved circulars

- 13.2.10 R A *listed company* must send a *circular* to holders of its *listed equity shares*

as soon as practicable after it has been approved.

...

Class 1 circulars

13.4.1 R A *class 1 circular* must also include the following information:

...

(4) a declaration by the issuer and its directors in the following form (with appropriate modifications):

"The [issuer] and the directors of [the ~~company~~ issuer], whose names appear on page [], accept responsibility for the information contained in this document. To the best of the knowledge and belief of the [issuer] and the directors (who have taken all reasonable care to ensure that such is the case) the information contained in this document is in accordance with the facts and does not omit anything likely to affect the import of such information.";

...

Related party circulars

13.6.1 R A *related party circular* must also include:

...

(7) ~~for a transaction where any percentage ratio is 25% or more, the information required to be included in a class 1 circular;~~ [deleted]

...

...

Purchase of own equity shares

13.7.1 R (1) A *circular* relating to a resolution proposing to give the *company* authority to purchase its own *equity securities* must also include:

...

(e) ...; ~~and~~

(f) ...; and

(g) where LR 12.4.2AR applies, an explanation of the potential impact of the proposed share buyback, including whether control of the listed company may be concentrated following the proposed transaction.

...

Purchase of own equity shares

...

13.7.1A G In considering whether an explanation given in a *circular* satisfies the requirement in LR 13.7.1R(1)(g), the FSA would expect the following information to be included in the explanation:

- (1) the shareholdings of *substantial shareholders* in the *listed company* before and after the proposed transaction; and
- (2) the shareholdings of a holder of *equity shares* who may become a *substantial shareholder* in the *listed company* as a result of the proposed transaction.

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13 Annex 1R Class 1 circulars

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...

3 The information required by this Annex is modified as follows:

...

- (2) ...; ~~and~~
- (3) ...;
- (4) information required by Annex 1 item 4 should be provided only in respect of those risk factors which:
 - (a) are material risk factors to the proposed transaction;
 - (b) will be material new risk factors to the *group* as a result of the proposed transaction; or
 - (c) are existing material risk factors to the *group* which will be impacted by the proposed transaction; and
- (5) information required by Annex 1 item 24 must include a copy of the Sale and Purchase Agreement (or equivalent document) if applicable.

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15.2.1 R To be *listed*, an *applicant* must comply with:

...

- (2) the following provisions of *LR 6* (Additional requirements for premium listing (commercial company)); ;

...

- (c) *LR 6.1.16R* to ~~*LR 6.1.24G*~~ *6.1.25R*; and

...

...

Transactions with related parties

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- 15.5.4 R In addition to the definition in *LR 11.1.4R* a *related party* includes any *investment manager* of the *closed-ended investment fund* and any member of such *investment manager's* group.

Additional exemption from related party requirements

- 15.5.5 R (1) *LR 11.1.7R* to *LR 11.1.11R* do not apply to an arrangement between a *closed-ended investment fund* and its *investment manager* or any member of that *investment manager's* group where the arrangement is such that each invests in or provides finance to an entity or asset and the investment or provision of finance is either:

...

...

...

Appendix 1 Relevant definitions

Note: The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

<i>associate</i>	<p>in relation to a <i>director</i>, <i>substantial shareholder</i>, or <i>person exercising significant influence</i>, who is an individual:</p> <ul style="list-style-type: none"> (1) that individual's spouse, civil partner or child (together “the individual's family”); (2) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an <i>occupational pension scheme</i> or an <i>employees' share scheme</i> which does not, in either case, have the effect of conferring benefits on persons all or
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	<p>most of whom are related parties;</p> <p>(3) any <i>company</i> in whose <i>equity securities</i> the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:</p> <p>(a) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or</p> <p>(b) to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all, matters;</p> <p>(4) <u>any partnership whether a limited partnership or <i>limited liability partnership</i> in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:</u></p> <p>(a) <u>a voting interest greater than 30% in the partnership;</u> or</p> <p>(b) <u>at least 30% of the partnership.</u></p> <p>For the purpose of paragraph (3),</p> <p>...</p>
<u><i>body corporate</i></u>	<u>(in accordance with section 417(1) of the <i>Act</i> (Definitions)) any body corporate, including a body corporate constituted under the law of a country or territory outside the <i>United Kingdom</i>.</u>
<u><i>break fee</i></u>	a fee payable by a <i>listed company</i> if certain specified events occur which have the effect of materially impeding a transaction or causing the transaction to fail.
<u><i>break fee arrangement</i></u>	<u>an arrangement falling within the description in <i>LR 10.2.6AR</i>.</u>
<u><i>class 3 transaction</i></u>	a transaction classified as a class 3 transaction under <i>LR 10</i> .

<u>limited liability partnership</u>	<u>(a) a <i>body corporate</i> incorporated under the Limited Liability Partnerships Act 2000;</u> <u>(b) a <i>body corporate</i> incorporated under legislation having the equivalent effect to the Limited Liability Partnerships Act 2000.</u>
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