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Financial Services Authority

Implementation of the Transparency Directive Investment Entities Listing Review

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Overview

This Consultation Paper (CP) seeks respondents' views on proposals to change our rules in two distinct areas of the UK Listing Authority (UKLA) Source Book.

The first area covers the implementation of the Transparency Directive (TD) which will affect the Disclosure and Listing Rules and the second area concerns our review of the Listing Rules relating to investment entities and proposes various changes.

Detailed discussion of the proposals in both of these areas is set out in the following chapters.

PART 1 – Transparency Directive

1. The TD concerns the harmonisation of requirements to disclose information about issuers whose securities are admitted to trading on a regulated market. It replaces and updates parts of the existing EU legislation in this area – the ‘Consolidated Admissions and Reporting Directive’. The TD is designed to enhance transparency on EU capital markets by requiring regulated market issuers to produce periodic financial reports and shareholders in such companies to disclose major holdings. The TD also deals with the mechanisms through which this information is to be disseminated and stored.
2. The TD is a minimum harmonisation directive which allows the home Member State of regulated market issuers to impose more stringent requirements than those set out in the directive while restricting the host Member State to the minimum TD requirements.

3. Our approach to implementing the TD is founded on our ‘better regulation’ commitment to implement directives in a sensible and proportionate way. We are proposing to implement the TD’s minimum provisions, and to retain existing requirements which would be additional to those provisions only where we believe these are clearly justified by our cost benefit analysis, or which are strongly supported by issuers and investors.
4. We have also taken the opportunity of TD implementation to review our rules covering areas related to – but outside the scope of – the TD. The CP sets out our proposals to remove those rules whose benefits are unclear and only retain those that we believe remain justified.
5. A key purpose of this consultation is to invite market views as to which elements of the current UK regime we should retain.

Who should read this?

6. This section of the CP will be of interest to
 - all issuers of securities issued on regulated markets and exchange regulated markets, including their advisers;
 - investors (both institutional and retail); and
 - firms involved in disseminating and storing regulated information.

Relevance to consumers

The TD will have the effect of imposing obligations on issuers whose securities are admitted to trading on a regulated market. As such, it impacts consumers by directly affecting the information available to investors in such securities. However, the TD requires a high standard of continuous reporting by companies whose shares are admitted to trading on a regulated market. This will enable shareholders and potential shareholders to make informed investment decisions. The TD should also enable shareholders and potential shareholders easier access to this information on a pan-European basis.

Structure

7. The section of the CP relating to the TD is in seven parts:
 - a) an introduction to the approach that we have taken to the implementation and the reasons for adopting it;
 - b) proposals for implementing the periodic financial reporting requirements of the TD;
 - c) proposals for implementing the major shareholder notification requirements of the TD;

- d) proposals for implementing the dissemination of regulated information requirements of the TD;
- e) proposals for implementing the central storage of regulated information requirements of the TD;
- f) a review of and invitation to comment on the issues associated with extending the shareholding disclosure regime to cover economic interests in shares more broadly, such as Contracts for Difference (CFD); and
- g) a cost-benefit analysis of proposed rule changes, in accordance with Section 155 of the Financial Services and Markets Act (FSMA).

Key Proposals

8. The TD requires issuers to produce annual and half-yearly reports, and issuers of shares to also produce interim management statements. We propose:
- to copy-out the TD requirements for such reports and statements into our rules;
 - to remove the requirement for issuers either to publish half-yearly reports in a newspaper or to send such reports to every holder of their securities; and
 - to retain three Listing Rules that set slightly more stringent requirements than the TD. The most important of these is the requirement for wholesale debt issuers to produce annual financial reports.

We have also reviewed the remaining Listing Rules on periodic financial information and propose to remove those whose benefits are unclear, and only retain those that appear to remain justified.

9. The TD establishes requirements for the disclosure of acquisitions or disposals of major shareholdings. This is currently a Department of Trade and Industry (DTI) responsibility and will transfer to us when we implement the TD. The CP raises a number of questions here. In particular, it asks whether the market would like either of the following:
- To keep the broad parameters of the current UK regime, under which notifications become necessary when shareholdings reach a 3% threshold, and every 1% thereafter. Shareholders must notify the issuer within two days following the notifiable event, and the issuer must notify the market no later than the end of the business day following receipt. Disclosures would apply to holdings in issuers with shares admitted to trading on a regulated market, and to holdings of shares in UK companies traded on exchange-regulated markets (including AIM and OFEX).

- To revert to the TD minimum requirements, under which notifications become necessary when shareholdings reach thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. Shareholders must notify the issuer no later than four trading days following the notifiable event, and the issuer must notify the market no later than three trading days following receipt. Disclosures would apply to holdings in issuers with shares admitted to trading on a regulated market only.

We do not propose at this time to extend the scope of disclosure requirements beyond securities to which voting rights are attached to cover economic interests in shares more broadly (such as CFDs). But we are inviting views on the issues which would be raised by such an extension, and the likely costs and benefits.

10. The TD requires issuers to disseminate TD information in a timely manner on a pan-European basis. We propose:
 - to retain the UK's current model, in which issuers must report information through a small number of Primary Information Providers for onward dissemination; but
 - to also invite views on whether the market would prefer (as the TD allows) that issuers disseminate directly or through a service provider.
11. The TD requires the establishment of at least one Officially Appointed Mechanism (OAM) for the central storage of such information. The Commission has indicated that interim solutions will be acceptable pending their formal legislative determination of the standards which an OAM will have to meet. So we propose:
 - an interim solution where our website provides hyperlinks to commercial websites that provide access to this information.

PART 2 – Investment Entities Listing Review

12. The term investment entities comprises investment trusts, venture capital trusts and other domestic and overseas investment companies, including property investment companies. They are an important component of the UK market: together, the number of investment entities presently listed on the Official List is almost 430, with a combined value of over £71 billion. We said in our review of the main Listing Rules in 2005 that we would look separately at the specialist regime for investment entities and this consultation presents the results of that review.

13. The proposals outlined in this CP aim to replace the existing listing regime with one of a similar standard in terms of the level of shareholder protection. However, by adopting a more principles-based approach towards the need to spread investment risk, these proposals provide a more modern and flexible platform that gives investment entities greater choice in selecting investment strategies.
14. As a result, these proposals would enable investment entities which employ a wider range of investment strategies, such as those currently employed by some hedge funds, to list in the UK for the first time. Those that do will be subject to a robust listing regime, including enhanced disclosure requirements, which delivers appropriate protections yet has regard to the burdens on issuers.
15. This approach is consistent with the way forward we outlined in the Feedback Statement to our Discussion Paper on Wider Range Retail Investment Products, where we have concluded that the response to an increasingly innovative sector lies in better consumer understanding and information dissemination rather than detailed product regulation.

Who should read this?

16. This section of the CP will be of interest to:
 - all those who participate in the capital raising process, including issuers seeking access to capital markets and their advisers; and
 - investors (both institutional and retail).

Relevance to consumers

Retail investment in listed investment entities totals many billions of pounds.

The changes proposed are designed to create a new listing regime that can accommodate investment entities with more modern investment techniques.

Therefore, this CP will be of interest to retail investors. Other interested parties will include listed companies, their directors, investment managers and other advisers.

Structure

17. This section of the CP, relating to investment entities, is in five parts. These are:
 - a) a description of the approach we have taken in this review and the reasons for it;
 - b) proposed changes to the eligibility rules for new investment entities;
 - c) proposed changes to the continuing obligations for investment entities once listed, including ongoing disclosure requirements;

- d) a discussion of the likely impact of our proposals by class of investment entity; and
- e) a cost-benefit analysis of proposed rule changes, in accordance with Section 155 of FSMA.

Key proposals

18. Our proposals cover two principal areas – eligibility for listing and continuing obligations of entities once listed.
19. We intend to maintain the existing approach which requires investment entities to meet clear criteria in order to be eligible for listing. However, we believe that the existing criteria have become outdated, and are in some respects overly-mechanistic – notably with respect to the rules governing the spread of investment risk. So we propose to take a more principles-based approach to eligibility, which will allow entities a wider range of approaches to demonstrate that the criteria are met. Such an approach would also be in line with our philosophy of giving boards of investment entities similar freedom to that enjoyed by other listed companies. We also propose to remove what is effectively duplication by looking to rely on other relevant regulatory provisions – such as our regime for authorising fund managers – where we can, rather than imposing listing rules.
20. We also consider that ongoing disclosure requirements provide a strong basis for protecting investors appropriately. However, we consider that there is scope to refocus the disclosures more effectively on information which will be of particular value to investors, and to release issuers from the burden of producing less valuable material. We are proposing to introduce a new requirement that significant changes in the risk profiles of investment entities should be disclosed to the market immediately. This follows a reassessment of the present disclosure regime, and the identification of a regulatory gap.
21. Specifically, on eligibility, we propose:
 - to allow investment entities to have greater flexibility in their choice of investment strategies, by removing restrictions on short selling and enabling greater use of synthetics;
 - to replace the current specific rules governing what qualifies as an adequate spread of investment risk with a more principles-based requirement – built on a revised definition of investment entities – supported by annual confirmations;
 - to remove the present rule requiring investment entities to be passive investors, and to clarify the extent to which an investment entity may influence a company in which it invests;

- to consider investment managers authorised under FSMA to conduct investment business as having met our eligibility requirements concerning the level of experience and expertise required of investment managers;
- to consider companies incorporated under the OEIC Regulations (and which are therefore authorised under FSMA) to be eligible for listing without needing to comply with any additional conditions;
- to require, as a condition of listing, a new investment entity to have sufficient working capital for 12 months; and
- to extend to venture capital trusts the measures governing the independence of boards from any investment managers, which were introduced for investment entities in the wake of concerns regarding split capital investment companies.

22. On continuing obligations and disclosure requirements, we propose:

- to require investment entities to state in their annual report and accounts how they are achieving their objective of spreading investment risk;
- to require investment entities to immediately notify of any significant changes to their risk profile;
- to remove the requirement for monthly/quarterly portfolio disclosure, and to remove a raft of detailed financial disclosure requirements to be included in an investment entity's annual report and accounts regarding portfolio composition;
- to remove a raft of restrictions presently in place on investment companies that invest in property, thus ensuring the compatibility of listing rules with tax rules that are to be introduced under the new UK-REITs regime;
- to remove rules that restrict the payment of dividends under certain circumstances;
- to make it easier for directors to obtain dispensation from the Model Code;
- to remove detailed rules regarding co-investment arrangements and instead to rely on the more general rules regarding related party transactions found in LR11;
- to introduce a new rule that on the appointment of a new investment manager by an existing listed investment entity, the requirement to have sufficient and appropriate experience is re-tested; and
- to remove the restriction on issues of shares below net asset value, relying instead on the anti-dilution measures applicable to listed companies generally.

Part 1

Implementation of the Transparency Directive

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 30 June 2006.

Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/pubs/cp/cp06_04_response.html).

Alternatively, please send comments in writing to:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

1 Introduction

- 1.1 The Transparency Directive (TD) is an important part of the European legislative framework for developing the Single Market in financial services known as the Financial Services Action Plan (FSAP). The TD aims to contribute to the FSAP by enhancing transparency in EU capital markets in several different ways. It requires most issuers with securities admitted to trading on a regulated market ('regulated market issuers') to produce periodic financial reports. Major shareholders in such companies have to disclose their holdings when acquisitions or disposals cause these to reach or breach certain thresholds. These issuers have to disseminate information useful to investors on a fast and pan-European basis. The TD also establishes a framework for the central storage of such information. The TD completed the European legislative process in December 2004 and must be implemented into national law by all Member States no later than 20 January 2007.
- 1.2 The TD is a framework or 'Lamfalussy' style directive, so does not contain all of the provisions setting out the detail in the text of the directive itself. The TD expressly provides that this additional detail will be included in the implementing measures to be adopted by the European Commission (the Commission). To date, the Commission has consulted on a number of such implementing measures. They are set out in Working Document ESC/34/2005 Rev. 2 and deal with a number of important aspects of implementation. They provide more detail on:
- the procedures for determining an issuer's home Member State;
 - the content of the half-yearly financial report;
 - some aspects of the procedures for the notification and disclosure of acquisitions/disposals of major shareholdings (including a draft recommendation of the use of standard forms);
 - the dissemination of regulated information; and
 - the equivalence of third country issuers' regimes.

- 1.3 The Commission has yet to finalise these measures and so this Consultation Paper (CP) is based on the assumption that the Commission's measures will remain substantially unchanged from those in the Working Document. To the extent that there are substantive changes, this may necessitate a second consultation on the affected implementation proposals and draft rules.
- 1.4 The TD sets out various requirements relating to issuers of securities admitted to trading on a regulated market situated or operating within a Member State ('regulated market issuers'). These requirements cover areas where the UK already has rules or legislation, which issuers, investors and other market participants have been working to for a number of years.
- 1.5 The FSA's 'Better Regulation Action Plan' (published in December 2005) reaffirmed our undertaking to implement directives in a sensible and proportionate way. While we must implement the minimum directive requirements (even if they would fail a cost benefit analysis from the viewpoint of the UK) we will only add or retain additional rules when these are justified in their own right.
- 1.6 This CP therefore proposes that we adopt the minimum TD provisions. And it proposes we only retain existing requirements which would be additional to those provisions where these are either clearly justified by our cost benefit analysis, or – if that analysis is less clear – where those requirements are strongly supported by issuers and investors.
- 1.7 We have also taken the opportunity of TD implementation to review FSA rules covering areas related to but outside the scope of the TD. The CP sets out our proposals to remove those rules whose benefits are unclear and only retain those we believe remain justified.
- 1.8 A key purpose of this CP is to ascertain respondents' views on those elements of the existing regime – both within the TD's scope and outside – which we propose to retain, and those we propose to remove.
- 1.9 Our approach to implementing the TD has implications for the FSA Handbook: in particular, the level of detail of the new 'transparency rules', the amendment or removal of existing rules, and the architecture into which the new rules will be placed.
- 1.10 The provisions of the TD are more prescriptive in some areas than the existing rules and less prescriptive in others. The copy-out approach has been taken in drafting the new transparency rules. Where the TD's provisions lack specific detail, we believe that the market is better placed to develop best practice. But we invite respondents to tell us about any areas where FSA guidance would be helpful.

- 1.11 The policy decisions to strictly limit instances of super-equivalence and delete unnecessary rules have resulted in us proposing to remove a number of rules. Please tell us whether you support those removals as part of our implementation policy. We may need to make further consequential amendments to Listing Rules and the rest of the FSA Handbook.
- 1.12 We propose that the draft rules implementing the TD (transparency rules) be inserted into the Disclosure Rules Sourcebook which will be renamed 'Disclosure and Transparency Rules'. The new transparency rules will have a separate identity to the disclosure rules to reflect the distinct nature of disclosure rules and transparency rules as set out in Part VI of FSMA. We propose to keep any retained measures which go beyond the TD minimum requirements in the Listing Rules. We invite you to comment on this proposed Handbook architecture.
- 1.13 Implementing the TD also has an impact on our powers to charge fees and to enforce provisions. With respect to our recovery of costs incurred in support of the transparency rules, the Company Law Reform Bill gives us power to charge fees 'in respect of the continued admission of financial instruments to trading on regulated markets'. Any specific proposals for such fees will be consulted on separately. As part of the Listing Review ENF 21 (Official Listing – Investigation Powers and Discipline) was added to the Enforcement Manual. This Chapter outlines the FSA's policy on how it will approach the use of its powers to investigate and discipline persons whose conduct is covered by any provision imposed by or under Part VI of FSMA. In light of HM Treasury's proposed changes to FSMA, minor amendments to the Enforcement Manual will be required to update the FSA's enforcement policy outlined in ENF 21 to encompass the new transparency rules.
- 1.14 As part of our cost benefit analysis we have compared the TD requirements with the existing UK regimes (mainly set out in the Companies Act 1985 – CA1985 – or FSA Listing Rules) to identify any material differences. To the extent that current UK rules substantively 'overlap' with comparable TD requirements, we have set out our proposals to retain or remove those UK rules based on our analysis of the associated costs and benefits. That analysis is in part informed by our informal pre-consultation with stakeholders, but we are keen to receive more formal responses.
- 1.15 The purpose of this consultation is to obtain feedback from investors, issuers and market participants about our proposals for implementing the TD and, in particular, whether our assessment of the benefits and costs of the additional requirements justifies us retaining them. The detailed requirements are explained later, but in general terms our proposals cover the four main areas dealt with by the TD.

Periodic Financial Reporting

- 1.16 The TD requires regulated market issuers to disclose annual and half-yearly financial reports. These are comparable to the ‘annual report and accounts’ and ‘half-yearly reports’ required under existing Company Law and Listing Rules. Under the TD, the issuer has to make public its annual financial report which is made up of its audited financial statements, a management report, the audit report and an appropriate statement of assurance from persons responsible in the issuer. For half-yearly reports, the TD requires an issuer to make public a condensed set of financial statements, an interim management report and an appropriate statement of assurance from persons responsible in the issuer. We propose to implement the TD provisions on annual and half-yearly financial reports using copy-out. It is important to note that many of the TD requirements are based on and replace comparable provisions of the Consolidated Admissions and Reporting Directive (2001/34/EC). To this extent, the implementation of the TD will have only limited effect for many issuers, for example, in relation to these elements of the TD requirements on the equal treatment of securities holders. The detailed requirements and our implementation proposals for annual and half-yearly reports are set out in paragraphs 2.6 to 2.15 of Chapter 2.
- 1.17 Regulated market issuers of shares will also have to produce interim management statements during each half-year. Existing Company Law and Listing Rules do not require the production of such statements. Interim management statements will have to include an explanation of material events and transactions that have taken place during the relevant period, their impact on the financial position of the issuer and a general description of the financial position and performance of the issuer during the relevant period. The requirement to produce an interim management statement does not apply if the issuer already produces quarterly financial reports. We propose to implement the TD provisions on interim management statements using copy-out. We do not propose to include guidance on these requirements, but we are clear that these requirements are expected to be less onerous than producing quarterly reports. The detailed requirements and our implementation proposals dealing with interim management statements are set out in paragraphs 2.16 to 2.20 of Chapter 2.
- 1.18 For periodic financial reporting, we have compared the TD requirements with those of the Listing Rules, which include some financial reporting requirements for issuers admitted to the official list (‘listed issuers’). As described above, this consultation sets out our proposals which largely copy-out the TD requirements for annual and half yearly reports and interim management statements. However, we believe there are sufficient benefits to warrant keeping some existing Listing Rules which go beyond the requirements of the TD. The most significant proposal is to continue to require regulated market issuers that are also ‘listed issuers’ which exclusively issue debt in denominations of at least €50,000 to produce annual financial reports. This replicates the position under the existing

Listing Rules. Such issuers (here after referred to as ‘wholesale debt issuers’) are exempted from this requirement under the TD. However, many of these issuers would be required to produce annual financial reports under their relevant Company Law, even if our current rules did not require them to do so. We therefore feel the costs of this proposal are limited and there are market benefits which justify us keeping this requirement.

1.19 For regulated market issuers that are also listed issuers, we therefore propose to retain Listing Rules which impose more stringent requirements than the TD in three areas:

- the requirement for wholesale debt issuers to produce annual financial reports as described above;
- the requirement for issuers of half-yearly reports that fall outside IAS34 to apply changes they expect to make to accounting policies in the annual report rather than merely describing their effect; and
- for issuers of shares to produce statements of dividends that comply with certain standards of timeliness and content rather than merely ‘publishing... notices concerning the allocation of dividends’ as required by the TD.

1.20 We propose to remove the requirement that issuers must either publish half-yearly reports in a newspaper or send them to every holder of their securities, on the grounds that the information will be effectively disseminated through other means. We believe this will yield significant savings to issuers.

1.21 These additional requirements and our implementation proposals are discussed in more detail in paragraphs 2.25 to 2.32 of Chapter 2.

1.22 In areas outside of the scope of the TD, the existing Listing Rules set additional periodic financial reporting requirements for listed issuers. We have taken the opportunity of TD implementation to review these rules and we propose to remove those rules whose benefits are unclear and to retain only those that remain justified. Although these rules were effectively part of the listing review consultation, it is reasonable to spend more time considering these rules now due to the greater focus on these areas in this consultation.

1.23 The proposed removals include:

- requiring annual report to contain details of arrangements under which a director has waived emoluments from the company;
- requiring a statement of the beneficial and non-beneficial interests of directors; and
- certain items in relation to purchases of own shares and the specific inclusion of an earnings per share figure in summary financial statements.

- 1.24 The Listing Rules we propose to retain include:
- the requirement to comply or explain corporate governance arrangements against the Combined Code;
 - directors' remuneration disclosures;
 - a statement by directors that the business is a going concern; and
 - disclosures of unaudited financial information.
- 1.25 These rules and our proposals to remove or retain them are discussed in more depth in paragraphs 2.33 to 2.55 of Chapter 2.

Major Shareholdings

- 1.26 The TD sets out requirements for the disclosure of major holdings of shares by investors. Where a shareholder acquires or disposes of shares of an issuer with securities to which voting rights are attached and which are admitted to trading on a regulated market, that shareholder must notify the issuer if the proportion of voting rights they hold reaches, exceeds or falls below the thresholds set out in the TD. The TD extends this basic notification requirement to certain situations where a person is entitled to acquire, to dispose of, or to exercise voting rights (such as concert parties). The basic notification requirement is further extended to include financial instruments that result in an entitlement to acquire shares to which voting rights are attached.
- 1.27 However, to avoid unnecessary burdens for certain market participants and allow for greater clarity about who actually exercises influence over an issuer, the TD allows for certain market participants, such as custodians and market makers, to be exempted from the notification requirements.
- 1.28 As part of the UK's implementation of the TD, the government is proposing that the existing major shareholding disclosure provisions of the CA1985 be repealed and responsibility for the major shareholding notification regime should pass from the DTI to us. We have compared the TD requirements with those of the CA1985, which sets out the UK's current major shareholding disclosure regime. That comparison shows that the CA1985 provisions generally go beyond the minimum requirements of the TD.
- 1.29 We understand that UK stakeholders (both investors and issuers) would generally prefer to retain the issuer scope, threshold and deadline aspects of the existing regime. But we invite you to confirm whether this is the case or not. This consultation sets out the option of implementing the major shareholder notification requirements of the TD in a way that as far as possible replicates these provisions of the CA1985 regime. The key elements are that:

- notifications would remain necessary when shareholdings reached a 3% threshold, and every 1% thereafter; and
 - disclosures would apply to holdings in issuers with shares admitted to trading on a regulated market, and to holdings of shares in UK companies traded on exchange-regulated markets (including AIM and OFEX).
- 1.30 In relation to holdings which we require shareholders to notify us about, we propose to implement primarily by way of copy-out of the directive provisions but with some proposed additions which would in certain respects replicate the effects of the CA1985 regime. However, this implementation is a suitable opportunity to consider afresh the desirability of retaining what would now become super-equivalent requirements relative to the minimum TD requirements and whether the UK's current regime produces more *useful* information or just more information. The various options are discussed in more depth in Chapter 3.

Dissemination of Regulated Information

- 1.31 The TD also sets out requirements for the dissemination of all 'regulated information'. Regulated information, broadly speaking, is the information issuers are required to announce to the market under the TD, article 6 of the Market Abuse Directive (e.g. inside information) and any further information which the home Member State may require. The TD requires Member States to ensure that regulated market issuers disclose regulated information in a manner which ensures fast access to such information on a non-discriminatory basis and make it available for central storage at an 'Officially Appointed Mechanism' (see immediately below). The TD does not mandate a dissemination model.
- 1.32 We have compared the TD requirements with the current UK dissemination regime, where issuers are required to issue their regulatory announcement via a Primary Information Provider (PIP) which disseminates this information to Secondary Information Providers (SIP). On the basis of this comparison, we propose to require the continued use of the existing dissemination regime for issuers for whom the UK is their home Member State. The TD dissemination requirements and our implementation proposals are discussed further in Chapter 4.

Central Storage of Regulated Information

- 1.33 The TD requires Member States to ensure the existence of at least one 'Officially Appointed Mechanism' (OAM) for the central storage of regulated information disclosed under the TD. The OAM must meet minimum standards of security and certainty about the information source, time-recording and easy access by end-users. It must also be aligned with the procedures for filing regulated information with the competent authority.

- 1.34 However, the details of these standards have yet to be determined. The Commission has asked the Committee of European Securities Regulators (CESR) to deliver technical advice on the role of the OAM by the end of June 2006. Given this timetable we would not anticipate that the Commission will be able formally to set detailed standards for OAMs until some time after the deadline for TD implementation (20 January 2007).
- 1.35 For the period between the implementation of the TD and the introduction of detailed OAM standards, Member States will be required to implement an interim solution to meet the requirement to appoint an OAM. The Commission has officially indicated to CESR that, providing the interim storage solution offers end-users 'some kind of access' to regulated information, a wide and flexible interpretation of the TD will be acceptable. In the longer term, Member States will be required to appoint at least one OAM which meets all of the yet to be decided standards.
- 1.36 We have compared the TD requirements for the interim period with the current UK arrangements where end-users already have 'some kind of access' to regulated information via hyperlinks on our website to certain commercial providers. On the basis of this comparison, we propose that for the interim period we retain the current storage arrangements. With a view to establishing final OAM standards, the consultation also asks respondents for their views on the nature of the demand for UK OAM(s) and whether they might be operated by the private sector or the FSA. The analysis and these questions are set out in Chapter 5.

Equivalence

- 1.37 Where we are the home Competent Authority for a third country issuer, the TD permits us to exempt such issuers from the TD requirements on periodic financial reporting, major shareholding notification, and other continuing reporting if the law of that third country (or another third country the issuer complies with) lays down requirements that we consider equivalent. To ensure a harmonised application of this right to exempt issuers, the TD provides for the EU Commission to adopt implementing measures in respect of equivalence. The Commission has yet to adopt such measures, so we have not made any pre-emptive assessments of equivalence. Initially, we will therefore treat all third country issuers for whom we are the home Member State as subject to our rules implementing the TD. However, we would invite third country issuers who consider the law with which they comply to be equivalent to the UK regime to open discussions with us on this subject. In such cases, we would be guided by the CESR advice on equivalence.

Contracts for difference and other derivative holdings

- 1.38 There has been some industry debate and press interest in the disclosure of derivative positions, as well as those of actual physical holdings of shares. The Takeover Panel has recently issued rules dealing with the disclosure of holdings of such derivative positions during takeover offer periods. The draft clauses tabled by the government in the Company Law Reform Bill (CLRB) would give us the powers to make rules in relation to disclosure of derivative positions. However, it is clear that this is a complex area that needs careful thought. We would be prepared to consider implementing a wider disclosure regime if it could be demonstrated there was a current market failure, and a workable practical approach that met the cost-benefit analysis test.
- 1.39 There may well be circumstances when disclosing derivative positions might provide useful information to issuers or the market more generally. But it is not clear that the disclosure of all derivative positions would be of great benefit to the market or issuers. Designing rules capturing all potentially useful disclosures, while not imposing unreasonable burdens on investors, would be a challenge. It is also unclear whether the end result would produce meaningful information that would help issuers and investors make appropriate decisions in sufficient numbers of cases.
- 1.40 Given these very real practical issues for us and the market, we have decided it would not be sensible to introduce rules dealing with disclosure of such derivative holdings as part of the implementation of the TD. We have been discussing informally with market participants the issues which such disclosures would raise, and we would like to use this consultation to ask for initial views from market participants about the desirability of introducing such a regime. Some of the pros and cons of such a regime are set out in Chapter 6.

2 Periodic Financial Information

- 2.1 The TD sets out requirements for the production of periodic financial information by regulated market issuers. These build on those of Regulation No 1606/2002 which covers the application of international accounting standards (IFRS) to such issuers and establishes a specific regime for certain regulated market issuers beyond the general requirements for all companies laid down in the Company Law directives. The TD aims to improve the quality, quantity and timeliness of periodic financial information for investors. So it sets requirements on the content and timing of annual and half-yearly financial reports and introduces interim management statements for issuers of shares which do not already produce quarterly reports.
- 2.2 As part of the process of implementing the TD, we have compared its periodic financial reporting requirements with the current Listing Rules which set out comparable rules for listed issuers. The comparison shows that to a large extent, the TD requirements are very similar to – but often extend beyond those of – the Listing Rules. For example, compared to the Listing Rules, the TD sets more prescriptive content requirements in certain areas, shorter deadlines for production, and covers additional types of periodic reporting. In general terms, we propose to implement the TD through copy-out of its requirements.
- 2.3 The comparison has also revealed certain areas where the current Listing Rules extend beyond the TD in terms of content or addressee scope. For example the Listing Rules require issuers to publish half-yearly reports in national newspapers or send them directly to shareholders, whereas the TD requires the dissemination of this information on a fast and pan-European basis. Also, while the Listing Rules require all listed issuers to produce at least annual report, the TD exempts issuers that exclusively issue wholesale debt from producing any periodic financial information. We have reviewed those Listing Rules and in three areas we propose to retain rules for listed issuers which are more stringent than the TD requires for regulated market issuers.

- 2.4 For Listing Rule requirements not covered by the TD, we have taken the opportunity of TD implementation to consider whether to remove those existing rules the benefits of which we believe may be unclear. While proposing to remove some rules, we will retain other rules dealing with the content of annual financial reports which we believe are important to the UK markets.
- 2.5 In this chapter we set out the issues arising on annual and half-yearly financial reports. We then consider the application of the requirement for interim management statements for share issuers. Finally, we cover the relatively few cases where the Listing Rules impose more stringent requirements than the TD and then those Listing Rules covering related areas which are outside the scope of the TD.

annual report

- 2.6 With the objective of ensuring timely and comparable annual financial reports, the TD sets out requirements on their content and publication. A regulated market issuer must make public its annual financial report. This is made up of its financial statements prepared in accordance with the applicable accounting standards, a management report, the audit report and an appropriate statement of assurance from persons responsible in the issuer. The issuer must publish the annual report no later than four months after the end of each financial year.
- 2.7 The audited financial statements must comprise consolidated accounts drawn up in line with Regulation (EC) No 1606/2002 (on the application of international accounting standards) if the issuer is required to produce consolidated accounts by the Seventh Company Law Directive. As well as consolidated accounts, the audited financial statements must also include the annual accounts of the parent company, drawn up in line with national law of the Member State where the parent company is incorporated. Where the issuer is not required to prepare consolidated accounts the audited financial statements must be prepared in accordance with the issuer's national law. In the UK, the great majority of listed issuers have been using IFRS for their annual consolidated accounts since 1 January 2005.
- 2.8 The management report must be drawn up in line with the Fourth Company Law Directive and if the issuer is required to prepare consolidated accounts, in accordance with the Seventh Company Law Directive. The statements by persons responsible within the issuer (usually the directors) must certify that to the best of their knowledge the financial statements have been prepared in accordance with the applicable accounting standards and give '...a true and fair view of the assets, liabilities, financial positions and profit and loss of the issuer'. It must also certify that the management report includes a fair review of the development and performance of the business and the position of the issuer and the undertakings included in the consolidation, together with a description of the principal risks and uncertainties they face.

- 2.9 We have compared these requirements to the existing Listing Rules. The comparison reveals that to a large extent, the TD requirements are very similar to and in some respects extend beyond those of the Listing Rules. Compared to the Listing Rules, the TD sets out more prescriptive content requirements such as requiring statements of assurance by persons responsible. However, we do not consider that this requirement affects the principle of unitary board responsibility. The TD also establishes shorter deadlines (four months) for publishing annual report than the Listing Rule requirement of six months. However, we note that in practice many issuers publish early and so we do not feel this requirement will cause issuers insurmountable problems.
- 2.10 The TD requires Member States to ensure that responsibility for compliance with the TD's provisions on periodic financial reporting and on the disclosure of information on changes to rights attached to securities and new loan issues or guarantees thereof lies with the issuer or its administrative, management or supervisory bodies. For the implementation of this requirement, we propose to apply a similar approach to that used with respect to responsibility for prospectuses. Therefore we propose that in all cases responsibility for compliance with our rules on periodic financial reporting and the disclosure of the above information lies with the issuer. Additionally, for listed UK issuers of shares we propose to introduce a Listing Rule that such responsibility lies with the directors as well.
- 2.11 The TD indicates that requirements for statements by persons responsible are not intended to affect liability regimes in Member States. We are aware that some stakeholders are concerned that the TD's provisions may in fact lead to an extension of directors' liability for drawing up and making public the annual financial report, and possibly for auditors' liability on information they have audited. The Financial Market Law Committee has issued a paper regarding these concerns. The Treasury is considering these views and we understand it will respond shortly.

Half-Yearly Financial Reports

- 2.12 The TD introduces more comprehensive half-yearly financial reports for regulated market issuers. The TD requires a condensed set of financial statements prepared in accordance with the applicable accounting standards, an interim management report and an appropriate statement of assurance from persons responsible in the issuer, and for this to be made public. If the half-yearly report has been audited or reviewed by an auditor then that report or review must be published as well. Half-yearly reports covering the first six months of the financial year will need to be published as soon as possible and at the latest two months after the end of the relevant period.

- 2.13 Where the issuer is required to produce consolidated accounts, the condensed set of financial statements must be prepared in line with Regulation No 1606/2002 (on the application of international accounting standards). Where the issuer is not required to prepare consolidated accounts, the condensed financial statements must at least include a condensed balance sheet, and a condensed profit and loss account, prepared in line with the same principles applied to the annual financial accounts. What this means in practice is that issuers using IFRS for their annual accounts (as noted above, this is the great majority of UK listed issuers) will be required to produce half-yearly reports in accordance with IAS34 on Interim Financial Reporting. The relatively few issuers that continue to use UK GAAP will be required to produce UK GAAP half-yearly accounts.
- 2.14 The interim management report must include an indication of the important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, together with a description of the principal risks and uncertainties for the remaining six months of the financial year. In a similar requirement to those for annual report, the statements made by persons responsible within the issuer must certify that to the best of their knowledge the condensed set of financial statements have been prepared in accordance with the applicable accounting standards and give a true and fair view of the assets, liabilities, financial position and profit or loss of the issuer or the undertakings included in the consolidation and that the interim management statement includes a fair review of the information required. However, it is not the case that the standard required to give a ‘true and fair view’ for the half-yearly financial report is the same as that for the annual report. According to the TD recitals, the condensed set of financial statements of the half-yearly financial report provide a sufficient basis for giving a true and fair view of the issuer’s assets, liabilities, financial position and profit and loss for the first six months of an issuer’s financial year.
- 2.15 Compared to the Listing Rules, the TD sets out more prescriptive content requirements, such as requiring the statements of assurance by persons responsible. The TD also establishes shorter deadlines (two months) for publishing half-yearly reports than the current Listing Rule requirement of 90 days. However, we note that in practice many issuers publish early.

Interim Management Statements

- 2.16 On the basis that more timely and reliable information about a share issuer’s performance over the financial year requires a higher frequency of information, the TD requires regulated market issuers of shares to publish interim management statements during the first and second six months of a financial year. Share issuers who already publish quarterly financial reports are not required to publish interim management statements.

- 2.17 Interim management statements must be made in a period between ten weeks after the beginning and six weeks before the end of the relevant six-month period. They must contain information covering the period from the beginning of the relevant six-month period to the date the statement is published. The TD requires these statements to provide an explanation of material events and transactions that have taken place and their impact on the financial position of the issuer/its controlled undertakings and a general description of the financial position and performance of the issuer/its controlled undertakings. There is no specific assurance requirement for these statements. It is important to note that these management statements are not full interim accounts along the lines required by IAS34.
- 2.18 These disclosures are expected to be less onerous than producing quarterly financial reports. Issuers may be able to use trading statements as an alternative to quarterly reports, provided that the content of the trading statements includes the information identified above as required under the TD.
- 2.19 We appreciate that the wording used by the TD setting out these requirements is relatively high level and open to interpretation. We have actively considered whether it would be appropriate for us to issue guidance on what will be required in practice. We have decided that it would not be appropriate to issue such guidance.
- 2.20 The contents of interim management statements will depend greatly on the particular circumstances of the issuer, the nature and complexity its business and developments in its sphere of activities. Any FSA guidance would have to be of general application and we feel that this would limit its usefulness to such an extent that it would have no value. We expect market practice to develop in this area and we will look to review the situation within an 18 – 24 month timeframe.

Q1: Do you agree with our proposal not to add to the TD requirements for interim management statements? Do you feel that FSA guidance in this area at this stage would be helpful or unhelpful, and why?

- 2.21 The new rules must be implemented by 20 January 2007. Given the inconsistency of this date with the financial reporting periods of individual issuers, we are aware of the need to determine the timing of when the new rules take effect. With a view to maximising the time available to issuers to initiate compliance with the new rules, we propose that they take effect for financial reporting periods commencing on or after 20 January 2007. We recognise that issuers with reporting periods starting before this date (e.g. those whose reporting periods equates to the calendar year) will not need to adhere to the new rules until 2008/2009 in respect of the 2008 reporting year. In contrast, issuers with reporting periods starting after 20 January 2007 (e.g. April 2007) will need to begin complying with the new rules at this earlier point in time. We invite your

views on whether the advantages of our proposal in terms of maximising the time available to issuers to adopt new rules outweigh the disadvantages of allowing different issuers to comply with different rules for a protracted interim period. We note that our considerations on the start date for the new rules may be overruled by any EU Commission pronouncement on this issue.

Non-periodic information for holders of securities

- 2.22 The TD makes certain ongoing information requirements of issuers of share and debt securities as towards the holders of their securities.
- 2.23 In replacement of the comparable CARD provisions, the TD requires regulated market issuers of share and debt securities to ensure equal treatment for all holders of such securities that are in same position. Such equal treatment only relates to shareholders in the same position and so does not prejudice the issue of how many voting rights may be attached to particular share. By the same token, holders of equally ranking debt securities should benefit from equal treatment, even in the case of sovereign debt. The TD requires issuers to provide the facilities and information necessary to enable all holders of their securities, including in particular those located abroad, to exercise their rights.
- 2.24 We propose to copy out these requirements of the TD in relation to both shares and debt securities. On the basis that the TD does not specify whether a convertible security is a share or debt security, we propose that issuers of such securities should not be subject to the TD requirements on ongoing information to holders of securities.

Q2: Do you agree with our proposal to copy out the TD requirements on ongoing information to holders of securities and with our analysis of the implications for issuers of convertible securities?

Review of Listing Rules Extending Beyond TD

- 2.25 Our comparison of the TD requirements with the Listing Rules has revealed four areas where the Listing Rules appear to extend beyond the TD. The four areas are:
- the requirement for listed issuers to either send half-yearly reports to holders of its listed securities or insert the report as an advertisement in a national newspaper;
 - the requirement for listed issuers of wholesale debt to at least publish annual results;
 - the requirement for half-yearly reports to reflect any accounting policy changes applicable in the subsequent annual report; and

- the requirement for dividend statements to comply with certain standards of timeliness and content.

2.26 As specified in the CARD, the Listing Rules require listed issuers to either send half-yearly reports to holders of its listed securities or insert the report as an advertisement in a national newspaper. The TD repeals this CARD provision and instead requires issuers to disseminate this information on a fast and pan-European basis. We anticipate that removing this Listing Rule requirement will result in some significant cost savings for issuers. Investors should not be significantly disadvantaged because issuers will be required to disseminate and store the information as explained in Chapters 4 and 5. So we propose removing this Listing Rule.

Q3: Do you agree that this Listing Rule requirement should be removed?

2.27 The TD exempts regulated market issuers of exclusively debt securities with a denomination of at least €50,000 from having to publish any periodic financial information. This is less strict than our current Listing Rules which require that all listed issuers (on both the main market and the Professional Securities Market – PSM) publish at least annual financial reports. We allow the use of accounting standards other than IFRS and allow up to six months for publication of these reports.

2.28 We consider it important that all issuers are required to continue to provide at least annual financial reports. If this were not the case then investors in such securities may only be able to access information about the issuer using indirect information sources such as credit-rating agencies. Many issuers are currently required to produce some form of annual report under national law. However, there are some countries with no such requirements. Given that many of the issuers concerned would in any case be producing such annual financial reports under national law we believe that the costs of such a requirement are limited and the benefits to the market outweigh these costs.

2.29 We therefore propose to retain the Listing Rule requirement for such issuers to continue to produce annual financial reports. We will also retain the current requirements in relation to accounting standards and time limits for production. So issuers will not be required to use IFRS, and will have to produce the annual financial reports within six months. We also intend to apply this approach in relation to those issuers on the PSM. However, if consultation responses lead us to remove this requirement for those wholesale debt issuers on the regulated markets, we would also remove this requirement for the PSM.

Q4: Do you agree with our proposal to retain the existing requirement for listed issuers of exclusively wholesale debt to produce annual report? If not, is this because you believe that investors will be able to rely on other information provided to investors, such as that from credit rating agencies, to make investment decisions about such securities?

Q5: Do you agree that the approach taken in relation to the PSM should mirror that for wholesale debt issuers?

2.30 For issuers that are not required to prepare consolidated accounts, the TD requires a description of the nature and effect of any change to accounting policies and presentation. In comparison, the Listing Rules require that issuers falling outside the scope of IAS34 (i.e. issuers not producing consolidated accounts or who are otherwise exempt from IAS34) reflect in half-yearly financial reports any accounting policy changes that will be applicable in the final year-end financial reports. In our view, issuers would have to analyse in detail the new accounting standards to determine their impact, so the additional costs of actually applying them should not be significant. We believe the rule adds clarity to the provisions of the TD and ensures comparability between results within the same financial year for investors, while imposing little additional cost. Issuers who comply with IAS34 will in any event have to follow this approach.

Q6: Do you agree with our proposal to retain this existing Listing Rule on the basis that this provides additional clarity to the TD requirement?

2.31 The TD requires regulated market issuers to ‘publish notices or distribute circulars concerning the allocation and payment of dividends’, but is silent about the timing and content of this information. In comparison, the existing Listing Rules require issuers to notify a Regulatory Information Service (RIS) as soon as possible after the issuer’s Board has approved any decision to pay or make any dividends or other distribution, or to withhold any dividend or interest payment. The announcement has to give quite detailed information in such circumstances.

2.32 We consider that the existing rule adds clarity to the TD provision and ensures investors are given timely, detailed information while not imposing any significant additional costs on issuers.

Q7: Do you agree with our proposal to retain this existing Listing Rule on the basis that this provides additional clarity to the TD requirement?

Listing Rules Covering Financial Report Requirements Outside the Scope of the TD

- 2.33 We have taken the opportunity of TD implementation to review the periodic financial reporting requirements of Listing Rules covering areas outside the scope of the TD. We have taken particular note of the requirements of UK Company Law, and considered whether duplication of those requirements in our regime is justified. We have also considered the extent to which, where there are requirements in Company Law, it is appropriate to extend identical – or similar – requirements through our rules to issuers which are outside the scope of UK Company Law. We propose to retain those rules that we believe are important to the UK markets and to remove those whose benefits are less clear.

Proposed retentions

- 2.34 The TD is silent on: preliminary statements of annual results; the ‘comply or explain’ approach to corporate governance arrangements such as the Combined Code (and the comparable requirements on overseas issuers); Directors’ Remuneration disclosures; a statement by directors that the business is a going concern; an auditors’ review of these, plus disclosures of unaudited financial information; small related party transactions; long-term incentive schemes; and, allotments for cash. Having reviewed these provisions, at this stage we intend to retain these requirements. The following sections discuss the requirements in more detail.
- 2.35 The Listing Rules currently require listed issuers to produce preliminary statements of annual results in accordance with certain criteria (i.e. have been agreed with issuer’s auditors; apply a presentation methodology consistent with that adopted in the annual accounts; take account of any likely modification to the auditors report; and include any additional information necessary to assess the results announced). Preliminary statements of annual results are currently required to be published as soon as possible and within 120 days of the issuer’s accounting year end. As explained in paragraph 2.9, the new TD deadline for publication of annual report is four months.
- 2.36 Given this timescale, we propose to amend the existing rules so that issuers will no longer be required to produce preliminary statements of annual results; however, if they choose to do so, they would have to meet the existing content standards. We consider these standards to be important to ensure comparability with annual report and other issuers. We expect that many issuers will continue to produce preliminary statements of annual results and do so well before they publish their full annual report. In addition, we consider it important for issuers and investors to note that the Disclosure Rules require issuers to publish inside information as soon as possible and a

preliminary statement of annual results will usually be sufficiently precise to be considered to fall within the definition of inside information. So the proposed amendment would not allow an issuer who was aware of poor preliminary results to delay communicating such information to the market.

Q8: Do you agree with the proposed change of preliminary statements of annual results from a mandatory to permissive regime?

2.37 We also propose to retain the following Listing Rules which require listed issuers to include certain information in their annual report. We continue to believe that these rules are important for the UK regime. Some of the rules were specifically consulted on in the recent Listing Review.

2.38 annual report must continue to include:

- Unaudited financial information. This was consulted on and supported in the Listing Review (LR 9.8.4R (2)).
- Details of small related party transactions (LR 9.8.4R (3)).
- Details of any long-term incentive schemes (LR 9.8.4R (4)).
- A statement made by the directors that the business is a going concern, together with supporting assumptions or qualifications as necessary (LR 9.8.6R (3)).
- A statement of whether the issuer's corporate governance arrangements comply with the Combined Code or explain how and why they do not (LR 9.8.6R (5), (6)). There is a broadly similar requirement for overseas issuers with a primary listing (LR 9.8.6R (7)). These provisions are central to the UK's corporate governance regime and were consulted on, and received strong endorsement, as part of the Listing Review.
- There are also requirements on the auditors report, including what should be reviewed (LR 9.8.10R, LR 9.8.11R and LR 9.8.12R).

Q9: Do respondents agree with our proposed retention of the above Listing Rules?

Proposed deletions

2.39 We have reviewed, and are considering removing, the following Listing Rules and believe it is appropriate to seek respondents' views on whether the rules provide benefits which outweigh the costs of the rules. If you believe there are benefits to the rules, please provide details of who benefits, and how significant this is, together with any data or evidence to support these views.

- 2.40 The rules we are considering removing include those: requiring annual report to contain details of arrangements under which a director has waived emoluments from the company or its subsidiary; requiring a statement of all the beneficial and non-beneficial interest of directors; certain items in relation to the issuer's purchases of its own shares and the specific inclusion of an earnings per share figure in summary financial statements. The rules are explained in more detail below.
- 2.41 We are considering removing these rules because there is some uncertainty about whether they provide sufficiently significant benefits for investors, as the rules simply make it easier to access information which is obtainable through other channels. These rules largely duplicate requirements set out elsewhere, including accountancy standards, company law and market abuse rules. So investors can access this information through other channels.
- 2.42 For example, information concerning the interests of company directors can be obtained from the company register and directors dealings notifications. To this extent, the benefits of the Listing Rules are limited to the ease-of-access they provide to this information by gathering it in one place. Nevertheless, we recognise that this ease-of-access constitutes a legitimate benefit for investors and would welcome respondents' views on whether it outweighs the costs of including this information in annual report, or elsewhere, and monitoring ongoing compliance. To the extent that this is indeed the case, we will retain the Listing Rules concerned.
- 2.43 LR 9.8.4R (1) requires an annual report to include a statement of the interest capitalised by the group during the period under review with an indication of the amount and treatment of any tax relief.
- 2.44 LR 9.8.4R (5) and (6) require an annual report to include details of any arrangements under which a director of the company has waived or agreed to waive any emoluments from the company or subsidiary undertaking. Where a director has agreed to waive future emoluments, the annual report must give details of such waiver together with those relating to emoluments which were waived during the period under review.
- 2.45 LR 9.8.4R (9) requires that where a listed company has listed shares in issue and is a subsidiary undertaking of another company, the annual report must include details of the participation by the parent undertaking in any placing made during the period under review.
- 2.46 LR 9.8.4R (10) requires an annual report to include details of any contract of significance subsisting during the period under review either to which the listed company, or one of its subsidiary undertakings, is a party and in which a director of the listed company is or was materially interested and/or between the listed company, or one of its subsidiary undertakings, and a controlling shareholder.

- 2.47 LR 9.8.4R (11) requires an annual report to include details of any contract for the provision of services to the listed company or any of its subsidiary undertakings by a controlling shareholder, subsisting during the period under review. This is unless it is a contract for providing services that the shareholder provides as principal business and/ or it is not a contract of significance.
- 2.48 LR 9.8.4R (12) requires an annual report to include details of any arrangement under which a shareholder has waived or agreed to waive any dividends.
- 2.49 LR 9.8.4R (13) requires that where a shareholder has waived or agreed to waive any dividends, an annual report must include details of such waiver together with those relating to dividends which are payable during the period under review.
- 2.50 LR 9.8.5 G advises that a listed company need not include within the annual report and accounts details of waivers of dividends of less than 1% of the total value of any dividend provided that some payment has been made on each share of the relevant class during the relevant calendar year.
- 2.51 For listed issuers incorporated in the UK, LR 9.8.6R (1) requires an annual report to include a statement setting out all the beneficial and non-beneficial interests of each director of the listed company that have been disclosed under the CA 1985.
- 2.52 LR 9.8.6R (2) requires an annual report to include information disclosed to the listed company in accordance with sections 198-208 of the CA 1985.
- 2.53 As explained in paragraph 3.2 these sections of the CA1985 are being repealed and the requirements on shareholders to notify issuers will be in our rules. Issuers will be required to disseminate these disclosures in line with Chapter 4. So we do not consider it necessary for the disclosures to be included in the annual report as they will be made on an ongoing basis.
- 2.54 LR 9.8.6R (4) requires an annual report to include a statement setting out details concerning the listed company's purchases of its own shares.
- 2.55 LR 9.8.13R requires that a summary financial statement issued by a listed company as permitted under CA1985 must disclose earnings per share.

Q10: Do you believe these Listing Rules provide benefits? If you do, please explain how you use the information covered in each of these rules? If you were not able to access such information through annual report, but could access it from other (possibly fragmented) sources, would you be disadvantaged?

3 Major Shareholding Notifications

- 3.1 The TD requires shareholders to inform an issuer whose shares are traded on a regulated market in the EU of changes to major holdings in that issuer's shares. Issuers must then disseminate this information to the wider market. Shareholders must also notify the relevant Competent Authority at the same time they notify issuers¹. The overall aim is to improve market efficiency and protect investors. The TD explains that this information should enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure. It should also enhance effective shareholder control of issuers, and increase the overall market transparency of important capital movements. This section sets out our proposals for implementing the major shareholding notification provisions.
- 3.2 The TD's requirements for notifying major shareholdings have four key elements: issuer scope; notifiable interests; notification thresholds; and notification deadlines. The TD minimum requirements in relation to each of these elements can be compared to those of the CA1985 which sets out the UK's current major shareholder disclosure regime. As part of the UK's implementation of the TD, the Government is proposing that the existing major shareholding disclosure provisions of the CA1985 will be repealed and responsibility for the major shareholding notification regime will pass from the DTI to the FSA. The CA1985 requirements are constructed differently with notification requirements triggered by reference to 'interests in shares' rather than control over the exercise of voting rights. Although occupying some common ground with the TD, the CA1985 provisions are in some respects more extensive and stringent than the minimum TD requirements.

¹ The proposed rules (DTR 5.9) require that this filing be done by electronic means. We consider such means to include email and therefore believe that the proposed rule will not subject the affected shareholders to significant additional compliance costs.

- 3.3 We propose to implement the major shareholder notification requirements of the TD primarily by copying-out the directive provisions, but with some proposed additions which would in certain respects replicate the effects of the CA 1985 regime. This implementation is a suitable opportunity to consider afresh the desirability of retaining what would now become super-equivalent requirements relative to the minimum TD requirements and whether the UK's current regime produces more *useful* information or just more information. So we would be particularly interested in respondents' views on whether we should instead simply implement the TD's minimum requirements.
- 3.4 For major shareholding notification requirements falling within the scope of the TD, we note that any disclosure requirements extending beyond the TD minimum can only be applicable to holdings in issuers who have the UK as their home Member State. We intend to implement the TD in such a way that any TD super-equivalent proposals are only applicable to holdings in UK issuers. Holdings in non-UK issuers for whom we are the home Competent Authority will only be subject to the TD's minimum requirements.
- 3.5 It is relevant to note that the CA1985 section 212 provisions which allow companies to obtain information from parties with interests in their shares will be carried over to the new regime under the Company Law Reform Bill (CLRB). The provisions can be found in Part 21 of the CLRB. Following supportive responses to the Treasury's consultation, the DTI is proposing to maintain 'interests in shares' as the basis for the disclosure obligations under those provisions. We are aware this will result in shareholders having to comply with different provisions depending on the type of disclosure (i.e. under the TD rules or in response to a notice from a company).

Issuer Scope

- 3.6 The TD disclosure requirements apply to holdings in issuers with shares admitted to trading on a regulated market, for which the UK is their home member state. In comparison, the CA1985 provisions apply to holdings in all UK public companies, whether traded or not. In both cases, the disclosure obligations apply to all shareholders irrespective of their jurisdiction.
- 3.7 On the basis of the draft clauses tabled in the CLRB, the Treasury is proposing to give us powers to apply (among other things) the TD major shareholding notification requirements to regulated markets, and to certain other markets in addition to that, but not to all public companies.
- 3.8 The Treasury consulted in March 2005 on the powers it proposed to give us to implement the major shareholdings notification provisions of the TD. Out of 12 respondents to that consultation who commented on this element, 11 supported the Treasury's proposal to give us powers to make issuers admitted to trading on exchange-regulated markets in the UK (and thus those with

qualifying holdings in those issuers) subject to the TD major shareholding notification regime. While some respondents considered that the reasons for needing transparency on regulated markets apply equally to exchange-regulated markets, they also cautioned that the users of exchange-regulated markets should be consulted.

- 3.9 On this basis, we propose to apply the TD's major shareholding notification rules to holdings in issuers with shares admitted to trading on a regulated market, and to holdings of shares of UK companies traded on exchange-regulated markets (such as AIM and OFEX). This approach would closely mirror the existing CA1985 regime, taking account of the scope of the government's proposed power for us to make rules in this area.
- 3.10 Compared with the existing CA1985 regime, our proposals would mean that:
- disclosure requirements would be extended for the first time to shareholdings in non-UK issuers with shares admitted to trading on a regulated market, and for which the UK was their home member state. (This is an unavoidable TD minimum requirement);
 - the current requirements for disclosure in relation to holdings in UK companies traded on exchange-regulated markets would be retained. (This would be over and above the minimum required by the TD);
 - but requirements would no longer apply to shareholdings in UK public companies not admitted to trading on a regulated market or an exchange-regulated market. The government is proposing to repeal that particular element of the CA1985, and is not proposing to extend to us any powers to replicate it.
- 3.11 An alternative implementation approach would be to limit the scope of the shareholder notification requirements to the TD minimum: that is, to apply it only to holdings in issuers with shares admitted to trading on a regulated market, for which the UK is the home member state.

Q11: Do you agree that we should apply major shareholding disclosure rules to holdings in issuers with shares admitted to trading on a regulated market, and to holdings of shares of UK companies traded on exchange-regulated markets such as AIM and OFEX? Alternatively, do you think the scope of the shareholder notification requirements should be limited to the TD minimum: holdings in issuers with shares admitted to trading on a regulated market for which the UK is the home member state?

Notifiable Interests

- 3.12 Under the TD, where a shareholder acquires or disposes of shares of an issuer with securities admitted to trading on a regulated market, and to which voting rights are attached, that shareholder must notify the issuer if the proportion of voting rights they hold reaches, exceeds or falls below specific thresholds.
- 3.13 This basic notification requirement in relation to changes in voting rights is extended to entitlements to acquire, to dispose of, or to exercise voting rights in certain situations. The situations include those: where an agreement is concluded between two or more parties which obliges the holders of voting rights to adopt a lasting common policy towards the management of the issuer and vote their rights in concert; where collateral is lodged with a third party and that person intends to exercise the voting rights; and where a person or entity may exercise voting rights at its discretion, in the absence of specific instructions from shareholders by way of a proxy.
- 3.14 The basic TD notification requirement for shares is also extended to include financial instruments that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, shares already issued to which voting rights are attached. Possible Markets in Financial Instruments Directive (MiFID) financial instruments which could be caught under the TD, if they contain the features described above, would include transferable securities and options, futures, swaps, forward rate agreements and any other derivative contracts relating to shares.
- 3.15 To avoid unnecessary burdens, and to provide greater clarity about who actually exercises influence over an issuer, the TD allows for certain market participants to be exempted from the notification requirements. Specifically:
- The notification requirements do not apply to shares which have been acquired for the sole purpose of clearing and settling within the T+3 settlement cycle. We consider that this exemption only applies to a central counterparty clearinghouse when it interposes itself between the buyer and seller of shares assuming the buyer's payment obligation to the seller and the seller's delivery obligation to the buyer.
 - Similarly, custodians are exempt from the notification requirements, providing they are holding shares in their capacity as a custodian, and can only exercise the voting rights attached to those shares under instructions given.

- There is also a partial exemption for market makers. Provided that market makers are authorised under MiFID, and do not intervene in the management of the issuer, or exert pressure on the issuer to buy back shares or back the share price, there is no requirement to notify holdings at the 5% threshold under the TD. There is an additional optional exemption from notifying voting rights held in the trading book as defined under directive 93/6/EEC on capital adequacy of investment firms and credit institutions, provided that the voting rights held in the trading book do not exceed 5% and the credit institution or investment firm ensures that the voting rights are not exercised or used to intervene in the management of the issuer. We propose to offer the partial exemption from the UK notification regime for voting rights held in the trading book.

3.16 These TD requirements in relation to notifiable interests do not exactly mirror those in the CA1985. In many areas (e.g. the acquisition of shares for the purpose of clearing, and the exemptions for custodians and shares held in trading books) the CA1985 contains no exact parallels with the TD, but the practical effect of the existing UK provision is in some respects the same. In other areas, the differences may be more substantive. For example, the existing market maker exemption under the CA1985 is applied without limitation as to the size of the makers' holding, whereas the TD only provides exemption from the 5% disclosure threshold, and not from the thresholds at 10% and above². On the other hand, certain of the TD rules for calculating total holdings appear less onerous than under the CA1985. Under the CA1985, one instance where it is necessary to aggregate corporate holdings is where a person has 1/3 ownership of the voting rights of company which in turn holds voting rights in another company. In contrast, under the TD a 'controlled undertaking' appears more synonymous with the concepts of a subsidiary and majority shareholder control as to the degree of control needed to require aggregation. Similarly, there are some material differences in the treatment of concert parties between the TD and CA1985. We would welcome any views respondents have about the differences between the two regimes, especially identifying any elements not covered by TD whose retention respondents consider justified.

3.17 An important area of difference between the TD and CA1985 is in the treatment of securities lending. The CA1985 [section 208(5)] allows a stock lender to conclude that, on entering the loan agreement, he both disposes of and acquires matching interests in the same shares, thereby netting off his interests and releasing him from the obligation to notify. In contrast, the TD does not treat the lender's right to call for delivery of the lent stock as an acquisition of those shares for the purposes of the notification requirement. So the lender is unable to net off positions automatically, and is consequently subject to the notification obligations.

² Although the TD exemption is therefore only partial compared to the full exemption of the CA1985, in practice we do not anticipate that the difference will entail a greater number of disclosures by market makers as they would rarely be expected to breach the 10% threshold.

- 3.18 We want to replicate the effect of the CA1985 with respect to securities lending and to avoid unnecessary disruption to existing securities lending arrangements. So we propose to clarify that the list of situations in which the basic notification requirements of the TD are extended includes the situation where a person has a right to call for delivery to himself of shares with voting rights attached. This clarification will make clear that a lender's right to call for delivery of lent stock is an acquisition of those shares for the purposes of the TD. This means that the lender's level of holding of shares to which voting rights are attached will not [normally] change by reason of it entering into a stock-lending agreement, and hence there is no notification triggered by disposal of the stock under the agreement.
- 3.19 The borrower's re-delivery obligation does not appear to be a disposal of an interest in shares for the purposes of the CA1985. So the borrower is not able to net the re-delivery obligation against its acquisition of the stock. This is also the position under the TD.
- 3.20 There have been occasions where borrowers appear to have borrowed stock solely to exercise the attached voting rights. To address the concerns of some relating to such situations, an alternative solution to that outlined above would be to make the lender's ability to treat its right of recall as an acquisition conditional on its undertaking (*vis-à-vis* its underlying client) to exercise that right of recall in every instance where there is a vote.
- 3.21 On the basis of the above comparison, we propose to implement the notifiable interests aspect of the major shareholder notification requirements of the TD in a way that replicates the most significant effects of the CA1985 regime.
- Q12: Are there any notifiable interests under the CA1985 that you consider are not covered by the TD but which you believe should be maintained? Do you agree that the partial exemption from notification for voting rights held in the trading book should be available to credit institutions and investment firms? Do you agree with either of the two alternative approaches to replicate, or make more stringent, respectively the effect of the CA1985 for stock lenders? Are there any side effects?
- 3.22 Neither the TD nor the CA1985 require the disclosure of economic interests in shares such as those represented by Contracts For Difference. However, a number of UK stakeholders have called for greater disclosure of such economic interests. The CP responds to those requests in Chapter 6.

Notification Thresholds

- 3.23 Under the TD, shareholders must notify the issuers when the proportion of voting rights held reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. In comparison, under the CA1985, shareholders must make a notification when an acquisition or disposal of an interest in a public company's shares takes that interest over or below the threshold of 3% and then every 1% thereafter. The CA1985 qualifies this disclosure requirement in the sense that only 'material interests' have to be notified from 3% to 10%.
- 3.24 As the TD is a minimum harmonisation directive, we are able to impose more stringent requirements for holdings in issuers for whom we are the home Member State. So we can choose to implement the Directive's minimum thresholds or, alternatively, retain the existing, more stringent, thresholds (including, to the extent possible under the TD, the CA1985 distinction between material and non-material interests). Although there are a number of different possible options, taking account of the various categories of issuer (see the discussion on scope above), we consider that there are essentially two main approaches:
- to transpose the TD's minimum requirements of disclosures at the 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% levels; or
 - to adopt the thresholds that are currently used in the UK under the CA1985, namely 3% and every percentage point above for material interests, and 10% and every percentage point above for any interest.
- 3.25 Moving to the TD minimum thresholds would substantially reduce the number of notifications made to the market in the UK and would provide cost savings for large institutional shareholders. However, it would also result in a decrease in market transparency from current standards and would weaken the UK's existing disclosure regime. On this basis we propose to base our implementation proposals on retaining the existing CA1985 requirements. But, again, we would be particularly interested in respondents' views on whether the major shareholder disclosure thresholds should reflect the CA1985 or TD regime.
- 3.26 It is important to point out that in relation to the specific exemption for market makers from notifying at the 5% threshold, we consider that whichever option is implemented in the UK, the spirit of the Directive should be upheld. As the TD only has notification thresholds at 5% and 10% we consider that the exemption for market makers should be up to, but not including, the 10% threshold, irrespective of which option is chosen. In other words, we propose that qualifying market makers should notify holdings above 10%, but not holdings below that level. If the CA1985 thresholds are adopted, we propose that market makers disclose at 10% and at every percentage point above. If the TD thresholds are adopted, we propose that market makers disclose at 10% and every TD level above that.

Q13: Which of the approaches to notification thresholds would you prefer? Depending on the thresholds adopted, do you agree with our proposed implications for disclosures by market makers?

Notification Deadlines

- 3.27 Under the TD, a shareholder must notify an issuer as soon as possible – but not later than four trading days – after any notification threshold has been reached, exceeded or fallen below. The issuer must then make the information public no later than three trading days after receiving the notification.
- 3.28 Under the CA1985, a shareholder must notify the company within two days following the day on which the obligation to notify arose. Under the Listing Rules, the listed company must then notify a RIS as soon as possible and not later than the end of the business day following receipt of the information.
- 3.29 We envisage that a shareholder should calculate its holding on the basis of its net or final position at the close of each trading day. At this point, it must determine whether any of its positions have changed in a way which requires notification.
- 3.30 We can choose to impose more stringent requirements under the TD for holdings in issuers for whom we are the home Member State. So we can choose to implement the TD's minimum thresholds or to retain the existing, more stringent, thresholds. We consider there are two main approaches to implementation:
- To implement the TD minimum timing requirements. i.e. the shareholder must notify the issuer as soon as possible, but not later than four trading days after the threshold has been reached, exceeded or fallen below. The issuer must then make the information public upon receipt but not later than three trading days after that.
 - To replicate the current interaction between the CA1985 and Listing Rules. i.e. the shareholder must notify the issuer within two days following the notifiable event, and the listed issuer must notify an RIS as soon as possible and not later than the end of the business day following receipt.
- 3.31 Implementing the Directive's minimum timing requirements would not result in the need to make fewer announcements. It would simply mean the market would not receive the announcements on such a timely basis as it does now. So it could result in a decrease in market transparency from current standards and could weaken the UK disclosure regime.

- 3.32 On this basis, we propose to base our implementation proposals on the CA1985 requirements, but we invite respondents to offer their views on whether the approach to notification deadlines should reflect the CA1985 or TD regime.

Q14: Which of the notification deadlines would you prefer?

Standard Forms

- 3.33 Working Document ESC/34/2005 Rev. 2 includes a draft recommendation on the use of standard forms when making major shareholding notifications. While the current UK disclosure regime does not operate on the basis of standard forms as regards shareholder notifications to issuers, listed issuers are encouraged to use standard forms in their communication with their chosen Primary Information Providers.
- 3.34 To the extent that the recommended standard forms are in fact applied across the EU there will be benefits to issuers – and ultimately the public – of receiving the required information in a standardised format. In addition, it should simplify the process for shareholders who have holdings in issuers located in different Member States. We therefore propose to apply the recommended standard forms.

4 Dissemination of Regulated Information

- 4.1 Under the TD, Member States are required to ensure that an issuer discloses regulated information in a manner which ensures fast access to such information on a non-discriminatory basis. The Commission will propose the minimum standards for dissemination in their level 2 measures. Regulated Information must be disclosed in a manner which ensures that it is capable of being disseminated to the general public fast, and as close to simultaneously as possible, in the home and other Member States. It must be communicated to more than one type of media, including media which are capable of reaching the public in other Member States. The TD does not mandate a dissemination model. Dissemination can be either direct, or indirect via a third party, but in either case the issuer remains ‘ultimately responsible’ for the satisfaction of the minimum dissemination standards and we will carry this through in our implementing provisions. In addition to disclosing regulated information, the TD also requires issuers at the same time to file such information with the competent authority of its home Member State.
- 4.2 Since 2002, the Listing Rules have required the use of the PIP/SIP regime for the disclosure of regulated information. The regime works on the basis that issuers are required to issue their regulatory announcements via any Primary Information Provider (PIP) approved by the FSA. The FSA approves services that meet the requisite standards and, once approved, the providers of those services operate as Regulatory Information Services (RIS). Currently, six PIPs are approved to operate as an RIS, offering issuers a choice of input mechanisms, charging structures and distribution networks. The criteria we set ensure that minimum standards are met, particularly for security, timely processing, distribution and ease of use. RISs are required to demonstrate that their service meets these criteria both prior to being able to operate as a RIS, and on a continuing basis. RISs are also required to commission an independent audit on application, and on an annual basis, to ensure that they comply with the criteria. RISs disseminate regulatory news to Secondary Information Providers (SIPs) including Reuters, Bloomberg, Dow Jones and various internet providers.

- 4.3 We consider that the PIP/SIP model meets the dissemination requirements of the TD and so propose maintaining it for issuers for whom the UK is the home Member State. As is the case currently, issuers (rather than their chosen RIS) remain responsible for ensuring that the minimum standards for dissemination of information are satisfied (i.e. fast, pan-European dissemination) and that their chosen PIP meets the RIS Criteria. For issuers for whom the UK is the host Member State, we will need to rely on the dissemination provisions in the issuers' home Member State (which, as noted above, must ensure dissemination on a pan-EU basis).
- 4.4 An alternative approach would be to allow issuers to disseminate information in a manner which they saw fit, so long as that was compliant with the TD requirements.
- 4.5 With respect to the requirement to file regulated information, we consider that the issuer's use of an RIS to disseminate regulated information will comply with the requirement to file that information with the FSA.

Q15: Do you agree that the FSA should mandate the continued use of the PIP/SIP regime for issuers for whom the UK is the home Member State?

- 4.6 We have taken this opportunity to review the PIP service criteria. The main changes concern the frequency with which PIPs are required to produce an independently audited annual report and the obligation to publish periodic financial information in full text.
- 4.7 With respect to the audit requirement, an RIS is currently required to produce such reports on an annual basis confirming that it satisfied the PIP service criteria in the preceding 12 months. In response to stakeholder requests we have reviewed this requirement and ask respondents to consider three alternative options: maintain current requirement; require an audited report every two years; or require an un-audited report every 12 months.
- 4.8 With respect to annual report and accounts, these are not currently required to be disseminated in full text. This is inconsistent with the TD which requires all regulated information to be disseminated in full text. Recognising the difficulties that some Secondary Information Providers would have in receiving such full text documents, we propose to limit the RIS full-text dissemination requirement to media that are capable of receiving and processing information in industry standard formats used for annual report and accounts.
- 4.9 The details of these proposals are set out in Annex 3.

5 Storage of Regulated Information

- 5.1 The TD requires that there is at least one Officially Appointed Mechanism (OAM) for the central storage of regulated information in each Member State. In the longer term, it envisages that regulated information which has been disseminated and stored should be available via a European network, accessible at affordable prices for retail investors. Such a network is intended to actively promote integration of European capital markets. Investors who are not situated in the issuer's home Member State should be put on an equal footing with investors who are, in terms of access to information.
- 5.2 A UK OAM will have to store all regulated information disseminated by an issuer admitted to trading on a regulated market in the UK. Regulated information, as explained in Chapter 4, will include all periodic financial information, all major shareholding disclosures, disclosures under the Market Abuse Directive, and all information issuers are required to disclose under UK laws, regulations or administrative provisions. For example, this means that an OAM will be required to store prospectuses published by issuers. OAMs will be able to charge for access to this information.
- 5.3 Under the TD, the Commission will adopt implementing measures on quality standards for the storage mechanism. However, the standards have not yet been finalised. The Commission only [recently] provided CESR with the formal mandate for technical advice on the role of the OAM (including agreement on interoperability, costing and funding, minimum quality standards and filing of regulated information by electronic means). CESR is not required to provide its advice until June 2006, so the Commission is unlikely to set detailed standards for OAMs until some time after the deadline for TD implementation (20 January 2007).

- 5.4 So at this stage it is impossible to describe in detail what the requirements on an OAM will be. In broad terms we know that OAMs will have to comply with minimum quality standards of security, certainty as to the information source, time recording and easy access for end-users. However, the details of these standards have yet to be determined. They will have to store information for at least five years. They are also likely to have to be linked in some way, perhaps via a network, to OAMs in other Member States.

Interim Approach

- 5.5 For the period between implementation of the TD and the formal implementation of level 2 measures to specify OAM standards, we will have to find an interim approach to the requirement to appoint an OAM.
- 5.6 In this respect, the Commission has indicated to CESR (in a letter from Alexander Schaub, Director-General of the European Commission Internal Market and Services DG, to Arthur Docters Van Leeuwen, Chairman of CESR, dated 20 July 2005) that if a Member State's interim storage mechanism offers end users 'some kind of access' to regulated information then a wide and flexible interpretation of the TD requirements will be acceptable during this interim period. In the long term, as and when level 2 measures on specific standards come into effect, we will have to appoint at least one OAM which meets all of the required standards. We have no further indication on the timing of this secondary implementation deadline.
- 5.7 Currently in the UK, there are a number of retail investor websites (e.g. the London Stock Exchange's website, Financial Express-UK Wire, Hemscott.net, and ample.com) which receive (an amalgamated form) of all information disseminated by PIPs. Much of this information is available for free, although some require a fee. We currently publish hyperlinks to these organisations on our website. They are displayed in the 'Frequently Asked Questions' section of the 'Regulatory Information Services' section of the UKLA pages. These are offered as examples of services that provide free access to the information disseminated by an RIS. In addition to the services provided by these websites, we also maintain a document viewing facility where anybody can request access to hard copies of information.
- 5.8 To provide an interim solution to the OAM requirement, we propose to make the links to the providers of information on our website more prominent and enhance the RIS section of the website generally. We believe that these arrangements would satisfy the requirement that investors have 'some kind of access' to regulated information in the interim period. The main advantages of this proposal are that there are very minimal costs and it retains flexibility to adapt the approach depending on the outcome of the Commission and CESR's work.

Long term Solution

- 5.9 To help us feed into the Commission and CESR's work and to prepare for implementation of the detailed standards once they are agreed, we are very keen to engage the market in a discussion of the role an OAM or a number of OAMs might play in the UK market. In particular we would welcome respondents' views on the: demand for storage of regulated information; the structure of this demand (for example, is there demand from retail investors, institutional investors, other market participants?); the extent to which such demand is already addressed; and the extent to which users might be prepared to pay for access to different types of information.
- 5.10 It is likely that any designated UK OAM would need to invest in technology to meet the minimum requirements as set out by the Commission, including the interoperability with other Member States' OAMs. There are two main models for such a mechanism – it could be provided on a commercial basis by private sector providers; or it could be operated by us. We would prefer to appoint one or more commercial entities to operate as the UK OAM(s). We have set out some of the issues below and we would welcome respondents' views on which of these models they would prefer.

Model 1 – Commercial OAM(s)

- 5.11 The first model, which we prefer, would entail appointing one or more commercial services to act as OAM(s). This model would be similar to that we use for dissemination of regulated information. There are several advantages to this model.
- 5.12 Commercial service providers have the ability to keep pace and adapt to the technological developments of the market, greater than our ability under model 2. In a similar way commercial providers would be able to develop value-added services to improve the facilities available for investors. This option would generate fewer costs for issuers, investors or us, as the approach would build on systems already used by commercial service providers.

Model 2 – FSA operated OAM

- 5.13 Alternatively, we could operate as an OAM. In some other EU countries, such as Spain and Portugal, the competent authority already provides a storage function and is likely to continue to do so. In contrast, the provision of such IT services lies outside our core activities and we do not currently have the necessary storage facilities or the capability and capacity to build and operate them. There would thus be significant costs to us of setting-up and maintaining a central storage mechanism. Furthermore, we envisage that

OAMs will charge no or minimal fees for basic access to regulated information and derive the bulk of their revenues from provision of value-added services (such as analysis of regulated information). Given that an FSA-operated OAM would not provide such services, the potentially high costs would have to be recovered through fees.

- 5.14 We would welcome respondents' views on which model you would prefer when it is necessary to establish a long-term OAM which meets the standards the Commission will establish.

Q16: Do you have a preference for either of the above models or suggestions for further alternative model(s)?

6 Contracts for Difference

- 6.1 Neither the TD nor the CA1985 require the disclosure of economic interests in shares such as those represented by Contracts For Difference (CFD). However, a number of UK stakeholders have recently been calling for greater disclosure of such interests. Although a holder of a long CFD does not own the share or the attached voting rights, some argue that they may be able to exercise a significant degree of de facto control over the shares held by the counterparty to hedge its position.
- 6.2 The Takeover Panel has recently introduced new rules requiring disclosure of dealings in derivatives and options (including CFDs) during offer periods only, which may arguably be the circumstance when increased CFD disclosure is most relevant. However, outside of offer periods, issuers may currently be unable to identify CFD holders who might indirectly exert influence on voting rights. Partly in recognition of this, the power which the government intends to give us to write rules in this area, which it has recently tabled to Parliament in the Company Law Reform Bill, will be broadly drawn. So we would be able to require wider disclosures if we thought that justified.
- 6.3 The benefits of disclosing economic interests relate to investor transparency and market integrity. CFDs have thus been a feature of a number of high-profile corporate situations, where it has been suggested that a party has been able to materially influence events by exercising control over the voting rights attached to the underlying stock identified in the CFD. The potential influence of CFD holders arises from the way CFD transactions are entered into and hedged. To the extent that CFD brokers have no 'real' use for the stock held to hedge a CFD position, it is likely that they will be mindful of the wishes of their underlying clients (the CFD holders). And even if there is no formal arrangement between the broker and holder, the latter would seem to be the obvious person to sell the underlying stock to (should he be willing) when the CFD and hedge transactions are unwound. Given the current unclear and limited disclosure regime this has raised calls among some stakeholders for CFD transactions to be subject to clear and comprehensive disclosure rules.

- 6.4 However, a disclosure regime that included economic interests would be complex. In calculating an economic interest, one would have to be careful to ensure that the resulting disclosure was sensible and that ‘apples’ were not aggregated with or netted off against ‘pears’. Long and short derivative interests can be very different, depending on the nature, terms and conditions of the derivative, and should often not be netted against each other to calculate an aggregate interest. Meaningful and clear calculation and presentation to enable a market participant to accurately net-off a long CFD against a short spread-bet, for example to give an aggregate percentage of the underlying share capital figure, would be difficult. Equally, netting off derivative positions (long or short) against cash market positions would lead to anomalous results and potentially meaningless disclosure. The only type of disclosure which would be clear could require each type of derivative interest to be aggregated (and not netted off) and disclosed on this basis separate from cash market positions. This would result in complicated disclosures showing in full the number and nature of derivative long positions compared to the number and nature of derivative short positions as well as the cash market position. The regime would be very complex in compliance and technical terms and would result in complex disclosure.
- 6.5 Assuming that all of the derivative positions that might be of interest could be accurately described and captured, it is not entirely clear whether the number of useful disclosures produced would merit the costs involved in producing them. The benefits of a disclosure regime would depend on the degree to which the market finds such information relevant in identifying the influence that CFD holders may exert and will need to be weighed in light of likely significant compliance costs that they will impose on (large) investors and direct costs to us in monitoring compliance.
- 6.6 We believe it is neither practical nor appropriate to consult on draft rules for a mandatory disclosure of major CFD holdings regime in this consultation on TD implementation. Looking beyond TD implementation, such a regime would only be established if a market failure analysis and cost benefit analysis showed clearly that it would be appropriate to do so.
- 6.7 We have had several discussions with market participants over the past few months on these issues. We are interested in hearing more formally market participants’ views on this subject with the view to a longer-term discussion. It would be particularly useful if respondents considered the practicalities of such a regime. In deciding whether and how to take this issue forward we will also consider the outcome of the review by the Takeover Panel in June 2007 of, amongst other things, the new rules of the Takeover Code relating to the disclosure of dealings in derivatives and options.

7 Summary Cost Benefit Analysis

- 7.1 In line with FSMA we have undertaken a Cost Benefit Analysis (CBA) of our proposals for implementing the TD. The significant differences in the nature scale and complexity of the affected issuers and the regulatory environment in which they operate have made it difficult to estimate the costs associated with our proposals. The cost estimates of the CBA are therefore not exhaustive and are set out in terms of broad ranges. We acknowledge the shortcomings of our analysis and would welcome any contribution respondents are able to give, particularly with respect to those areas where our CBA only marginally supports our policy proposals.
- 7.2 This chapter summarises the most significant elements of the CBA, but we recommend that you read the detailed analysis set out in Annex 1. The CBA of our implementation proposals is set out in four categories: periodic financial reporting; major shareholding notifications; dissemination of regulated information; and storage of regulated information.

Periodic Financial Reporting

- 7.3 We propose to copy-out the TD requirements concerning annual and half yearly financial reports and interim management statements.
- 7.4 Compared to the Listing Rules, the wider scope, more prescriptive content and shorter publication deadlines of the TD for annual and half-yearly financial reports may generate additional compliance costs to issuers. However, these are limited to the extent that most issuers are already required to produce such reports with similar content requirements. Most issuers also already publish within the new deadlines. In terms of benefits, the TD requirements should enable investors to make more timely informed investment decisions.

- 7.5 The new requirements for regulated market issuers of shares that do not already produce quarterly reports to produce interim management statements are expected to generate compliance costs. The scale of these costs, and benefits for investors, will depend on how market practice develops, as the TD only sets high-level requirements on the content of interim management statements. Costs and benefits may be limited to the extent that issuers are able to amend the content of trading statements which they already produce to meet the requirements of the TD.
- 7.6 In four areas, the Listing Rules extend beyond the requirements of the TD. We propose to retain rules in three of these areas.
- 7.7 In contrast to the TD, the Listing Rules require issuers to publish their half-yearly report in a national newspaper or send it to holders of its securities. Our proposal to remove this LR is expected to generate significant cost savings for issuers and should not significantly disadvantage investors as the information will be disseminated according to the TD minimum standards.
- 7.8 Unlike the TD, the Listing Rules require wholesale debt issuers to produce annual reports. We propose to retain this requirement. For most issuers there will be no incremental costs as they are required to produce annual report under national law. A minority of issuers will continue to bear the costs of producing such reports which are not expected to increase as we will continue not requiring the use of IFRS and allow six months for publication. We consider that the requirement brings significant benefits in terms of investor and market protection against an influx of issuers not otherwise required to produce annuals.
- 7.9 Compared to the TD, the Listing Rules require issuers of half-yearly reports to apply changes in accounting policies that are expected to be made in the full year accounts rather than merely describing their effect. We propose to retain this requirement. Under the TD, issuers would have to analyse in detail the new accounting standards to describe their effect. So the continued incremental costs of actually applying them are expected to be negligible. We think this LR brings significant benefits in terms of comparability of reports.
- 7.10 Compared to the TD, the Listing Rules require issuers of shares to produce preliminary statements of dividends complying with certain standards of timeliness and content rather than merely ‘publishing...notices concerning the allocation of dividends’. We propose to retain this requirement. Because issuers will have the required information anyway, we expect the continued additional costs to be borne by issuers to be marginal. We consider that retaining the LR will bring benefits in terms of more timely, detailed and comparable information.
- 7.11 In areas covered by the Listing Rules which are outside the scope of the TD, we propose to amend the Listing Rules on preliminary statements of annual results and remove a number of other Listing Rules.

- 7.12 Given the TD's shorter deadline for the publication of annual report, we propose to change the Listing Rules on preliminary statements of annual results to a permissive regime. Issuers choosing not to publish preliminary results will benefit from reduced compliance costs. However, these are unlikely to be significant as issuers are expected to have the underlying information anyway. The quantity and timing of information for investors are not expected to decrease under this proposal. This is because, even if issuers choose not to produce preliminary results, the annual report itself will be produced to a similar timescale to that currently applying to preliminary results.
- 7.13 We propose to remove a number of the Listing Rules, including, for example, those requiring annual report to contain details of any director waiver of emoluments and statements of beneficial and non-beneficial interests of directors. We propose to remove these LR on the basis that there is uncertainty about whether they provide significant benefits for investors because they make it easier to access information which is otherwise obtainable. However, we recognise that ease-of-access constitutes a legitimate benefit and invite respondents' views on this.

Major Shareholding Notifications

- 7.14 The TD requires shareholders to notify issuers of major holdings in shares and issuers to make these disclosures public. The TD requirements can be considered in terms of issuer scope, notifiable interests, and notification thresholds and deadlines.
- 7.15 On issuer scope, the TD requires the regime to be applied to regulated market issuers of shares, but we have discretion over whether to apply a regime to exchange regulated market issuers. On balance, we consider the CBA to be marginally in favour of retaining the extension of the major shareholding notification regime to UK equity issuers traded on exchange regulated markets.
- 7.16 The encompassed addressees are already subject to the disclosure regime of the CA1985, so given the high fixed cost structure of shareholder notifications, the additional costs to shareholders and issuers which the current wider regime entails are not likely to be significant. In terms of benefits, information on shareholdings should enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure. It should also enhance effective shareholder control of issuers, and increase the overall market transparency of important capital movements. There will be greater direct costs to us for monitoring the regime.
- 7.17 With respect to notifiable interests, we propose to implement the major shareholder notification requirements of the TD primarily by way of copy out of the directive provisions with an amendment to allow stock lenders to net their loan of stock against their right to call for delivery of it. Based on the pre-existence of monitoring systems, the costs of recalibrating those systems and of actually making notifications are expected to be marginal.

- 7.18 The TD minimum disclosure thresholds can be compared to the lower thresholds under the CA1985. We can choose which thresholds to apply and on balance we consider the CBA to be marginally in favour of maintaining the current thresholds. The compliance costs to stakeholders of continuing to monitor holdings and make disclosures are expected to be marginal at the individual issuer level. Retaining the existing thresholds would mean a higher number of disclosures leading to greater transparency and thereby maintaining price efficiency and market confidence.
- 7.19 The TD disclosure deadlines for shareholders to notify issuers and for issuers to notify the market can be compared to the shorter deadlines of the CA1985 and LR. We can choose which deadlines to apply and on balance consider the CBA to be marginally in favour of maintaining the current deadlines. The shorter deadlines are not expected to significantly increase compliance costs. Shorter deadlines ensure greater transparency and market confidence as the information on major shareholders is available more quickly to the market.

Dissemination of Regulated Information

- 7.20 The TD requires issuers to disseminate regulated information meeting certain minimum standards. It is silent on what model issuers can use to disseminate. We propose to continue to require issuers to use the PIP/SIP model to meet these requirements. This is not expected to impose much greater compliance costs on issuers than if they were allowed to disseminate in other ways (i.e. either directly or via un-approved service providers). There would be costs associated with such models, and in nearly all circumstances we anticipate that issuers would find it more cost effective to continue to use approved service providers to meet the dissemination requirements. The benefits of maintaining the PIP-SIP model include that there is a consolidation of regulated information sources which lowers investors' search costs, leading to increased incorporation of information in prices and thus greater price efficiency.

Storage of Regulated Information

- 7.21 Until the long-term requirements on storage mechanisms are established, the TD requires that investors have some sort of access to regulated information. Our interim solution is to make presentational changes to our website. Depending on the outcome of the Commission's work the long-term storage requirements will require implementation proposals and a CBA. The interim solution should not entail increased costs to issuers or investors. The benefits will depend on the extent to which investors use our website to access the commercial sites providing access to information. Apart from the very low associated costs, there are also benefits that the UK will retain flexibility to adopt whichever model for the storage mechanism which is most appropriate for the long term when the standards are established.

Part 2

Investment Entities Listing Review

The Financial Services Authority invites comments on this Consultation Paper. Comments should reach us by 30 June 2006.

Comments may be sent by electronic submission using the form on the FSA's website at (www.fsa.gov.uk/pubs/cp/cp06_04_response.html).

Alternatively, please send comments in writing to:

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It is the FSA's policy to make all responses to formal consultation available for public inspection unless the respondent requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure.

Copies of this Consultation Paper are available to download from our website – www.fsa.gov.uk. Alternatively, paper copies can be obtained by calling the FSA order line: 0845 608 2372.

1 Introduction

- 1.1 This chapter provides some context to the review of the Listing Rules for investment entities (the Listing Review), by explaining the various factors that we have taken into consideration when formulating our proposals. It describes the philosophy we have adopted in positioning the regime for listed investment entities, both within the Listing Rules generally and within the wider retail investment landscape.

The reason for undertaking the Listing Review now

- 1.2 In November 2004, the Treasury published a consultation document seeking views on the appropriate regulatory status of investment trusts in the wake of concerns over split capital investment trusts. The possible regulatory options included making investment trusts regulated products (similar to authorised unit trusts and open-ended investment companies), making them authorised persons (but not authorised products), and maintaining the present position in which they are simply subject to the listing regime.
- 1.3 The Treasury concluded, on balance, that adopting a different regulatory approach would not result in better regulation than could be delivered using the Listing Rules. In its response to the consultation, the Treasury stated that it *‘welcomes the FSA’s forthcoming review of the Listing Rules applicable to investment companies as an opportunity to ensure that the regulatory regime remains both robust and proportionate, in the context of the Listing Rules generally, and wider regulatory developments.’*¹
- 1.4 In July 2005, we introduced new listing rules following a fundamental review of the listing regime, and consultation on our approach to implementing the Prospectus and Market Abuse Directives (the 2005 Review). This resulted in three new parts of the FSA Handbook:

1 Para 4.12, The regulation of investment trust companies: Government response (November 2005)

- The Listing Rules – which contain rules and guidance for issuers of securities admitted (or seeking admission to) the Official List. These rules focus on eligibility for listing, the continuing obligations of listed issuers (other than those contained in the Disclosure Rules) and sponsors.
- The Disclosure Rules – which contain rules and guidance in relation to the publication and control of ‘inside information’ and the disclosure of transactions by persons discharging responsibilities and their connected persons. The Disclosure Rules implement the Market Abuse Directive.
- The Prospectus Rules – which contain the rules, regulations and guidance outlining circumstances in which a prospectus is required and what information that prospectus must contain. The Prospectus Rules implement the Prospectus Directive.

1.5 Because of the Treasury’s ongoing consultation exercise at that time, the 2005 Review did not cover the Listing Rules applicable to investment entities (chapter 15) or venture capital trusts (chapter 16). In any event, it was felt that changes to the rules in this area warranted their own, focused, consultation exercise.

Scope and objectives

1.6 As the Prospectus Rules and Disclosure Rules are determined by EU Directives, we have little scope to propose amendments to them: the proposals contained in this document relate to the Listing Rules only. This final phase of the fundamental review of the listing regime has broadly the same aims as that of the 2005 Review:

- to simplify and modernise the listing regime (in this case to create a single listing regime that applies to different forms of investment entities, irrespective of investment policy or tax status);
- to ensure that the UK continues to offer a regime that provides an appropriate level of regulation, and the flexibility and transparency demanded by those wishing to raise capital on the UK markets; and
- to ensure that, given the changing legal and regulatory environment, the regime we operate continues to meet our regulatory objectives.

1.7 It should be noted that the Listing Review relates only to companies admitted to the Official List. As a result, companies listed on other markets, such as the Alternative Investment Market of the London Stock Exchange, are unaffected by these proposals.

Other factors influencing the Listing Review

- 1.8 The Listing Review has been undertaken against a background of other significant regulatory activity which has helped to shape our thinking.

Better regulation

- 1.9 We are committed to improving and simplifying regulation and, in December 2005, we published our Better Regulation Action Plan². The Action Plan summarised what we have done already to improve the way we regulate and what we are doing to improve further, including the proposals in this consultation. In particular, the Action Plan explained our intention to further move the balance of regulation towards high-level principles rather than detailed rules and guidance. We believe that better outcomes can be produced by encouraging a focus on the best actions to take in a particular situation rather than following a mechanistic process. The proposals in this consultation reflect that approach.

Wider-Range Retail Investment Products (DP05/3)

- 1.10 Our wider-range retail investment products discussion paper which was published in June 2005 is directly relevant to the Listing Review because listed investment entities often attract significant retail demand and are similar to authorised funds in that they are pooled investment vehicles, albeit operating under differing regulatory regimes.
- 1.11 In the feedback statement to DP05/3 published this month, we explain that there is an inevitable trend towards increased variety of products and our regulatory response should be to rely on consumer education and awareness as the principal tool for the protection of consumers, rather than attempting to restrict the variety of products available for investors. Indeed, we intend to consult on allowing funds of unregulated funds (such as a fund of hedge funds) to become authorised for the first time.

Hedge funds: A discussion of risk and regulatory engagement (DP05/4)

- 1.12 This discussion paper, which we published in June 2005, is also relevant because one of the issues for the Listing Review has been whether – and if so, under what conditions – hedge funds might be listed. It should be noted that funds of hedge funds are able to list under the present rules.
- 1.13 DP05/4 recognises the growing importance of hedge funds and their contribution to the financial markets, and states how we are committed to playing our part to ensure the UK remains an attractive location for hedge fund managers to be based.

2 http://www.fsa.gov.uk/pubs/other/better_regulation.pdf

- 1.14 In our feedback to that Discussion Paper, published earlier this month, we explain that in future we will seek additional information from hedge fund managers we supervise to enhance our understanding of their activities, which will remain an area of supervisory focus.

Prospectus Directive

- 1.15 Most investment entities listed in the UK are closed-ended companies. There is no restriction on the marketing of securities of a closed-ended company to retail investors in the UK, provided any public offer is supported by an approved prospectus or approved listing particulars. On that basis, securities in unlisted or overseas listed investment companies may find their way to retail investors, as well as securities in listed companies. Or, to put it another way, an investment entity does not need to be listed for its securities to be made available to retail investors.
- 1.16 The introduction of the Prospectus Directive has further entrenched this position in two ways:
- Companies making public offers into the UK must publish a prospectus approved by their home competent authority. As a result, we, as the UK Listing Authority, approve documentation in relation to public offers of securities for companies that have not applied for admission to the Official List, and so do not need to meet the eligibility requirements or comply with the continuing obligations set out in the Listing Rules. Some of these companies making public offers are investment entities employing wider-range investment strategies.
 - Once the prospectus of an investment entity has been approved by its home competent authority, it can be used as a passport to enable the marketing of its securities in other Member States. As a result, those investment entities employing wider-range investment strategies can market their securities to investors across Europe, including into the UK, on the basis of an approved prospectus, without further restrictions.

FSA Consultation Paper 164

- 1.17 New measures governing the relationships between boards and investment managers were introduced in 2004 following CP164. This paper resulted from a commitment made to the Treasury Select Committee in November 2002 to consult on several changes to the Listing Rules in the wake of concerns raised in relation to split capital investment companies.

3 Generally this will be the competent authority of the EEA state in which the company has its registered office.

4 <http://www.fsa.gov.uk/Pages/Library/Policy/CP/2003/164.shtml>

- 1.18 These measures included a change to the definition of non-independence in the context of listing. We have been encouraged by the effectiveness of these provisions in addressing concerns that directors were not always able to make objective decisions, especially where those decisions might conflict with the interests of the investment manager.

The 2005 Review

- 1.19 The feedback we received during the fundamental review of the Listing Rules was that the high standards imposed on listed companies serve to maintain the value of listing and that key requirements, both in terms of eligibility (such as a minimum track record for new applicants) and continuing obligations (such as the need for shareholder approval for significant transactions), should be retained.

Consultation on introduction of UK-REITs

- 1.20 In its 2006 Budget Report, the government announced it would introduce, in the UK, Real Estate Investment Trusts (UK-REITs) with effect from 1 January 2007, to improve the efficiency of both the commercial and residential property investment markets. The introduction of UK-REIT legislation will provide the basis for liquid and publicly available property investment vehicles available to a wide range of investors, contributing to the government's wider objectives for raising productivity in the commercial property sector.
- 1.21 In order to qualify as a UK-REIT, a company will need to be listed on a recognised stock exchange, such as the London Stock Exchange.

Our approach

- 1.22 Taking account of the various factors described above, and in keeping with the aims of the 2005 Review, we have attempted to construct a new regime using the following philosophy:
- Boards should not be constrained, through detailed Listing Rules, from undertaking investment activity which they believe is in the interests of their shareholders.
 - The quality standards of listing, that were supported in the 2005 Review, should be maintained for investment entities.
 - Disclosure and governance arrangements need to ensure appropriate investor protection, and any gaps in the regime need to be identified and addressed.
 - Where possible, rules that restrict the choice of investment activity should be removed and only retained where specific concerns need to be addressed, such as those associated with multi-layered funds.

- The integrity of the eligibility requirements applicable to other listed (i.e. trading) companies must not be undermined by allowing such companies to qualify for listing as investment entities when this is not appropriate.
- Where it is possible to rely on other regulations to achieve a desired outcome (such as assessing eligibility of an investment manager's experience), this should be done.
- Listing should be made available to investment entities employing more sophisticated investment strategies than at present, through the introduction of a more principles-based approach which allows them to demonstrate they are maintaining an appropriate spread of risk.
- The new regime should be effective and long lasting.

Our proposals

1.23 We believe that the proposals contained in this document have the following benefits:

- They create a single regime for listed investment entities, compared with the five different regimes we have now.
- They help to clarify the position of listed investment entities in the context of the wider universe of investment products that are pooled investment vehicles.
- They comprise a more principles-based approach (particularly in the key area of determining a spread of investment risk) that we believe, in conjunction with rules where necessary, adds value in maintaining efficient, orderly and fair markets, but at the same time improves access to listing.
- They maintain and reinforce investor protection measures, particularly disclosure requirements, but as far as possible avoid interfering with the investment decisions of boards.
- By being simpler and clearer, they will increase the likelihood that investors understand the status of listing, and the nature of the regime, when making their investment decisions.
- They reduce the size of the FSA Handbook in this area by approximately 60%.
- By facilitating the listing of a wider range of investment entities (subject to their being able to meet the conditions of listing and continuing obligations) these proposals are consistent with our objective to maintain the competitiveness of the UK markets.
- They will accommodate UK-REITs which, under the existing Listing Rules, would have been subject to an array of additional investment restrictions.

Regulatory tools available

- 1.24 As explained, the proposals in this document relate to changes in the Listing Rules and not the Prospectus Rules or Disclosure Rules. Within the Listing Rules we have the ability to regulate in the following areas:
- Eligibility – the standards required of an issuer seeking a listing for the first time.
 - Continuing obligations – ongoing requirements for issuers once listed, including governance and disclosure requirements.
- 1.25 Our proposals for each of these areas are described in more detail in the following chapters.

2 Eligibility for Listing

Introduction

- 2.1 The Listing Rules governing eligibility for admission to the Official List provide safeguards for investors and ensure that appropriate standards are met, including in relation to boards of directors and shareholder rights. We believe this regime supports the worth of listing as a mark of quality and the proposals set out in this chapter maintain appropriate standards.
- 2.2 This section sets out, in detail, the draft requirements an investment entity would have to meet to be eligible for listing. Later, we explain our proposals regarding the secondary listing regime for investment entities and our approach towards assessing the eligibility for listing of collective investment schemes.

General approach

- 2.3 In broad terms, a company is deemed eligible for admission to the Official List if it can meet the criteria contained within the Listing Rules and if it produces a prospectus in a form compliant with the Prospectus Rules, making clear to investors the risks associated with investing in its securities. We think the decision to admit a company to the Official List should be as objective as possible, and factors such as the specific nature of its business model, or the nature of the risks that it runs, are not generally taken into consideration.
- 2.4 The measures contained within this document comprise a common set of rules for all types of listed investment entities, regardless of their structure, asset allocation or tax status. By focusing on a few important safeguards, we aim to establish a more flexible regime in an area which has rapidly evolved in recent years and where innovation will undoubtedly continue.

Current eligibility rules

- 2.5 The current eligibility requirements for investment entities differ from those applicable to trading companies as set out below.

Requirement	Trading companies	Investment entities
Has been in existence for at least three years and earned revenue throughout that period;	✓	✗
Has a market capitalisation of £700,000 at listing;	✓	✓
Where it has accounts, these are unqualified;	✓	✓
Has sufficient working capital for the first twelve months of listing;	✓	✗
Has control over the majority of its assets.	✓	✗

2.6 In recognition of the fact that investment entities are normally start-ups, the current rules permit them to list without the need for a three year track record or a ‘clean’ working capital position. As a counterbalance, and to ensure that the listing regime remains of an appropriate standard, the rules state that in order to list, an investment entity must:

- have an adequate spread of investment risk (which we interpret to mean must not short-sell, other than for the purpose of efficient portfolio management);
- be a passive investor and must not control the businesses in which it invests;
- ensure that those responsible for managing investments have adequate experience; and
- ensure that where it employs an external investment manager, the investment manager is independent of the board of directors.

2.7 In the course of this review, we have revisited each of these provisions, with a view to creating a new framework that provides scope for investors and product providers to take advantage of advances in investment techniques, while at the same time maintaining appropriate shareholder protections.

Definition of an investment entity

2.8 A key element of the new framework is the use of a new definition of an investment entity to determine eligibility for listing. This definition encapsulates the key characteristics of a well-diversified investment entity which should be eligible for listing, and through this definition, eligibility can be assessed by reference to principles, rather than mechanistic rules. We propose deleting the current definitions of different types of investment entities (such as venture capital trusts, investment trusts and property investment companies) because these now fall within this more general definition.

Present approach towards requirement for a spread of investment risk

- 2.9 The requirement for an adequate spread of investment risk lies at the cornerstone of the existing regime for investment entities and detailed rules set out how this is to be achieved. Key amongst these is a requirement that no more than 20% of the total assets of an issuer may be invested in the securities of any other company at the time the investment is made.
- 2.10 This simple approach may be legitimate in the context of long-only, low-g geared investment companies with traditional investment policies, where such restrictions ensure that losses sustained in any one investment would not prove fatal to the investment entity itself. However, the industry has developed considerably since these rules were first introduced, and they are no longer effective in the modern era, leading to confusion amongst stakeholders and difficulties in interpretation.
- 2.11 The present rules are limited in a number of respects. For example:

- Long-short strategies may actually be more diversified than long-only strategies, but our existing policy is to limit their use.
- In assessing the adequacy of the spread of investment risk, the present rules take no account of gearing levels. The emergence of very highly geared structures, which nevertheless meet the requirement that no more than 20% of the total assets are invested in any one asset, have exposed the limitations of the present provisions.
- The increasing use of synthetics and innovative structures has led to increased pressure on the interpretation, especially where an investment is reliant on a single counterparty.
- The existing provisions have only limited effect beyond the time the initial investment is made, with the result that portfolios can become heavily skewed over time without redress, or without any explanation as to how investment risk is being spread.
- The rules are very rigid and fail to take into account the substance of an investment strategy. As a result, certain structures, such as those which channel funds through a single index-linked bond, which are actually designed to gain exposure to well-diversified portfolios, may be ineligible for listing.
- Their effectiveness in ensuring that there is in fact as ‘adequate’ spread of investment risk is open to question because of the emphasis they place on portfolio composition as an indicator of investment risk. Other factors may also have an important bearing on the risk profile, such as gearing, counterparty risk, liquidity risk, credit risk and custodial risk.

- 2.12 Examples such as those given above suggest to us that the existing rules need significant reworking as they do not afford shareholders the level of protection that is probably assumed from a listing. Indeed, there is a possibility that investors may believe that listed investment entities and their investment policies are more closely constrained on an ongoing basis through the Listing Rules than may be the case.

Proposed approach to the requirement to spread investment risk

- 2.13 Consistent with our general philosophy in the Listing Review, we have concluded that a move away from the current, somewhat mechanistic, rules towards a more principles-based approach would better achieve the desired outcome. It would do this in a way that offers more flexibility and allows issuers to take more responsibility for determining how they will meet the criterion. With strong requirements in place governing the relationship between investment managers and investment entities' boards, which remain accountable to their shareholders, we believe that investment entities should be free to act in the best interests of their shareholders, as is the case for other listed companies.
- 2.14 We propose therefore to replace the specific rule limiting individual investments to 20% of a fund's total assets with a more detailed definition of the term 'investment entity'. To meet this definition (and so be considered for listing), an investment entity must be established with the object of investing funds with a view to spreading investment risk. This definitional approach will be reinforced with a requirement for a statement in the annual report and accounts about how this objective is achieved including quantitative analysis where necessary. Importantly, this would give issuers the opportunity to demonstrate to their investors, on a look-through basis if appropriate, how they are achieving the objective of spreading risk. This is in contrast to the current approach which imposes rigid rules that act as a crude proxy for adequacy of portfolio diversification.
- 2.15 We believe this will force boards, both on listing and thereafter, to consider investment risk in its wider sense when assessing how they are able to achieve a spread of investment risk, and what other risk management techniques they may need to employ. The definition makes clear that issuers should have regard to asset allocation, risk diversification and gearing in complying with this objective.
- 2.16 The removal of the term 'adequate' further clarifies the Listing Rules in this area. In future, entities must simply have a spread of investment risk, and demonstrate how this is achieved. The extent to which this may be 'adequate' is a matter of judgement for investors, rather than us, and issuers will provide information in the annual report on which investors can base their judgement.

2.17 In those cases where an entity's investment policy does not appear to us to achieve the object of spreading investment risk, we will consider whether the entity is more suited to LR6 (ie a holding, or trading company). If so, then we will require it to make its application for listing under that regime, in which case it will need to have a three year record.

Q1. Do you agree that the current approach towards the need to spread investment risk should be replaced with one that is principles-based?

Q2. If so, do you agree that the proposals described, including the requirement for an annual statement, represent an effective method of achieving the desired outcome?

Removal of investment restrictions

2.18 The new approach towards spread of investment risk described above enables us to relax our policy on investment activity, giving investment entities much greater flexibility in their choice of investment strategy. The restrictions we place on short selling, for example, are due to the interpretation of the 20% rule. Short selling is currently permitted to only a limited extent – for the purpose of efficient portfolio management. This proposal would allow investment entities employing wider-range investment strategies, including those currently pursued by some hedge funds, to list in the UK for the first time and allow greater use of synthetic instruments to achieve exposure to underlying assets.

2.19 Provided there is sufficient disclosure to shareholders of the risks associated with investing in an investment entity exposed to a particular asset class or investment strategy, and entities continue to satisfy the requirement to spread investment risk, then we see no reason why shareholders should not be free to invest in that entity.

2.20 This proposal is in line with the regulatory approaches we are taking elsewhere. It accords with our feedback statement to DP05/3, where we explain there is an inevitable trend towards increased variety of products and the solution to this should be greater reliance on consumer education and awareness as the principal tool for the protection of consumers, rather than an attempt to restrict the variety of products available for investors.

2.21 It should be noted that we are retaining the current rule requiring that an investment entity wishing to change its investment policy must first obtain approval from its shareholders.

Q3: Do you agree that investment entities would benefit from greater flexibility in their choice of investment strategies, including short selling, and should the listing regime accommodate investment entities that take advantage of this increased flexibility?

Passivity

- 2.22 The present rules require an investment entity to be a passive investor. While our interpretation of this has evolved in recent years, we propose removing the wording. This is because we believe investment entities may want to exercise influence in their capacity as shareholders in the same way as other shareholders are able to.
- 2.23 The proposals clarify the extent to which an investment entity may influence the businesses in which it invests – it may provide strategic advice and may have representatives on the boards of companies in which it invests, provided it does not take board control or become actively involved in the day-to-day management of those businesses.

Q4: Do you agree that the requirement for an investment entity to be a passive investor should be removed?

Restrictions on control

- 2.24 A key distinction between the listing regimes for trading companies and investment entities is control. Trading companies must demonstrate control over their assets, whereas investment entities are not permitted to take controlling stakes in the companies in which they invest. These contrasting rules are designed to make clear the distinction between trading companies and investment entities, and to prevent the two regimes becoming entwined.
- 2.25 We are conscious that following the widespread consultation during the 2005 Review, it was considered appropriate to retain the requirement for a trading company to have a three year track record of operations to be eligible for listing. If new investment entities were able to take controlling stakes in companies, then there would be a risk that the integrity of the listing regime for trading companies could be undermined. This is because a trading company without the necessary three year record could present itself for listing as an investment entity. Traditional industrial conglomerates could also become eligible for listing as investment entities if they were able to demonstrate that they had a diversified portfolio.

2.26 Although we are not proposing any changes to these restrictions here, we would be very interested in views on whether a relaxation could be achieved without undermining the listing regime for other listed (i.e. trading) companies. While such a move would be in line with our general aim of reducing the extent to which the Listing Rules impact on an entity's choice of investment activity and policies, we would like to engage in further debate before deciding whether to make such a proposal.

Q5: Do you believe it is desirable, or possible, for investment entities listed under this chapter to take controlling stakes in companies in which they invest, without undermining the listing regime for other listed (i.e. trading) companies?

Feeder funds

2.27 Our present rules state that where an investment entity has a policy of principally investing its funds in another company or fund, then it must ensure that its directors comprise a majority of the board of the company in which it invests. The purpose of this rule is to ensure the entity has control over the company it invests in, so that it can ensure the company follows the investment policies required by the listed investment entity.

2.28 We propose replacing this rule with a simpler requirement for the investment entity to be able to control the investment policies of the investee, without specifying how this must be achieved. This is a more principles-based approach, which would give investment entities greater freedom in how they achieve control, without needing board representation.

2.29 We are aware that a number of offshore funds operate master-feeder structures, where the funds of the listed entity are invested in another, larger, company or partnership in order to achieve the required diversification. Even under the more principles-based approach proposed above, we would still not be able to accommodate the listing of these structures, because they do not usually control the master funds.

Q6: Do you agree with the proposal to rely on a more general requirement for feeder funds to control the investment policies of entities in which they invest, rather than on the current provisions regarding board representation?

Q7: Do you think we should consider accommodating master-feeder funds where the investment entity fails to control the investment policy of the investee, and, if so, how?

Sufficient working capital for 12 months

- 2.30 Since the implementation of the Prospectus Directive in July 2005, investment entities have been required to include a working capital statement in their prospectuses. Until then, the Listing Rules exempted them from the need to make this disclosure, in recognition of their unusual characteristics.
- 2.31 To be admitted to the Official List, a trading company must satisfy us that it and its subsidiary undertakings (if any) have sufficient working capital available for the group's requirements for at least the next 12 months from the date of publication of the prospectus or listing particulars. This requirement is currently disapplied for investment entities. However, we feel that this disapplication is no longer appropriate, especially given the proposals to allow investment entities to follow a wider array of investment policies. To the extent that an investment entity has an investment policy of investing in liquid securities on a long-only basis without any significant gearing, then we believe that making a 'clean' working capital statement, supported by sponsors, will not be an onerous (or expensive) requirement. Indeed, since the Prospectus Directive came into effect, all investment entities that have listed have made a 'clean' working capital statement.
- 2.32 However, investment entities employing wider-range investment strategies, such as those engaged in short selling, or highly geared companies investing in illiquid stocks, they may need to expend more resource on sensitivity analysis to assess whether they can make an unqualified working capital statement. Indeed, we would expect sponsors to focus on this as part of their own due diligence.
- 2.33 We believe that the need for investment entities to consider their working capital needs at launch may have a moderating influence on their choice of investment strategies and this will add some degree of additional shareholder protection.

Q8: Given that a working capital statement is in any case required under the Prospectus Rules, do you agree that requiring an investment entity to satisfy the FSA that it and its subsidiary undertakings (if any) have sufficient working capital for at least twelve months on listing is appropriate?

Independence of investment managers

- 2.34 The Listing Rules require the board to be independent of any investment manager and new measures governing the relationships between boards and investment managers were introduced in 2004 following CP164. We propose retaining these rules as they sit comfortably with our approach of relying on good corporate governance for shareholder protection, rather than any detailed product regulation.

- 2.35 VCTs are presently subject to rules contained in a separate chapter and whilst these include requirements for boards and investment managers to be independent, the enhancements described above have never applied to them. This is because CP164 was designed to address concerns relating to splits and VCTs were seen as being outside the scope of that exercise.
- 2.36 In keeping with our desire to create a single platform for all types of investment entity, we propose extending these rules to all investment entities, including VCTs. We recognise that VCTs occupy a unique area within the investment entity community and the specialist nature of these vehicles gives rise to a need for directors with specialised experience. However, we have been impressed by the positive effect that these rules have had on the investment entity industry and feel that the extension of these eligibility rules to VCTs will secure worthwhile benefits.
- 2.37 The application of these rules to VCTs which are already listed is discussed further in the next chapter.

Q9: Do you agree that the eligibility conditions regarding the level of independence between boards and their investment managers should be extended to VCTs?

Experience and expertise of investment managers

- 2.38 Most investment entities are start-ups, seeking to raise money at launch. In such cases, we look to the experience of those who will be managing the investments (company directors or investment manager) as an alternative to the three year track record required for trading companies to be eligible for listing.
- 2.39 Currently, in order to meet this test, an investment entity must demonstrate that those persons managing the investments have sufficient experience in the management of investments of the type in which the investment entity proposes to invest. The sufficiency of experience is determined by reference to the quantity and type of funds managed over a three year period, without having any regard to the investment manager's performance. We feel it appropriate to retain this requirement as a proxy for the three year track record required for trading companies, which was supported in the 2005 Review.
- 2.40 We propose refining this rule to avoid any duplication in this area, so that if the investment manager is authorised under FSMA to conduct investment activity then they are considered to have met this test (i.e. that they have the appropriate experience and expertise) without the need for any further demonstration of experience. For those entities that are not FSA-authorised investment managers (typically the case for entities with self-managed investments), then the existing tests will continue to apply.

2.41 We believe this change will lighten the burden of investment entities and their advisers when assessing eligibility for listing. The term ‘satisfactory’ will also be replaced with ‘appropriate’ to remove any indication of subjectivity on the part of the UKLA when assessing a new applicant’s eligibility.

Q10: Do you agree that if an investment entity employs an investment manager authorised under FSMA to conduct investment activity, then it should be considered to have the necessary experience to meet the eligibility test?

Property investment companies

2.42 We propose removing a raft of restrictions presently in place regarding investment entities that invest significantly in property. The measures being removed include restrictions on gearing, limits on the proportion of leasehold property that can be held and rules requiring diversification of tenancies and assets. Removing these rules is consistent with our general approach of replacing specific investment restrictions with the broader, definition based, requirement for a spread of investment risk, supported by disclosure. We do not yet know how many existing listed property investment companies are likely to take advantage of the new Real Estate Investment Trusts (UK-REITs) regime, that was announced in March 2004⁵ and which is due to be implemented in 2007. However those property investment companies that do seek this tax status will find that the Listing Rules are likely to be compatible with these new tax rules.

Q11: Do you agree that the restrictions placed on property investment companies should be removed?

Investment entities and the secondary listing regime

2.43 Overseas trading companies applying for a secondary listing on the Official List in accordance with LR14 are subject to a lower level of regulation than is the case for companies seeking a primary listing. This is because the rules for secondary listings set out in LR14 reflect a standard similar to that required by the directives, without significant embellishment.

2.44 However, under the existing rules investment entities must comply with both LR2 (Requirements for listing – all securities) and LR6 (Additional requirements for listing for equity securities) with modifications in LR15 and LR16 as the case may be. As a result, a listing under LR14 (secondary listing of overseas companies) is not available to overseas investment entities.

5 Promoting more flexible investment in property: a consultation, Budget 2004, HM Treasury and Inland Revenue.

2.45 We propose retaining this position because we believe that investment entities carry particular risks to our objectives, particularly given that they often have a significant retail investor base. The proposals contained in this document represent, in our opinion, the minimum standards that any listed investment entity should be subject to, regardless of domicile or regulatory status. We will clarify this position to the effect that an investment entity cannot obtain a secondary listing. Accordingly, an investment entity that wishes to be admitted to the Official List will have to apply for a primary listing of its equity securities and will be subject to the full regime applicable to investment entities.

Q12: Do you agree that a secondary listing should not be available to investment entities and that if an overseas investment entity wishes to list, it must submit itself to the full listing regime contained within this document?

Collective investment schemes

2.46 We have clarified the rules regarding investment entities that are also collective investment schemes because the current rules have failed to keep pace with regulatory developments. In particular, the current rules provide concessions in relation to disclosure requirements for unrecognised schemes, despite the fact that these schemes are unlikely to obtain a listing in the UK under present financial promotion restrictions.

2.47 The new rules make clear that to be listed an investment entity must be either:

- an investment entity, as defined in the proposed new rules described above;
- an investment company with variable capital (ICVC); or
- an overseas collective investment scheme that is a recognised scheme;

2.48 We use the term ICVC rather than open-ended investment company (OEIC) which appears in the current rules, because ICVC is consistent with the FSA Handbook and these two terms are in fact interchangeable.

Considering each of these in turn:

Investment companies with variable capital (ICVCs)

2.49 An ICVC is a body incorporated under the OEIC Regulations and which is authorised under FSMA. We believe that if an ICVC wishes to be listed then it should automatically be considered eligible, without needing to comply with any additional eligibility conditions. This is because ICVCs are already authorised to market their securities to the public and the imposition of further eligibility criteria is unlikely to offer any additional benefits, such as shareholder protection. Under the proposals ICVCs would, however, be subject to many of the same ongoing disclosure requirements as other investment entities to ensure that there is an orderly market in their securities.

2.50 We have also considered proposing similar rules to accommodate authorised unit trusts, but do not believe there would be sufficient demand from such entities to warrant this. However, if there is interest amongst authorised unit trusts for a listing regime that would accommodate them, then we would be prepared to consider making the necessary rules.

Q13: Do you agree that ICVCs should be considered eligible for listing by virtue of their regulatory status?

Q14: Do you believe that we should introduce new rules for authorised unit trusts?

Overseas collective investment schemes that are recognised schemes

2.51 Recognised collective investment schemes are schemes for whom the FSA is not the home state regulator, unlike ICVCs. While such schemes must comply with the regulatory requirements of their home state regulator, we are proposing that to be listed they must comply with the full eligibility regime, as if they were any other investment entity.

Q15: Do you agree that an overseas collective investment scheme that is a recognised scheme should be subject to the full eligibility regime?

Overseas collective investment schemes that are unrecognised schemes

2.52 The current rules allow these schemes to list, but state that they need only comply with their disclosure obligations under the Listing Rules to the extent that this is permitted under the financial promotions rules within FSMA. It is unlikely that such schemes would be able to widely disseminate a prospectus in order to be listed and as a result, the references to unrecognised schemes that are included in the current rules are effectively redundant. We propose that they be deleted.

Q16: Do you agree with our analysis regarding collective investment schemes that are unrecognised schemes?

3 Continuing Obligations

Introduction

- 3.1 Continuing obligations aim to ensure that investment entities make sufficient information available to facilitate an orderly market in their listed securities. We have explained why we believe that investment entities should enjoy, on an ongoing basis, greater freedom in their choice of investment activity, which is a significant departure from the present rules, but there are circumstances where it remains appropriate to restrict their activities.

This chapter looks at proposed changes in the continuing obligations regime, which have resulted from a reassessment of the effectiveness of these rules to ensure that shareholder protections remain robust, yet proportionate.

Disclosure is an important shareholder protection measure, particularly in relation to an investment entity's exposure to risk and we are minded to retain most of the existing rules in this area, but to make them much clearer to the user, by removing an array of cross references.

- 3.2 We propose to:
- Revise the notification requirements so as to ensure that the information provided to shareholders is useful, yet the costs and impact of compliance are proportionate for issuers. These revisions are principally concerned with disclosure of risk and periodic financial information.
 - Maintain certain restrictions on the extent to which investment entities may invest in other investment entities.
 - Maintain the strong governance measures that have been in place since 2004 and which have increased the level of independence between boards of investment entities investment managers.

Notification requirements - risk disclosures

Spread of investment risk

- 3.3 A key proposal in this paper is the requirement for investment entities to spread their investment risk and we have proposed that this requirement have two limbs: firstly, the investment entity must maintain a spread of investment risk, and make public a statement making clear how its investment policy will achieve this (this is a condition of listing) and secondly, the investment entity, once listed, must explain how this is being achieved on an ongoing basis.
- 3.4 To underpin this second limb, we propose to introduce a requirement for the annual report and accounts to include a statement explaining, with quantitative analysis as appropriate, how the entity is achieving its objective of spreading investment risk. This analysis is likely to include portfolio analysis but may include other information that the board believe to be relevant to its assessment of investment risk faced by the investment entity.

Disclosure of significant changes to risk profile

- 3.5 We have considered whether there is any significant gap in the existing disclosure requirements. There are of course a number of disclosure requirements that listed investment entities will need to comply with and which are not contained within the Listing Rules:
- **Contents of prospectuses – Prospectus Rules** – Annex XV of Regulation 809/2004 of the European Commission, which is reproduced in Appendix 3 to the Prospectus Rules, sets out the required contents of a prospectus produced by an investment entity either seeking admission to trading on a regulated market or making a public offer. As a consequence, any new or existing investment entity raising funds is required to include prominent disclosure of risk factors that are specific to that entity or its industry.
 - **Transparency Directive (TD)** – The TD requires the investment entity to include, within its annual report and accounts, a description of the principal risks and uncertainties that it faces. In addition, the half-yearly financial reports must contain a description of the principal risks and uncertainties for the remaining six months of the financial year. The TD is due to be implemented by 20 January 2007.
 - **Disclosure Rules** – Listed investment entities must comply with the Disclosure Rules, which are applicable to all companies with securities admitted to trading on a regulated market. As a result, they must make an immediate announcement to the market of any inside information. Inside information is information of a precise nature which is not generally available, relates directly or indirectly to an issuer and would, if generally available, be likely to have a significant effect on the price of the securities.

Information is likely to have a significant effect on price if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions.

The Disclosure Rules, which were introduced on 1 July 2005, provide guidance to the effect that in determining whether information is inside information the significance of the information in question will vary depending on a variety of factors, including the sector in which it operates. Directors need to carefully and continuously monitor whether changes in the circumstances of the listed company are such that an announcement obligation has arisen.

- 3.6 Despite the various disclosure requirements described above, there may be circumstances where information is not disclosed, particularly if it is not likely to have a significant effect on the share price and thus not fall within the definition of 'inside information' under the Disclosure Rules.
- 3.7 We believe that investors are keen to understand the level of risk associated with an investment entity, in order to ensure their own investment portfolio is appropriately balanced. If an investment entity were to undertake a significant change, for example in relation to gearing, an investor should be informed in a timely manner, rather than finding out at the year end.
- 3.8 To address this possible gap in the flow of information, we are proposing a new rule requiring a significant change in an investment entity's risk profile to be immediately announced. We have included guidance with the proposed rule setting out the various factors that are likely to be considered, including portfolio composition, gearing, counterparty risk, credit risk and custodial risk.
- 3.9 It should be noted that this rule is aimed at ensuring that only significant changes are announced and we do not intend this requirement to be overly burdensome. On most occasions, we anticipate that changes warranting announcement would result from significant decisions made by the investment entity itself, rather than as a result of external events and in such cases the investment entity would be well placed to make the announcement. Indeed, many investment entities would make voluntary announcements in such circumstances at present.
- 3.10 To be able to comply with this rule, investment entities would need to ensure they have systems and controls in place to monitor their risk profiles (in accordance with Listing Principle 2). However, given the amount of similar information already required to be produced on a periodic basis, we anticipate that this will be achieved by the relatively modest redesigning of existing systems and controls. In any event, there will be a correlation between the costs of compliance and the complexity of the investment activity or structure concerned. So for the very prudent investment company, there is unlikely to be a material cost arising from this proposal.

Q17: Do you agree that there is a gap in the present disclosure regime and that a new requirement for investment entities to disclose significant changes to their risk profiles is appropriate?

Notification requirements – financial information

Background

- 3.11 The new approach to the spread of investment risk requirement will allow investment entities to pursue a wider range of strategies, including allowing a more prominent role for short selling. However, disclosure of information on short selling is potentially problematic. Publishing information on outstanding short positions may improve transparency in markets, and could assist in making markets more efficient. But with disclosure of such information, the risks associated with short selling could increase.
- 3.12 One of the risks associated with short selling is the risk of a short squeeze. If predators know about current specific short positions, they can better evaluate the risks and returns of initiating a short squeeze. Fear of a short squeeze might deter short-selling amongst traders, and thus curtail the process of risk arbitrage. If short sellers stop driving prices towards fair value, the market becomes less efficient. In recognising these potential issues, we are proposing the removal of detailed portfolio disclosure requirements as explained below.

Monthly/quarterly portfolio disclosure

- 3.13 In our discussions with industry we have received mixed views regarding the effectiveness of current rules LR15.4.11(1) and (2), which were introduced in 2004 following CP164 in an attempt to improve transparency in the wake of the concerns over split capital investment trusts. The information provided under LR15.4.11(2) is particularly limited in that the rule merely requires the names of an investment entity's top ten investments, without any indication of the size or value of these holdings. Indeed, some companies are now presenting this information in alphabetical order.
- 3.14 To the extent that an investment entity's portfolio must fall within its stated investment policy, then knowledge of the specific composition is likely to be of limited value to investors. We also believe that other proposals described here, including the requirement for an annual statement on how the spread of risk requirement is being met, and the need to disclose significant ongoing changes in an investment entity's risk profile, represent an effective alternative to this rule. Indeed, we would expect any investment disclosable under the current LR15.4.11(1) to be disclosed under this new regime on a real-time basis, as such an investment would be likely to represent a significant change in the risk profile of the investment entity.

- 3.15 In light of the possible problems that such disclosures could give rise to for entities engaged in short selling, and their limited effectiveness, we propose to remove this rule. It is also worth noting that VCTs have not previously been subject to this rule.

Q18: Do you agree with the proposal to remove the requirement for detailed monthly and/or quarterly disclosure?

Financial information in the annual report and accounts

- 3.16 The present rules require detailed financial information to be included in the annual report and accounts of investment entities. These requirements differ according to the type of investment entity. For example, investment trusts need to include an analysis of their investment portfolio as between equity shares and convertible securities, whereas this is not a requirement for other investment entities.
- 3.17 Consistent with our objective of (a) creating a single regime across all types of investment entities and (b) relying on other regulations where appropriate, we propose removing these provisions entirely. Instead, the application of accounting standards should ensure that appropriate information is made available to shareholders. The removal of these rules also help address the problems associated with a short squeeze described above.

Q19: Do you agree with the proposal to remove financial information requirements and instead to rely on the requirements set by accounting standards to ensure that shareholders have sufficient information?

Governance arrangements

Independence of investment managers

- 3.18 We noted in Chapter 2 that new measures governing the independence between boards and investment managers were introduced in 2004 in response to concerns raised over the behaviour of splits. These measures have proved very effective and we propose retaining them both as eligibility requirements for new applicants seeking a listing and also as continuing obligations for existing listed companies.
- 3.19 VCTs have not so far been subject to these provisions but we are proposing extending them as eligibility conditions for new VCTs in future for the reasons described in paragraph 2.36. Given the specialist nature of their fund management, the introduction of these measures as a continuing obligation is likely to result in particular problems for existing VCTs and we understand that

in a number of cases, board composition would need to be changed in order to comply. The cost-benefit analysis on the extension of these measures to existing VCTs suggests that the costs could be significant for this group of issuers.

3.20 We are keen to be proportionate in our application of the proposals. So while these measures, as eligibility requirements, will be implemented for VCTs when the rules come into force, we propose a transitional period for existing VCTs of eighteen months, to give them time to make the necessary arrangements, such as board changes. This 18 month period is consistent with the transitional provisions that were included with the rules when the independence measures were introduced for investment entities in 2004.

3.21 In addition to providing this generous transitional period, we are interested in views on whether we should go further for existing VCTs.

Q20: In relation to the ongoing requirement for boards to be independent of their investment managers, would you support the granting of concessions for VCTs that are already listed and, if so, what would you suggest?

Compliance with the Model Code

3.22 At present, we grant dispensation from the Model Code provided we are satisfied that certain circumstances apply. In practice, this means that an investment entity must write to us providing comfort on these circumstances and if we are satisfied, we will grant a dispensation, allowing the entity's directors to deal in the securities. We propose amending this rule to ease the administrative burden: under the proposed rule, an investment entity will simply need to announce to the market that these circumstances have been met, in which case its directors can deal without first obtaining dispensation from us.

Compliance with the Combined Code

3.23 The existing rules include specific carve-outs from the Combined Code, recognising that investment entities often have boards of non-executives and so the provisions referring to executive directors are not applicable. The substance of these carve-outs will be retained under the proposed new rules.

3.24 The Association of Investment Trust Companies (AITC) has produced a guide⁶ to assist investment companies in their compliance with various corporate governance obligations, and we note that the Financial Reporting Council has stated that following the guide should ensure that investment company boards are fully meeting their obligations in relation to the Combined Code and LR9.8.6. We have concluded that it is not necessary to include specific guidance to this effect in the Listing Rules.

6 Corporate Governance Guide for Investment Companies February 2006.

Other continuing requirements

Income, surpluses and dividends

- 3.25 The present rules prohibit the payment of dividends unless they are covered by income received from underlying investments. The distribution as dividend of surpluses arising from the realisation of investments is also prohibited. We propose removing these provisions on the basis that they overlap to an extent with the Companies Act and accounting rules. This is in keeping with our desire to harmonise the rules for investment entities and other listed (ie trading) companies where appropriate.

Property Investment Companies – general approach

- 3.26 In keeping with our objective of creating a single platform for all types of investment entity, we are proposing to remove the definition of ‘Property Investment Companies’. While these will be subject to the same rules as other investment entities, there are two areas where specific rules remain appropriate and these are described below. The definition of a property investment company under the existing rules is a company that invests more than 20% of its assets in property and we have maintained that distinction, albeit without a definition.

Property Investment Companies – significant transactions

- 3.27 Listed trading companies that undertake acquisitions or disposals outside of their ordinary course of business are subject to LR10, which requires announcements to be made and prior shareholder approval obtained, depending upon the size of the transaction (as determined by class tests). For most listed investment entities, LR10 only applies when a transaction is outside the scope of their investment policies, and we propose retaining this concession.
- 3.28 However, in keeping with the existing rules, for investment entities that invest more than 20% of their funds in property (under the existing rules this is the definition of a property investment company) LR10 applies as if they were trading companies, even if transactions fall within the investment entities’ stated investment policies.
- 3.29 The reason for the different treatment of investment entities that invest in property is the fact that it is often difficult to distinguish a property company from an investment company which invests in property. To maintain the integrity of the rules for property (ie trading) companies, it is considered necessary for them to be subject to LR10. However, in applying LR10 it should be noted that they benefit from certain concessions in the calculation of class tests, recognising the unusual characteristics of property transactions generally.

- 3.30 As a further concession, and in line with our current policy for property investment companies, LR10 would not apply within 12 months of the raising of funds to finance new acquisitions, as it is implicit in the investment decisions taken by shareholders that they approve of acquisitions in that time.

Property Investment Companies – Valuation reports

- 3.31 An investment entity that has more than 20% of its assets invested in property will be required to include a property valuation report in its annual report and accounts, as it does now.

Experience and expertise of investment managers

- 3.32 At present, there is no rule requiring investment managers to have sufficient experience beyond the time of initial listing. However, given that this is a key shareholder protection, in practice we re-assess this whenever a new investment manager is appointed to an existing listed investment entity and we propose clarifying this by introducing a new rule. However, we do not expect this to be a significant issue because of our proposed reliance on FSA authorisation for assessing whether investment managers have sufficient experience.

Restrictions on cross-holdings

- 3.33 We have considered whether it is necessary to retain the specific rules regarding cross-holdings that were introduced following the collapse of split capital investment companies. While these rules represent specific limits on a company's investment activity which may appear at odds with our liberal philosophy, we believe these should be retained because they are aimed at preventing a systemic collapse of the market, rather than preventing the failure of individual investment entities.

Restriction on issues of shares below NAV

- 3.34 We propose removing the present rule that prevents an investment entity from issuing shares at a discount to its net asset value (NAV) unless they are first offered to existing shareholders. Investment entities are subject to the restriction within LR9.5.10 applicable to all listed companies which, in most cases, prevents companies from issuing shares where the issue price is at a discount of more than 10% to the middle market price.
- 3.35 We believe that LR9.5.10 constitutes sufficient protection against dilution through share issues and do not believe that specific measures linked to asset value are necessary for investment entities.

Overseas collective investment schemes that are unrecognised schemes

- 3.36 The present rules include specific provisions such that an open ended investment company which is an unrecognised scheme⁷ is only required to make information available to the FSA and to other recipients to the extent that it is permitted under FSMA. This is because they are subject to sections 21 (Restrictions on financial promotion) and 238 (Restrictions on promotion) of FSMA which seek to restrict the marketing of unregulated collective investment schemes. The current listing rule will be removed because we do not accept that it is in shareholders' interests to be denied information in such circumstances, and that if a company is unable to comply with its disclosure requirements then it should not be listed.
- 3.37 In any event, as we explain in Chapter 2, overseas collective investment schemes that are unrecognised schemes would probably be unable to produce the necessary prospectus in order to list, as a result of these financial promotion restrictions.
- 3.38 For these reasons, we believe that the specific provisions regarding unrecognised schemes serve no useful purpose and so we propose removing them.

7 LR 15.7.4

4 Likely impact of proposals

Introduction

- 4.1 These proposals are being made against a backdrop of significant regulatory activity in the environment in which investment entities operate. Set out within this chapter is a summary of regulatory status of each type of investment entity and a discussion of the likely impact of the proposals on them. We have included a cost benefit analysis ('CBA') of the proposed rules in Annex 2.
- 4.2 The following table includes an analysis of the investment entities currently listed, according to their structure or tax status. We then discuss the extent to which these proposals will lead to changes in the number and type of listings in future.

Types of investment entity eligible for listing	Number listed	Market Cap
Investment Trusts	251	£57.0bn
Venture Capital Trusts	100	£1.7bn
Property Investment Co.s (excludes property trading companies)	16	£4.0bn
Other UK investment entities	1	£0.2bn
Other overseas investment entities	60	£8.3bn
Total	428	£71.2bn

Impact of proposals by class of investment entity

- 4.3 As explained above, the proposals are designed to create a single listing regime for all investment entities, irrespective of their tax status or structure. Provided sufficient shareholder protections are included within the rules, then we see no reason to distinguish between different types of entity. However, the impact of these rules will still vary, primarily for those entities subject to other legislation, such as the Income and Corporation Taxes Act 1988 (ICTA).

- 4.4 The added flexibility that the proposals will introduce may lead to an increase in the number and range of investment entities seeking a listing in the UK. Investment entities will have greater flexibility in their choice of investment strategies under the more principles-based approach and this should encourage a greater variety of investment entities to list.
- 4.5 While we cannot accurately predict the level of take-up after introducing the proposed new rules, the reasons why this will vary amongst different types of investment entities is explored below.

Investment trusts

- 4.6 Most investment entities currently listed are investment trusts. Despite their name, investment trusts are actually closed ended investment companies that benefit from exemption from tax on chargeable gains, provided they meet a number of tax rules⁸. The extent to which investment trusts will take advantage of the relaxations proposed in this paper may be limited by these tax rules. However, the proposed replacement of the prescriptive and mechanistic rules with a more principles-based approach will create greater opportunity for investment trusts, despite these tax rules.
- 4.7 To be approved as an investment trust, a company must pass a number of tests for the accounting period concerned, which are administered by HM Revenue and Customs. In brief, these are that:

- (a) the company is resident in the United Kingdom;
- (b) the company's income consists wholly or mainly of eligible investment income;
- (c) no holding in a company represents more than 15% by value of the investing company's investments;
- (d) its shares are listed on the Official List of the Stock Exchange;
- (e) distribution as dividend of surpluses arising from the realisation of investments is prohibited by the company's memorandum or articles of association; and
- (f) it does not retain in respect of any accounting period more than 15% of its eligible investment income.

8 S. 842 Income and Corporation Taxes Act

Venture capital trusts (VCTs)

4.8 Like investment trusts, VCTs are actually closed ended investment companies which are subject to tax rules⁹ that impose further restrictions on their investment activity, meaning that they would not currently be able to take full advantage of the relaxations contained in our proposals. The tax rules for VCT status can be summarised as follows:

- its income for its most recent accounting period must have been wholly or mainly from shares or securities;
- throughout that period, at least 70% (by value) of its investments must have been ‘qualifying holdings’, that is shares or securities in companies which meet the conditions of the scheme and which were issued to the company and have been held by it ever since;
- throughout that period, at least 30% (by value) of its qualifying holdings must have been holdings of ordinary shares with no preferential rights to dividends or to the company’s assets on its winding up, and no right to be redeemed;
- at no time in that period must its holding in any company have represented more than 15% (by value) of its investments;
- throughout that period, its ordinary shares must have been listed on the London Stock Exchange; and
- it must not have retained more than 15% of the income it derived in that period from shares or securities.

Overseas investment companies

4.9 It is this category that is likely to be most affected by the proposals. Domestic investment entities generally apply for investment trust status. Anecdotally, we understand that an investment entity seeking a listing in the UK will either be structured as an investment trust or alternatively be domiciled overseas. Domestic investment entities that are not investment trusts are very rare.

4.10 As a result, overseas investment companies will be particularly well-placed to take advantage of the proposals. Among them will be companies employing more advanced investment strategies and, depending upon whether it is economic to do so, may include hedge funds (see below).

9 S.842AA Income and Corporation Taxes Act 1988

Hedge funds

- 4.11 The global hedge fund industry is now estimated to comprise 8,000 hedge funds, with total assets under management of up to \$1,200bn. Europe is the fastest growing area of the global hedge fund industry – the market has grown from \$12bn in 1998 to around \$120bn in 2003 and, according to recent estimates, as much as \$300bn is currently managed in Europe by 1,500 funds, with two thirds of European hedge funds managed out of London.
- 4.12 We understand from our discussions with the market that there is a degree of appetite for listing amongst the hedge fund community but it does not appear that a large number will seek to list in the short term as a result of the proposed rules. One reason for this is that many hedge funds would find the disclosure rules associated with a public listing to be problematic, given the nature of their investment strategies and the arbitrage opportunities that could arise. Other issues outside of our control, such as tax planning, would also be relevant to considerations.

Property investment companies

- 4.13 As a result of the proposal to remove a raft of investment restrictions on property investment companies, this regime will be compatible with entities wishing to benefit from UK-REIT status. One of the conditions of UK-REIT status is that they must be listed on a Recognised Stock Exchange. While we anticipate that a good number (although not necessarily all) of currently listed property investment companies will convert to UK-REIT status, we expect further companies to list for the first time in order to qualify under these tax rules. As a result, these proposals will have a significant impact in this area.
- 4.14 We understand that a number of property companies (rather than property investment companies) may also seek UK-REIT status. For those that are currently listed as trading companies, then to the extent that they remain eligible for listing under LR6, we would anticipate that they would remain under that regime, rather than transferring to LR15 under these proposals.

5 Summary Cost-Benefit Analysis

5.1 Annex 2 contains our cost-benefit analysis (CBA) for implementing the proposals described above. Evaluated with respect to those under the current Listing Rules Regime, all costs and benefits break down into:

- direct costs to the FSA;
- compliance costs to the industry;
- indirect costs to the industry and the market; and
- benefits to the industry and the market.

5.2 This chapter summarises certain significant changes but we recommend that you read the detailed analysis contained in Annex 2.

Direct costs

5.3 Broadly speaking, the direct costs to us are likely to fall as a result of the number of deregulatory changes being made. Where our costs increase as a result of a greater number of entities seeking to list, these will be offset by the listing fees being paid by these new entities.

Compliance costs

5.4 The proposed requirement for an annual statement to describe the spread of risk may result in an increase to the industry of £154,000 per year, based on the proportion of currently listed firms likely to be affected.

5.5 On the basis that many investment entities are likely to already have appropriate systems and controls in place, or will have prudent investment policies that mean significant changes would be unlikely, the costs of the proposal to require investment entities to disclose significant changes in their risk profile might be in the region of £6.7m in the first year.

- 5.6 We would expect this cost to fall on an ongoing basis, as IT start-up costs will fall away and as investment entities become more familiar with this rule and seek legal advice less often.
- 5.7 One-off costs of complying with the proposal for independence of VCT boards from their investment managers are estimated to be in the region of £1m due to the need to replace currently non-independent directors and chairmen.
- 5.8 Requiring investment entities to include an unqualified working capital statement should not result in a rise in compliance costs for most entities as, so far, no entity has taken advantage of the current situation where a qualified statement is permitted. Those entities taking advantage of the relaxation on short selling may find it more costly to comply with this proposal, both in terms of staff time and accounting costs.

Indirect costs

- 5.9 Allowing entities greater flexibility in their choice of investment strategies may have the indirect effect of entities being more prone to fail, which may lead to investors taking on more risk than they had anticipated. On a continuing obligation basis, there is the risk that current long-only funds may choose to start short selling but shareholder approval would be required for this.
- 5.10 The proposal to consider FSA-authorized investment managers eligible may result in an investment manager being considered eligible when, in fact, it may have no direct, relevant experience. This is because FSA-authorization criteria are less detailed than the current Listing Rule guidelines on investment manager experience (although it should be noted that under these guidelines it is experience, rather than investment performance that is assessed) – hence there is the potential for returns to be adversely affected. Overall, however, the ongoing requirements for board review and affirmation in the annual report and accounts should act to reduce such indirect costs.
- 5.11 It is possible that disclosure of significant changes in risk profile may lead to investor uncertainty as they could be faced with additional information which may or may not have risk and/or price implications. There is also the risk that it may obscure price-sensitive information disclosed under the Disclosure Rules.

Benefits

- 5.12 The benefits of the principles-based approach to spread of risk are that there will no longer be reliance on an over-simplistic rule which has the potential to exclude well-diversified structures from listing and enable relatively less diversified entities to list.

- 5.13 An annual statement explaining how a spread of investment risk has been achieved would have the benefit of ensuring investment entities are mindful on an ongoing basis of the need for a spread of risk. This may help to reduce the likelihood of default and promote better market discipline, since investors would be better informed about investment risk and strategy.
- 5.14 The increased flexibility afforded to investment entities should lead to greater product choice and to the possibility for better portfolio performance and wider diversification alternatives.
- 5.15 The requirement for an unqualified working capital statement may help to maintain market confidence and investor protection.
- 5.16 The proposed rule change to automatically consider FSA-authorized investment managers eligible will reduce compliance costs by an estimated £5000 per submission per entity, for those 90% who will no longer need to prepare and submit the necessary documentation to, and meet the detailed eligibility requirements set by, the UKLA. This should result in an estimated saving to the industry of £225,000 per annum.
- 5.17 The proposed new requirement for investment managers to have experience on an ongoing basis should also help to ensure market confidence as investors can be confident that at all times the investment manager will either (a) be authorized or (b) have met the eligibility requirements set by the UKLA.
- 5.18 The benefit of the proposal for significant changes to the risk profile to be disclosed (over and above those currently required by the Disclosure Rules) will depend on the extent to which this non price-sensitive information is of value to investors and may impact their decision-making process.
- 5.19 The requirement for VCT boards to be independent from their managers should lead to greater investor and market confidence in this sector.
- 5.20 The deregulatory changes are expected to result in a decrease in compliance costs. Where quantifiable, these savings amount to £2.8m per annum across the industry as whole.

Cost Benefit Analysis – Transparency Directive

Introduction

1. Sections 155 and 157 of FSMA require that we undertake a cost benefit analysis (CBA) of proposed rules or proposed general guidance on rules, and publish the results. The purpose of a CBA is to assess, in quantitative terms where possible and in qualitative terms where not, the economic costs and benefits of a proposed policy. Specifically, we are required to publish ‘an estimate of the costs together with an analysis of the benefits to accompany the proposed draft rules’. We would welcome any comments from respondents on our assessment of the costs and benefits.

Background

2. The Transparency Directive (TD) is a minimum harmonisation directive. It allows the home Member State of an issuer of securities to impose additional requirements on that issuer and holders of that issuer’s shares. Our general approach has been to copy out the TD’s provisions, and only propose retaining existing requirements which go beyond those provisions where we consider this is justified by a market failure and cost benefit analysis. When we feel the CBA is only marginally balanced we are keen to engage respondents to justify which option they prefer. In such circumstances we are fully prepared to be guided by the industry when they can provide strong justification for their position.
3. The TD’s requirements will apply to the approximately 2,800 regulated market issuers in the UK. At the moment the vast majority of these issuers are also Officially Listed issuers. Therefore the scope of the TD overlaps significantly with that of the existing Listing Rules. We will be given specific statutory power to extend some of the major shareholding aspects of the TD to the approximately 1,100 UK equity issuers on AIM and OFEX.

The baseline

4. We aim in this CBA to draw out the differences in the costs and benefits which would attach to the TD minimum requirements, and to the current UK regime. Where we propose to apply the TD minimum requirements, the baseline comparator is the current UK regime. Where we propose to retain the current UK rules, the baseline comparator is the TD minimum. So our policy proposals have been analysed with respect to the alternative policy option as the baseline.

The methodology

5. We have researched how costs and benefits will fall on the relevant groups of interested parties or stakeholders and have discussed our proposals with:
 - issuers;
 - trade bodies;
 - investor representatives;
 - accountants;
 - law firms; and
 - Primary Information Providers.

Cost benefit analysis

6. The periodic financial reporting, major shareholding notification, dissemination and storage requirements of the TD are aimed at addressing the market failure of asymmetric information and relate to both the market confidence and investor protection objectives. The extent to which it addresses this will depend on how important investors find the information concerned when analysing risk-reward tradeoffs.
7. Without the periodic financial reporting requirements, issuers have incentives to make disclosures only if they will not adversely affect their cost of capital. Since not all issuers will elect to disclose, investors would not be able to distinguish between high-risk and low-risk issuers and as a result will only buy/value securities at a price that reflects the average issuer risk profile. In this case, the price will be too low for good-quality, low risk issuers and too high for poor quality, high risk issuers, thereby adversely affecting market efficiency.
8. The major shareholding notification requirements may help increase price efficiency as share prices of issuers may more accurately or fully reflect issuers' expected fundamentals. Without such requirements, potential acquirers would not reveal privately held information making acquisitions less expensive and there may be more firms that compete for corporate control.

However, lower disclosure may mean lower price efficiency. Minority shareholders may not be aware of the bids for corporate control and likely impacts as a result. If they face greater than expected investment risk, this might undermine investor confidence.

9. The TD dissemination and storage requirements aim to ensure that investors have access to timely consolidated information by lowering search costs. There may also be an increase in price efficiency as more information may be incorporated in prices.
10. In carrying out the CBA, we have sought to take account of a number of general interactions within the complex addressee and regulatory environment affected by our proposals. In analysing each proposal, we have thus considered that the costs and benefits are likely to differ depending on the type and nationality of the issuer concerned (e.g. regulated market issuer or exchange regulated market issuer, UK or third country) and the extent to which the area is already subject to regulation (e.g. based on company law or Listing Rules).
11. The significant differences in the nature, scale and complexity of the affected issuers and the regulatory environment in which they operate have made it difficult to estimate the costs associated with our proposals. The cost estimates of the CBA are therefore not exhaustive and are set out in terms of broad ranges. We acknowledge the shortcomings of our analysis and would welcome any contribution respondents are able to give.

Periodic Financial Information

12. For the following sections dealing with our proposals to copy out the TD minimum requirements on the timing and content of annual reports, half-yearly reports and interim management statements, all costs and benefits have been evaluated with respect to current Listing Rules regime. In general, there are large fixed costs involved in producing such information and the marginal costs of individual components can therefore be difficult to quantify.

Deadlines and issues of scope for publication of annual and half yearly reports

13. The TD requires regulated market issuers to publish annual and half-yearly reports. The vast majority of issuers trading on UK regulated markets are also listed and already subject to broadly similar periodic financial reporting requirements. However, the deadlines for publication are being shortened, and the requirements will be new for the very few regulated market issuers which are not also listed.

Compliance Costs

14. There will be compliance costs for some issuers which have to change their processes to publish annual reports within four months rather than six months and half-yearly reports within two months rather than 90 days. Our analysis suggests that around 75% of issuers already publish their annual accounts within four months and around 60% of issuers already publish their half yearly reports within two months. So there will be no incremental costs to the majority of issuers. The costs to the minority of issuers will include one-off transitional costs of amending their systems and processes. There may be ongoing costs including, for example, reduced work flexibility for staff. However, in general, the aggregate incremental costs are not expected to be significant given that most issuers are already able to meet the shorter deadlines.

Indirect Costs and Benefits

15. The benefits will depend on the extent to which investors will have access to the full annual and half-yearly reports sooner for issuers that do not already disclose this quickly. This will facilitate more timely and informed decisions, promoting greater market discipline and efficiency. The wider scope may imply compliance costs for non-listed firms trading on a regulated market and thus may cause them to withdraw from trading on a regulated market and act as a barrier to entry for those firms considering trading on a regulated market. But this impact is unlikely to be significant given that nearly all issuers trading on a regulated market are listed.

Direct Costs

16. Small additional costs may be incurred over the first year while issuers adjust to the new deadline requirements for publication of reports. It is reasonable to expect that additional costs to us will stem from increased staff time spent contacting firms to remind them of publication deadlines and dealing with any additional breaches or suspensions that may occur as a result.

Content of Annual and Half-Yearly Reports

17. The TD requires regulated market issuers to publish annual and half-yearly reports. There are already broadly similar, but less prescriptive, content requirements for listed issuers.

Compliance Costs

18. As the requirements on content are broadly similar to the existing requirements imposed by Listing Rules, and given the high fixed costs associated with producing annual reports, the incremental compliance costs are not expected to be significant at the issuer level. Based on our pre-consultation, the new requirements, e.g. statements by persons responsible and management reports, will give rise to incremental ongoing compliance costs to issuers. For annual reports, pre-consultation suggested that these costs may be in the region of £500 per issuer. On an aggregated basis this amounts to estimated costs in the region of £1-2 million per annum across 2,800 issuers. Pre consultation also suggests that the main components of these costs will be managerial time and professional adviser fees.

Indirect Costs and Benefits

19. The TD updates and expands minimum requirements for the content of annual reports on an EU-wide basis. Because these requirements are broadly similar to existing requirements imposed by the Listing Rules and UK companies legislation, benefits may be limited. However, the imposition of expanded minimum requirements across the EU should result in more consistent information disclosures allowing greater comparability of information, thereby enhancing investor confidence and contributing to the integration of capital markets across the EU. Because of this, there has been some support for the new requirements from investor groups. The extent of these benefits will depend on how investors regard and use the additional information. The new requirements could also have the added benefit of reducing the cost of capital for some issuers to the extent that the disclosures reduce informational asymmetries and improve comparative analysis.

Direct Costs

20. There will be minimal affect on direct costs to the FSA.

Interim Management Statements

21. The TD requires regulated market issuers of shares who do not already produce quarterly reports to publish interim management statements. This requirement is new, although some issuers already produce quarterly reports and issuers may be able to meet the TD's requirements by amending the content of trading statements which they already publish.
22. The extent of the costs and benefits assessed below will depend on how market practice develops, since the TD only has broad guidelines on the content of interim management statements.

Compliance Costs

23. There will be incremental compliance costs to issuers of producing the new statements. Approximately 1,200 regulated market issuers of shares do not already produce quarterly reports, so will have to publish interim management statements. To the extent that such issuers are able to amend the content of trading statements which they already produce to meet the requirements of the TD, the incremental compliance costs may be limited to one-off costs to become familiar with these requirements and to change systems to produce the requisite information. Based on the Treasury's estimate of an additional half day of compliance officer time this aggregates up to one off costs of about £240,000 across the 1,200 issuers identified above. This represents a lower-bound estimate in this case.
24. As a maximum limit, assuming all issuers produce new interim management statements (as opposed to amending the content of trading statements they already produce) then our pre consultation suggests that ongoing costs could be in the region of £4,000 per issuer for two statements per annum. On an aggregated basis this amounts to estimated costs in the region of £5 million per annum across the 1,200 issuers.

Indirect Costs and Benefits

25. The potential benefits include an increase in the quality and quantity of information enabling investors to take more timely and informed decisions. The increased frequency of reporting may increase investor confidence and promote market efficiency – through more accurate pricing of companies' equity – and greater market discipline of companies' risk taking behaviour. However these benefits will be limited to the extent that the encompassed issuers already produce quarterly reports or make trading statements complying with the TD requirements.
26. There is a risk that some issuers may seek to delay certain disclosures to coincide with the publication of interim management statements. However, issuers will still be required under the Disclosure Rules to disclose inside information.

Direct Costs

27. The cost of monitoring this new obligation will depend on the outcome of a study of acceptable market practice. If content and timeliness of these reports are to be monitored on an on-going basis, we will incur set up costs to change its monitoring systems. In addition it is reasonable to expect that additional costs to us will stem from the need for increased levels of staff time devoted to liaising with issuers about the new requirements and dealing with any additional breaches or suspensions that may occur as a result.
28. There will be a small additional cost to us for the initial period of review.

Review of Listing Rules Extending Beyond the TD

29. There are four areas where the existing Listing Rules extend beyond the TD requirements. We propose to retain rules in three of these areas where we feel that they are both justified by our assessment of the costs and benefits and there is support from industry. The alternative option would be to remove these Listing Rules requirements and thereby scale back to the TD minimum requirements.
30. As we propose to retain three rules without amendment, we are not strictly required to produce a CBA, but we have done so to facilitate respondents' consideration of our proposals. The costs and benefits of the proposed retentions have been analysed with respect to the TD minimum requirements.

Removal of requirement to publish half yearly reports in newspapers or send to holders of securities

31. The TD removes the requirement that issuers publish their half-yearly report in a national newspaper or send a copy to every holder of its securities. Instead, the TD requires the half-yearly reports to be disseminated in a way that meets minimum standards. So we propose to remove the current requirement and have analysed the costs and benefits of doing so against the alternative option of retaining the current rule.

Compliance Costs

32. There will be benefits of cost savings to issuers which are discussed below.

Indirect Costs and Benefits

33. There will be significant cost savings to issuers of removing the requirement for half-yearly reports to be either published in a national newspaper or sent to holders of the issuer's securities. For issuers that send copies to holders of their securities the costs can vary significantly depending on the number of holders. For issuers that publish in newspapers, pre-consultation suggests that the costs can vary from around £6,000 to £60,000. Based on the lower end of the scale, the minimum cost savings on an aggregated basis may be in the region of £20 million per annum across 2,800 issuers¹. This removal should not significantly disadvantage investors, since half-yearly reports will be required to be disseminated according to the TD's minimum standards.

Direct Costs

34. There will be minimal affect on direct costs to us.

¹ This estimate assumes that all issuers publish their half yearly reports in a newspaper.

Retention of requirement for Wholesale Debt Issuers to produce annual reports

35. The TD removes the requirement that listed issuers of exclusively debt with a denomination of at least 50,000 EUR, or equivalent, produce annual financial reports. On balance we feel that the CBA marginally supports our proposal to retain this requirement. The alternative option would be to remove the existing rule. Our pre consultation suggests that industry and investors would at this point strongly support our proposal. We would welcome respondents' views.

Compliance Costs

36. Most regulated market issuers of exclusively debt securities with denomination of at least 50,000 EUR or equivalent are required to produce annual reports under national law. In total there are currently about 1,000 such 'wholesale debt issuers'. However, approximately 100-130 such issuers from jurisdictions like the Cayman Islands and Netherlands Antilles are not required to produce such reports under national law. Such issuers currently bear these ongoing costs. Retaining the requirement prevents them from realising cost savings which may occur if they were no longer required to produce the reports. The amount of these lost savings varies considerably and will depend on the nature, scale and complexity of these issuers. The range may be as great as £5,000 to £100,000 per issuer per annum. On an aggregated basis these are estimated to be £600,000 - £13 million per annum across the 130 issuers. We will continue to allow the use of accounting standards other than IFRS and allow up to six months for publication of these reports.

Indirect Costs and Benefits

37. The requirement addresses information asymmetries. The benefits derive from the rule's protection of the quality and quantity of information on wholesale debt issuers in the UK. While only a modest number of issuers are currently directly affected by the rule, as all UK issuers and many overseas issuers are required to produce annual reports under national law, it arguably prevents a potential influx of issuers who are not required to do so. It also reduces the incentives for issuers to re-domicile in countries with less stringent disclosure requirements. The current requirements would ensure that investors will be able to compare an issuer's financial condition over time. The requirement may be a disincentive to issuers who would not otherwise have to produce annual reports. However there would be benefits in terms of investor protection and attractiveness of the UK markets to better quality issuers. This is supported by the increasing number of wholesale debt issuers on UK markets.

38. Our pre-consultation suggested widespread support for this proposal. Some parties indicate that without annual reports investors would be less able to make meaningful assessments of the issuer's financial condition/prospects and would necessitate reliance on indirect information sources such as credit rating agencies. In this case, annual reports may help to reduce agency costs arising from informational asymmetries, and, as a result, this may impact issuers' cost of capital. However, the extent of this impact will depend on the nature and type of information disclosed in these reports.

Direct Costs

39. There will be minimal affect on direct costs to us.

Retention of requirement for issuers producing half-yearly reports to reflect changes in Accounting Policies applicable in the subsequent annual report

40. The TD requires that issuers of half-yearly reports that fall outside of IAS34 describe the nature and effect of any changes in accounting policies that are expected to be made in the annual reports. For such listed issuers we propose to retain the existing requirement that the policies must be actually applied in the preceding half yearly reports. The alternative option would be to scale back to the minimum TD requirements.

Compliance Costs

41. Most issuers will have to comply with IAS34 under TD anyway, so the rule will create no extra costs for them. Issuers that do not comply with IAS34 will have to provide a description of the nature and effect of any change to accounting policies and presentation under TD. So, the continued requirement to actually follow the new accounting policies and presentation is not considered to be significant. As issuers would arguably have to analyse in detail the new accounting standards to determine their impact, the potential cost savings foregone by continuing to require that issuers actually apply them should be negligible.

Indirect Costs and Benefits

42. Retaining the rule will provide benefits of greater comparability of reports and thereby address information asymmetry.

Direct Costs

43. There will be minimal affect on direct costs to us.

Retention of requirement to publish more detailed Preliminary Statements of Dividends

44. The TD requires regulated market issuers to publish and distribute circulars concerning the allocation and payment of dividends. On balance we feel our CBA marginally supports our proposal to retain more detailed requirements on the timing and content of such statements for listed issuers. We would welcome respondents to confirm whether this is the case or not. The alternative option would be to scale back to the minimum TD requirements.

Compliance Costs

45. Compared to the TD requirement to publish notices regarding dividends, the current Listing Rules make more detailed requirements on the timing and content of this information. Consequently, any cost savings foregone by maintaining the current requirements will be small, since in practice, issuers will have the information anyway and use a largely fixed price Regulatory Information Service to publish it. On an aggregated basis these are estimated to be £70,000 per annum (based on one message per issuer).²

Indirect Costs and Benefits

46. Any indirect costs (such as an increase in the issuer's cost of capital) are also unlikely to be significant to the extent that this information is likely to be sufficiently precise to be inside information and so would need to be disclosed anyway under the Disclosure Rules. The existing rule may better address potential information asymmetries by providing greater clarity than the TD provision. Retaining the current rule will bring benefits of more timely, detailed and comparable information.

Direct Costs

47. There will be minimal affect on direct costs to us.

Review of Listing Rules covering financial reporting requirements outside the scope of the TD

48. We have discretion over existing rules which cover financial reporting requirements outside the scope of the TD. We have reviewed these rules and intend to retain those rules which we believe are important to UK markets and we are considering removing those rules where the benefits may be less clear. We strongly encourage respondents to consider whether they believe the rules we are considering removing provide significant benefits and should be retained.

² This estimate is based on the assumption that issuers will have the information already and that the costs incurred will primarily arise from sending the information to a RIS. Based on a price per message of £50, this will aggregate to £70,000 as there are approximately 1400 regulated market issuers of shares.

If you believe there will be benefits, please explain what these benefits are, to whom they arise and provide any data or evidence to support their view.

Amendment of rule on Preliminary Statements of Annual Results

49. Given the shorter deadline for the publication of annual reports which we have to introduce under the TD, we propose to amend the existing rule on preliminary statements of annual results. Instead of requiring their production, we propose a permissive rule under which issuers can choose to produce such statements. But if the issuer chooses to do so it must comply with the existing content standards. The alternative approach would be to remove the existing rule altogether.

Compliance Costs

50. There will be benefits of cost savings to issuers who choose not to produce preliminary statements of annual results which are discussed below.

Indirect Costs and Benefits

51. If issuers choose not to publish preliminary results then benefits arise due to a decrease in ongoing compliance costs for producing and disseminating. These are unlikely to be significant (at the issuer level) as issuers are likely to have most of the information anyway. Pre consultation suggests that the savings due to not publishing such information may be in the region of £4,000 per issuer per annum. On an aggregated basis these are estimated to be a maximum of around £10 million per annum across 2,800 issuers³. Any such savings may be considered to partially offset the additional costs associated with the new TD requirements for annual reports.
52. It is important to note that the quantity and timing of information for investors will not decrease significantly even if issuers chose not to produce preliminary results, as the annual report itself will be produced within a similar timescale as preliminary results currently are. The permissive rule ensures that the information meets certain criteria allowing investors to compare the information across issuers which choose to produce preliminary results. The permissive rule will not affect the disclosure of price sensitive (potentially negative) information by the issuer since under the provisions of the Market Abuse Directive an issuer is required to disclose such information to the market.

³ This is a maximum figure as it assumes all such issuers choose not to produce preliminary statements of annual results.

Direct Costs

53. There will be an additional cost to us in terms of staff time of monitoring a permissive rather than mandatory regime. This will stem from a shift in supervisory focus from preliminary statements to the full annual reports, monitoring the additional trading statements⁴ and continued monitoring of those preliminary statements that are produced.

Possible removals

54. As discussed in paragraphs 2.39 to 2.55 of chapter 2, we are proposing to remove several rules where their benefits are less clear. We strongly encourage respondents to consider whether each of the rules under consideration provides benefits and should be retained. In making your evaluation, please take into account the type of information that is being affected and whether it is of value to you in decision-making. If certain information is beneficial in that respect, please explain what these benefits are and provide any data or evidence to support that view.

Compliance Costs

55. There will be some cost savings to issuers as a result of these rules being removed. These savings are discussed below.

Indirect Costs and Benefits

56. Given the cost structure of producing annual reports with high fixed and low marginal costs, the removal of such requirements are likely to lead to a modest reduction in the costs of producing annual reports. The possible cost savings of removing individual rules was hard to quantify. Pre-consultation suggested that if we removed all the rules we are considering removing, then the costs savings may be in the region of £2,000 per issuer. On an aggregated basis this amounts to estimated cost savings in the region of £6 million per annum across 2,800 issuers.
57. We are considering removing these rules on the basis that there is some uncertainty about whether they provide sufficiently significant benefits for investors, as the rules simply make it easier to access information which is obtainable through other channels anyway. Indeed, several duplicate requirements set out in other disclosure regimes, including accountancy standards, company law and market abuse rules. Investors can therefore access the affected information via those alternative channels. For example, information concerning the interests of company directors can be obtained from the company register and directors' dealings notifications. To this extent,

⁴ It is also reasonable to assume that there will be an increase in other regulatory announcements required under MAD regarding the dissemination of price sensitive information for those firms that do not produce preliminary results.

the benefits of the Listing Rules are limited to the ease-of-access they provide to the encompassed information by gathering this in one place. Nevertheless, we recognise that this ease-of-access constitutes a legitimate benefit for investors and would welcome respondents' views on whether it outweighs the costs of producing this information and monitoring compliance therewith. To the extent that this is indeed the case, we will retain the Listing Rules concerned.

Direct Costs

58. There will be minimal direct cost savings if these rules were to be removed.

Major Shareholding Disclosures

59. The TD requires shareholders to notify issuers of major holdings in shares and requirements on issuers to make these disclosures public.

Issuer Scope

60. The current Companies Act 1985 (CA1985) regime covers approximately 11,700 UK public companies. The Treasury have decided to remove approximately 8,000 public companies not admitted to trading on a regulated market or exchange regulated market from the disclosure of major shareholding regime. The TD requires the regime to be applied to regulated market issuers of shares. With respect to holdings in non-UK issuers for whom we are the home Member State, these will be subject to the TD minimum requirements. We have discretion over whether to apply a regime to issuers on an exchange regulated market.
61. On balance we feel that the CBA marginally supports our proposal to apply a regime to UK equity issuers traded on exchange regulated markets rather than the option of not doing so. This includes approximately 1,100 UK equity issuers traded on AIM or OFEX. Our pre-consultation suggests that industry and investors would at this point strongly support the proposal. Additionally, when the Treasury consulted, 11 out of the 12 respondents supported the proposal to give us powers to make such rules. We would welcome your views.

Compliance Costs

62. Continuing to apply the existing regime will forgo some potential cost savings for shareholders and issuers. These are not expected to be significant given the costs structure for issuers and shareholders of making notifications (i.e. high fixed costs of systems to establish when and what to notify and low marginal costs of actually making notifications – see sections below).

Indirect Costs and Benefits

63. Some pre-consultation suggested that the TD's rationale for requiring disclosure of major shareholdings may apply equally to issuers with shares admitted to trading on exchange regulated markets as it does to regulated market issuers. The TD explains that this information should enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure. It should also enhance effective shareholder control of issuers, and increase the overall market transparency of important capital movements.

Direct Costs

64. There will be greater direct costs to us for setting up and monitoring the regime because the number of firms falling under our scope for the monitoring of this rule will increase by approximately 50%. Monitoring costs are estimated to be in the region of £5,000 per annum.

Notifiable interests

65. Certain interests must be disclosed under the TD. These requirements are different from the CA1985, with notification triggered by reference to control over the exercise of voting rights rather than 'interests in shares'. Although occupying some common ground with the CA1985, the TD provisions are in some respects less extensive. We propose to implement the major shareholder notification requirements of the TD primarily by way of copy out of the directive provisions.

Compliance Costs

66. There will be one off transitional costs to shareholders of reconfiguring the systems used to track when disclosures are required. There are large fixed costs in establishing systems for shareholders to know when and what to disclose. The costs to shareholders and to issuers of making notifications are marginal. The population of major shareholders is dominated by institutional investors such as investment banks. Such shareholders already have systems in place to track what disclosures need to be made and when. They will also have procedures in place to make notifications. The population of major shareholders is relatively stable, so few, if any, shareholders will need to establish such systems or procedures from scratch. Hence any incremental costs to most shareholders would be ongoing costs of continuing to disclose.

Indirect Costs and Benefits

67. There may be benefits to the extent that there are improved minimum standards for interests in issuers which must be notified across the EU.

Direct Costs

68. There will be minimal affect on direct costs to us.

Stock lending

69. The proposal to amend the TD notifiable interests to exempt stock lenders from having to notify is evaluated against the situation where lenders are required to notify.
70. This proposal would maintain the position of stock lending under the CA1985. If lenders were required to notify, then they would need to amend systems and processes to facilitate this. This could give rise to incremental compliance costs. To the extent that these are significant, this could negatively impact the quantity of stock lending and liquidity in this market.
71. While there will be fewer disclosures under our proposal, we believe there to be no negative affect on transparency. Indeed our proposal will avoid the potentially misleading disclosure by lenders when they still have the right to recall the stock.

Notification Thresholds

72. The TD requires disclosures at the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%. The current thresholds under the CA1985 are 3% and every percentage point above. We can choose to impose additional thresholds to those set out in the TD.
73. On balance we feel our CBA marginally supports our proposal to retain the current thresholds. Our pre-consultation suggests that industry and investors would at this point strongly support the proposal. We would welcome respondents confirming whether this is the case or not.

Compliance Costs

74. The existing thresholds would result in a far greater number of disclosures compared with those under the TD thresholds. Our desk based analysis suggests that based on a sample of disclosures made by issuers on the FTSE All Share index across 2005, there may be as many as ten times more disclosures at the existing thresholds compared to the TD minima. To provide some context, there were approximately 11,000 major shareholding disclosure announcements by issuers in the FTSE All Share Index in 2005. There were approximately 4,500 disclosures by issuers in the AIM All Share Index and approximately 100 by issuers on OFEX over the same timeframe.

75. Once the systems are in place to track when and what disclosures are required, the ongoing compliance costs to shareholders of actually making disclosures are marginal. Similarly, the compliance costs to issuers of making disclosures are marginal. Pre-consultation suggested that the cost per disclosure for a regulated market issuer is in the region of £150. On an aggregated basis the incremental costs of retaining the existing thresholds may be in the region of £2.5 million per annum across 1390 issuers⁵.
76. This figure is calculated on the basis that in 2005 there were 11,000 disclosures by approximately 800 issuers in the FTSE All Share Index. There are 1,390 equity issuers in total on regulated markets. Assuming the ratio of disclosures per issuer for issuers not in the index is the same as for those in the index, there may have been around 19,000 disclosures in total. Using the £150 per disclosure estimate this aggregates to an estimated cost in the region of £2.8 million. Assuming there are ten times as many disclosures than there would be under the TD thresholds then 90% (around £2.5 million) of these costs are incremental.
77. If you assume the cost per disclosure is the same as estimated for exchange regulated market issuers and that there are also ten times as many disclosures under the current thresholds than there would be under the TD thresholds, then the incremental costs of the current thresholds for AIM and OFEX issuers may be in the region of £600,000 across 1,100 issuers.

Indirect Costs and Benefits

78. The greater number of disclosures results in greater transparency for investors, issuers and the market generally. It is significantly easier to establish when shareholders are building or disposing of holdings in issuers. This may be important to both the management of the issuer and investors who may be able to take more informed investment decisions on the value of the securities. Retaining the existing thresholds may maintain market confidence and price efficiency, with prices more accurately reflecting the value of the issuer's potential.
79. The lower threshold and shorter deadlines [see below] may make mergers and acquisitions even more expensive than they would be under the TD minimum requirements and thereby result in fewer bids for potentially inefficient target firms and discourage competition for corporate control. This is because potential acquirers would have to reveal a greater amount of privately held information on how much they value the potential target firm compared to the TD minimum situation. However as explained above, the increased transparency (including information on potential takeovers) may improve price efficiency as the prices would more accurately reflect the true value of the underlying firm's potential.

⁵ The costs per issuer depend on the number of disclosures an issuer will have to make. This depends on the nature and composition of its shareholder base. Only 90% of this aggregate estimate are incremental costs.

Direct Costs

80. There would be no significant affect on the direct costs to us.

Notification Deadlines

81. The TD requires disclosures within four days (for shareholders to notify issuers) and three days (for issuers to notify the market). The current deadlines under the CA1985 and Listing Rules are two days and the end of the next business day following receipt of the notification from the shareholder, respectively. We can choose to impose more stringent requirements than the TD minimum requirements.
82. On balance, we feel our CBA marginally supports our proposal to retain the current deadlines rather than to move to the TD minima. Our pre-consultation suggests that industry and investors would at this point strongly support the proposal. We would welcome respondents to confirm whether this is the case or not.

Compliance Costs

83. Pre-consultation suggested that the shorter notification deadlines do not result in significantly greater compliance costs. However, some issuers have suggested in pre-consultation that the shorter deadline may make notifications more logistically challenging, as employees have less flexibility in planning work.

Indirect Costs and Benefits

84. The shorter deadlines ensure greater transparency as the information on major shareholders is available more quickly to the market. On this basis, retaining the requirements would maintain market confidence.

Direct Costs

85. There would be minimal affect on direct costs to us.

Standard Forms

86. The TD recommends that shareholders and issuers use standard forms for the notification of major shareholdings. There is no such current requirement. We propose to require the use of standard forms, in line with the TD's recommendation. The alternative approach would be to not require the use of a standard form.

Compliance Costs

87. Costs to shareholder and issuers of having to use the standard forms are expected to be minimal.

Indirect Costs and Benefits

88. To the extent that standard forms will be used across the EU there will be benefits to issuers – and ultimately the public – of receiving the required information in a standardised format. In addition, it should simplify the process for shareholders who have holdings in issuers located in different Member States.

Direct Costs

89. Direct costs to us will be lower as it will be easier for us to process the information.

Dissemination

90. The TD requires issuers to disseminate regulated information meeting certain minimum standards. It is silent on what model issuers can use to disseminate. We propose to continue to require issuers to use the PIP/SIP model to meet these requirements.

Compliance Costs

91. Retaining the PIP/SIP model is not expected to impose much greater compliance costs on issuers than if they were allowed to disseminate in other ways. Other ways could include using operators which are not approved by us or by issuers taking it upon themselves to disseminate regulated information on a pan-European basis meeting the minimum standards required. There would be costs associated with such models, and in nearly all circumstances we anticipate that issuers would find it more cost effective to continue to use service providers to meet the dissemination requirements. One reason for this would be that they will be able to have some confidence that the PIP/SIP arrangements satisfy the TD minimum criteria without having to do much due diligence. If issuers wanted to use alternative mechanisms they would have to undertake more due diligence which would have associated costs.

Indirect Costs and Benefits

92. The benefits of maintaining the PIP/SIP model include the consolidation of regulated information sources and a sequential flow of information to the market. To the extent that consolidated information sources lowers investors' search costs, more information may be incorporated in prices leading to greater price efficiency. Familiarity with the system may also contribute to lowering of search costs⁶.

⁶ More information on the PIP-SIP regime can be found in CP92 - Review of the UK mechanism for disseminating regulatory information by listed companies

Direct Costs

93. The direct costs to us of monitoring the dissemination obligations on issuers are considerably lower under the current regime than they would be if issuers could disseminate in other ways. This is because it would be far more difficult to monitor compliance by issuers.

Storage – the interim solution

94. Until the long-term requirements on storage mechanisms are established, the TD requires us to ensure that investors have some sort of access to regulated information. Our interim solution is to make presentational changes to our website. This has very low cost implications. Depending on the outcome of the Commission's work the long-term storage requirements will require further CBA.

Compliance Costs

95. There should be no increased costs to issuers or investors.

Indirect Costs and Benefits

96. The benefits will depend on the extent to which investors use our website to access the commercial sites providing access to information.

Apart from the very low associated costs there are also benefits that the UK will retain flexibility to adopt whichever model for the storage mechanism which is most appropriate for the long term when the standards are established.

Direct Costs

97. There are minimal direct costs to us for making presentational changes to our website.

List of Questions

- Q1: Do you agree with our proposal not to add to the TD requirements for interim management statements? Do you feel that FSA guidance in this area at this stage would be helpful or unhelpful, and why?
- Q2: Do you agree with our proposal to copy out the TD requirements on ongoing information to holders of securities and with our analysis of the implications for issuers of convertible securities?
- Q3: Do you agree that the Listing Rule requirement for listed issuers to either send half-yearly reports to holders of its securities or insert the report in a national newspaper should be removed?
- Q4: Do you agree with our proposal to retain the existing requirement for listed issuers of exclusively wholesale debt to produce annual reports? If not, is this because you believe that investors will be able to rely on other information provided to investors, such as that from credit rating agencies, to make investment decisions about such securities?
- Q5: Do you agree that the approach taken in relation to issuers on the PSM should mirror that for wholesale debt issuers?
- Q6: Do you agree with our proposal to retain the Listing Rule requirement that issuers falling outside the scope of IAS34 should reflect in half-yearly reports any accounting policy changes that will be applicable in the annual report on the basis that this provides additional clarity to the TD requirement?
- Q7: Do you agree with our proposal to retain the Listing Rule requirement on the timeliness and content of dividend statements on the basis that this provides additional clarity to the TD requirement?

- Q8: Do you agree with the proposed change of preliminary statements of annual results from a mandatory to permissive regime?
- Q9: Do respondents agree with our proposed retention of LR9.8.4R(2)(3)(4), LR9.8.6R(3)(5)(6)(7), LR9.8.10R, LR9.8.11R and LR9.8.12R?
- Q10: Do you believe LR9.8.4R(1)(5)(6)(9)(10)(11)(12)(13), LR9.8.5G, LR9.8.6R(1)(2)(4) and LR9.8.13R rules provide benefits? If you do, please explain how you use the information covered in each of these rules? If you were not able to access such information through annual reports, but could access it from other (possibly fragmented) sources, would you be disadvantaged?
- Q11: Do you agree that we should apply major shareholding disclosure rules to holdings in issuers with shares admitted to trading on a regulated market, and to holdings of shares of UK companies traded on exchange-regulated markets such as AIM and OFEX? Alternatively, do you think the scope of the shareholder notification requirements should be limited to the TD minimum: holdings in issuers with shares admitted to trading on a regulated market for which the UK is the home member state?
- Q12: Are there any notifiable interests under the CA1985 that you consider are not covered by the TD but which you believe should be maintained? Do you agree that the partial exemption from notification for voting rights held in the trading book should be available to credit institutions and investment firms? Do you agree with either of the two alternative approaches to replicate, or make more stringent, respectively the effect of the CA1985 for stock lenders? Are there any side effects?
- Q13: Which of the approaches (TD minimum or CA1985) to notification thresholds would you prefer? Depending on the thresholds adopted, do you agree with our proposed implications for disclosures by market makers?
- Q14: Which of the notification deadlines (TD minimum or CA1985 and Listing Rules) would you prefer?
- Q15: Do you agree that the FSA should mandate the continued use of the PIP/SIP regime for issuers for whom the UK is the home Member State?
- Q16: Do you have a preference for either of the storage models (commercial OAMs or FSA operated OAM) or suggestions for further alternative model(s)?

Summary of changes to RIS Criteria

1. The following paragraphs set out the proposed changes to the current Regulated Information Services (RIS) criteria:

Person approved as a RIS

2. We have introduced the idea of a person who is the legal entity that owns and operates the RIS.
3. The name of the person who has been approved as a RIS will be added to our list of *Regulated Information Services*. Similarly, the name of this person will be removed from the same list if we cancel approval.
4. We have introduced this distinction to strengthen the legal foundation of the RIS Criteria.

RIS status within other EEA States

5. A number of RIS organisations have asked us whether implementing the TD will allow a RIS approved by the FSA to act in the same capacity within other EEA states.
6. The Commission has not mandated the use of third parties to disseminate regulated information. As set out elsewhere in this paper, we propose to introduce super-equivalent rules in this area and mandate the use of a RIS. Nevertheless, EEA state competent authorities other than us will implement rules regarding use of third party disseminators at their own discretion.
7. Also, other EEA state competent authorities may not consider that compliance with the FSA's RIS Criteria fulfils TD requirements. So, our approval would not necessarily mean that a person would be able to act as a third party disseminator within other EEA states.

8. Similarly, a person who has been approved by another EEA state to disseminate regulated information as a third party would not necessarily be approved by us as a RIS.

Requirement for an independently audited annual report

9. The TD says that an issuer is ultimately responsible for disseminating regulated information in a manner ensuring fast access on a non-discriminatory basis. This is true even if an issuer chooses a third party, such as a RIS, to disseminate its regulated information.
10. We believe that FSA approval of an initial application to become a RIS gives sufficient comfort to issuers that the approved RIS will help issuers meet the dissemination obligations imposed by the TD. However, an issuer should also be assured that the RIS of its choice will continue to provide this assistance on an ongoing basis. Currently this assurance is provided by a report that the RIS produces on an annual basis confirming that it met all the criteria in the preceding 12 months. Currently, we require this report be independently audited.
11. A number of RIS organisations have requested that we reconsider this current requirement. We propose three options to address this request:

Proposal 1 - Maintenance of current regime

12. One option would be for us to continue to require a RIS produce a report on an annual basis that confirms it met all the criteria in the preceding 12 months and that this report be independently audited.
13. The requirement for an annual report that is independently verified by an auditor gives a high level of comfort to an issuer that the RIS will help the issuer to meet its TD obligations.
14. However, the requirement for an audited report currently costs a RIS approximately £25,000 per year. This cost reduces the financial viability of operating as a RIS for some organisations. If one or more RIS organisations request cancellation of approval as a result of this cost burden, the choice of RIS and the benefits of competition that result from this choice will be reduced for issuers as a whole.
15. Also, the internal systems of most RIS organisations are fully automated and are not subject to major changes year on year. In addition, we are not aware of any significant errors having been made by any RIS since the implementation of the RIS regime. Consequently, there may be little value to be gained by the independent verification of a RIS report every year.

Proposal 2 – Requirement for an audited report every two years

16. A second option would be for us to continue to require that a RIS produce a report that confirms that the RIS met all the criteria in the preceding 12 months. However, we could require the report to be subject to an auditor's independent verification at the following times only:
 - upon an initial application by a person for approval as a RIS;
 - every two years following approval as a RIS; and
 - in any event if a RIS had substantially changed one or more of its internal systems or procedures over the preceding 12 months.
17. The above proposals would substantially reduce the cost burden placed upon a RIS while maintaining the comfort provided by independent verification of compliance with RIS criteria.
18. However, the lack of substantial errors or evidence of misuse of regulated information in relation to the RIS regime could be seen as confirmation of the effectiveness of existing controls.

Proposal 3 – Requirement for an un-audited report

19. A third option would be for us to require that a RIS produce an un-audited report that confirms that the RIS met all the criteria in the preceding 12 months. An issuer could then perform its own due diligence work, as necessary, to gain independent verification that the report was accurate.
20. Under this proposal an initial application to become a RIS would still need to be accompanied by an audited report.
21. This proposal would remove most of the regulatory cost burden for an organisation operating as a RIS. This may encourage more applications for RIS status and issuers may benefit from increased choice and competition as a result.
22. However, there are currently six organisations that have been approved by us to act as a RIS. Consequently, there may already be sufficient choice and competitiveness within the RIS regime.
23. This proposal, if implemented would also be a major change in our approach to the regulation of the RIS regime. The Policy Statement we published in November 2001 in response to consultation on the proposal to introduce the RIS regime (PS 92) said that:

'Independent verification that a [RIS] meets the service criteria set by the FSA on an ongoing basis is a crucial part of our proposals' (paragraph 3.52).

24. Also, the lack of ongoing independent verification of compliance with RIS criteria would mean that an issuer would not know if internal controls had been applied consistently between RIS organisations.
25. In addition, if an issuer did perform its own due diligence work to independently verify that the RIS report was accurate, the cost of verification would not be removed but instead transferred from the RIS to the issuer. The overall cost would also be multiplied by the number of issuers who performed such due diligence work.

Publication of RIS reports

26. Whatever option is implemented, we propose to publish the annual report we receive from a RIS on our website. This would give issuers the information they require when considering whether a RIS will help the issuer meet its TD obligations on an ongoing basis.

Deadline for submission of RIS report

27. Whatever option is implemented, we propose to require that the annual report be submitted to the FSA by a RIS within three months of the end of the 12-month reporting period.

Standard Forms

28. We currently publish Standard Forms to be used by issuers when making regulated information announcements via a RIS. These Standard Forms can be printed from our website and faxed or posted to the RIS in hard copy form for onward dissemination by the RIS.
29. The Commission has recommended the use of Standard Forms for publishing and filing major shareholding transactions.
30. When an issuer publishes an announcement using a Standard Form via a RIS, our internal systems cannot recognise individual data items (e.g. the dealing date of a transaction) held within the form. This means that when we receive a Standard Form announcement from a RIS, these individual data items must be manually re-input by our staff into our systems. This is a time consuming and labour intensive task.

Proposals

31. We propose that a RIS be required to offer an issuer an electronic version of a Standard Form if an issuer chooses a headline category that is associated with a Standard Form. The headline categories to be associated with Standard Forms are:

- Holding(s) in Company – Voting Rights;
 - Holding(s) in Company – Financial Instruments;
 - Block Listing Interim Review;
 - Director/PDMM Shareholding; and
 - Transaction in own shares.
32. The electronic form offered by a RIS should conform to input templates that are available from us.
33. We propose that the output content of an announcement distinctly identify, in a machine readable format, individual data items input by an issuer via a Standard Form. We will coordinate the precise identification to be used for each data item with our third party supplier of amalgamated RIS information.

Rationale for proposals

34. As stated above, current arrangements place a heavy administrative burden on us. The capture of Standard Form information in a way that can be automatically recognised by our internal systems will remove this burden. Consequently, the overall efficiency of our regulatory activities will be improved and costs to us reduced.
35. In addition, commercial data vendors will also be able to make use of the enriched data content of Standard Form announcements. For example, the proposed change should enable consolidation of the dealings made by a particular major shareholder in the securities of multiple issuers over a particular period. A commercial data vendor could offer this consolidated information for the benefit of investors.
36. However, this proposal will impose an additional cost upon RIS organisations. This will mostly be one-off set-up costs.

Prioritisation of regulated information

37. We propose to change the requirement for 95% of regulated information received electronically to be released within five minutes of receipt. We propose, instead, to require that regulated information be disseminated ‘without delay’ if it is received electronically.
38. We have proposed this change as RIS organisations have made us aware that on rare occasions, for reasons outside of the RIS organisation’s control, the current requirement cannot be met. RIS organisations were concerned that a breach of this rule due to extraordinary circumstances would immediately invalidate their RIS status.

FSA issuer identification number

39. The current RIS criteria require that a RIS use a 'short name' to identify an issuer in the output content of a regulated information announcement. A 'short name' is a shortened version of the issuer's name as a string of text 20 characters or less in length. The 'short name' allows our internal systems to associate a regulated information announcement with an issuer. We publish a list of short names to be used by a RIS on our website.
40. A 'short name' is an imperfect tool for identifying the issuer to whom regulated information belongs. This is because the 'short name' value for every issuer is created manually by our staff and consequently is affected by human error. Similarly, if a RIS inadvertently uses a short name whose text is slightly different to that published by us, our systems are unable to identify the issuer of that regulated information.
41. We propose to require that a RIS include an FSA issuer identification number within the output content of a regulated information announcement. This number will be generated automatically by our internal systems without human input.
42. We will publish our issuer identification number for each issuer on our website in place of the current list of short names. When a new issuer has securities admitted to a regulated market in the UK, we will inform every RIS of its issuer identification number and add this information to the list on our website as soon as possible. Similarly when an issuer has the last of its securities cancelled from a UK regulated market, we will remove its FSA issuer identification number from our website. As currently, the website list will be downloadable via a hyperlink.
43. A RIS will be free to continue to use short names within regulated information announcements for alternative purposes. However, we propose to remove the requirement for short names to be carried as part of the output content of regulated information announcements.

Annual Report & Accounts

44. Currently, an issuer's annual report & accounts are not disseminated in full via a RIS. Instead the FSA Listing Rules require an issuer to make a short notification via a RIS that its annual report & accounts have been published and are available to view at our Document Viewing Facility. This facility is a single computer terminal within our offices at Canary Wharf in London that is publicly accessible to visitors.

45. The TD classifies annual report & accounts as ‘regulated information’. This means that annual report & accounts must be disseminated in the same method as all other regulated information. So, an issuer must make its annual report & accounts available on a fast, non-discriminatory basis to the public in all EEA States.
46. We consider that the current method of publication of annual report & accounts does not meet TD requirements. We propose that an issuer use a RIS to disseminate its annual report & accounts in full.
47. However, annual report & accounts are large documents that contain pictures, photographs and graphics as well as tables and text. So the electronic version of an annual report & accounts document is held in a specialist format such as the Portable Document Format (pdf) or a desktop publishing format. We are aware that the systems of some media cannot accept electronic documents in these formats.
48. So we propose that a RIS be required only to disseminate annual report & accounts to media that can receive and accept the specialist industry standard formats used to hold annual report & accounts. We do not propose to require a RIS to convert annual report & accounts documents into a text only format that all media can receive and accept.
49. We believe this proposal meets TD dissemination requirements and is the best compromise between ensuring the widest possible dissemination of annual report and accounts and the limitations imposed by the technologies currently used by some media.

Use of new terms

‘inside information’

50. The section of the RIS criteria entitled ‘Validation of input’ includes a requirement that there be no unauthorised access to ‘inside information’. This replaces the term ‘regulatory information’ in the same section of the current criteria. This term has been used to align the RIS criteria with the current Market Abuse Regime.

‘media’

51. We propose to replace the term ‘Secondary Information Provider’ or ‘SIP’ with the term ‘media’ to align the RIS criteria with terms used by the TD.

Change to list of headline categories

‘Annual Report & Accounts’

52. We propose to move the headline category ‘Annual Report & Accounts’ from the ‘low priority’ section of the headline category list to the ‘medium priority’ section. This reflects the increased regulatory importance of annual report and accounts following the implementation of the TD. This regulatory importance has increased due to the proposal to make preliminary statements of annual results voluntary and the reduction in the reporting deadline for annual report and accounts required by the TD.

‘Half-yearly report’

53. We propose to replace the headline category ‘Interim Results’ with ‘Half-yearly Report’ to align the RIS criteria with the TD and to avoid confusion with Interim Management Statements.

‘Holding(s) in Company’

54. We propose to split the current ‘Holding(s) in Company’ headline category into two headline categories to reflect the two Standard Forms recommended by the Commission. The two new headline categories are: ‘Holding(s) in Company – Voting Rights’ and ‘Holding(s) in Company – Financial Instruments’.

‘Interim Management Statement’

55. We propose to introduce the headline category ‘Interim Management Statement’ to align the RIS criteria with the requirement for this report under the TD.

**TRANSPARENCY OBLIGATIONS DIRECTIVE
(DISCLOSURE AND TRANSPARENCY RULES) INSTRUMENT 2006**

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"):
- Section 73A (Part 6 rules);
 - Section 90A and 90B (Transparency rules);
 - Section 101 (Listing rules: general provisions); and
 - Section 157(1) (Guidance).

Commencement

- B. Transitional Provision 4 in Annex A and all relevant amendments to the Glossary in Annex B shall come into force on [1 December 2006] otherwise this instrument comes into force on 20 January 2007.

Amendments to the Handbook

- C. (1) Annex A to this instrument inserts into the Handbook new chapters in the Disclosure and Transparency Rules sourcebook (DTR).
- (2) The Glossary of definitions is amended in accordance with Annex B.
- (3) Annex C to this instrument amends the Listing Rules sourcebook (LR).

Notes

- D. In Annex A to this instrument, the "notes" (indicated by "**Note:**") are included in for the convenience of readers but do not form part of the legislative text.

Citation

- E. This instrument may be cited as the Transparency Obligations Directive (Disclosure and Transparency Rules) Instrument 2006.

By order of the Board

Amendments to the Disclosure Rules

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

Insert the following transitional provision.

Disclosure and transparency rules

DTR 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
1	4.1.7 and 4.2.4	R	<p>An <i>issuer</i> need not prepare its financial statement in accordance with <i>DTR</i> 4.1.7R or <i>DR</i> 4.2.4R for any financial year beginning before 1 January 2007 if:</p> <p>(a) the <i>issuer's</i> registered office is in a <i>non-EEA State</i>; and</p> <p>(b) the <i>issuer</i> prepares its financial statements in accordance with internationally accepted standards.</p> <p>[Note: article 23.2 TD]</p>	From 20 January 2007	
2	4.2.4	R	<p>(1) This provision applies to an <i>issuer</i>:</p> <p>(a) whose <i>debt securities</i> only are <i>admitted to trading</i>; and</p> <p>(b) whose <i>Home State</i>, in accordance with article 2.1(i) of the <i>TD</i>, is the <i>United Kingdom</i>.</p> <p>(2) An <i>issuer</i> is not required to disclose financial statements in accordance with <i>DTR</i> 4.2.4R(1) for the financial year starting on or after 1 January 2006.</p> <p>[Note: article 30.1 TD]</p>	From 20 January 2007	
3	4.1.7 and 4.1.9 to 4.1.12	R	<p>(1) This provision applies to an <i>issuer of debt securities</i>:</p> <p>(a) that is incorporated in a <i>non-EEA</i></p>	From 20 January 2007	

			<p><i>State;</i></p> <p>(b) whose <i>Home State</i>, in accordance with article 2.1(i) of the <i>TD</i>, is the <i>United Kingdom</i>; and</p> <p>(c) whose <i>debt securities</i> were <i>admitted to trading</i> in the <i>EEA</i> prior to 1 January 2005.</p> <p>(2) An <i>issuer</i> need not draw up its financial statements in accordance with <i>DTR 4.1.7R</i> or its management report in accordance with <i>DTR 4.1.9R</i> to <i>DTR 4.1.12R</i> provided:</p> <p>(a) the annual financial statements prepared by <i>issuers</i> from that <i>non-EEA State</i> give a true and fair view of the <i>issuer's</i> assets and liabilities, financial position and results;</p> <p>(b) the <i>non-EEA State</i> where the <i>issuer</i> is incorporated has not made mandatory the application of <i>IAS</i> or <i>IFRS</i>; and</p> <p>(c) the Commission has not taken any decision in accordance with article 23.4(ii) of the <i>TD</i> as to whether there is an equivalence between <i>IAS</i> and <i>IFRS</i> and:</p> <p>(i) the accounting standards laid down in the law, regulations or administrative provisions of the <i>non-EEA State</i> where the <i>issuer</i> is incorporated; or</p> <p>(ii) the accounting standards of the <i>non-EEA State</i> such an <i>issuer</i> has elected to comply with.</p> <p>[Note: article 30.3 <i>TD</i>]</p>		
4	5.6.1	R	<p>Has effect as if it required, additionally, each <i>issuer</i> by not later than [31 December 2006] to make public (in the case of a <i>regulated market issuer</i> by publication to a <i>RIS</i>):</p> <p>(i) the total number of voting rights and capital in respect of each class of <i>share</i> which it issues and which is admitted to trading on a <i>regulated market</i> or <i>UK prescribed market</i>; and</p> <p>(ii) any subsequent alteration of that number and capital occurring between the date on which the disclosure in (i) is made and 20 January 2007.</p>	[date on which instrument is made]	

Amend Chapter 1 of *DTR* as follows:

- 1 Introduction
- 1.1 Application and purpose (*Disclosure rules*) ...

Insert new Chapter 1A as follows (all new text):

- 1A Introduction
- 1A.1 Application and purpose (*Transparency rules*)
 - 1A.1.1 G The application of Chapters 4, 5 and 6 of *DTR* is set out at the beginning of each chapter and, where necessary, section.
 - 1A.1.2 R Neither this chapter nor Chapters 4, 5 or 6 shall apply in relation to units issued by collective undertakings other than the closed-end type, or to units acquired or disposed of in such collective investment undertakings [**Note: article 1.2 TD**].
 - 1A.1.3 R For the purposes of 1A.1.2 R a collective investment undertaking other than the closed-end type means unit trusts and investment companies:
 - (1) the object of which is the collective investment of capital provided by the public, and which operates on the principle of risk spreading; and
 - (2) the units of which are, at the request of the holder of such units, repurchased or redeemed, directly or indirectly, out of the assets of those undertakings, [**Note: article 2.1(g) TD**]and "units of a collective investment undertaking" means securities issued by a collective investment undertaking and representing the rights of the participants in such an undertaking. [**Note: article 2.1(h) TD**]

Purpose

- 1A.1.4 G The purpose of the *transparency rules* is to implement the *Transparency Directive* and to make other rules to ensure there is adequate transparency of and access to information in the UK financial markets.

FSA performing functions as competent authority

- 1A.1.5 G In relation to the *transparency rules*, the *FSA* is exercising its functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to *persons* to whom the *transparency rules* apply include *DEC* (the Decision making manual), Chapter 9 of *SUP* (the Supervision manual) and Chapter 21 of *ENF* (the Enforcement manual).

Note: A list of *regulated markets* can be found on the *FSA* website at the following address: <http://www.fsa.gov.uk/register/exchanges.do>

1A.2 Modifying rules and consulting the FSA

Modifying or dispensing with rules

- 1A.2.1 R (1) The *FSA* may dispense with, or modify, the *transparency rules* in such cases and by reference to such circumstances as it considers appropriate (subject to the terms of directives and the *Act*).
- (2) A dispensation or modification may be either unconditional or subject to specified conditions.
- (3) If an *issuer*, or other *person* has applied for, or been granted, a dispensation or modification, it must notify the *FSA* immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.
- (4) The *FSA* may revoke or modify a dispensation or modification.
- 1A.2.2 R (1) An application to the *FSA* to dispense with or modify, a *transparency rule* must be in writing.
- (2) The application must:
- (a) contain a clear explanation of why the dispensation or modification is requested;
 - (b) include details of any special requirements, for example, the date by which the dispensation or modification is required;
 - (c) contain all relevant information that should reasonably be brought to the *FSA*'s attention;
 - (d) contain any statement or information that is required by the *disclosure rules* to be included for a specific type of dispensation or modification; and
 - (e) include copies of all documents relevant to the application.
- 1A.2.3 G An application to dispense with or modify a *transparency rule* should ordinarily be made at least five *business days* before the proposed dispensation or modification is to take effect.

Early consultation with FSA

- 1A.2.4 G An *issuer* or other *person* should consult with the *FSA* at the earliest possible stage if they:
- (1) are in doubt about how the *transparency rules* apply in a particular situation; or
 - (2) consider that it may be necessary for the *FSA* to dispense with or modify a *transparency rule*.

Address for correspondence

Note: The *FSA's* address for correspondence in relation to the *disclosure rules* is:

Company Monitoring Team
Markets Division
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Fax: 020 7066 8368

1A.3 FSA may require the publication of information

- 1A.3.1 R (1) The *FSA* may, at any time, require an *issuer* to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market.
- (2) If an *issuer* fails to comply with a requirement under paragraph (1) the *FSA* may itself publish the information (after giving the *issuer* an opportunity to make representations as to why it should not be published).

Misleading information not to be published

- 1A.3.2 R An *issuer* must take all reasonable care to ensure that any information it notifies to a *RIS* is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.

Notification when a *RIS* is not open for business

- 1A.3.3 R If an *issuer* is required to notify information to a *RIS* at a time when a *RIS* is not open for business, it must distribute the information as soon as possible to:
- (1) not less than two national newspapers in the *United Kingdom*;

- (2) two newswire services operating in the *United Kingdom*; and
- (3) a *RIS* for release as soon as it opens.

1A.4 Fees

- 1A.4.1 R An *issuer* must pay the fees set out in *DTR* App 2R to the *FSA* when they are due.

Insert new Chapter 4 as follows:

DTR 4: PERIODIC FINANCIAL REPORTING

4.1 Annual financial report

Application

- 4.1.1 R This section applies to an *issuer*:
- (1) whose *transferable securities* are *admitted to trading*; and
 - (2) whose *Home State*, in accordance with article 2.1(i) of the *TD*, is the *United Kingdom*.

Compliance with the Listing Rules

- 4.1.2 G An *issuer* that is also admitted to the *official list* should consider its obligations under the *Listing Rules* in addition to the requirements in these *rules*.

Responsibility for information

- 4.1.3 R Responsibility for all information drawn up and made public in accordance with *DTR 4* lies with the *issuer*. [**Note: article 7 TD**]

Publication of annual financial reports

- 4.1.4 R An *issuer* must make public its annual financial report at the latest four months after the end of each financial year. [**Note: article 4.1 TD**]

- 4.1.5 R An *issuer* must ensure that its annual financial report remains publicly available for at least five years. [**Note: article 4.1 TD**]

Content of annual financial reports

- 4.1.6 R The annual financial report must include:
- (1) the audited financial statements; [**Note: article 4.2 TD**]
 - (2) a management report; and [**Note: article 4.2 TD**]
 - (3) responsibility statements. [**Note: article 4.2 TD**]

Audited financial statements

- 4.1.7 R (1) If an *issuer* is required to prepare consolidated accounts according to the Seventh Council Directive 83/349/EEC, the audited financial statements must comprise:
- (a) consolidated accounts prepared in accordance with *IFRS*, and

- (b) accounts of the parent *company* prepared in accordance with the national law of the *EEA State* in which the parent *company* is incorporated.

[Note: article 4.3 TD]

- (2) If an *issuer* is not required to prepare consolidated accounts, the audited financial statements must comprise accounts prepared in accordance with the national law of the *EEA State* in which the *issuer* is incorporated. **[Note: article 4.3 TD]**

[Note: clause 372 of the Company Law Reform Bill sets out the obligation to prepare group accounts.]

Auditing of financial statements

- 4.1.8 R (1) If an *issuer* is required to prepare consolidated accounts, the financial statements must be audited in accordance with Article 37 of the Seventh Council Directive 83/349/EEC.
- (2) If an *issuer* is not required to prepare consolidated accounts the financial statements must be audited in accordance with Articles 51 and 51a of the Fourth Council Directive 78/660/EEC.
- (3) The audit report, signed by all the persons responsible for auditing the financial statements must be disclosed in full to the public together with the annual financial report.

[Note: article 4.4 TD]

[Note: article 37 of the Seventh Council Directive 83/349/EEC and articles 51 and 51a of the Fourth Council Directive 78/660/EEC are implemented in the *United Kingdom* by section 235 of the Companies Act 1985.]

Content of management report

- 4.1.9 R The management report must contain:
 - (1) a fair review of the business of the *issuer*; and
 - (2) a description of the principal risks and uncertainties facing the *issuer*.
- 4.1.10 R The review required by *DTR* 4.1.9R must:
 - (1) be a balanced and comprehensive analysis of:
 - (a) the development and performance of the business of the *issuer* during the financial year; and

- (b) the position of the *issuer* at the end of that year, consistent with the size and complexity of the business;
- (2) include, to the extent necessary for an understanding of the development, performance or position of the business of the *issuer*:
 - (a) analysis using financial key performance indicators; and
 - (b) where appropriate, analysis using other key performance indicators including information relating to environmental matters and employee matters; and
- (3) include references to, and additional explanations of, amounts included in the *issuer's* annual financial statements, where appropriate.

[Note: clause 390 Company Law Reform Bill]

- 4.1.11 G In *DTR* 4.1.10R(2), key performance indicators are factors by reference to which the development, performance or position of the business of the *issuer* can be measured effectively.
- 4.1.12 R The management report required by *DTR* 4.1.9R must also give an indication of:
 - (1) any important events that have occurred since the end of the financial year;
 - (2) the *issuer's* likely future development;
 - (3) activities in the field of research and development;
 - (4) the information concerning acquisitions of own shares prescribed by Article 22 (2) of Directive 77/91/EEC;
 - (5) the existence of branches of the *issuer*; and
 - (6) in relation to the *issuer's* use of *financial instruments* and where material for the assessment of its assets, liabilities, financial position and profit or loss:
 - (a) the *issuer's* financial risk management objectives and policies, including its policy for hedging each major type of forecasted transaction for which hedge accounting is used, and
 - (b) the *issuer's* exposure to price risk, credit risk, liquidity risk and cash flow risk.

[Note: article 46 of the Fourth Council Directive 78/660/EEC and article

36 of the Seventh Council Directive 83/349/EEC]

Responsibility statements

- 4.1.13 R (1) Responsibility statements must be made by the *persons* responsible within the *issuer*.
- (2) The name and function of any *person* who makes a responsibility statement must be clearly indicated in the responsibility statement.
- (3) For each *person* making a responsibility statement, the statement must set out that to the best of his or her knowledge:
- (a) the financial statements, prepared in accordance with the applicable set of accounting standards, give a true and fair view of the assets, liabilities, financial position and profit or loss of the *issuer* and the undertakings included in the consolidation taken as a whole; and
 - (b) the management report includes a fair review of the development and performance of the business and the position of the *issuer* and the undertakings included in the consolidation taken as a whole, together with a description of the principal risks and uncertainties that they face.

[Note: article 4.2(c) TD]

4.2 Half-yearly financial reports

Application

- 4.2.1 R This section applies to an *issuer*:
- (1) whose shares or *debt securities* are *admitted to trading*; and
 - (2) whose *Home State*, in accordance with article 2.1(i) of the *TD*, is the *United Kingdom*.

Publication of half-yearly financial reports

- 4.2.2 R (1) An *issuer* must make public a half-yearly financial report covering the first six months of the financial year.
- (2) The half-yearly financial report must be made public as soon as possible, but no later than two months, after the end of the period to which the report relates.
- (3) An *issuer* must ensure that the half-yearly financial report remains available to the public for at least five years.

[Note: article 5.1 TD]

Content of half-yearly financial reports

4.2.3 R The half-yearly financial report must include:

- (1) a condensed set of financial statements;
- (2) an interim management report; and
- (3) responsibility statements.

Preparation and content of condensed set of financial statements

4.2.4 R (1) If an *issuer* is required to prepare consolidated accounts, the condensed set of financial statements must be prepared in accordance with the international accounting standard applicable to the interim financial reporting. **[Note: article 5.3 TD]**

- (2) If an *issuer* is not required to prepare consolidated accounts, the condensed set of financial statements must contain, as a minimum the following, as defined by reference to the principles of IAS 34:
 - (a) a condensed balance sheet;
 - (b) a condensed profit and loss account; and
 - (c) explanatory notes on these accounts.

[Note article 5.3 TD]

4.2.5 R (1) In preparing the condensed balance sheet and the condensed profit and loss account as required by *DTR* 4.2.4R(2), an *issuer* must follow the same principles for recognising and measuring as when preparing annual financial reports. **[Note article 5.3 TD]**

(2) The balance sheet and the profit and loss account must show, as a minimum, each of the headings and subtotals included in the most recent annual financial statements of the *issuer*. Additional line items must be included if their omission would make the half-yearly report misleading. **[Note: article 4.1(a) TD level 2]**

(3) The half-yearly financial information must include comparative information presented as follows:

- (a) balance sheet as at the end of the first six months of the current financial year and comparative balance sheet as at the end of the immediate preceding financial year; and
- (b) profit and loss account cumulatively for the first six months of the current financial year with comparative information for the comparable period for the preceding financial year. **[Note: article 4.1(b) TD level 2]**

- (4) The notes of the half-yearly financial statements must include, as a minimum, the following information, if material and not disclosed elsewhere in the half-yearly report:
- (a) a statement that the same accounting policies and methods of computation are followed in the half-yearly financial statement as compared with the most recent annual financial statements or, if those policies or methods have been changed, a description of the nature and effect of the change;
 - (b) explanatory comments about the seasonal or cyclical nature of interim operations;
 - (c) the nature and amount of items affecting assets, liabilities, equity, net income, or cash flows that are unusual because of their nature, size, or incidence (disclosure of cash flow information is required in the half-yearly report only if the *issuer* has disclosed this type of information in its annual financial statements);
 - (d) the nature and amount of changes in estimates of amounts reported in prior financial years, if those changes have a material effect in the current interim period;
 - (e) issuances, repurchases, and repayments of debt and equity securities;
 - (f) dividends paid (aggregate or per share) separately for ordinary shares and other shares;
 - (g) segment revenue and segment result for business segments or geographical segments, whichever is the entity's primary basis of segment reporting (disclosure of segment data is required in the half-yearly report only if the *issuer* has disclosed segment data in its annual financial statements);
 - (h) material events subsequent to the end of the first six months that have not been reflected in the financial statements for the interim period;
 - (i) the effect of changes in the composition of the entity during the interim period, including business combinations, acquisition or disposal of subsidiaries and long term investments, restructurings, and discontinued operations;
 - (j) changes in contingent liabilities or contingent assets since the last annual balance sheet date if the *issuer* has recognised or disclosed contingent liabilities or contingent assets in its annual financial statements; and
 - (k) any events or transactions that are material to an

understanding of the first six months of the financial year.

[Note: article 4.1(c) TD level 2]

- (5) In order to ensure comparability with the annual financial statement, the half-yearly financial statement referred to in paragraph 3 must also include information required by IAS 34 which the *issuer* has decided to voluntarily disclose in the annual report although not required by the obligations in the accounting rules that the *issuer* has to apply. **[Note: article 4.2 TD level 2]**

Content of interim management report

4.2.6 R The interim management report must include at least:

- (1) an indication of important events that have occurred during the first six months of the financial year, and their impact on the condensed set of financial statements, and
- (2) a description of the principal risks and uncertainties for the remaining six months of the financial year.

[Note: article 5.4 TD]

4.2.7 R In addition to the requirement set out in *DTR* 4.2.6R, an *issuer* of shares must disclose in the interim management report the following information, as a minimum:

- (1) related parties' transactions that have taken place in the first six months of the financial year and that have materially affected the financial position or the performance of the enterprise in this period; and
- (2) any changes in the related parties transactions described in the last annual report that could have a material effect on the financial position or performance of the enterprise in the first six months of the financial year.

[Note: article 5 TD level 2]

Auditing of the condensed set of financial statements

- 4.2.8 R (1) If the half-yearly financial report has been audited or reviewed by auditors, the audit report or review must be reproduced in full.
- (2) If the half-yearly financial report has not been audited or reviewed by auditors, an *issuer* must make a statement to this effect in its report.

[Note: article 5.5 TD]

Responsibility statements

- 4.2.9 R (1) Responsibility statements must be made by the *persons* responsible within the *issuer*.
- (2) The name and function of any *person* who makes a responsibility statement must be clearly indicated in the responsibility statement.
- (3) For each *person* making a responsibility statement, the statement must set out that to the best of his or her knowledge:
- (a) the condensed set of financial statements, which has been prepared in accordance with the applicable set of accounting standards, gives a true and fair view of the assets, liabilities, financial position and profit or loss of the *issuer*, or the undertakings included in the consolidation as a whole as required by *DTR 4.2.4R*;
 - (b) the interim management report includes a fair review of the information required by *DTR 4.2.6R*; and
 - (c) the interim management report includes a fair review of the information required by *DTR 4.2.7R*, in the case of an *issuer* of shares.

[Note: article 5.2(c) TD]

4.3 Interim management statements

Application

- 4.3.1 R This section applies to an *issuer*:
- (1) whose shares are *admitted to trading*; and
 - (2) whose *Home State*, in accordance with article 2.1(i) of the *TD*, is the *United Kingdom*.

Publication of interim management statements

- 4.3.2 R An *issuer*, other than an *issuer* described in *DTR 4.3.6R*, must make public a statement by its management during the first six-month period of the financial year and another statement by its management during the second six month period of the financial year. **[Note: article 6.1 TD]**
- 4.3.3 R The statement required by *DTR 4.3.2R* must be made in a period between ten weeks after the beginning, and six weeks before, the end of the relevant six-month period. **[Note: article 6.1 TD]**

Content of interim management statements

4.3.4 R The interim management statement must contain information that covers the period between the beginning of the relevant six-month period and the date of publication of the statement. **[Note: article 6.1 TD]**

4.3.5 R The interim management statement must provide:

- (1) an explanation of material events and transactions that have taken place during the relevant period and their impact on the financial position of the *issuer* and its controlled undertakings, and
- (2) a general description of the financial position and performance of the *issuer* and its controlled undertakings during the relevant period.

[Note: article 6.1 TD]

4.3.6 R An *issuer* which publishes quarterly financial reports:

- (1) in accordance with national legislation; or
- (2) in accordance with the rules of the *regulated market*,

is not required to make public statements as required by *DTR 4.3.2R*. **[Note: article 6.2 TD]**

4.4 Exemptions

4.4.1 R *DTR 4.1* to *DTR 4.3* do not apply to:

- (1) a State, a regional or local authority of a State, a public international body of which are least one *EEA State* is a member, the ECB and *EEA States'* national central banks; or **[Note: article 8.1(a) TD]**
- (2) an *issuer* that issues exclusively *debt securities admitted to trading* the denomination per unit of which is at least 50,000 Euros (or an equivalent amount); or **[Note: article 8.1(b) TD]**
- (3) an *issuer* whose registered office is in a *non-EEA State* that:
 - (a) complies with either:
 - (i) the law of that *non-EEA State* which lays down equivalent requirements; or
 - (ii) the law of a *non-EEA State* that the *FSA* considers as equivalent; **[Note: article 23.1 TD]**
 - (b) files the information covered by the requirements laid down in the *non-EEA State* in accordance with *DTR 6.2.2R*; and
 - (c) discloses the information covered by the requirements laid down in the *non-EEA State* in accordance with *DTR 6.2.4R* to *DTR 6.2.9G* and *DTR 6.3*.

4.4.2 R *DTR 4.2* does not apply to a *credit institution* whose shares are not *admitted to trading* and which has, in a continuous or repeated manner, only issued *debt securities* provided that:

- (1) the total nominal amount of all such *debt securities* remains below 100,000,000 Euros; and
- (2) the *credit institution* has not published a prospectus in accordance with the *prospectus directive*.

[Note: article 8.2 TD]

Equivalence – annual management report

4.4.3 R For the purposes of *DTR 4.4.1R(3)* an *issuer* will be treated as meeting equivalent requirements to those set out in *DTR 4.1.6R(2)* provided that its annual management report includes at least the following information:

- (1) a fair review of the development and performance of the *issuer's* business and of its position, together with a description of the principal risks and uncertainties that it faces;
- (2) an indication of any important events that have occurred since the end of the financial year; and
- (3) indications of the *issuer's* likely future development.

[Note: article 14.1 TD level 2]

4.4.4 R (1) The fair review described in *DTR 4.4.3R(1)* must be a balanced and comprehensive analysis of the development and performance of the *issuer's* business and of its position, consistent with the size and complexity of the business.

- (2) To the extent necessary for an understanding of the *issuer's* development, performance or position, the analysis described in paragraph (1) must include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business.

[Note: article 14.1 TD level 2]

Equivalence – interim management report

4.4.5 R For the purposes of *DTR 4.4.1R(3)* an *issuer* will be treated as meeting equivalent requirements to those set out in *DTR 4.2.6R* provided that:

- (1) the *issuer's* interim management report includes at least the following information:
 - (a) a review of the period covered; and

- (b) indications of the *issuer's* likely future development for the remaining six months of the financial year; and
- (2) the *issuer* is required by the law of the *non-EEA State* to produce both a condensed set of financial statements and an interim management report.

[Note: article 14.2 TD level 2]

- 4.4.6 R In addition to the requirements set out in *DTR 4.4.5R*, an *issuer* of shares must include in its interim management report information about major related parties transactions. **[Note: article 14.2 TD level 2]**

Equivalence – responsibility statements

- 4.4.7 R For the purposes of *DTR 4.4.1R(3)* an *issuer* will be treated as meeting equivalent requirements to those set out in *DTR 4.1.13R* and *DTR 4.2.9R* provided that the law of the *non-EEA State* makes a *person* within the *issuer* responsible for the annual and half-yearly financial information, and in particular for:
- (1) the compliance of the financial statements with the applicable reporting framework or set of accounting standards, and
 - (2) the fairness of the management review included in the management report.

[Note: article 14.3 TD level 2]

Equivalence – interim management statements

- 4.4.8 R (1) For the purposes of *DTR 4.4.1R(3)* an *issuer* will be treated as meeting equivalent requirements to those set out in *DTR 4.3* provided that it publishes quarterly financial reports, whether as a result of the requirements of the law of the *non-EEA State* or on its own initiative.
- (2) If an *issuer* does not publish quarterly financial reports, it must comply with *DTR 4.3*.

[Note: article 14.4 TD level 2]

Equivalence – consolidated accounts

- 4.4.9 R (1) This *rule* applies to an *issuer* which prepares consolidated accounts and whose parent *company* is not required by the law of the *non-EEA State* to provide individual accounts.
- (2) For the purposes of *DTR 4.4.1R(3)* an *issuer* will be treated as meeting equivalent requirements to those set out in *DTR 4.1.7R(1)* provided that the information contained in the consolidated accounts

includes:

- (a) for *issuers* of shares, dividends computation and ability to pay dividends;
- (b) for all *issuers*, minimum capital and equity requirements and liquidity issues.

[Note: article 14.5 TD level 2]

- 4.4.10 G The *FSA* may require additional audited disclosures giving information on the individual accounts of the *issuer* as a standalone, relevant to the information referred to in *DTR* 4.4.9R(2). Those disclosures may be prepared under local accounting principles. **[Note: article 14.5 TD level 2]**
- 4.4.11 R (1) For the purposes of *DTR* 4.4.1R(3) an *issuer* which is not required by the law of a *non-EEA State* to prepare consolidated accounts will be treated as meeting equivalent requirements to those set out *DTR* 4.1.7R(2) in relation to individual accounts provided that the *issuer* prepares its individual accounts according to:
 - (a) *IFRS*; or
 - (b) the national accounting standard of a *non-EEA State* that is equivalent to *IFRS*.
- (2) If the individual accounts are not prepared according to the one of the standards referred to in paragraphs (1)(a) or (1)(b) they must be presented in the form of restated financial statements.
- (3) The individual accounts must be audited independently.

[Note: article 14.6 TD level 2]

Insert new Chapter 5 as follows:

[In this Chapter text with a shaded background indicates how alternative policy proposals would be given effect]

DTR 5: VOTE HOLDER AND ISSUER NOTIFICATION RULES

5.1 Notification of the acquisition or disposal of major shareholdings

5.1.1 R In this chapter references to "*issuer*" are to:

- (1) an *issuer* for whom the *United Kingdom* is the *Home State*; and to
- (2) an *issuer* which is a public company within the meaning of section 1(3) of the Companies Act 1985 and whose *shares* are admitted to trading on a market which (not being a *regulated market*) is a *prescribed market* (a "*UK prescribed market issuer*").

5.1.2 R A *shareholder* must notify the *issuer* of the proportion of voting rights which he holds if:

- (1) he acquires or disposes of *shares* in the *issuer* to which voting rights are attached and if as a result of that acquisition or disposal the proportion of voting rights which he holds reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75%, or if
- (2) the proportion of voting rights which he holds reaches, exceeds or falls below the thresholds in (1) as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the issuer in accordance with *DTR 5.6.1R*;

and in the case of an *issuer* which is not incorporated in an *EEA state* such notification must be made on the basis of equivalent events and disclosed information. **[Note: articles 9.1 and 9.2 of *TD*]**

5.1.2 R A *shareholder* must, subject to (2), notify the *issuer* (unless it is a non-UK regulated market issuer) of the proportion of voting rights he holds if:

- (1) he acquires or disposes of *shares* to which voting rights are attached and if, as a result of that acquisition or disposal, the proportion of voting rights which he holds:
 - (a) reaches, exceeds or falls below 3%, 4%, 5%, 6%, 7%, 8%, 9%, 10% and each 1% threshold thereafter up to 100%; or if
 - (b) the proportion of voting rights which he holds reaches, exceeds or falls below any of the thresholds in (a) as a result of events changing the breakdown of voting rights and on the basis of information disclosed by the *issuer* in accordance with [*DTR 5.6.1R*];

and in the case of an *issuer* which is not incorporated in an *EEA state* such notification must be made on the basis of equivalent events and disclosed information. [Note: articles 9.1 and 9.2 of TD]

- (2) For the purpose of determining whether the notification requirement in (1) applies a *shareholder* shall (except for the thresholds at 5%, 10% and above) disregard the following:
- (a) *shares* which a *person* has who may lawfully manage investments belonging to another under an agreement in or evidenced in writing;
 - (b) *shares* held by a *person* in his capacity as an operator of:
 - (i) an *AUT*;
 - (ii) a *recognised scheme*; or
 - (iii) a *UCITS firm*;
 - (c) *shares* belonging to an *open-ended investment company*.

- (3) For the purposes of subsection (2)(a), a *person* ("A") may lawfully manage *investments* belonging to another if:
- (a) A can manage those *investments* in accordance with a *Part IV permission*;
 - (b) A is an *EEA* firm other than one mentioned in sub-paragraphs (c), (d) or (e) of paragraph 5 of Schedule 3 to the *Act* and can manage those *investments* in accordance with its *EEA* authorisation;
 - (c) A can, in accordance with section 327 of the *Act*, manage those *investments* without contravening the prohibition contained in section 19 of the *Act*; or
 - (d) A can lawfully manage those *investments* in another *EEA State* and would, if he were to manage those *investments* in the *UK*, require a *Part IV permission*.

And in the case of a non-*UK regulated market issuer*, this rule shall have effect as if the thresholds in (1)(a) were 5%, 10%, 15%, 20%, 30%, 50% and 75%.

5.1.3 G DTR 5.7 below determines the manner in which voting rights are calculated and notified.

5.1.4 R The requirements in DTR 5.1.2 R above do not apply:

- (1) in respect of *shares* acquired for the sole purpose of clearing and settlement within a settlement cycle not exceeding the period

beginning with the transaction and ending at the close of the third *trading day* following the day of the transaction (irrespective of whether the transaction is conducted on-exchange);

- (2) to custodians holding *shares* in their custodian capacity provided such custodians can only exercise the voting rights attached to such *shares* under instructions given to them in writing or by *electronic means*;
- (3) to the acquisition or disposal of a major holding reaching or crossing the 5% threshold by a *market maker* acting in that capacity subject to any such *market maker* satisfying the criteria and complying with the conditions and operating requirements set out in *DTR 5.1.5R* below;
- (4) in respect of voting rights attached to *shares* which are held by a *credit institution* or *investment firm* provided that:
 - (a) the *shares* are held within the *trading book* of the *credit institution* or *investment firm*;
 - (b) the voting rights attached to such *shares* do not, when calculated in accordance with *DTR 5.4*, exceed 5%; and
 - (c) the *credit institution*, or as the case may be *investment firm*, ensures that the voting rights attached to *shares* in the *trading book* are not exercised or otherwise used to intervene in the management of the *issuer*.

[Note: articles 9.4, 9.5 and 9.6 TD]

- 5.1.5 R (1) In *DTR 5.1.4R(3)* references to a *market maker* are to a *market maker* which:
- (a) is authorised by its *Home State* [under *MiFID*]; and which
 - (b) does not intervene in the management of the *issuers* concerned, and does not exert any influence on the issuer to buy such *shares* or back the *share* price. **[Note: articles 9.5 and 9.6 TD]**
- (2) A *market maker* shall notify to the *competent authority* of the *Home State* of the *issuer* that it conducts or intends to conduct market making activities:
- (a) immediately following 20 January 2007 for those *issuers* for which it is acting as *market maker*;
 - (b) whenever the *market maker* enters into a new contract whereby it will be performing market making activities; or
 - (c) at the latest within the time limit provided for in *DTR 5.7.3R*

after the threshold was crossed or reached.

This notification shall be made for each *share* for which market making activities are conducted.

- (3) A *market maker* benefiting from the exemption provided for in *DTR 5.1.4R(3)* shall equally notify to the *competent authority* of the *Home State* of the *issuer* that:
- (a) it ceases to conduct market making activities;
 - (b) it intends to undertake any of the activities mentioned in subparagraph (b) of *DTR 5.1.5R(1)*.

This notification must make clear that the exemption provided for in *DTR 5.1.5R* no longer applies. **[Note: article 7 TD level 2]**

5.2 Acquisition or disposal of major proportions of voting rights

- 5.2.1 R A *person* (whether a *shareholder* of the *issuer* or not) identified in the second column of the following table, must comply with the notification requirements in *DTR 5.1.2R* to the extent that he is entitled to acquire, to dispose of, or to exercise voting rights in any of the cases identified in the first column or a combination of them. **[Note: article 10 TD]**

Case	Persons who must notify
(a) voting rights held by a third party with whom a <i>person</i> has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the <i>issuer</i> in question;	(a) all parties to the agreement;
(b) voting rights held by a third party under an agreement concluded with a <i>person</i> providing for the temporary transfer for consideration of the voting rights in question;	(b) the <i>person</i> that acquires the voting rights and is entitled to exercise them under the agreement and the <i>person</i> who is transferring temporarily for consideration the voting rights;
(c) voting rights attaching to <i>shares</i> which are lodged as collateral with a <i>person</i> provided the <i>person</i> or entity controls the voting rights and declares its intention of exercising them;	(c) the <i>person</i> holding the collateral, provided that <i>person</i> controls the voting rights and declares his intention of exercising them, and the <i>person</i> lodging the collateral under these conditions;

(d) voting rights attaching to <i>shares</i> in which a <i>person</i> has the life interest;	(d) the <i>person</i> who has a life interest in <i>shares</i> if that <i>person</i> is entitled to exercise the voting rights attached to the <i>shares</i> and the <i>person</i> who is disposing of the voting rights when the life interest is created;
(e) voting rights which are held, or may be exercised within the meaning of points (a) to (d) by an undertaking controlled by a <i>person</i> ;	(e) the controlling <i>person</i> and, if it has a notification duty at an individual level under (a) to (d) above or <i>DTR</i> 5.1 or a combination of any of those situations, the controlled undertaking;
(f) voting rights attaching to <i>shares</i> deposited with a <i>person</i> which the <i>person</i> can exercise at its discretion in the absences of specific instructions from the <i>shareholders</i> ;	(f) the deposit taker of the <i>shares</i> , if he can exercise the voting rights attached to the <i>shares</i> deposited with him at his discretion, and the depositor of the <i>shares</i> ;
(g) voting rights held by a third party in his own name on behalf of a <i>person</i> ;	(g) the <i>person</i> that controls the voting rights;
(h) voting rights which a <i>person</i> may exercise as a proxy where the <i>person</i> can exercise the voting rights at his discretion in the absence of specific instructions from the <i>shareholders</i> ;	(h) the proxy holder, if he can exercise the voting rights at his discretion, and the <i>shareholder</i> who has given his proxy to the proxy holder;
(i) voting rights attaching to <i>shares</i> in respect of which a <i>person</i> has a right to call for delivery to himself or to his order.	(i) the <i>person</i> who is so entitled.

[Note: article 10 TD]

- 5.2.2 R (1) For each *person* identified in case (a) the notification obligation is triggered where the proportion of voting rights subject to the agreement reaches, exceeds or falls below the applicable thresholds.
- (2) For each *person* identified in cases (b) to (h) the notification obligation is triggered individually where the proportion of voting

rights held reaches, exceeds or falls below the applicable thresholds.

[Note: article 9.1 TD level 2]

- 5.2.3 R (1) Whenever changes in the circumstances described in the first column in *DTR 5.2.1 R* result in changes to the proportion of voting rights attributable to the *person* who was required to make the notification, a subsequent notification is required if the proportion of voting rights held reaches, exceeds or falls below any of the applicable thresholds.
- (2) In the circumstances in case (h), if the proxy is given in relation to one *shareholder* meeting, a single notification at the moment of giving the proxy shall be sufficient to fulfil the notification requirement provided it is clarified at the moment of the notification what the resulting situation in terms of voting rights will be when the discretion ends. **[Note: article 9.2 TD level 2]**.
- 5.2.4 G The purpose of *DTR 5.2.1R* and *DTR 5.2.3R* is to identify who is controlling the way in which voting rights are exercised and these provisions do so by identifying:
- (1) additional voting rights that *shareholders* may have;
- (2) other *persons* who may in practice be able to control the exercise of voting rights with the result that they may need to make a notification of an entitlement to voting rights.
- 5.2.5 G In order to assess whether a notification is necessary, a *shareholder* will need to aggregate with his existing rights any further voting rights identified by *DTR 5.2.1R* or *DTR 5.2.3R* and other *persons* will need to make a notification if by reason of the application of any one or more of the cases in *DTR 5.2.1R* the proportion of the voting rights which he can control reaches, exceeds or falls below the thresholds in *DTR 5.1.2R* **[Note: article 9.1 TD level 2]**.
- 5.2.6 G Further provisions relating to the aggregation of holdings required by the *parent undertaking* of a *management company* or *investment firm* are at *DTR 5.4* below.
- 5.2.7 R *DTR 5.1.2R* and case (c) of *DTR 5.2.1R* do not apply in respect of *shares* provided to or by a member of the European System of Central banks in carrying out their functions as monetary authorities, including *shares* provided to or by such members under a pledge or repurchase of similar agreement for liquidity granted for monetary policy purposes or within a payments system provided:
- (1) this shall apply only for a short period following the provision of the *shares*; and
- (2) the voting rights attached to the *shares* during this period are not exercised. **[Note: article 11 TD]**.

- 5.2.8 R (1) A *shareholder* or other *person* who is required to make a notification may, without affecting their responsibility, appoint another *person* to make the notification on his behalf.
- (2) Where two or more *persons* are required to make a notification such *persons* may, without affecting their responsibility, arrange for a single notification to be made. **[Note: articles 9.3 and 9.4 TD level 2]**.
- 5.3 Notification of voting rights arising from the holding of certain financial instruments
- 5.3.1 R A *person* who holds, directly or indirectly, qualifying *financial instruments* that result in an entitlement to acquire, on such holder's own initiative alone, under a formal agreement, *shares* to which voting rights are attached, already issued, of an *issuer* must comply with the notification requirements in *DTR 5.1.2R*. **[Note: article 13.1 TD]**.
- 5.3.2 R (1) The following types of *financial instrument* may qualify as *financial instruments* for the purposes *DTR 5.3.1R* if they contain the features described in *DTR 5.3.1R*:
- (a) *transferable securities*;
 - (b) *options, futures, swaps, forward rate agreements* and any other *derivative contracts* relating to *shares*;
- (2) The following are not qualifying instruments:
- (a) *money-market instruments*;
 - (b) *units* in *collective investment undertakings*;
 - (c) *options, futures, swaps, forward rate agreements* and any other *derivative contracts* relating to *securities* other than *shares, currencies, interest rates* or *yields*;
 - (d) *options, futures, swaps forward rate agreements* and any other *derivative contracts* relating to *commodities* that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);
 - (e) *options, futures, swaps* and any other *derivative contract* relating to *commodities* that can be physically settled provided that they are traded on a *regulated market* and/or an *MTF*;
 - (f) *options, futures, swaps forwards* and any other *derivative contracts* relating to *commodities*, that can be physically settled not otherwise mentioned in Annex C.6 of *MiFID* and not being for commercial purposes, which have the

characteristics of other *derivative financial instruments*, having regard to whether, inter alia, they are cleared and settled through *recognised clearing houses* or are subject to regular margin calls;

- (g) *derivative* instruments for the transfer of credit risk;
 - (h) financial *contracts for differences*, if these only allow for a cash settlement;
 - (i) *options, futures, swaps, forward rate agreements* and any other *derivative contracts* relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations indices and measures not otherwise mentioned in this paragraph, which have the characteristics of other *derivative financial instruments*, having regard to whether, inter alia, they are traded on a *regulated market* or an *MTF*, are cleared and settled through *recognised clearing houses* or are subject to regular margin calls.
- (3) For the purposes of *DTR 5.3.1R*, the holder of qualifying *financial instruments* is required to aggregate and, if necessary, notify all such instruments as relate to the same underlying *issuer*.
- (4) For the purposes of paragraph *DTR 5.3.1R*, a 'formal agreement' shall mean a legally binding agreement under national law.

[Note: articles 12.1, 12.2 and 12.3 TD level 2]

5.4 Aggregation of managed holdings

- 5.4.1 R (1) The *parent undertaking* of a *management company* shall not be required to aggregate its holdings identified for the purposes of *DTR 5.1.2R* or *DTR 5.2.1R* with the holdings managed by the *management company* under the conditions laid down in the *UCITS Directive*, provided such *management company* exercises its voting rights independently from the *parent undertaking*.
- (2) But the requirements for the aggregation of holdings applies if the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, has invested in holdings managed by such *management company* and the *management company* has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another *controlled undertaking* of the parent undertaking.
- [Note: articles 12.3 and 12.4 TD]**

- 5.4.2 R (1) The *parent undertaking* of an *investment firm* authorised under *MiFID* shall not be required to aggregate its holdings identified for the purposes of *DTR 5.1.2R* or *DTR 5.2.1R* with the holdings which such *investment firm* manages on a client-by-client basis within the meaning of Article 4(1) of *MiFID*, provided:
- (a) the *investment firm* is authorised to provide such portfolio management;
 - (b) it may only exercise the voting rights attached to such *shares* under instructions given in writing or by *electronic means* or it ensures that individual portfolio management services are conducted independently of any other services under conditions equivalent to those provided for under the *UCITS Directive* by putting into place appropriate mechanisms; and
 - (c) the *investment firm* exercises its voting rights independently from the *parent undertaking*.
- (2) The requirements for the aggregation of holdings apply if the *parent undertaking*, or another *controlled undertaking* of the *parent undertaking*, has invested in holdings managed by such *investment firm* and the *investment firm* has no discretion to exercise the voting rights attached to such holdings and may only exercise such voting rights under direct or indirect instructions from the parent or another *controlled undertaking* of the *parent undertaking*. **[Note: article 12.5 TD]**

- 5.4.3 R (1) A parent undertaking of a *management company* or of an *investment firm* which, in relation to any *share*, does not, in accordance with *DTR 5.4.1R* or *DTR 5.4.2 R*, aggregate holdings, must (other than in the case of *shares* issued by a *UK prescribed market issuer*) notify to the *competent authority* of the home *Member State* of the *issuer*:
- (a) that it does not interfere by giving direct or indirect instructions or in any other way in the exercise of the voting rights held by its *management company* or *investment firm*;
 - (b) that its *management company* or *investment firm* exercises the voting rights attached to the asset they manage independently from it;
 - (c) a list of the names of the *management companies* and *investment firms* of the *parent undertaking* as well as the *competent authority* that supervises them.
- (2) The *parent undertaking* shall update the information required under (1)(c) on an ongoing basis in case of any change to the list.
- (3) In case the *parent undertaking* intends to benefit from the exemptions only in relation to the financial instruments referred to in

DTR 5.3, this notification shall only include the information required under (1)(c).

- (4) The *parent undertaking* must make a notification under (3) immediately following 20 January 2007 or whenever it wishes to make use of the exemptions. This declaration may be done only once and needs not to be done on an *issuer by issuer* basis.

5.4.4 R In order to ensure compliance with the conditions of independence to benefit from the exemptions conferred by *DTR 5.4.1R* or *DTR 5.4.2R*, a *parent undertaking* of a *management company* or of an *investment firm* must (other than in the case of a *UK prescribed market issuer*) be able to demonstrate to the *competent authority* of the home Member State of the *issuer* on request that:

- (1) the organisational structures of the *parent undertaking* and the *management company* or *investment firm* are such that the voting rights are exercised independently of the parent;
- (2) the *persons* who decide how the voting rights are to be exercised are not the same for the *parent undertaking* and the *management company* or *investment firm* and act independently;
- (3) if the *parent undertaking* is a client of its *management company* or *investment firm* or has holding in the assets managed by the *management company* or *investment firm*, there is a clear written mandate for an arms-length customer relationship between the *parent undertaking* and the *management company* or *investment firm*. [**Note: article 11.2 of TD level 2**].

5.4.5 G A *parent undertaking* and the *management company* or *investment firm* may be able to demonstrate that *DTR 5.4.4R(1)* is satisfied if, as a minimum, they have implemented written policies and procedures reasonably designed to prevent the distribution of information between the *parent undertaking* and the *management company* or *investment firm* that relate to the exercise of voting rights.

5.5 Acquisition or disposal by issuer of shares

5.5.1 R An *issuer* of *shares* must, if it acquires or disposes of its own *shares*, either itself or through a *person* acting in his own name but on the *issuer's* behalf, make public the proportion of its own *shares* as soon as possible, but not later than four *trading days* following such acquisition or disposal where that proportion reaches, exceeds or falls below the thresholds of 5% or 10% of the voting rights.

5.5.2 R The proportion shall be calculated on the basis of the total number of *shares* to which voting rights are attached. [**Note: article 14 TD**].

5.6 Disclosures by issuers

- 5.6.1 R An *issuer* must, at the end of each calendar month during which an increase or decrease has occurred, disclose to the public the total number of voting rights and capital in respect of each class of *share* which it issues. **[Note: article 15 TD]**.
- 5.6.2 R An *issuer* must without delay disclose to the public any change in the rights attaching to its various classes of *shares*, including changes in the rights attaching to *derivative securities* issued by the *issuer* giving access to the *shares* of that *issuer*. **[Note: article 16.1 TD]**.
- 5.6.3 R An *issuer* of *securities* other than *shares* admitted to trading on a *regulated market* must disclose to the public without delay any changes in the rights of holders of *securities* other than *shares*, including changes in the terms and conditions of such *securities* which could indirectly affect those rights, resulting in particular from a change in loan or in interest rates. **[Note article 16.2 TD]**.
- 5.6.4 R An *issuer* of *securities* admitted to trading on a *regulated market* (other than an *issuer* which is a public international body of which at least one *EEA State* is a member) must disclose to the public without delay any new loan issues and in particular any guarantee or security in respect of such issues. **[Note: article 16.3 TD]**.
- 5.6.5 G *DTR* 6.3 contains requirements concerning how *issuers* must disclose information to the public.
- 5.6.6 R Responsibility for all information drawn up and made public in accordance with *DTR* 5.6.2R to *DTR* 5.6.4R lies with the *issuer*.
- 5.7 Procedures for the notification and disclosure of major holdings
- 5.7.1 R The notification required under *DTR* 5.1.2R and *DTR* 5.2.1R shall include the following information:
- (1) the resulting situation in terms of voting rights;
 - (2) the chain of *controlled undertakings* through which voting rights are effectively held, if applicable;
 - (3) the date on which the threshold was reached or crossed; and
 - (4) the identity of the *shareholder*, even if that *shareholder* is not entitled to exercise voting rights under the conditions laid down in *DTR* 5.2.1R and of the *person* entitled to exercise voting rights on behalf of that *shareholder*.
- 5.7.2 R (1) The notification required under *DTR* 5.3.1R (Notification of voting rights arising from the holding of certain financial instruments) must include the following information:
- (a) the resulting situation in terms of voting rights;

- (b) if applicable, the chain of *controlled undertakings* through which financial instruments are effectively held;
 - (c) the date on which the threshold was reached or crossed;
 - (d) for instruments with an exercise period, an indication of the moment where *shares* will or can be acquired, if applicable
 - (e) date of maturity or expiration of the instrument;
 - (f) identity of the holder; and
 - (g) name of the underlying *issuer*.
- (2) The notification must be made to the *issuer* of each of the underlying *shares* to which the financial instrument relates and, in the case of *shares* admitted to trading as a *regulated market*, to each *competent authority* of the Home States such *issuers*. **[Note: article 12.4 TD level 2]**
- 5.7.3 R The notification to the *issuer* shall be effected as soon as possible, but not later than four *trading days* in the case of a *non-UK regulated market issuer* and **[two trading day in all other cases]**, the first of which shall be the day after the date on which the *shareholder*, or the *person* referred to in *DTR 5.2.1R*:
- (1) learns of the acquisition or disposal or of the possibility of exercising voting rights, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition, disposal or possibility of exercising voting rights takes effect; or
 - (2) is informed about the event mentioned in *DTR 5.1.2R(2)*.
- And for the purposes of (1) above a *shareholder* or other *person* shall be deemed to have knowledge of the acquisition, disposal or possibility to exercise voting rights on the trading day after the execution of the transaction in question. **[Note: articles 12.1, 12.2 and 12.3 TD and article 10 TD level 2]**
- 5.7.4 R An undertaking need not make the notification required by *DTR 5.7.1R* if instead the notification is made by the *parent undertaking* or, where the *parent undertaking* is itself a *controlled undertaking*, by its own *parent undertaking*. **[Note: article 12.3 TD]**
- 5.7.5 R Voting rights must be calculated on the basis of all the *shares* to which voting rights are attached even if the exercise of such rights is suspended and shall be given in respect of all *shares* which are in the same class to which voting rights are attached. **[Note: article 9.1 TD]**
- 5.7.6 R The number of voting rights to be considered when calculating whether a threshold is crossed or reached is the number of voting rights in existence

according to the issuer's most recent disclosure made in accordance with *DTR 5.6.1 R*. [Note: article 9.2 TD and article 12.4 TD level 2]

- 5.7.7 G The *FSA* maintains and publishes on its website at www.fsa.gov.uk a calendar of *trading days* which applies in the *United Kingdom* for the purposes of this chapter. [Note: article 8 TD level 2]
- 5.7.8 R (1) A *shareholder* or other person making a notification under *DTR 5.1.2R* or *DTR 5.2.1R* must, in relation to *shares* admitted to trading on a *regulated market*, do so using the form [VR] available in electronic format at the *FSA*'s website at www.fsa.gov.uk.
- (2) A person making a notification under *DTR 5.3.1R* (Notification of voting rights arising from the holding of certain financial instruments) must, in relation to *shares* admitted to trading on a *regulated market*, do so using the form [F1] available in electronic format at the *FSA*'s website at www.fsa.gov.uk. [Note: Commission Draft Recommendation]
- 5.7.9 R An *issuer* must, in relation to *shares* admitted to trading on a *regulated market*, on receipt of a notification made under *DTR 5.1.2R*, *DTR 5.2.1 R* or *DTR 5.3.1 R* (Notification of voting rights arising from holding certain financial instruments) and in any event by not later than the close of the third *trading day* thereafter make public all of the information contained in the notification. [Note: article 12.6 TD]

[as soon as possible and in any event by the end of the *business day* following receipt of a notification]

- 5.8 Filing of information with competent authority
- 5.8.1 R (1) A *shareholder* or other *person* who is required to make a notification to an *issuer* under *DTR 5.1.2 R*, *DTR 5.2.1 R* or *DTR 5.3.1 R* (Notification of voting rights arising from the holding of certain financial instruments) must, in relation to *shares* admitted to trading on a *regulated market*, at the same time file a copy of such notification with the *competent authority* of the *Home State* of the *issuer*.
- (2) The information to be filed with the *competent authority* must include a contact address of the *shareholder* or other *person* making the notification (but such details must be in a separate annex and not included on the form which is sent to the *issuer*). [Note: article 19.3 TD].
- 5.9 Use of electronic means for notifications and filing
- 5.9.1 R *Shareholders* and other *persons* filing information with the *FSA* for the purposes of the chapter must do so using *electronic means*.
- 5.10 Third country issuers

5.10.1 R An *issuer* whose registered office is in a third country will be treated as meeting equivalent requirements to those set out in *DTR 5.7.9R* provided that the period of time within which the notification of the major holdings is to be effected to the *issuer* and is to be made public by the *issuer* is in total equal to or shorter than seven trading days. The time frames for the notification to the *issuer* and for the subsequent disclosure to the public by the *issuer* may be different to those set out in *DTR 5.7*. **[Note: article 14.7 TD level 2]**

5.10.2 R An *issuer* whose registered office is in a third country will be treated as meeting equivalent requirements to those set out in *DTR 5.5.1R* provided that:

- (1) when the *issuer* is only allowed to hold up a maximum of 5% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the third country whenever this the maximum threshold of 5% of the voting rights is reached or crossed;
- (2) when the *issuer* is allowed to hold up to maximum of between 5% and 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the third country whenever this maximum threshold and or the 5% threshold of the voting rights are reached or crossed;
- (3) when the *issuer* is allowed to hold more than 10% of its own *shares* to which voting rights are attached, a notification requirement is triggered under the law of the third country whenever the 5% or 10% thresholds of the voting rights are reached or crossed. Notification above the 10% threshold is not required for the purposes of this Article.

[Note: article 14.8 TD level 2]

5.10.3 R An *issuer* whose registered office is in a third country will be treated as meeting equivalent requirements to those set out in *DTR 5.6.1R* provided that the *issuer* is required under the law of the third country to disclose to the public the total number of voting rights and capital within 30 calendar days after an increase or decrease of such total number has occurred. **[Note: article 14.9 TD level 2]**

5.10.4 R An undertaking whose registered office is in a third country which would have required an authorisation in accordance with Article 5(1) of the *UCITS Directive* or, with regard portfolio management under point 4 of section A of Annex I to *MiFID* if it had its registered office or, only in the case of an *investment firm*, its head office within the Community, will be treated as complying with equivalent conditions of independence as *management companies* or *investment firms* to those set out in *DTR 5.4* provided that:

(1) the *management company* or *investment firm* is free to exercise the

voting rights attached to the assets it manages in all situations;

- (2) the *management company* or *investment firm* disregards the interest of the *parent undertaking* or any other party whenever conflicts of interest arise.

[Note: article 23.6 TD]

Insert new Chapter 6 as follows:

DTR 6: CONTINUING OBLIGATIONS AND ACCESS TO INFORMATION

6.1 Information requirements for issuers of shares and debt securities

Application

- 6.1.1 R (1) This section applies in relation to an *issuer* whose *Home State*, in accordance with article 2.1(i) of the *TD*, is the *United Kingdom*.
- (2) References to *transferable securities*, shares and *debt securities* are to such instruments as are *admitted to trading*.

Amendments to constitution

- 6.1.2 R (1) If an *issuer of transferable securities* proposes to amend its *constitution* it must communicate the draft amendment to:
- (a) the *FSA*; and
- (b) the *regulated market* on which its *securities* have been admitted to trading.
- (2) The communication referred to in paragraph (1) must be effected without delay but at the latest on the date of calling the general meeting which is to vote on, or be informed of, the amendment.

[Note: article 19.1 TD]

Equality of treatment

- 6.1.3 R (1) An *issuer* of shares must ensure equal treatment for all holders of shares who are in the same position. **[Note: article 17.1 TD]**
- (2) An *issuer of debt securities* must ensure that all holders of *debt securities* ranking *pari passu* are given equal treatment in respect of all the rights attaching to those *debt securities*. **[Note: article 18.1 TD]**

Exercise of rights by holders

- 6.1.4 R An *issuer* of shares or *debt securities* must ensure that all the facilities and information necessary to enable holders of shares or *debt securities* to exercise their rights are available in the *Home State* and that the integrity of data is preserved. **[Note: articles 17.2 and 18.2 TD]**

Exercise of rights by proxy

- 6.1.5 R (1) *Shareholders* and *debt securities* holders must not be prevented from exercising their rights by proxy, subject to the law of the country in

which the *issuer* is incorporated. **[Note: articles 17.2 and 18.2 TD]**

- (2) An *issuer* of shares or *debt securities* must make available a proxy form, on paper or, where applicable, by *electronic means* to each *person* entitled to vote at a meeting of *shareholders* or a meeting of *debt securities* holders. **[Note: articles 17.2(b) and 18.2(b) TD]**
- (3) The proxy form must be made available either:
 - (a) together with the notice concerning the meeting; or
 - (b) after the announcement of the meeting.

[Note: articles 17.2(b) and 18.2(b) TD]

Appointment of a financial agent

- 6.1.6 R An *issuer* of shares or *debt securities* must designate, as its agent, a financial institution through which *shareholders* or *debt securities* holders may exercise their financial rights. **[Note: articles 17.2(c) and 18.2(c) TD]**

Electronic Communications

- 6.1.7 G An *issuer* of shares or *debt securities* may use *electronic means* to convey information to *shareholders* or *debt securities* holders. **[Note: articles 17.3 and 18.4 TD]**
- 6.1.8 R To use *electronic means* to convey information to holders, an *issuer* must comply with the following:
- (1) a decision to use *electronic means* to convey information to *shareholders* or *debt securities* holders must be taken in a general meeting;
 - (2) the use of *electronic means* must not depend upon the location of the seat or residence of:
 - (a) the *shareholder*
 - (b) *persons* referred to in rows (a) to (h) of the table set out in *DTR 5.2.1R*;
 - (c) the *debt security* holder or;
 - (d) a proxy representing a *debt security* holder;
 - (3) identification arrangements must be put in place so that the *shareholders*, *debt security* holders or other *persons* entitled to exercise or to direct the exercise of voting rights are effectively informed;
 - (4) *shareholders*, *debt security* holders or *persons* referred to in rows (a)

to (e) of the table set out in *DTR* 5.2.1R who are entitled to acquire, dispose of or exercise voting rights must be:

- (a) contacted in writing to request their consent for the use of *electronic means* for conveying information and if they do not object within a reasonable period of time, their consent can be considered to have been given; and
 - (b) able to request at any time in the future that information be conveyed in writing; and
- (5) any apportionment of the costs entailed in the conveyance of information by *electronic means* must be determined by the *issuer* in compliance with the principle of equal treatment set out in *DTR* 6.1.3R.

[Note: articles 17.3 and 18.4 TD]

Information about meetings, issue of new shares and payment of dividends – share issuers

- 6.1.9 R An *issuer* of shares must provide information to holders on:
- (1) the place, time and agenda of meetings;
 - (2) the total number of shares and voting rights; and
 - (3) the rights of holders to participate in meetings. **[Note: article 17.2(a) TD]**
- 6.1.10 R An *issuer* of shares must publish notices or distribute circulars concerning the allocation and payment of dividends and the issue of new shares, including information on any arrangements for allotment, subscription, cancellation or conversion. **[Note: article 17.2(d) TD]**

Information about meetings, and payment of interest – debt security issuers

- 6.1.11 R An *issuer* of *debt securities* must publish notices or distribute circulars concerning:
- (1) the place, time and agenda of meetings of *debt securities* holders;
 - (2) the payment of interest;
 - (3) the exercise of any conversion, exchange, subscription or cancellation rights and repayment; and
 - (4) the rights of holders to exercise their rights in relation to paragraphs (1) – (3).

[Note: article 18.2(a) TD]

- 6.1.12 R If only holders of *debt securities* whose denomination per unit amounts to at least 50,000 Euros (or an equivalent amount) are to be invited to a meeting, the *issuer* may choose as a venue any *EEA State*, provided that all the facilities and information necessary to enable such holders to exercise their rights are made available in that *EEA State*. **[Note: article 18.3 TD]**

Non-EEA State exemption

- 6.1.13 R *DTR 6.1.3R to DTR 6.1.12R* do not apply to an *issuer* whose registered office is in a *non-EEA State* that:
- (1) complies with either:
 - (a) the law of that *non-EEA State* which lays down equivalent requirements; or
 - (b) the law of a *non-EEA State* third country that the *FSA* considers as equivalent;
 - (2) files the information covered by the requirements laid down in the *non-EEA State* in accordance with *DTR 6.2.2R*; and
 - (3) discloses the information covered by the requirements laid down in the *non-EEA State* in accordance with *DTR 6.2.4R to DTR 6.2.9G* and *DTR 6.3*.

[Note: article 23.1 TD]

- 6.1.14 R For the purposes of *DTR 6.1.13R* an *issuer* will be treated as meeting equivalent requirements to those concerning the content of the information about meetings set out in *DTR 6.1.9R* and *DTR 6.1.11R* provided that the law of the *non-EEA State* requires the *issuer* to at least provide information on the place, time and agenda of the meetings. **[Note: Article 14.10 TD level 2]**

Regional and local authority exemption

- 6.1.15 R A regional or local authority with *securities admitted to trading* is not required to comply with the following:
- (1) *DTR 6.1.4R to DTR 6.1.8R*; and
 - (2) *DTR 6.1.11R to DTR 6.1.12R*.

[Note: article 1.3 TD]

6.2 Filing information and use of language

Application

- 6.2.1 R This section applies to:

- (1) an *issuer*:
 - (a) whose *transferable securities* are *admitted to trading*; and
 - (b) whose *Home State*, in accordance with article 2.1(i) of the *TD*, is the *United Kingdom*; and
- (2) a *person* who has requested, without the *issuer's* consent, the admission of its *transferable securities* to trading on a *regulated market*.

Filing of information with FSA

- 6.2.2 R An *issuer* or *person* that discloses *regulated information* must, at the same time, file that information with the *FSA*. **[Note: article 19.1 TD]**
- 6.2.3 G An *issuer* or *person* that discloses *regulated information* may comply with *DTR 6.2.2R* by using a *RIS* to disseminate the information in accordance with *DTR 6.3*.

Language

- 6.2.4 R If *transferable securities* are *admitted to trading* only in the *United Kingdom* and the *United Kingdom* is the *Home State*, *regulated information* must be disclosed in English. **[Note: article 20.1 TD]**
- 6.2.5 R If *transferable securities* are *admitted to trading* in more than one *EEA State* including the *United Kingdom* and the *United Kingdom* is the *Home State* *regulated information* must be disclosed:
 - (1) in English; and
 - (2) either in a language accepted by the competent authorities of each *Host State* or in a language customary in the sphere of international finance, at the choice of the *issuer*.

[Note: article 20.2 TD]

- 6.2.6 R (1) If *transferable securities* are *admitted to trading* in one or more *EEA States* excluding the *United Kingdom* and the *United Kingdom* is the *Home State*, *regulated information* must be disclosed either:
 - (a) in a language accepted by the competent authorities of those *Host States*; or
 - (b) in a language customary in the sphere of international finance,
 at the choice of the *issuer*.
 - (2) Where the *United Kingdom* is the *Home State*, *regulated information* must be disclosed either in English or in another language customary

in the sphere of international finance, at the choice of the *issuer*.

[Note: article 20.3 TD]

- 6.2.7 R If *transferable securities* are admitted to trading without the *issuer's* consent:
- (1) DTR 6.2.4R to DTR 6.2.6R do not apply to the *issuer*; and
 - (2) DTR 6.2.4R to DTR 6.2.6R apply to the *person* who has requested such admission without the *issuer's* consent.

[Note: article 20.4 TD]

- 6.2.8 R If *transferable securities* whose denomination per unit amounts to at least 50,000 Euros (or an equivalent amount) are admitted to trading in the *United Kingdom* or in one or more *EEA States*, regulated information must be disclosed to the public in either a language accepted by the competent authorities of the *Home State* and *Host States* or in a language customary in the sphere of international finance, at the choice of the *issuer* or of the *person* who, without the *issuer's* consent, has requested such admission.

[Note: article 20.6 TD]

English language

- 6.2.9 G English is a language accepted by the *FSA* where the *United Kingdom* is a *Home State* or *Host State*.

6.3 Dissemination of information

Application

- 6.3.1 R This section applies to:
- (1) an *issuer*:
 - (a) whose *transferable securities* are admitted to trading; and
 - (b) whose *Home State*, in accordance with article 2.1(i) of the *TD*, is the *United Kingdom*; **[Note: article 21.1 TD]**
 - (2) a *person* who has requested, without the *issuer's* consent, the admission of its *transferable securities* to trading on a *regulated market*; and **[Note: article 21.1 TD]**
 - (3) *transferable securities* that are admitted to trading only in the *United Kingdom* which is the *Host State* and not in the *Home State*. **[Note: article 21.3 TD]**
- 6.3.2 R An *issuer* or *person* must disclose *regulated information* in the manner set out in DTR 6.3.3R to DTR 6.3.7R. **[Note: article 21.1 TD]**

- 6.3.3 R (1) When disseminating *regulated information* an *issuer* or other *person* must ensure that the minimum standards contained in *DTR 6.3.4R* to *DTR 6.3.7R* are met.
- (2) An *issuer* or *person* must entrust a *RIS* with the disclosure of *regulated information* to the public and must ensure that the *RIS* complies with the minimum standards contained in *DTR 6.3.4R* to *DTR 6.3.7R*.
- (3) The ultimate responsibility for meeting the minimum standards contained in **DTR 6.3.4R to DTR 6.3.7R** remains with the *issuer* or *person* that relies on a *RIS*.

[Note: article 13.1 TD level 2]

- 6.3.4 R *Regulated information* must be disclosed without delay, in a manner ensuring that it is capable of being disseminated to the general public, fast, and as close to simultaneously as possible in the *Home State* and in the other *EEA States*. To this end, the *regulated information* must be communicated to an appropriate number of media, including being capable of reaching the public throughout the EU. **[Note: article 13.2 TD level 2]**

- 6.3.5 R *Regulated information* must be communicated to the media in unedited full text, in a manner which ensures the security of the communication, minimises the risk of data corruption and unauthorised access, and provides certainty as to the source of the *regulated information*. Security of receipt must be ensured by remedying as soon as possible any failure or disruption in the communication of *regulated information*. An *issuer* or *person* is not responsible for systemic errors or shortcomings at the media to which the *regulated information* has been communicated. **[Note: article 13.3 TD level 2]**

- 6.3.6 R *Regulated information* must be communicated to a *RIS* in a way which:
- (1) makes clear that the information is *regulated information*;
- (2) identifies clearly:
- (a) the *issuer* concerned;
- (b) the subject matter of the *regulated information*; and
- (c) the time and date of the communication of the *regulated information* by the *issuer*.

[Note: article 13.4 TD level 2]

- 6.3.7 R Upon request, an *issuer* or other *person* must be able to communicate to the *FSA*, in relation to any disclosure of *regulated information*:
- (1) the name of the *person* who communicated the *regulated*

information to the *RIS*;

- (2) the security validation details;
- (3) the time and date on which the *regulated information* was communicated to the *RIS*;
- (4) the medium in which the *regulated information* was communicated; and
- (5) details of any embargo placed by the *issuer* on the *regulated information*, if applicable

[Note: article 13.5 TD level 2]

- 6.3.8 R An *issuer* or *person* must not charge investors any specific cost for providing *regulated information*. **[Note: article 21.1 TD]**

Disclosure of information in a non-EEA State

- 6.3.9 R (1) Information that is disclosed in a non-*EEA State* which may be of importance to the public in the *EEA* must be disclosed in accordance with the provisions set out in **DTR 6.2 and DTR 6.3**.
- (2) Paragraph (1) applies additionally to information that is not *regulated information*.

[Note: article 23.3 TD]

- 6.4 Choice of Home State and notifications by third country issuers

Application

- 6.4.1 R In respect of *transferable securities* which are admitted to *trading* on a *regulated market*, this section applies to:
- (1) an *issuer* whose *Home State* is the *United Kingdom* in accordance with article 2.1(i) of the *TD*; and
 - (2) an *issuer* who chooses the *United Kingdom* as its *Home State* in accordance with article 2.1(i)(ii) of the *TD*.

Choice of Home State

- 6.4.2 R An *issuer* that chooses the *United Kingdom* as its *Home State*, pursuant to article 2.1(i)(ii), either for the first time or as a result of changing circumstances must make a declaration to this effect to be disclosed to the public in accordance with *DTR 6.3*. **[Note: article 3 TD level 2]**

Amendments to the Glossary

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

admission to trading (in *PR* and *DTR*) admission to trading on a regulated market.
(Glossary)

controlled undertaking means any undertaking:

- (a) in which a natural person or legal entity has a majority of the voting rights; or
- (b) of which a natural person or legal entity has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question (and for this purpose the holder's rights in relation to voting, appointment and removal shall include the rights of any other undertaking controlled by the shareholder and those of any natural person or legal entity, albeit acting in its own name, on behalf of the shareholder or of any other undertaking controlled by the shareholder); or
- (c) of which a natural person or legal entity is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights, respectively, pursuant to an agreement entered into with other shareholders or members of the undertaking in question, or
- (d) over which a natural person or legal entity has the power to exercise, or actually exercises, dominant influence or control;

debt security (1) (in *DTR 2*, *DTR 3* and *LR*) debentures, debenture stock, loan stock, bonds, certificates of deposit or any other instrument creating or acknowledging indebtedness.

(2) (in *DTR 4*, *DTR 5* and *DTR 6*) (in accordance with article 2.1(b) of the *Transparency Directive*) bonds or other forms of transferable securitised debts, with the exception of securities which are equivalent to *shares* in companies or which, if converted or if the rights conferred by them are exercised, give rise to a right to acquire shares or securities equivalent to shares.

(23) (except in *DTR* and *LR*) any of the following:

a *debenture*;

a *government and public security* ;

a *warrant* which confers a right in respect of an *investment* in (a) or (b).

DTR

the *Disclosure Rules and Transparency Rules* sourcebook

electronic means

are means of electronic equipment for the processing (including digital compression), storage and transmission of data, employing wires, radio optical technologies, or any other electromagnetic means;

Home Member State

(in *DTR* PR and *LR*) Home State

Home State

- (1) (in relation to a *credit institution*) the *EEA State* in which the *credit institution* has been authorised in accordance with the *Banking Consolidation Directive* ...
- (8) (in *LR* and *PR*) (as defined in section 102C of the Act) in relation to an issuer of *transferable securities*, the *EEA State* which is the "home Member State" for the purposes of the *prospectus directive* (which is to be determined in accordance with Article 2.1(m) of that directive).

(9) (in *DTR*)

(i) in the case of an issuer of debt securities the denomination per unit of which is less than EUR 1 000 or an issuer of shares;

- where the issuer is incorporated in the Community, the Member State in which it has its registered office;

- where the issuer is incorporated in a third country, the Member State in which it is required to file the annual information with the competent authority in accordance with Article 10 of Directive 2003/71/EC.

The definition of 'home' Member State shall be applicable to debt securities in a currency other than Euro, provided that the value of such denomination per unit is, at the date of the issue, less than EUR 1 000, unless it is nearly equivalent to EUR 1 000;

(ii) for an issuer not covered by (i), the Member State chosen by the issuer from among the Member State in which the issuer has its registered office and those Member State which have admitted its securities to

trading on a regulated market on their territory. The issuer may choose only one Member State as its home Member State. Its choice shall remain valid for at least three years unless its securities are no longer admitted to trading on any regulated market in the Community;

<i>IFRS</i>	<i>International Financial Reporting Standards</i>
<i>International Financial Reporting Standards</i>	international financial accounting standards within the meaning of EC Regulation No 1606/2002 of the European Parliament and of the Council of 19 July 2002 as adopted from time to time by the European Commission in accordance with that Regulation.
<i>issuer</i>	(1) (except in <i>CIS, LR, PR</i> and <i>DTR</i>) ... (2) (in <u>chapters 1, 2 and 3</u> of <i>DTR</i> and <i>FEES</i> in relation to <i>DTR</i>) ... (2A) (in <u>chapters 1A, 4, 5 and 6</u> of <i>DTR</i>) 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>management company</i>	<u>means a company as defined in article 1a(2) of Council Directive 85/611/EEC of 20 December 1985 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);</u>
<i>market maker</i>	<u>means a person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital at prices defined by him;</u>
<i>market operator</i>	<u>market operator a person or persons who manages and /or operates the business of a regulated market. The regulated market may be the regulated market itself;</u>
<i>regulated information</i>	<u>all information which an issuer, or any other person who has applied for the admission of financial instruments to trading on a regulated market without the issuer's consent, is required to disclose under:</u> (a) <u>the Transparency Directive;</u> (b) <u>article 6 of the Market Abuse Directive; or</u> (c) <u>LR, and DTR.</u>
<i>regulatory regulated</i>	a <u>Regulatory Regulated</u> Information Service that is approved by the

<i>information service or RIS</i>	<i>FSA</i> as meeting the Primary Information Service criteria <u>Criteria for Regulated Information Services</u> and that is on the list of Regulatory <u>Regulated Information Services</u> maintained by the <i>FSA</i>
<i>regulated market</i>	<u>(in accordance with article 4(1)(14) of <i>MiFID</i>) a multilateral system operated and/or managed by a <i>market operator</i>, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in <i>financial instruments</i> – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the <i>financial instruments</i> admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions [Title III of <i>MiFID</i>].</u>
<i>share</i>	<p>(1) (except in CIS, LR and DTR) ...</p> <p>(2) (in CIS) ...</p> <p>(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 company, and includes:</p> <p>(a) Stock (except where a distinction between shares and stock is express or implied); and</p> <p>(b) Preference shares; and</p> <p>(c) <u>in chapters 4, 5 and 6 of DTR a convertible share.</u></p>
<i>shareholder</i>	<p>(1) (in relation to an <i>ICVC</i>, and subject to CIS 11.2.2R (Special meaning of shareholder)):</p> <p>(a) (in relation to a <i>share</i> that is represented by a <i>bearer certificate</i>) the <i>person</i> who holds the certificate;</p> <p>(b) (in relation to a <i>share</i> that is not represented by a <i>bearer certificate</i>) the <i>person</i> whose name is entered on the <i>register</i> in relation to that <i>share</i>;</p> <p>(2) <u>(in relation to chapters 5 [] of DTR) any natural person or legal entity governed by private or public law, who holds directly or indirectly:</u></p> <p>(a) <u>shares of the issuer in its own name and on its own account;</u></p> <p>(b) <u>shares of the issuer in its own name, but on behalf of another natural person or legal entity;</u></p> <p>(c) <u>depository receipts, in which case the holder of the depository receipt shall be considered as the</u></p>

shareholder of the underlying shares represented by the depository receipts.

transferable securities

(as defined in section 102A of the *Act*) anything which is a transferable security for the purposes of ~~the investment services directive~~ Directive 2004/39/EEC of the European Parliament and of the Council on markets in financial instruments, other than money-market instruments for the purposes of that directive which have a maturity of less than 12 months.

Transparency Directive/TD

the European Parliament and Council Directive on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market or through a comparable mechanism for the disclosure of information under national requirements of a Member State concerning the dissemination of information (No. 2004/109/EC).

Transparency rules

(in accordance with section 73A(6) of the *Act*) rules relating to the notification and dissemination of information in respect of issuers of transferable securities and relating to major shareholdings.

Amendments to the Listing Rules

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

1.4 Miscellaneous

...

Equivalent information

1.4.4 R ~~An issuer whose securities are listed on an overseas investment exchange operating in a non-EEA state, must notify to a RIS information equivalent to that notified to the market of the non-EEA state if the information may be of importance to evaluate the securities listed by the FSA. [Note: Articles 69 and 82 CARD]~~

1.4.5 G ~~The information required under LR 1.4.4R is in addition to information that is required to be disclosed under the disclosure rules.~~

...

Electronic Communication

1.4.9 R (1) If the listing rules require an issuer to send documents to its security holders, the issuer may, in accordance with DTR 6.1.8R, use electronic means to send those documents.

G

~~If the listing rules require an issuer to send documents to its security holders in the United Kingdom, the issuer is taken to comply with the requirement for any specific holder if:~~

(1) ~~the issuer and the security holder have agreed to the use of electronic communication for sending copies of documents to the holder and:~~

(a) ~~the documents are documents to which the agreement applies; and~~

(b) ~~copies of the documents are sent using electronic communication to such address, number or other location as may for the time being be notified by the holder to the issuer~~

for that purpose; or

- (2) ~~the issuer and the security holder have agreed to the holder having access to documents on a website (instead of the documents being sent to the holder) and:~~
- (a) ~~the documents are documents to which the agreement applies; and~~
 - (b) ~~the holder is notified in a manner for the time being agreed for the purpose between the holder and the issuer, of:~~
 - (i) ~~the publication of the documents on a website;~~
 - (ii) ~~the address of that website;~~
 - (iii) ~~the place on that website where the documents may be accessed and how they may be accessed;~~
 - (iv) ~~the period of time for which the documents will be available on the website, which must be for a period of not less than 21 days from the date of notification or, if later, until the conclusion of any general meeting to which the documents relate; and~~
 - (c) ~~the documents are published on that website throughout the period referred to in paragraph (b)(iv), provided that, if the documents are published on that website for a part but not all of that period, the documents will be treated as published throughout that period if the failure to publish those documents throughout the period is wholly attributable to circumstances which it would not be reasonable to have expected the issuer to prevent or avoid.~~

1.4.10 R If an *issuer* makes use of LR 1.4.9R, it must make the documents available during normal business hours to *security* holders for a period of not less than 21 days from the date of communication or notification or, if later, until the conclusion of any general meeting to which the documents relate, in printed form and free of charge in sufficient numbers to satisfy demand from *security* holders at:

- (1) ~~the issuer's registered office in the United Kingdom (if any); and~~
- (2) ~~the offices of any paying agent of the issuer in the United Kingdom.~~

9.1 Preliminary

...

Application: Preference shares

9.1.2 R A *company* that has a *primary listing of preference shares* must comply with:

- (1) LR 9.2.1R to LR 9.2.6BR;
- (2) LR 9.2.11R to LR 9.2.12G;
- (3) LR 9.2.14R to LR 9.2.17G;
- (4) LR 9.3.1R to LR 9.3.10G;
- (5) LR 9.5.1R to LR 9.5.9R;
- (6) LR 9.6.1R to LR 9.6.4R;
- (7) LR 9.6.6R;
- (8) LR 9.6.11R;
- (9) LR 9.6.19R to LR 9.6.22G;
- (10) LR 9.7A; and
- (11) LR 9.8, but not:
 - (a) LR 9.8.4R(3);
 - (b) LR 9.8.4R(5) and (6);
 - (c) LR 9.8.4R(12) and (13);
 - (d) LR 9.8.6R(6) and (7); and

(e) ~~LR 9.8.8R; and,~~

~~(12) LR 9.9.~~

9.1.2A G For the purposes of compliance with the *transparency rules*, the *FSA* considers that a *listed company* that issues *preference shares* should comply with *DTR 4 (Periodic financial reporting)*, *DTR 5 (Vote holder and issuer notification rules)* and *DTR 6 (Access to information)* as if it were an issuer of debt securities as defined in the *transparency rules*.

Application: securities convertible into equity shares

9.1.3 R A company that has a *primary listing* of securities convertible into *equity shares* must comply with:

(1) ~~LR 9.2.1R to LR 9.2.6BR;~~

(2) ~~LR 9.2.11R;~~

(3) ~~LR 9.2.13G;~~

~~(4) LR 9.3.1R to LR 9.3.5R;~~

(5) ~~LR 9.5.11R to LR 9.5.12R;~~

(6) ~~LR 9.5.15R to LR 9.5.16R;~~

(7) ~~LR 9.6.1R;~~

(8) ~~LR 9.6.3R;~~

(9) ~~LR 9.6.4R to LR 9.6.6R;~~

(10) ~~LR 9.6.19R to LR 9.6.22G; and~~

(11) ~~LR 9.8 but not:~~

(a) ~~LR 9.8.4R(3);~~

(b) ~~LR 9.8.4R(5) and (6);~~

(c) ~~LR 9.8.4R(12) and (13);~~

(d) LR 9.8.6R(6) and (7); and

(e) LR 9.8.8R.

...

9.2 Requirements with continuing application

...

Registrar

9.2.4 R ~~A listed company must appoint a registrar in the United Kingdom unless it provides financial services and itself performs the functions of a registrar in the United Kingdom. [Note: Article 65(2) CARD]~~

Compliance with the disclosure rules and transparency rules

9.2.5 G A listed company, whose securities are admitted to trading on a regulated market in the United Kingdom, should consider its obligations under DTR 2 (Disclosure and control of inside information by issuers).

9.2.6 R A listed company that is not already required to comply with DTR 2 (Disclosure and control of inside information by issuers) must comply with DTR 2 as if it were an issuer for the purposes of the disclosure rules.

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).

9.2.6B R A listed company that is not already required to comply with the transparency rules must comply with DTR 4, DTR 5 and DTR 6 as if it were an issuer for the purposes of the transparency rules.

...

Amendments to constitution

9.2.14 R ~~A listed company must lodge two copies of any proposed amendment to its constitution with the FSA no later than when it sends the notice convening the meeting to decide on the amendment. [Note: Article 66 CARD]~~

...

9.3 Continuing obligations - holders

~~Equality of treatment~~

9.3.1 R ~~A listed company must ensure equality of treatment for all holders of listed equity securities or listed preference shares who are in the same position. [Note: Article 65(1) CARD]~~

9.3.2 G ~~LR 9.3.1R includes the obligation to post all circulars to overseas holders.~~

~~Prescribed information to holders~~

9.3.3 R ~~A listed company must ensure that at least in each EEA State in which its equity securities or preference shares are listed all the necessary facilities and information are available to enable holders to exercise their rights. In particular it must:~~

~~(1) inform holders of meetings which they are entitled to attend;~~

~~(2) enable them to exercise their vote, where applicable; and~~

~~(3) publish notices or distribute circulars giving information on:~~

~~(a) the allocation and payment of dividends and/or interest;~~

~~(b) the issue of new securities, including arrangements for the allotment, subscription, conversion or exchange of such securities; and~~

~~(c) redemption or repayment of the securities. [Note: Article 65(2) CARD]~~

~~Use of airmail and first class mail~~

9.3.4 R ~~Where available, airmail or an equivalent service that is no slower must be used when sending documents to holders of *listed equity securities* or *listed preference shares* in non-EEA States.~~

9.3.5 R ~~Where available, first class mail or an equivalent service that is no slower must be used when sending documents to holders of *listed equity securities* or *listed preference shares* in the *United Kingdom* and other EEA States.~~

...

~~Communications with holders of bearer shares~~

9.3.8 R (1) ~~A *listed company* required to communicate with holders of its *listed* bearer shares must publish an advertisement in at least one national newspaper referring to the communication and giving the address or addresses from which copies of the communication can be obtained.~~

(2) ~~A *listed company* is not required to comply with paragraph (1) if:~~

(a) ~~the *listed* bearer shares are in global form; and~~

(b) ~~the *listed company* can confirm that notices will be transmitted as soon as possible to all holders.~~

...

9.6 Notifications

~~Notifications relating to capital~~

9.6.4 R ~~A *listed company* must notify a *RIS* as soon as possible (unless otherwise indicated in this *rule*) of the following information relating to its capital:~~

(1) ~~any proposed change in its capital structure including the structure of its *listed debt securities*, save that an announcement of a new issue may be delayed while marketing or underwriting is in progress;~~

(2) ~~any change in the rights attaching to any class of its *listed shares* or to any of its *listed equity securities* which are convertible into *equity shares*;~~

- (3) any redemption of *listed shares* including details of the number of *shares* redeemed and the number of *shares* of that class outstanding following the redemption;
- (4) any extension of time granted for the currency of temporary documents of title;
- (5) ~~the effect, if any, of any issue of further *securities* on the terms of exercise of rights under options, warrants and other *securities* convertible into *equity shares*; and~~
- (6) the results of any new issue of *equity securities* or *preference shares* or of a public offering of existing *shares* or other *equity securities*.

9.6.5 R ~~A *listed company* must notify a *RIS* as soon as possible of the basis of *equity securities* offered:~~

- (1) generally to the public for cash; or
- (2) by way of an *open offer* to shareholders.

...

Notification of major interests in shares

9.6.7 R ~~A *listed company* must notify a *RIS* as soon as possible and in any event by the end of the *business day* following receipt of the information, of any information disclosed to it in accordance with sections 198 to 208 of the Companies Act 1985 (relating to the obligation to disclose certain major interests in the share capital of a company). The notification must also include the following details:~~

- (1) the date on which the information was disclosed to the *company*; and
- (2) the date on which the transaction was effected, if known.

9.6.8 R ~~A *listed company* must notify a *RIS* as soon as possible and in any event by the end of the *business day* following receipt of the information, of any information obtained by it pursuant to section 212 of the Companies Act 1985 (relating to persons interested in shares) or otherwise, where it is apparent that an interest exists or has been increased or reduced or ceased to exist and should have been disclosed under sections 198 to 208 of the Companies Act 1985 but has not previously been disclosed.~~

Note: A *listed company* may use the form entitled Notification of Major Interests in Shares to make the notifications required by *LR 9.6.7R* and *LR 9.6.8R*. The Notification of Major Interests in Shares form can be found on the UKLA section of the *FSA's* website.

9.6.9 G ~~The requirement to make a notification under *LR 9.6.7R* and *LR 9.6.8R* will be deemed to be discharged if the relevant interest has been notified to a *RIS* pursuant to the disclosure provisions of the *Takeover Code* or the *SARs*.~~

9.6.10 G ~~An *overseas company* with a *primary listing* should notify a *RIS* as soon as possible of information equivalent to that required by *LR 9.6.7R* and *LR 9.6.8R* whenever it becomes aware of such information. [**Note:** Article 68 *CARD*]~~

...

LR 9.7 is deleted in its entirety and is replaced with *LR 9.7A*

9.7A Preliminary statement of annual results, statement of dividends and half-yearly reports

Responsibility for periodic financial information

9.7A.1 R (1) This rule applies to a *company* incorporated in the *United Kingdom* whose *equity shares* are *listed*.

(2) Responsibility for all information drawn up and made public in accordance with *DTR 4*, *LR 9.7A* and *LR 9.8* lies with:

(a) the *listed company*; and

(b) the *directors* of the *listed company*.

Preliminary statement of annual results

9.7A.2 R If a *listed company* prepares a preliminary statement of annual results:

(1) the statement must be published as soon as possible after it has been approved by the board;

(2) the statement must be agreed with the *company's* auditors prior to publication;

- (3) the statement must show the figures in the form of a table, including the items required for a half-yearly report, consistent with the presentation to be adopted in the annual accounts for that financial year;
- (4) the statement must give details of the nature of any likely modification that may be contained in the auditors report required to be included with the annual financial report; and¹
- (5) the statement must include any significant additional information necessary for the purpose of assessing the results being announced.

Statement of dividends

9.7A.3 R A listed company must notify a RIS as soon as possible after the board has approved any decision to pay or make any dividend or other distribution on listed equity or to withhold any dividend or interest payment on listed securities giving details of:

- (1) the exact net amount payable per share;
- (2) the payment date;
- (3) the record date (where applicable); and
- (4) any foreign income dividend election, together with any income tax treated as paid at the lower rate and not repayable.

Omission of information

9.7A.4 G The FSA may authorise the omission of information required by LR 9.7A.2R or LR 9.7A.3R if it considers that disclosure of such information would be contrary to the public interest or seriously detrimental to the listed company, provided that such omission would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the shares.

Half-yearly reports

9.7A.5 R In addition to the requirements set out in DTR 4.2 the accounting policies and presentation applied to half-yearly figures must be consistent with those

¹ I have amended this rule slightly as the old rule didn't make complete sense – by saying “if the auditors report is likely to be modified” would indicate that the company doesn't know whether the report will be modified or not – in which case how can the company include details of the modification? Please advise.

applied in the latest published annual accounts except where:

- (1) the accounting policies and presentation are to be changed in the subsequent annual financial statements, in which case the new accounting policies and presentation should be followed, and the changes and the reasons for the changes should be disclosed in the half-yearly report; or
- (2) the FSA otherwise agrees.

[LR 9.8.7 – LR 9.8.12 have been included for ease of reference]

9.8 Annual financial report and ~~accounts~~

~~Publication of annual report and accounts~~

- 9.8.1 R (1) ~~A listed company must publish its annual report and accounts as soon as possible after they have been approved.~~
- (2) ~~A listed company must approve and publish its annual report and accounts within six months of the end of the financial period to which they relate.~~
- 9.8.2 R ~~The annual report and accounts must:~~
- (1) ~~have been prepared in accordance with the listed company's national law and, in all material respects, with national accounting standards or IAS;~~
 - (2) ~~have been independently audited and reported on, in accordance with:~~
 - (a) ~~the auditing standards applicable in an EEA State; or~~
 - (b) ~~an equivalent auditing standard;~~

- (3) ~~be in consolidated form if the *company* has *subsidiary undertakings*; and~~
- (4) ~~if they do not give a true and fair view of the state of affairs, profit or loss and cash flows of the *group*, provide more detailed and additional information. [Note: Article 67 *CARD*]~~

9.8.3 R ~~A *listed company* must publish both own accounts and consolidated accounts if the own accounts contain additional significant information. [Note: Article 67(2) *CARD*]~~

Information to be included in annual report and accounts

- 9.8.4 R In addition to the requirements set out in *DTR 4.1* the annual report and accounts a *listed company* must include in its annual financial report, where applicable, the following:
- (1) ~~a statement of the amount of interest capitalised by the *group* during the period under review with an indication of the amount and treatment of any related tax relief;~~
 - (2) any information required by *LR 9.2.18R* (Publication of unaudited financial information);
 - (3) details of any small related party transaction as required by *LR 11.1.10R(2)(c)*;
 - (4) details of any long-term incentive schemes as required by *LR 9.4.3R*;
 - (5) ~~details of any arrangements under which a *director* of the *company* has waived or agreed to waive any emoluments from the *company* or any *subsidiary undertaking*;~~
 - (6) ~~where a *director* has agreed to waive future emoluments, details of such waiver together with those relating to emoluments which were waived during the period under review;~~
 - (7) in the case of any allotment for cash of *equity securities* made during the period under review otherwise than to the holders of the *company's equity shares* in proportion to their holdings of such *equity shares* and which has not been specifically authorised by the *company's* shareholders:
 - (a) the details required by paragraph 39 of Schedule 4 to the Companies Act 1985 (Form and content of company

accounts);

- (b) the names of the allottees, if less than six in number, and in the case of six or more allottees a brief generic description of each new class of equity holder (e.g. holder of loan stock);
 - (c) the market price of the allotted *securities* on the date on which the terms of the issue were fixed; and
 - (d) the date on which the terms of the issue were fixed;
- (8) the information required by paragraph (7) must be given for any unlisted *major subsidiary undertaking* of the *company*;
- (9) ~~where a *listed company* has *listed shares* in issue and is a *subsidiary undertaking* of another *company*, details of the participation by the *parent undertaking* in any *placing* made during the period under review;~~
- (10) ~~details of any *contract of significance* subsisting during the period under review:~~
- (a) ~~to which the *listed company*, or one of its *subsidiary undertakings*, is a party and in which a *director* of the *listed company* is or was materially interested; and~~
 - (b) ~~between the *listed company*, or one of its *subsidiary undertakings*, and a controlling shareholder;~~
- (11) ~~details of any contract for the provision of services to the *listed company* or any of its *subsidiary undertakings* by a controlling shareholder, subsisting during the period under review, unless:~~
- (a) ~~it is a contract for the provision of services which it is the principal business of the shareholder to provide; and~~
 - (b) ~~it is not a *contract of significance*;~~
- (12) ~~details of any arrangement under which a shareholder has waived or agreed to waive any dividends; and~~
- (13) ~~where a shareholder has agreed to waive future dividends, details of such waiver together with those relating to dividends which are payable during the period under review.~~

- 9.8.5 G ~~A listed company need not include with the annual report and accounts details of waivers of dividends of less than 1% of the total value of any dividend provided that some payment has been made on each share of the relevant class during the relevant calendar year.~~

Additional information

- 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 and accounts:
- (1) a statement setting out all the beneficial and non-beneficial interests of each *director* of the *listed company* that have been disclosed to the *company* under the Companies Act 1985 as at the end of the period under review including:
 - (a) all changes in the beneficial and non-beneficial interests of each *director* that have occurred between the end of the period under review and one month prior to the date of the notice of the annual general meeting; or
 - (b) if there have been no changes in the period described in paragraph (a), a statement that there have been no changes in the beneficial or non-beneficial interests of each *director*;
 - (2) a statement showing, as at a date not more than one month prior to the date of the notice of the annual general meeting:
 - (a) all information disclosed to the *listed company* in accordance with sections 198 to 208 of the Companies Act 1985 (Disclosure of certain major interests in the share capital of a company); or
 - (b) that there have been no disclosures, if no disclosures have been made;
 - (3) a statement made by the *directors* that the business is a going concern, together with supporting assumptions or qualifications as necessary, that has been prepared in accordance with “Going Concern and Financial Reporting: Guidance for Directors of listed companies registered in the United Kingdom”, published in November 1994;
 - (4) a statement setting out:

- (a) ~~details of any shareholders' authority for the purchase, by the *listed company*, of its own *shares* that is still valid at the end of the period under review;~~
 - (b) ~~in the case of purchases made otherwise than through the market or by tender to all shareholders, the names of sellers of such *shares* purchased, or proposed to be purchased, by the *listed company* during the period under review;~~
 - (c) ~~in the case of any purchases made otherwise than through the market or by tender to all shareholders, or options or contracts to make such purchases, entered into since the end of the period covered by the report, information equivalent to that required under Part II of Schedule 7 to the Companies Act 1985 (Disclosure required by company acquiring its own shares, etc.); and~~
 - (d) ~~in the case of sales of *treasury shares* for cash made otherwise than through the market, or in connection with an *employees' share scheme*, or otherwise than pursuant to an opportunity which (so far as was practicable) was made available to all holders of the *listed company's securities* (or to all holders of a relevant class of its *securities*) on the same terms, particulars of the names of purchasers of such *shares* sold, or proposed to be sold, by the *company* during the period under review;~~
- (5) a statement of how the *listed company* has applied the 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;
- (6) a statement as to whether the *listed company* has:
- (a) complied throughout the accounting period with all relevant provisions set out in Section 1 of the *Combined Code*; or
 - (b) not complied throughout the accounting period with all relevant provisions set out in Section 1 of the *Combined Code* and if so, setting out:
 - (i) those provisions, if any it has not complied with;
 - (ii) in the case of provisions whose requirements are of a continuing nature, the period within which, if any, it did not comply with some or all of those provisions; and

(iii) the *company's* reasons for non-compliance; and

(7) a report to the shareholders by the Board which contains all the matters set out in LR 9.8.8R.

9.8.7 R An *overseas company* with a *primary listing* must disclose in its annual report and accounts:

- (1) whether or not it complies with the corporate governance regime of its country of incorporation;
- (2) the significant ways in which its actual corporate governance practices differ from those set out in the *Combined Code*; and
- (3) the unexpired term of the service contract of any *director* proposed for election or re-election at the forthcoming annual general meeting and, if any *director* for election or re-election does not have a service contract, a statement to that effect.

Report to shareholders

9.8.8 R The report to the shareholders by the Board required by LR 9.8.6R(7) must contain the following:

- (1) a statement of the *listed company's* policy on executive *directors'* remuneration;
- (2) information presented in tabular form, unless inappropriate, together with explanatory notes as necessary on:
 - (a) the amount of each element in the remuneration package for the period under review of each *director*, by name, including but not restricted to, basic salary and fees, the estimated money value of benefits in kind, annual bonuses, deferred bonuses, compensation for loss of office and payments for breach of contract or other termination payments;
 - (b) the total remuneration for each *director* for the period under review and for the corresponding prior period;
 - (c) any significant payments made to former *directors* during the period under review; and
 - (d) any share options, including "Save-as-you-earn" options, for each *director*, by name, in accordance with the requirements

of the Directors' Remuneration Report Regulations;

- (3) details of any *long-term incentive schemes*, other than share options as required by paragraph (2)(d), including the interests of each *director*, by name, in the *long-term incentive schemes* at the start of the period under review;
- (4) details of any entitlements or awards granted and commitments made to each *director* under any *long-term incentive schemes* during the period, showing which crystallize either in the same year or in subsequent years;
- (5) details of the monetary value and number of *shares*, cash payments or other benefits received by each *director* under any *long-term incentive schemes* during the period;
- (6) details of the interests of each *director* in the *long-term incentive schemes* at the end of the period;
- (7) an explanation and justification of any element of a *director's* remuneration, other than basic salary, which is pensionable;
- (8) details of any *directors' service contract* with a notice period in excess of one year or with provisions for pre-determined compensation on termination which exceeds one year's salary and benefits in kind, giving the reasons for such notice period;
- (9) details of the unexpired term of any *directors' service contract* of a *director* proposed for election or re-election at the forthcoming annual general meeting, and, if any *director* proposed for election or re-election does not have a *directors' service contract*, a statement to that effect;
- (10) a statement of the *listed company's* policy on the granting of options or awards under its *employees' share schemes* and other *long-term incentive schemes*, explaining and justifying any departure from that policy in the period under review and any change in the policy from the preceding year;
- (11) for money purchase schemes (as in Part I of Schedule 6 to the Companies Act 1985 (Disclosure of information: emoluments and other benefits of directors and others)) details of the contribution or allowance payable or made by the *listed company* in respect of each *director* during the period under review; and

- (12) for defined benefit schemes (as in Part I of Schedule 6 to the Companies Act 1985 (Disclosure of information: emoluments and other benefits of directors and others)):
- (a) details of the amount of the increase during the period under review (excluding inflation) and of the accumulated total amount at the end of the period in respect of the accrued benefit to which each *director* would be entitled on leaving service or is entitled having left service during the period under review;
 - (b) either:
 - (i) the transfer value (less *director's* contributions) of the relevant increase in accrued benefit (to be calculated in accordance with Actuarial Guidance Note GN11 but making no deduction for any under-funding) as at the end of the period; or
 - (ii) so much of the following information as is necessary to make a reasonable assessment of the transfer value in respect of each *director*:
 - (A) age;
 - (B) normal retirement age;
 - (C) the amount of any contributions paid or payable by the director under the terms of the scheme during the period under review;
 - (D) details of spouse's and dependants' benefits;
 - (E) early retirement rights and options;
 - (F) expectations of pension increases after retirement (whether guaranteed or discretionary); and
 - (G) discretionary benefits for which allowance is made in transfer values on leaving and any other relevant information which will significantly affect the value of the benefits; and
 - (c) no disclosure of voluntary contributions and benefits.

Information required by law

- 9.8.9 G The requirements of *LR 9.8.6R(6)* and *LR 9.8.8R* relating to corporate governance are additional to the information required by law to be included in the *listed company's* annual report and accounts.

Auditors report

- 9.8.10 R A *listed company* must ensure that the auditors review each of the following before the annual report is published:

(1) *LR 9.8.6R(3)* (statement by the directors that the business is a going concern); and

(2) the parts of the statement required by *LR 9.8.6R(6)* (corporate governance) that relate to the following provisions of the *Combined Code*:

(a) C1.1;

(b) C.2.1; and

(c) C3.1 to C3.7.

- 9.8.11 R A *listed company* must ensure that the auditors review the following disclosures:

(1) *LR 9.8.8R(2)* (amount of each element in the remuneration package & information on share options);

(2) *LR 9.8.8R(3)*, (4) and (5) (details of long term incentive schemes for directors);

(3) *LR 9.8.8R(11)* (money purchase schemes); and

(4) *LR 9.8.8R(12)* (defined benefit schemes).

- 9.8.12 R If, in the opinion of the auditors the *listed company* has not complied with any of the requirements set out in *LR 9.8.11R* the *listed company* must ensure that the auditors report includes, to the extent possible, a statement giving details of the non-compliance.

~~Summary financial statements~~

- 9.8.13 R ~~Any summary financial statement issued by a *listed company* as permitted under the Companies Act 1985, must disclose:~~
- ~~(1) earnings per share; and~~
 - ~~(2) the information required for summary financial statements set out in the Companies Act 1985.~~

LR 9.9 is deleted in its entirety.

14.3 Continuing obligations

...

~~Amendments to constitution~~

- 14.3.5 R ~~An *overseas company* must lodge two copies of any proposed amendment to its *constitution* with the *FSA* by no later than when it sends the notice convening the meeting to decide on the amendment. [Note: Article 66 *CARD*]~~

...

Equality of treatment

- 14.3.12 R ~~An *overseas company* must ensure equality of treatment for all holders of its *equity securities* who are in the same position. [Note: Article 65(1) *CARD*]~~

- 14.3.13 G ~~*LR 14.3.12R* includes the obligation to post all *circulars* to overseas holders.~~

~~Prescribed information to holders~~

- 14.3.14 R ~~An *overseas company* must ensure that at least in each *EEA state* in which its *equity securities* are listed all the necessary facilities and information are available to enable holders to exercise their rights. In particular it must:~~
- ~~(1) inform holders of meetings which they are entitled to attend;~~
 - ~~(2) enable them to exercise their vote, where applicable; and~~

- (3) ~~publish notices or distribute circulars giving information on:~~
 - (a) ~~the allocation and payment of dividends and/or interest~~
 - (b) ~~the issue of new *equity securities*, including arrangements for the allotment, subscription, conversion or exchange of such *securities*; and~~
 - (c) ~~redemption or repayment of the *equity securities*. [Note: Article 65(2) *CARD*]~~

Registrar

14.3.15 R (1) This rule applies to an overseas company for whom the United Kingdom is a host Member State for the purposes of the Transparency Directive.

(2) An overseas company must appoint a registrar in the United Kingdom if:

- (a) there are 200 or more holders resident in the United Kingdom; or
- (b) 10% or more of the *equity securities* are held by persons resident in the United Kingdom.

14.3.15 G An overseas company for whom the United Kingdom is the home Member State for the purposes of the Transparency Directive should see LR
A 14.3.22G and LR 14.3.23R.

14.3.16 G ~~An overseas company is not required to comply with LR 14.3.15R if the company provides financial services and itself performs the functions of a registrar in the United Kingdom. [Note: Article 65(2) *CARD*]~~

Notifications relating to capital

14.3.17 R An overseas company must notify a *RIS* as soon as possible (unless otherwise indicated in this *rule*) of the following information relating to its capital:

- (1) any proposed change in its capital structure including the structure of its *listed debt securities*, save that an announcement of a new issue may be delayed while marketing or underwriting is in progress;

- (2) ~~any change in the rights attaching to any class of its listed equity securities or to any of its securities which are convertible into equity shares;~~
- (3) any redemption of *listed equity securities* including details of the number of *equity securities* redeemed and the number of *equity securities* of that *class* outstanding following the redemption;
- (4) ~~the basis of equity securities offered:~~
 - (a) generally to the public for cash; or
 - (b) by way of an *open offer* to shareholders;
- (5) any extension of time granted for the currency of temporary documents of title;
- (6) ~~the effect, if any, of any issue of further securities on the terms of exercise of rights under options, warrants and other securities convertible into equity shares; and~~
- (7) the results of any new issue of *listed equity securities* or of a public offering of existing *shares* or other *equity securities*.

...

Notification of major interests in shares

- 14.3.19 R (1) ~~An overseas company that is incorporated in a non-EEA state must notify a RIS of the information set out in paragraph (2) when it becomes aware that a person or entity has acquired or disposed of a number of shares in the overseas company such that the person's or entity's holding of the voting rights of the company (determined in accordance with Article 92 CARD) reaches, exceeds or falls below 10%, 20%, one third or 50% and two thirds of the total voting rights.~~
- (2) The information to be notified to a *RIS* is:
- (a) the proportion of voting rights held; and
 - (b) ~~the date on which the company became aware of the acquisition or disposal. [Note: Article 68(3) CARD]~~

- 14.3.20 R The notification required by *LR 14.3.19R* must be made as soon as possible and in any event by 7.30 a.m. on the *business day* following the date on which the *company* becomes aware of the acquisition or disposal.
- 14.3.21 R ~~An overseas company that is incorporated in an EEA state must notify a RIS as soon as possible and in any event by 7.30 a.m. on the business day following receipt of the information of details of the interests of which the company is aware in the shares of the company as communicated to the company pursuant to the law of its country of incorporation and (if different) the requirements of the competent authority of the EEA state where the company has a listing. [Note: Article 68(3) CARD]~~

Compliance with the transparency rules

- 14.3.22 G An overseas 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).
- 14.3.23 R A listed company that is not already required to comply with the transparency rules must comply with DTR 4, DTR 5 and DTR 6 as if it were an issuer for the purposes of the transparency rules.

LR 14.4 is deleted in its entirety.

17.3 Requirements with continuing application

...

17.3.3 Equality of treatment

~~An issuer must ensure equal treatment for all holders of its listed securities of the same class in respect of all rights attaching to such securities. [Note: Article 78(1) CARD]~~

Annual accounts

- 17.3.3A R *LR 17.3.4R* to *LR 17.3.6G* apply to an issuer that is not already required to comply with *DTR 4*.

- 17.3.4 R (1) An *issuer* must publish its annual report and annual accounts as soon as possible after they have been approved. [~~Note: Article 80(1) CARD~~]
- (2) An *issuer* must approve and publish its annual report and accounts within six months of the end of the financial period to which they relate.
- 17.3.5 G (1) If an *issuer* prepares both own and consolidated annual accounts it may publish either form provided that the unpublished accounts do not contain any significant additional information. [~~Note: Article 80(2) CARD~~]
- (2) If the annual accounts do not give a true and fair view of the assets and liabilities, financial position and profits or losses of the *issuer* or *group*, additional information must be provided to the satisfaction of the FSA. [~~Note: Article 80(3) CARD~~]
- (3) An *issuer* incorporated or established in a *non-EEA State* which is not required to draw up its accounts so as to give a true and fair view but is required to draw them up to an equivalent standard, may draw up its accounts to this equivalent standard.
- 17.3.6 G An *issuer* that meets the following criteria is not required to comply with LR 17.3.4R:
- (1) ~~the issuer is an issuer of asset-backed securities and is not required to comply with any other requirement for the publications of annual report and accounts; or~~
- (2) (a) the *issuer*:
- (i) is a wholly owned subsidiary of a *listed company*;
- (ii) issues *listed securities* that are unconditionally and irrevocably guaranteed by the *issuer's listed holding company* or equivalent arrangements are in place;
- (iii) is included in the consolidated accounts of its *listed holding company*; and
- (iv) is not required to comply with any other requirement for the preparation of annual report and accounts; and
- (b) non publication of the *issuer's* accounts would not be likely to mislead the public with regard to facts and circumstances that

are essential for assessing the securities.

Paying agent

- 17.3.7 R ~~An issuer must appoint and retain a paying agent in the United Kingdom until the date on which the listed securities are finally redeemed unless the issuer:~~
- ~~(1) provides financial services; and~~
 - ~~(2) itself performs the functions of a paying agent in the United Kingdom. [Note: Article 78(2) CARD]~~

Disclosure Rules and Transparency Rules

- 17.3.8 G An issuer, whose securities are admitted to trading on a regulated market in the United Kingdom, should consider its obligations under DTR 2 (Disclosure and control of inside information by issuers).
- 17.3.9 R An issuer that is not already required to comply with DTR 2 must comply with DR 2 as if it were an issuer for the purposes of the disclosure rules.
- 17.3.9A G An issuer, 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).
- 17.3.9B R An issuer that is not already required to comply with the transparency rules must comply with DTR 4, DTR 5 and DTR 6 as if it were an issuer for the purposes of the transparency rules.

...

Amendments to constitution

- 17.3.11 R ~~An issuer must submit two copies of any proposed amendment to its constitution that affects the rights of securities holders to the FSA by no later than when it sends the notice convening the meeting to decide on the amendment. [Note: Article 79 CARD]~~

...

- 17.4 Disclosures

- 17.4.1 R ~~An issuer must notify a RIS as soon as possible of:~~
- ~~(1) any new issues and guarantee or security related to such new issues; [Note: Article 81 CARD]~~
 - ~~(2) any change of guarantor or security of its *listed securities* where this information is important for the purposes of assessing the *securities* in question;~~
 - ~~(3) any change in the rights attaching to *listed securities* (including any change in loan terms or in the rate of interest carried by the *listed securities*); [Note: Article 81 CARD]~~
 - ~~(4) when any document has been submitted to the FSA for publication through the *document viewing facility* under LR 17.3.1R, unless the full text of the document is provided to a RIS;~~
 - ~~(5) any change of paying agent in the *United Kingdom*; and~~
 - ~~(6) the publication of:~~
 - ~~(a) its annual report and accounts;~~
 - ~~(b) in the case of *debt securities* guaranteed by another *company*, the annual report and accounts of the *company* that is providing the guarantee unless that *company* is *listed* or adequate information is otherwise available; and~~
 - ~~(c) in the case of *convertible securities* which are exchangeable for *securities* of another *company*, the annual report and accounts of that other *company* unless that *company* is *listed* or adequate information is otherwise available.~~

~~Disclosure to holders: exercise of rights~~

- 17.4.2 R ~~An issuer must ensure that at least in each *EEA state* in which its *securities* are listed, all the necessary facilities and information are available to enable holders of such *securities* to exercise their rights. In particular, it must:~~
- ~~(1) inform holders of meetings which they are entitled to attend;~~
 - ~~(2) enable them to exercise their vote, where applicable; and~~
 - ~~(3) publish notices or distribute circulars giving information on:~~

- (a) ~~the payment of interest in respect of such *securities*; and~~
- (b) ~~the exercise of any conversion, exchange, subscription or renunciation rights and repayment of its *securities*. [Note: Article 78(2) *CARD*]~~

17.4.3 R ~~An *issuer* of bearer *securities* must comply with LR 17.4.2R by publishing an advertisement in at least one national newspaper in the *United Kingdom*.~~

17.4.4 G ~~An *issuer* of bearer *securities* is not required to comply with LR 17.4.3R if:~~

- (1) ~~the *securities* are in global form; and~~
- (2) ~~the *issuer* can confirm that notices will be transmitted without delay to all holders.~~

~~Communications with holders~~

17.4.5 R (1) ~~An *issuer* must notify a *RIS* of all notices to holders of its *listed securities* no later than the date the notices are sent to holders.~~

- (2) ~~An *issuer* must submit to the *FSA* draft copies of any proposed amendment to its *constitution* which would affect the rights of holders. [Note: Article 79 *CARD*]~~

~~Disclosure: convertible and guaranteed securities~~

17.4.6 R ~~Any changes to conversion rights attaching to *convertible securities* must be notified to a *RIS* as soon as possible. [Note: Article 81 *CARD*]~~

17.5 Requirements for states, regional and local authorities and public international bodies

17.5.1 R This chapter does not apply to a state, a regional or local authority and a *public international body* with *listed debt securities* except that such an *issuer* must comply with:

- (1) ~~LR 17.3.2R (Admission to trading);~~
- (2) ~~LR 17.3.3R (Equality of treatment);~~
- (3) ~~LR 17.4.1R(3) (Disclosures to be made without delay to an *RIS*); and~~

- (4) ~~LR 17.4.2R to LR 17.4.4G (Disclosure to holders—exercise of rights).~~

Compliance with transparency rules

- 17.5.2 R (1) This rule applies to a state, a regional or local authority and a public international body with listed debt securities for whom the United Kingdom is its home Member State for the purposes of the Transparency Directive.
- (2) An issuer referred to in paragraph (1) that is not already required to comply with the transparency rules must comply with:
- (a) DTR 5.6.3R (disclosure of changes in rights);
 - (b) DTR 6.1.2R (amendments to constitution);
 - (c) DTR 6.1.3R(2) (equality of treatment);
 - (d) DTR 6.2 (Filing information and use of language); and
 - (e) DTR 6.3 (Dissemination of information).

18.4 Continuing obligations

- 18.4.1 R An issuer of debt securities which the certificates represent must comply with the continuing obligations set out in LR 17.3 (Requirements with continuing application) ~~and LR 17.4 (Disclosures)~~ in addition to the requirements of this section.

...

- 18.4.3 R An *overseas company* that is the *issuer* of the *equity shares* which the certificates represent must comply with:
- (1) the requirements of this section;
 - (2) the continuing obligations set out in LR 14.3 (Continuing obligations) ~~and LR 14.4 (Continuing obligations—financial information);~~ and

- (3) DTR 2 (Disclosure and control of inside information by issuers), as if it were an issuer for the purposes of the disclosure rules.

...

Compliance with Transparency Rules

- 18.4.7 G An issuer, 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).
- 18.4.9 R An issuer that is not already required to comply with the transparency rules must comply with DTR 4, DTR 5 and DTR 6 as if it were an issuer for the purposes of the transparency rules.

19.4 Continuing obligations

...

Equality of treatment

- 19.4.4 An issuer must ensure equal treatment for all holders of listed securitised derivatives of the same series in respect of all rights attaching to such securitised derivatives.

Annual accounts

- 19.4.5 R (1) An issuer must publish its annual accounts as soon as possible after they have been approved.
- (2) An issuer must approve and publish its annual accounts within six months of the end of the financial period to which they relate.
- 19.4.6 R (1) Annual accounts must be drawn up and be independently audited.
- (2) If an issuer prepares both own and consolidated annual accounts, it may publish either form provided that the unpublished accounts do not contain any significant additional information.

...

- 19.4.8 R The *FSA* may dispense with *LR 19.4.5R* and *LR 19.4.6R* if:
- (1) the issue is *guaranteed*;
 - (2) the guarantor is a listed *company*;
 - (3) the *issuer* is included in the consolidated accounts of the guarantor;
 - (4) no other requirement for the preparation of annual reports and accounts exists; and
 - (5) non-publication of the *issuer's* accounts would not be likely to mislead the public with regard to facts and circumstances, knowledge of which is essential for the assessment of the *securitised derivatives* in question.

Paying agent

- 19.4.9 R An *issuer* must maintain a paying agent in the *United Kingdom* until the maturity date of the *securitised derivatives* unless the *issuer*:
- (1) provides financial services; and
 - (2) itself performs the function of a paying agent in the *United Kingdom*.

...

Disclosure rules and transparency rules

- 19.4.11 R An *issuer* must comply with *DTR 2.1* to *DTR 2.7* as if it were an *issuer* for the purposes of the *disclosure rules*.
- 19.4.11 G An *issuer*, 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).
- 19.4.11B R An *issuer* that is not already required to comply with the *transparency rules* must comply with *DTR 4*, *DTR 5* and *DTR 6* as if it were an *issuer* for the purposes of the *transparency rules*.
- 19.4.11C G For the purposes of compliance with the *transparency rules*, the *FSA* considers that an *issuer* of *securitised derivatives* should comply with *DTR*

4, DTR 5 and DTR 6 as if it were an issuer of debt securities as defined in the transparency rules.

19.5 Disclosures

...

~~Changes to rights~~

~~19.5.2 R Any change in the rights attaching to *listed securitised derivatives* must be notified to a *RIS* as soon as possible.~~

~~19.5.3 R An *issuer* must notify a *RIS* as soon as possible of:~~

~~(1) any new issues and guarantee or security related to such new issues;
and~~

~~(2) any change of guarantor or security for the *securitised derivatives* where this information is important for the purposes of assessing the *securities* in question.~~

~~Annual accounts~~

~~19.5.4 R Immediately following the publication of its annual accounts an *issuer* must notify a *RIS* of where *securitised derivative* holders can obtain a copy of the annual accounts free of charge.~~

~~19.5.5 R Where an *issuer* has been granted a dispensation under *LR 19.4.8R* from publishing annual accounts, it must notify a *RIS* once the accounts have been published of where *securitised derivative* holders can obtain a copy of the guarantor's accounts free of charge.~~

~~Communications with holders~~

~~19.5.6 R All notices to holders must be made either by:~~

~~(1) publishing an advertisement in at least one national newspaper circulating in the *United Kingdom*;~~

~~(2) despatch of the notice to the holders registered address; or~~

(3) ~~sending the notice electronically to the holder's e-mail address.~~

...

Paying agent

19.5.8 R ~~Any change of paying agent within the *United Kingdom* must be notified to a *RIS* as soon as possible.~~

Amendments to the Enforcement Manual

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

1.2.2A G *ENF* includes material on the investigation, disciplinary and criminal prosecution powers that are available to the *FSA* when it is performing functions as the competent authority under Part VI of the *Act* (see ENF 21). The *Act* provides a separate statutory framework within which the *FSA* must operate when it acts in that capacity. Schedule 7 to the *Act* modifies the application of the *Act* in relation to the exercise of functions as competent authority under Part VI of the *Act*. When determining whether to exercise its powers in its capacity as competent authority for ~~listing~~ Part VI of the *Act* (for example, the powers described in ENF 21), the *FSA* will have regard to the matters and objectives which are applicable to the competent authority function.

...

1.4.20 G ENF 21 (~~Official listing~~ Part VI: investigation and discipline powers) describes the *FSA's* policy on how it will use its investigation and discipline powers relating to ~~official listing~~ Part VI cases.

...

ENF 1 Annex 1, Table 2

SUBJECT	PART AND SECTION OF THE ACT	ENFORCEMENT MANUAL LOCATION
...		
<u>Disciplinary Powers in official listing Part VI cases</u>		
...		
<u>Information Gathering and Investigation Powers</u>		
...		
<u>Power to call for information</u>	<u>Part VI, s 90C</u>	<u>ENF 21.1A</u>
Power to require information	Part XI, s 165	<i>ENF 2.3.2G – ENF 2.3.7G</i>
...		
<u>Investigation Powers in official listing Part VI cases</u>	<u>Part VI, s 97</u>	<i>ENF 21</i>
...		

...

12.1.1 G ...

- (4) the *FSA* may issue a public statement under section 87M (Public censure of issuer) and section 91 of the *Act* (Penalties for breach of *Part 6 rules*) where that has been a contravention of Part VI of the *Act*, the *Part 6 rules*, or the *prospectus rules* or a provision otherwise made in accordance with the *Prospectus Directive* or a requirement imposed under such provision or the transparency rules or a provision otherwise made in accordance with the *Transparency Directive* (see ENF 21).

ENF 21 **Official Listing Part VI Cases — Investigation powers and discipline**

21.1A **The FSA's power to call for information**

21.1A.1 G Section 90C of the Act (FSA's power to call for information) relates to the FSA's power to require information and documents reasonably required in connection with the exercise by the FSA of functions in relation to the transparency rules or a provision otherwise made in accordance with the Transparency Directive.

21.1A.2 G The FSA may use its section 90C power to require information and documents from:

1. a relevant issuer;
2. a voteholder;
3. an auditor of a relevant issuer or of a voteholder;
4. a person who controls a voteholder;
5. a person controlled by a voteholder;
6. a director or other similar officer of a relevant issuer;
7. a director or other similar officer of a voteholder or, where the affairs of a voteholder are managed by its members, a member of the voteholder.

21.1A.3 G If a person fails to produce any document required, the FSA may require him to state, to the best of his knowledge, where the document is.

21.2 **The FSA's powers to appoint an investigator**

21.2.1 G ...

- (1) there may have been a contravention of a provision of Part VI of the Act or of Part 6 rules or a provision otherwise made in accordance with the Prospectus Directive or the Transparency Directive;
- (2) a person who was at the material time a person mentioned in section 91(1) or (1A) of the Act has been knowingly concerned in a contravention of a provision of Part VI of the Act or of Part 6 rules or a provision otherwise made in accordance with the Prospectus Directive or the Transparency Directive by that person; or

...

21.3 **The FSA's policy on appointing an investigator, use of investigation powers and control of investigations**

Appointment of an investigator

21.3.1 G The FSA's primary aim when appointing an investigator will be to confirm whether a provision of Part VI of the Act (sections 85 and 87G) or Part 6 rules or a provision otherwise made in accordance with the Prospectus Directive or the Transparency Directive have been complied with and, if they have not, to determine the nature and extent of any breach. The FSA will usually appoint a member of FSA staff as an investigator, as allowed by section 170(5) of the Act.

...

Action against directors, former directors and persons discharging managerial responsibilities

21.6.1 G ...

21.6.2 G The primary responsibility for ensuring compliance with Part VI of the *Act*, the *Part 6 rules*, ~~or~~ the *prospectus rules*, or a provision otherwise made in accordance with the *Prospectus Directive* or a requirement imposed under such provision, the transparency rules or a provision otherwise made in accordance with the *Transparency Directive* or a requirement imposed under such provision rests with the *persons* identified in section 91(1) ~~and~~ section 91(1A) and section 91(1B) of the *Act* respectively. Normally, therefore, any disciplinary action taken by the *FSA* for contraventions of these obligations will, in the first instance, be against those *persons*.

21.6.3 G However, in the case of a contravention by a *person* referred to in section 91(1)(a) or section 91(1)(b)(i) or section 91(1A) or section 91(1B) of the *Act* ("P"), where the *FSA* considers that another *person* who was at the material time a *director* of P was knowingly concerned in the contravention, the *FSA* may take disciplinary action that *person*. In circumstances where the *FSA* does not consider it appropriate to seek a disciplinary sanction against P (notwithstanding a breach of relevant requirements by such *person*), the *FSA* may nonetheless seek a disciplinary sanction against any other *person* who was at the material time a *director* of P and was knowingly concerned in the contravention.

21.6.4 G *Persons* discharging managerial responsibilities within an issuer and their *connected persons*, who has requested or approved the admission of a *financial instrument* to trading on a *regulated market*, and *connected persons* have their own responsibilities under the *disclosure rules*, as set out in ~~DR~~ DTR 3 for which they are primarily responsible. Accordingly, disciplinary action for a breach of the *disclosure rules* will not necessarily involve the issuer.

...

21.7 Financial penalties in Part VI cases

Powers to impose penalties

...

21.7.2A G Section 91(1B) of the *Act* enables the *FSA* to impose a penalty of such amount as it considers appropriate, if it considers that any *person* has contravened a provision of the *transparency rules*, or a provision otherwise made in accordance with the *Transparency Directive* or a requirement imposed on him under such a provision.

21.7.3 G The *Act* provides further that if in such a case the *FSA* considers that another *person*, who was at the material time a *director* of a *person* referred to in section 91(1)(a), (1)(b)(i) or (1A) or (1B) of the *Act*, was knowingly concerned in the contravention, it may impose on him a penalty of such amount as it considers appropriate (section 91(2)).

...

Part 1 – Appendix 2

Criteria for Regulated Information Services

For inclusion on the FSA Website only and not part of the Handbook

1 Application

1.1 These criteria address:

- (1) a *Regulated Information Service*;
- (2) a *person* that is applying for approval as a *Regulated Information Service*.

1.2 Where a word or phrase is in italics, its definition can be found in the *FSA Glossary*

Application for approval as a Regulated Information Service

2.1 A *person* wanting to be approved as a *Regulated Information Service* and be included on the *FSA's* list of *Regulated Information Services* must apply to the *FSA* by submitting the following to Company Monitoring Team at the *FSA's* address:

- (1) details of all the connections that it has established, or it intends to establish, with media in the *United Kingdom* and other *EEA States*;
- (2) details of the fees it proposes to charge *persons* submitting *regulated information* for dissemination;
- (3) a report by a reporting accountant qualified to act as an auditor of the matters set out in criteria 3.1 – 3.28 and 4.1 – 4.11;
- (4) all additional documents, explanations and information as required by the *FSA*.

2.2 For the purposes of these criteria "media" means a news vendor that receives, via an information feed, *regulated information* from a *Regulated Information Service* and then disseminates that information to the public fast and as close to simultaneously as possible.

2.3 When considering an application for approval as a *Regulated Information Service* the *FSA* may:

- (1) carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators;
- (2) ask the applicant or its specified representative to answer questions and explain any matter the *FSA* considers relevant to the application;
- (3) take into account any information which it considers appropriate in relation to the application; and
- (4) request that any information provided by the applicant is verified in such a manner as the *FSA* may specify.

Grant of approval

- 2.4 Approval as a *Regulated Information Service* becomes effective only when the name of the *person* who has been approved as a *Regulated Information Service* is added to the *FSA*'s list of *Regulated Information Services*.

3 Criteria for approval as a Regulated Information Service

- 3.1 The *FSA* will approve a *person* as a *Regulated Information Service* only if it is satisfied that the *person* can disclose *regulated information* in a manner ensuring fast access to such information on a non-discriminatory basis.
- 3.2 The *FSA* will be likely to consider that a *person* can disclose *regulated information* in a manner ensuring fast access on a non-discriminatory basis if the *person* meets the criteria set out in 3.3 – 3.28 and 4.1 - 4.11.

Operational hours

- 3.3 A *Regulated Information Service* must be able to:
- (1) receive *regulated information* 24 hours a day, seven days a week; and,
 - (2) disseminate *regulated information* at least between the hours of 7:00 am and 6:30 pm on any *business day*.

Dissemination of information to media

- 3.4 A *Regulated Information Service* must establish and maintain connections to

media in the *United Kingdom* and other *EEA States*.

Receiving regulated information

3.5 A *Regulated Information Service* must be capable of receiving and releasing to the media to which it is connected *regulated information* that has been submitted by:

- (1) an issuer;
- (2) an entity acting as agent for an issuer;
- (3) any regulatory body listed in criterion 3.6; and
- (4) any other entity or *person* required to submit *regulated information*.

3.6 A *Regulated Information Service* must disseminate to the media to which it is connected any *regulated information* it receives from :

- (1) the *FSA*;
- (2) the *Takeover Panel*;
- (3) the Competition Commission;
- (4) the Civil Aviation Authority;
- (5) the Department of Trade and Industry;
- (6) the Environment Agency;
- (7) the Gaming Board for Great Britain;
- (8) the Independent Television Commission;
- (9) the Office of the Gas and Electricity Markets;
- (10) the Office of the Rail Regulator;
- (11) the Office of the National Lottery;
- (12) the Office of Water Services;
- (13) the Office of Telecommunications;

- (14) the Office of Fair Trading;
- (15) the Financial Reporting Review Panel.

Validation of input

3.7 A *Regulated Information Service* must have adequate systems and controls to ensure that:

- (1) there is certainty about:
 - (a) the identity of any *person* that communicates, to the *Regulated Information Service*, *regulated information* on behalf of an issuer or organisation;
 - (b) if different from (a), the identity of the issuer or organisation on whose behalf the *regulated information* is submitted; and
 - (c) the authority of the *person* to submit the *regulated information* on behalf of the issuer or organisation;
- (2) there is no significant risk of data corruption in the input process;
- (3) there is no unauthorised access to unpublished *inside information*;
- (4) Standard Form information is validated using the templates that can be found on the UKLA section of the *FSA's* website.

Processing

3.8 A *Regulated Information Service* must have adequate systems and controls to ensure that *regulated information* is processed securely. This means that a *Regulated Information Service* should:

- (1) have a working environment that is secure and free of unauthorised surveillance;
- (2) have computer-based systems that incorporate access controls; and
- (3) record external telephone calls concerning *regulated information*.

3.9 A *Regulated Information Service* must have adequate systems and controls to prevent the misuse of *regulated information* by any of its staff. This means that a *Regulated Information Service* should, through appropriate terms in its contracts of employment etc, ensure that all staff that have

access to *regulated information* owe a duty of confidentiality to the *Regulated Information Service*.

Use of headline categories

- 3.10
- (1) A *Regulated Information Service* must use at all times the *FSA's* headline categories when disseminating *regulated information* to any media to which it is connected.
 - (2) Paragraph (1) does not apply when a *Regulated Information Service* disseminates information it has received from a *Recognised Investment Exchange*.
 - (3) A *Regulated Information Service* must provide an appropriate Standard Form if the corresponding headline for that Standard Form is chosen by the *person* submitting *regulated information*.

Note: The *FSA's* headline categories can be found on the UKLA section of the *FSA's* website.

Embargo of regulated information

- 3.11 A *Regulated Information Service* must have systems to embargo *regulated information* for release at a date and time specified by the *person* that has submitted the information.
- 3.12 A *Regulated Information Service* must have systems to cancel any embargo placed on *regulated information* and cause the immediate dissemination of that information if instructed to do so by the *FSA*.
- 3.13 A *Regulated Information Service* must have systems to stay the dissemination of any *regulated information* if so instructed by the *FSA*, until further notice is given by the *FSA*.

Prioritisation of regulated information

- 3.14 A *Regulated Information Service* must disseminate, without delay, all *regulated information* that it has received electronically unless the *regulated information* is embargoed by the *person* who submitted it.
- 3.15
- (1) A *Regulated Information Service* must prioritise, without delay, all *regulated information* that it has received by facsimile or hard copy.
 - (2) The information referred to in paragraph (1) must be prioritised according to the type of headline category.

- 3.16 *Regulated information* that is received by facsimile or hard copy that is marked as “urgent priority” must be disseminated by a *Regulated Information Service* without delay.
- 3.17 A *Regulated Information Service* must give priority to *regulated information* that is submitted by the *FSA* if so requested by the *FSA*.

Receipt and release of regulated information

- 3.18 (1) A *Regulated Information Service* must record *regulated information* as "received" as soon as the information enters the *Regulated Information Services'* system.
- (2) A *Regulated Information Service* must record *regulated information* as "released" when the information leaves the *Regulated Information Services'* system.

Dissemination to the media

- 3.19 A *Regulated Information Service* must monitor its systems to ensure, with reasonable certainty, that all *regulated information* it processes is disseminated successfully to the media to which it is connected.
- 3.20 (1) If a media informs a *Regulated Information Service* that the dissemination of *regulated information* has failed, the *Regulated Information Service* must re-transmit the missing *regulated information*.
- (2) A *Regulated Information Service* must re-transmit failed transmissions, immediately, but in any event within five minutes of being informed of the failure by the media.

Output format

- 3.21 A *Regulated Information Service* must disseminate *regulated information* to any media to which it is connected in the following format:
- (1) in unedited full text as submitted to the *Regulated Information Service*; and
- (2) in an industry standard format that is capable of distributing all types of *regulated information*.

Output content

- 3.22 When *regulated information* is communicated to the media, it must contain

the following elements:

- (1) identification of the information as *regulated information*;
- (2) a number uniquely identifying the item of *regulated information*;
- (3) the sequence number of the *regulated information*;
- (4) the name of the issuer concerned;
- (5) the *FSA* identification number of the issuer concerned;
- (6) a headline capturing the subject matter of the *regulated information*;
- (7) the headline category code of the *regulated information*;
- (8) the time and date the *regulated information* was received by the *Regulated Information Service*;
- (9) the time and date the *regulated information* was released by the *Regulated Information Service*;
- (10) all distinct values input via a Standard Form;
- (11) a clear indication of the end of the *regulated information*;

Validation of output

- 3.23 A *Regulated Information Service* must include a mechanism to provide certainty to the intended recipients of *regulated information* that the information has been disseminated by a *Regulated Information Service*.

Recovery provisions

- 3.24 A *Regulated Information Service* must make adequate provision for possible disruptions to its operations. Recovery provisions must be sufficient to ensure that there is minimum disruption to the continuous operation of the *Regulated Information Service*.

Service support

- 3.25 A *Regulated Information Service* must provide service support to its clients and any media to which it is connected during the hours it would normally release *regulated information* and, at least, between the hours of 7.00 am and 6.30 pm on any *business day*.

Charges

- 3.26 A *Regulated Information Service* must set out clearly the services it provides and the fees it charges for those services.
- 3.27 A *Regulated Information Service* must not charge any of the regulatory bodies listed in criterion 3.6 for the dissemination of *regulated information*.
- 3.28 A *Regulated Information Service* must supply, free of charge, an output feed of *regulated information*, exclusive of all other information, to the *FSA*, or an agent appointed by the *FSA* to act on its behalf.

4 Ongoing obligations and notification requirements

Requirement to meet the criteria at all times

- 4.1 A *Regulated Information Service* must, at all times, meet the *Regulated Information Service* criteria.

Note: The *FSA* will cancel the approval of a *Regulated Information Service* that fails to comply with criterion 4.1 by removing the name of the *person* who has been approved as a *Regulated Information Service* from the *FSA*'s list of *Regulated Information Services*.

Annual report

- 4.3 (1) A *Regulated Information Service* must submit to the *FSA* an [annual] report which confirms that the *Regulated Information Service* met all the criteria in the preceding [12] months.
- (2) The [annual] report described in paragraph (1) must be prepared by a reporting accountant qualified to act as auditor.
- (3) The annual report must be submitted to the *FSA* within 3 months of the anniversary of date on which approval as a *Regulated Information Service* was granted.

Notifications

- 4.4 A *Regulated Information Service* must inform the *FSA* immediately if any connection to a media is suspended or terminated.
- 4.5 A *Regulated Information Service* must inform its clients and the *FSA*

without delay if its operations are disrupted.

- 4.6 A *Regulated Information Service* must provide the *FSA* with the names and contact details of its staff who are available 24 hours a day, seven days a week, to assist the *FSA* with its regulatory responsibilities.
- 4.7 A *Regulated Information Service* must provide to the *FSA* without delay any information that the *FSA* may reasonably require for the performance of its functions.
- 4.8 A *Regulated Information Service* that learns of a breach of any of its security measures must:
- (1) immediately notify the *FSA* of the breach; and
 - (2) as soon as possible provide the *FSA* with a detailed report of the breach and any steps taken to correct that breach.
- 4.9 A *Regulated Information Service* must inform the *FSA* without delay of any changes to the fees or charges to *persons* or entities submitting *regulated information* for dissemination.
- 4.10 A *Regulated Information Service* that has had its approval cancelled must, without delay, inform its clients and any media to which it is connected that it is no longer approved to process or release *regulated information*.

Record Keeping

- 4.11 A *Regulated Information Service* must have effective arrangements for making and retaining, for 3 years, adequate records of all matters relating to the processing of *regulated information*. As a minimum, arrangements must include records of the following information for each announcement of *regulated information* disseminated by a *Regulated Information Service*:
- (1) the name of any *person* that communicates to the *Regulated Information Service* *regulated information* on behalf of an issuer or other organisation;
 - (2) the name of the issuer or organisation on whose behalf the *regulated information* is communicated;
 - (3) the security validation details;
 - (4) the date and time the *regulated information* is received by the *Regulated Information Service*;

- (5) details of the medium in which the *regulated information* is received by the *Regulated Information Service*;
- (6) details of any embargo placed by the issuer on the *regulated information* (if relevant);
- (7) details of all those *persons* who are authorised by the *Regulated Information Service* to have access to the information;
- (8) details of any substantive changes made by a *Regulated Information Service* to a document during processing; and
- (9) the date and time the *regulated information* is released to the media by the *Regulated Information Service*.

4.12 G A *Regulated Information Service* that has had its approval cancelled should continue to comply with criterion 4.11.

HEADLINE CATEGORIES FOR USE WITH REGULATORY ANNOUNCEMENTS

[To appear on the UKLA website]

URGENT PRIORITY	
Headline category	Description
Temporary Suspension	Submitted to indicate that a security has been temporarily suspended from the Official List
Statement re. Suspension	Statement regarding the suspension of listing/trading of a company's listed securities
Restoration of Listing	Submitted to indicate that a security has been admitted/cancelled from the Official List
Official List Notice	Submitted to indicate that a security has been admitted to / cancelled from the Official List
Miscellaneous	Miscellaneous urgent priority announcements
HIGH PRIORITY	
Headline category	Description
1 st Quarter Results	First quarter financial results
3rd Quarter Results	Third quarter and nine months financial results
Acquisition	Statement regarding an acquisition of a company or assets
AGM Statement	Statement made at a company's AGM
Capital Reorganisation	Notification of the restructuring of a company's existing share capital
Conversion of Securities	Notification of the details of a conversion of securities (eg warrants/convertible loan stock)
Disclosure Table	Notification of companies currently in offer period
Disposal	Statement regarding the disposal of a company or assets
Drilling Report	Report given by mineral, oil and natural gas companies
EGM Statement	Statement made at a company's EGM
EPT Disclosure	Exempt principal trader

Final Results	Full year/4 th quarter financial results
Formal Notice	Notification of the issue of a debt instrument programme and publication of relevant listing particulars
Further re (insert appropriate text)	Announcement made following an initial, related announcement
Half-yearly Results	Half year/2 nd quarter financial results
Interim Management Statement	A twice yearly financial statement made by an issuer's management.
Issue of Debt	Notification of an issue of debentures, debenture or loan stock, bonds and notes, whether secured or unsecured
Issue of Equity	Notification of an issue of equity shares e.g. offer for subscription/offer for sale/rights issue
Letter of Intent Signed	Statement regarding a letter of intent signed between entities
Merger Update	Statement regarding decision whether a takeover/merger has been referred for investigation to the Competition Commission/Secretary of State for Trade and Industry
Offer by [add offeror's name]	Statement giving details of an offer announced by the offeree.
Offer for [add offeree's name]	Statement giving details of an offer announced by the offeror
Offer Lapsed	Statement declaring that the required acceptances for an offer to be successful have not been obtained and that the offer has lapsed
Offer Rejection	Statement that an offer has been rejected
Offer Talks Terminated	Statement that a company's offer discussions have been terminated without an offer being made
Offer Update	Statement giving an update on an offer e.g. offer acceptances/offer extension/offer becoming wholly unconditional
Prior Notice of Merger	Statement regarding proposed mergers
Product Launch	Statement regarding the launch of a new product by a company
Re Agreement	Statement regarding an alliance between entities

Re Alliance	Statement regarding an alliance between entities
Re Contract	Statement regarding a contract entered into/awarded/signed
Re Joint Venture	Statement regarding a joint venture between entities
Regulatory Application	Application by a company to a regulatory body for a product or service (e.g. approval to market a pharmaceutical product)
Regulatory Approval	Approval from a regulatory body for a company's product or service (e.g. approval to market a pharmaceutical product)
Research Update	A statement giving an update on research (e.g. clinical trials)
Response to (insert appropriate text)	Statement submitted in response to a previous statement made another entity
Restructure Proposals	Operational restructuring of a company
Result of AGM	Notification of the result of any voting at an AGM
Result of EGM	Notification of the results of any voting at an EGM
Result of Equity Issue	Notification of the result of an issue of equity shares e.g. offer for subscription/offer for sale/ rights issue
Result of Meeting	Outcome of a meeting other than an AGM or EGM
Result of Tender Offer	Notification of the result of a tender offer
Rule 8.1 – [insert name of offerree or offeror]	The Takeover Panel requirement for the disclosure of dealings during an offer period
Rule 8.3 - [insert name of offerree or offeror]	The Takeover Panel requirement for the disclosure of dealings during an offer period
SAR 3 – [insert name of company]	Notification of a holding required by the Takeover Panel Substantial Acquisition Rule 3. The company name inserted should be the name of the company in which shares have been acquired or disposed of
SAR 5 – [insert name of company]	Notification of a holding required by the Takeover Panel Substantial Acquisition Rule 5. The company name inserted should be the name of the company in which shares have been acquired or disposed of
Scheme of arrangement	Statement giving details of a scheme of arrangement

Statement re (insert appropriate text)	Statement regarding a particular the Takeover Panel issue
Statement re (insert appropriate text)	Statement regarding a particular issue
Statement re (insert appropriate text)	Statement by the Competition Commission regarding the outcome of its investigation of a takeover/merger
Statement re Possible Offer	Statement that a company is in discussions which may or may not lead to an offer being made
Statement re Press Comment	Statement regarding press comment
Statement re Share Price Movement	Statement regarding a movement in the price of a company's listed securities
Syndicate Results	Statement of results submitted by Lloyd's insurance syndicates
Tender Offer	Notification of a tender offer
Trading Statement	Statement regarding a company's trading performance (e.g. profit warning)
Transaction in Own Shares*	Notification of a transaction involving own shares, including a purchase, sale, redemption, cancellation, transfer or allotment
Miscellaneous	Miscellaneous high priority announcements
MEDIUM PRIORITY	
Headline category	Description
Additional Listing	Notification of any addition to a company's existing share capital
Annual Information Update	Notification referring to or containing all information that has been published or has been made available to the public over the last 12 months
Annual Report & Accounts	Notification of a company's annual report & accounts
Base Rate Change	Statement regarding a change in the interest rate offered/charged by a financial institution
Block listing Interim Review*	Six monthly notification by a company issuing securities on a regular basis
Compulsory Acqn of Shares	Statement regarding the compulsory acquisition of shares

Director/PDMR Shareholding*	Notification of issuers, <i>persons</i> discharging managerial responsibilities and their connected <i>persons</i> in respect of transactions conducted in their own account in shares of the issuer (see DR3 of the Disclosure Rules)
Directorate change	Notification of any change to a company's board e.g. appointments/resignations/changes to important functions or executive responsibilities of a director
Dividend Declaration	Declaration of a dividend issued by a company
FRN Variable Rate Fix	Update of interest rate for a floating rate note
Geographical Distribution	Notification by an investment company/trust of the geographical distribution of its assets
Holding(s) in Company – Financial Instruments*	Notification of a major interest in the voting rights attached to a financial instrument (See Listing Rule ***)
Holding(s) in Company – Voting Rights*	Notification of a major interest in the voting rights attached to shares (See Listing Rule ***)
Net Asset Value(s)	Notification by an investment company/trust of its Net Asset Value
Portfolio Update	Periodic notification by an investment company/trust of its investment portfolio as required by Listing Rule 15.4.10 R
Publication of a prospectus	Publication of a prospectus in accordance with prospectus rules
Rule 2.10 Announcement	Announcement by an offeree company at the beginning of an offer period regarding details of all relevant securities issued by the company together with the numbers of such securities in issue as required by the Takeover Panel.
Total Assets Value	Notification by an investment company/trust of its Total Asset Value
Treasury Stock	Notification of the rate of interest payable on treasury stocks
Miscellaneous	Miscellaneous medium priority announcements
LOW PRIORITY	
Headline category	Description
Change of Name	Notification of a company's change of name
Circ re. [insert appropriate	Notification that a document issued to holders of listed

document title]	securities (including notices of meetings but excluding listing particulars, annual report and accounts, interim reports, proxy cards and dividend or interest vouchers) is available for public inspection
Company Secretary Change	Notification of the appointment/resignation of a company secretary
Director Declaration	Notification of details of all directorships held by a director in any other publicly quoted company and any details shown in Listing Rule paragraph 9.6.13(2) to (6)
Doc re. [insert appropriate document title	Notification that a document issued to holder of listed securities is available for public inspection
New Accounting Ref Date	Notification of a change in a company's accounting reference date
Notice of AGM	Notification of a company's annual general meeting
Notice of EGM	Notification of a company's extraordinary general meeting
Notice of Results	Notification of the date financial results will be published
Offer Document Posted	Statement that offer document has been posted to holders of a company's listed securities
Miscellaneous	Miscellaneous low priority announcements
Test Message	Message submitted to test announcement system but not published

* Headline category is associated with a Standard Form.

Part 1 – Appendix 3

STANDARD FORM VR
VOTING RIGHTS – ARTICLE 12(1) OF THE TRANSPARENCY DIRECTIVEⁱ

1. Identity of the issuerⁱⁱ:
2. Reason for the notification (please tick the appropriate box):
 - an acquisition or disposal of shares with voting rights attached ("direct holding")
 - an acquisition or disposal of voting rights ("indirect holding")
 - an event changing the breakdown of voting rights
3. Full name of person(s) subject to the notification obligationⁱⁱⁱ:
4. Full name of shareholder(s) (if different from 3.)^{iv}:
5. Date on which the threshold was crossed or reached^v:
6. Date on which the issuer was notified (to be completed by issuer only):
7. Threshold that has been crossed or reached:
8. Notified details:

Class/ type of shares	Triggering transaction ^{vi}		Resulting situation after the triggering transaction ^{vii}				
	Number of voting rights acquired (+) when reaching or crossing a threshold	Number of voting rights disposed of (-) when reaching or crossing a threshold	Number of shares	Number of voting rights ^{viii}		% of voting rights	
			Direct	Direct	Indirect	Direct	Indirect

9. Chain of controlled undertakings through which the voting rights are effectively held, if applicable^{ix}:
10. In case of proxy voting: [name of the proxy holder] will cease to hold [number] voting rights as of [date].
11. Additional information:

ANNEX TO THE STANDARD FORM VR

This annex is only to be filed with the competent authority and should not be sent to an issuer or submitted to a Regulatory Information Service.

a) Identity of the holder:

Full name (including legal form for legal entities)

Contact address (registered office for legal entities)

Phone number

Other useful information (at least legal representative for legal persons)

b) Identity of the notifier, if applicable^x:

Full name

Contact address

Phone number

Other useful information

c) Additional information

STANDARD FORM FI
FINANCIAL INSTRUMENTS – ARTICLE 12(4) OF THE [TEXT IMPLEMENTING THE
DIRECTIVE] ^{xi}

1. Identity of the underlying issuer of existing shares to which voting rights are attached^{xii}:
2. Reason for the notification (*please tick the appropriate box*):
 - an acquisition or disposal of financial instruments which may result in the acquisition of shares already issued to which voting rights are attached
 - an event changing the breakdown of voting rights
3. Full name of the holder (natural person/legal entity) entitled to acquire shares already issued to which voting rights are attached:
4. Date on which the threshold was crossed or reached:
5. Date on which the issuer was notified (to be completed by issuer only):
6. Notified details:

Expiration Date ^{xiii}	Triggering transaction ^{xiv}		Resulting situation after the triggering transaction	
	Number of voting rights that may be acquired (+) if instrument is exercised/converted when reaching or crossing a threshold	Exercise/Conversion Period/ Date ^{xv}	Number of voting rights	% of voting rights

7. Chain of controlled undertakings through which the financial instrument/s are effectively held, if applicable^{xvi}:
8. Additional information:

ANNEX TO THE STANDARD FORM FI

This annex is only to be filed with the competent authority and should not be sent to an issuer or submitted to a Regulatory Information Service.

a) Identity of the holder:

Full name (including legal form for legal entities)

Contact address (registered office for legal entities)

Phone number

Other useful information (at least legal representative for legal persons)

b) Identity of the notifier, if applicable^{xvii}:

Full name

Contact address

Phone number

Other useful information

c) Additional information

NOTES TO THE FORMS

ⁱ The holder of securities that is subject to the notification requirement should send this form to the issuer (excluding the annex) and file it with the FSA (including the annex). This form can be filed with the FSA by faxing it to the following number [***].

An issuer in receipt of this form should disseminate the information on the form via a Regulatory Information Service using the headline category "Holding in Company – Voting Rights".

ⁱⁱ Either the full name of the legal entity or another method for identifying the issuer provided it is reliable and accurate.

ⁱⁱⁱ This should be the full name of (a) the shareholder; (b) the natural person or legal entity acquiring, disposing of or exercising voting rights in the cases provided for in Article 10 (b) to (h) of the Directive; or (c) all the parties to the agreement referred to in Article 10 (a) of the Directive, as appropriate.

^{iv} Applicable in the cases provided for in Article 10 (b) to (h) of the Directive. This should be the full name of (a) the shareholder who disposed of the voting rights if he has a notifiable interest; or (b) of the shareholder to whom the voting rights are being transferred if he has a notifiable interest.

^v It should normally be the date on which the transaction took place. For passive crossings, the date when the corporate event took effect. For the case provided for in Article 10(a) of the directive, when entering in to the agreement, the date when the agreement was entered into; when there are subsequent changes to the agreement, this will be the date of the change by the acquisition or disposal of voting rights; when the agreement is terminated, this will be the date of termination.

^{vi} These columns do not need to be completed in case of notification due to an event changing the breakdown of voting rights nor when entering into or terminating an agreement.

^{vii} For the case provided for in Article 10(a) of the directive, there should be no disclosure of individual holdings per party to the agreement unless a party individually crosses or reaches an Article 9 threshold. This applies upon entering into, introducing changes to or terminating an agreement.

^{viii} In case of combined holdings of shares with voting rights attached "direct holding" and voting rights "indirect holding", please split the voting rights number and percentage into the direct and indirect columns – if there is no combined holdings, please leave the relevant box blank.

^{ix} The notification should include the name(s) of the controlled undertakings through which the voting rights are held, and the amount of voting rights and the percentage held by each controlled undertaking.

^x Whenever another person makes the notification on behalf of the shareholder or the natural person/legal entity entitled to exercise the voting rights.

^{xi} The holder of financial instrument that is subject to the notification requirement should send this form to the issuer of the underlying shares that the holder of the financial instrument may acquire voting rights in (excluding the annex) and file the form with the competent authority (including the annex). This form can be filed with the FSA by faxing it to the following number [***].

An issuer in receipt of this form should disseminate the information on the form via a Regulatory Information Service using the headline category "Holding in Company – Financial Instruments".

^{xii} Either the full name of the legal entity or another method for identifying the issuer provided it is reliable and accurate.

^{xiii} Date of maturity/expiration of the financial instrument i.e. the date when right to acquire shares ends.

^{xiv} These columns do not need to be completed in the case of notification due to an event changing the breakdown of voting rights.

^{xv} If the financial instrument has such a period – please specify this period – for example once every 3months starting from [date].

^{xvi} State the identity of each controlled undertaking and the total number of voting rights held by each entity.

^{xvii} Whenever another person makes the notification on behalf of the holder of financial instruments.

Cost Benefit Analysis – Listing Rules Review

Introduction

1. Sections 155 and 157 of FSMA require that we undertake a cost benefit analysis (CBA) of proposed rules or proposed general guidance on rules, and publish the results. The purpose of a CBA is to assess, in quantitative terms where possible and in qualitative terms where not, the economic costs and benefits of a proposed policy. Specifically, we are required to publish ‘an estimate of the costs together with an analysis of the benefits to accompany the proposed draft rules’.

The baseline

2. For the purposes of this CBA, we have assessed the differences between the baseline, which is the situation as it applies to existing and new issuers under the current Listing Rules, and the position that would arise if the proposed rules and guidance were introduced. Where new issuers are considered (particularly in relation to **Eligibility**), we have considered only those who would have been eligible under the current regime. As a result, the analysis set out below excludes the costs and benefits that may be incurred by entities that are not eligible under the current regime.
3. However, the proposed regime would make it possible for investment entities with a variety of strategies, including those currently pursued by some hedge funds, to list for the first time. Any costs they incur in response to their decision to list would be purely voluntary, as these entities are not required, unlike investment trusts and venture capital trusts, to list under other legislation.
4. To the extent that investment entities which are not currently eligible to list take the opportunity to list in future, we envisage the following benefits:
 - Increased choice available to investors – Investors would benefit from greater choice in the types of listed investment entities available.

- Increased shareholder protection – New issuers that are not currently eligible for listing would submit themselves voluntarily to the UK listing regime for the first time. This regime includes shareholder protection measures (largely disclosure based) that do not apply to unlisted entities.
- Strengthening the international attractiveness of UK listing – Other jurisdictions already list entities pursuing a wider range of investment strategies and these proposals provide greater potential for the UK to attract listings. We understand from our discussions with the market that there is a degree of appetite for listing amongst the hedge fund community but it does not appear that a large number will seek to list in the short term as a result of the proposed rules.
- Access to a wider pool of potential investors – New applicants that are not currently eligible for listing would have access to a wider range of potential investors under these proposals, particularly as investment mandates often restrict investments to listed securities.
- Greater liquidity – Hedge funds can often be illiquid investments. To the extent that in future hedge funds may take the opportunity to establish listed, closed-ended funds, this could increase the level of liquidity in the industry, creating perpetual vehicles that investors can trade in and out of more easily.

The methodology

5. We have researched how costs and benefits will fall on the relevant groups of interested parties or stakeholders and have discussed our proposals with:
 - listed issuers;
 - investment managers;
 - trade bodies;
 - other professional advisers;
 - consumer representatives; and
 - the Centre for Financial Markets Research at the University of Edinburgh.
6. We have held internal discussions to ensure that these proposals are both practicable and consistent with FSA policy. We have also held round-table discussions with the full range of stakeholders across the industry, notably members of the investment management community.
7. In addition, the Centre for Financial Markets Research at the University of Edinburgh was instrumental in providing analysis on the effects of short selling.

Cost benefit analysis

8. The purpose of this CBA is to publish our assessment, in quantitative terms where practicable, of the *incremental* costs of these proposals and our analysis of their benefits, and we would welcome comment from the industry on it. All incremental costs and benefits are evaluated relative to those under the existing regime.
9. Direct costs are those costs incurred by us and include those relating to document vetting, monitoring and enforcement. We expect there to be an increase in the level of listing activity arising from the introduction of a more flexible, principles-based Listing Rules regime and this would result in the need for increased resources. However, to the extent that these arise from new issuers, such increases will largely be matched by listing fees being paid by these new entities. We consider the absolute level of these costs to be small and, therefore, that the incremental direct costs of regulation will be of no more than minimal significance.
10. There are also specific rules being proposed which will result in a reduction in our direct costs, for instance the proposed rule relating to investment manager eligibility which is discussed in further detail below.
11. Compliance costs are those costs incurred by listed investment entities (both existing issuers and those new issuers who are eligible under the current regime) to ensure that they satisfy the requirements under the new regime. These include the one-off and ongoing costs of, amongst other things, understanding the new rules, training of staff, and upgrading and maintaining information systems. As highlighted below, the significance of these costs may vary across issuers and depend on the nature and makeup of the investment portfolio and corporate governance structure.
12. The indirect costs and benefits resulting from the proposed rule changes will often be more important to issuers and the market than direct costs or compliance costs, as their effect is often more significant and long-lasting. We have assessed whether the proposed rule changes will cause indirect costs and benefits through the following channels:
 - the level of information and protection available to investors;
 - the variety of securities available to investors;
 - the degree of choice of investment strategy available to issuers;
 - the reduction of the compliance burden on issuers;
 - the level of competition between alternative exchanges (both within the UK and throughout Europe); and

- the impact on the desirability of the UK as a place to list and invest in securities.
13. The remainder of this document is set out in three strands: eligibility, continuing obligations and deregulatory changes.
 14. **While the proposed measures are examined separately below, they should be viewed as a package, which has a number of limbs, all contributing to an overall standard of regulation that we feel is appropriate. This linkage can be illustrated by the proposal to remove the current quarterly portfolio disclosure requirements, on the basis that it is largely being replaced by the proposal for disclosure of significant changes to risk profile.**

Eligibility

15. Under the current regime, an investment entity is eligible for listing if it can show that it meets the standards set under the following key tests:
 - there is an adequate spread of investment risk – which is established through the rule specifying that no more than 20% of the total assets is invested in any one issuer;
 - the applicant is passive and does not control or seek to control or be actively involved in the management of any companies or businesses in which it invests;
 - those responsible for managing the investments have sufficient and satisfactory experience in the management of investments of the type in which the entity proposes to invest; and
 - the applicant can demonstrate independence from any investment manager (not applicable to venture capital trusts).
16. We have made significant changes to each of these tests, as described below, and introduced a new shareholder protection rule requiring applicants to have sufficient working capital for their first 12 months of listing.
17. These proposed changes are largely deregulatory in that they will give investment entities greater choice in their selection of investment strategies and create a more principles-based approach, particularly towards the need to spread investment risk. As explained, these measures should be viewed as a package, along with proposed changes to the continuing obligations as described further within the ‘Continuing Obligations’ section.

Spread of risk

Major change – Require investment entities to invest and manage their funds with a view to spreading investment risk (removing current detailed provisions limiting investments to 20% of total assets).

Compliance Costs

18. Under the present rules, investment entities can ensure compliance with the requirement to spread investment risk simply by limiting any single investment to no more than 20% of their total funds. Under the proposed rules, it would not be this simple, and investment entities would be obliged both to ensure that they have diversified their investment risk and to explain how they have done so.
19. Satisfying the new rule will depend on, amongst other things, an investment entity's investment strategy and portfolio make-up, both of which could be more complex under the new regime. This is because the new regime affords more flexibility (e.g., the use of short selling) and permits the use of more advanced investment strategies and financial instruments. The costs of assessing diversification on a principles-based regime may also be higher due to a greater degree of uncertainty about what constitutes a sufficient spread of investment risk and a wider array of available techniques to consider.
20. However, as explained above, in evaluating compliance costs relative to the existing listing rules, we considered how these might change only for investment entities whose investment policies would enable them to list under the current regime. In some cases, these entities may be able to demonstrate a sufficient spread of risk by employing an approach similar to that under the current regime. Compliance costs under the new, principles-based regime may, however, be higher for some investment entities which may need to employ more sophisticated techniques, in order to make the quantitative assessments necessary to demonstrate a sufficient spread of risk. However, it is to be expected that the more sophisticated the investment strategy, the more difficult, and hence more expensive, the statement will be to produce.
21. Investment trusts and VCTs – all of which are listed – comprise a large proportion of the total number of listed investment entities. In addition to any listing rules, they are required to comply with the investment restrictions imposed by ICTA, including that no holding in a company represents more than 15% of their investments. Given this restriction, it should be easy for them to show that they have achieved a spread of investment risk, and therefore met the requirements, using the existing systems and information produced to ensure compliance with ICTA rules. For these entities, the incremental cost is expected to be of minimal significance.
22. Domestic and overseas investment and property investment companies (which are not subject to ICTA restrictions) may incur costs in complying with this rule but the increase is not expected to be significant. For these companies, it is estimated that this additional statement could add approximately £2,000 to the cost of producing the annual report and accounts. Given that the total number of investment entities excluding investment trusts and VCTs currently stands at 77, this would result in an increase in costs to the industry in the region of £154,000 per year.

Indirect costs

23. We do not believe there are any indirect costs associated with this proposal.

Benefits

24. The benefit of this new principles-based approach is that there will no longer be reliance on such a simple rule which has the potential to exclude from listing some well-diversified structures while at the same time enabling the listing of those which, although complying with the letter of the rule, may not have a genuine spread of investment risk, particularly given greater flexibility described below. This new approach should provide added investor protection and better disclosure on investment activity, showing how investment entities are achieving the object of investing with a view to spreading investment risk.

Passivity and Control

Major Change – Clarify the extent to which investment entities may provide strategic advice to companies in which they invest and appoint a limited number of non-executive directors to the board and removing the present rule requiring investment entities to be passive).

Compliance costs

25. Given that this is a deregulatory measure as we are removing the requirement for passivity, we do not expect investment entities to experience an increase in compliance costs.

Indirect costs

26. There are no indirect costs associated with this proposal.

Benefits

27. Clarifying the extent to which investment entities may have board representation and may provide strategic advice should better align the interests of investment entity and the management of the companies in which they invest. This should act to promote market efficiency.

Requirement for sufficient working capital

Major Change – Requirement for sufficient working capital to continue trading for 12 months (this is a new requirement).

Compliance costs

28. We do not expect there to be a significant rise in compliance costs as a result of this change. Under the Prospectus Rules, an investment entity must include a working capital statement in its prospectus, while the present Listing Rules permit an investment entity to list even if that statement is qualified. Since the introduction of the Prospectus Rules, no investment entity has taken advantage of this concession. This is most likely because it is difficult to market securities if a qualified statement is made. Since a strong incentive for issuing unqualified statements already exists, incremental compliance costs are not expected to be significant.
29. There may be a small minority, specifically those who will take advantage of the proposed relaxation on short selling, who may find it relatively more costly to comply with this new requirement as they may need to expend more resource on sensitivity analyses. For these entities, it may be more expensive, both in terms of staff time and accounting costs, to confirm they have sufficient working capital to continue trading for the next 12 months.

Indirect costs

30. We have considered whether this proposal would deter new applicants from listing. However, for the reasons given, we do not envisage this to be the case.

Benefits

31. Since investment entities have strong incentives to issue unqualified working capital statements currently, the additional benefits of this rule are limited. It should, nevertheless, help maintain market confidence and investor protection in the UK listing market. It is also important that this proposal is read alongside the relaxation of the short selling restriction and the more principles-based approach to spread of risk.

Investment manager eligibility

Major Change – FSA-authorized investment managers automatically meet the expertise and experience eligibility criteria (removing the current requirement for FSA-authorized investment managers to demonstrate to us that they have appropriate experience).

Compliance costs

32. This change may result in reduced compliance costs to investment entities. Where an entity is able to demonstrate that its investment manager has the necessary FSA permissions, it will no longer need to provide detailed submissions to the UKLA setting out the manager's experience, nor will the UKLA need to discuss and agree that such experience is appropriate.

33. Self-managed trusts will not be able to avail themselves of this new rule and will continue to be subject to the UKLA vetting process and as a result, their compliance costs will not change. However, given that approximately 90% of investment entities currently listed employ investment managers (i.e. are not self managed) this proposal will be of significant benefit to the industry.
34. We estimate the cost of compliance with the existing rules is approximately £5,000 for each eligibility submission, including the costs of preparing an eligibility letter, research, advice and verification. On the assumption that approximately 50 investment entities list per year then the total cost would amount to £250,000. However, 10% of new listings are by self managed issuers, which would not benefit from the proposed rule change and total savings would therefore be in the region of £225,000 per annum.

Indirect costs

35. Indirect costs could potentially derive from the more relaxed approach regarding the way that investment entities can demonstrate that those managing investments have sufficient and appropriate experience. That is, because FSA permissions are drawn very widely, it is possible that under the proposed framework, an investment manager could meet this test even though it may have no direct experience in the specific area that the investment entity intends to invest. Since the test would therefore be less detailed, there could be negative implications for investment performance and investor returns, i.e., increased risk of investor losses. On the other hand, the existing Listing Rules test relates only to an investment manager's experience, and not performance.
36. To the extent that shareholders or boards currently rely on third-party reviews of an investment manager's qualifications, then this could give rise to moral hazard costs. These costs, however, may be mitigated by existing board requirements in this area: the board must include a statement in the annual report and accounts whether they believe the continued appointment of the investment manager to be in the interests of the shareholders as a whole, and give reasons for that view.

Benefits

37. A further benefit is that the pool of investment managers who would be deemed eligible would be increased. In addition, greater certainty would be afforded to investment entities in the likely eligibility of their chosen investment manager.

Independence of VCT boards from the investment managers

Major Change – Extending the enhanced requirement that the board be independent from investment managers to VCTs (at present VCTs are exempt from these more detailed measures)

Compliance costs

38. This proposal will extend to VCTs the rigorous approach towards the requirement that boards are independent from investment managers that was introduced for other investment entities in 2004. Those applying to list for the first time should not incur increased costs as a result, as they will incur the same fees when appointing an independent director as a non-independent director.

Indirect costs

39. Recruitment may be more problematic than under the current regime as the VCT industry is quite small and it has been argued that the pool of individuals with sufficient expertise to act as a director has already been exhausted. So, while they will not incur increased recruitment costs, they may incur increased search costs to find satisfactory directors.

Benefits

40. The benefit of this proposal is that it will bring the same degree of independence to VCT boards as was introduced to other investment companies following CP164. These proposals have worked extremely well and have restored investor confidence in the relationship between the investment manager and the investment entity. An indication of the greater degree of independence is the higher incidence of investment managers being replaced by investment entities' boards.

Continuing Obligations – key regulatory measures

41. We have also proposed the following changes to the continuing obligations regime, following a reassessment of the existing rules:
- A new requirement for a statement in the annual report and accounts confirming that the issuer has achieved a spread of investment risk.
 - A new requirement for immediate disclosure of any significant change in the risk profile of an issuer.
 - A new rule to reflect the current practice of re-assessing eligibility of investment managers, in the event that new investment managers are appointed.
 - Making VCTs subject to the same measures as all other investment entities, rather than being subject to specific rules as they are now.
42. These are described in greater detail below.

Spread of Risk

Major change – Require investment entities to include in their annual report and accounts a statement explaining, with appropriate quantification, how the need for a sufficient spread of risk is being met (this replaces the requirement that when any investment is made, it must be limited to 20% of the entity's total assets).

Compliance costs

43. As explained in paragraphs 18-20, there may be a rise in compliance costs due to a greater degree of uncertainty about what constitutes a spread of investment risk and a wider array of available techniques to consider.
44. As explained in paragraph 20, investment trusts and VCTs, which are subject to ICTA restrictions on investment concentration, should not incur significantly increased compliance costs.
45. Domestic and overseas investment and property investment companies are expected to incur incremental compliance costs of £2,000 annually leading to an increase across the industry of £154,000 per annum.

Indirect costs and benefits

46. The spread of investment risk requirement under the current regime has only a limited continuing application. This means that once the entity has listed, it can become a highly undiversified and therefore riskier entity. Under these new rules, the board of the investment entity would have to consider on an annual basis how it is meeting the requirement to invest with the object of spreading risk. This will help to ensure that the investment entities are mindful of the need to have regard to this objective and that there is closer alignment between the eligibility criteria and continuing obligations. It also ensures that investors are better informed on an annual basis about the investment strategy of the entity in question.
47. There is the possibility that the requirement to produce this statement will act as a counter-balance to the proposal for increased flexibility in the investment strategies that can be employed. As a result, investment entities could undertake more prudent investment management techniques than might otherwise be the case. While this could be viewed as a benefit, it is arguable that more prudent techniques would entail less hedging and hence higher risk. In summary, changes in investment strategy will now have to take into account this statement (whose cost as mentioned above is correlated to the risk being run).

Disclosure of significant changes to risk profile

Major Change – Listed entities must make immediate notification of any significant changes to their risk profile (this is a new requirement).

Compliance costs

48. The purpose of this proposal is to ensure that the various risk disclosure requirements that listed investment entities are subject to, represent a complete regime and that there are no gaps. It is designed to capture significant changes only, most of which would be the result of strategic decisions taken by the investment entity and as such we would not expect a high incidence of such events. In any case, we understand that to a large extent this is already best practice and that for many investment entities, the costs associated with these proposals would not be significant.
49. Furthermore, we would expect that those entities making decisions which would impact their risk profile in this manner or who are exposed to a significant degree to the types of risk described in the draft rules, would already have systems and controls in place to be aware when their risk had changed with respect to these areas.
50. Given that the Transparency Directive will introduce a requirement to disclose, twice yearly, the ‘principal risks and uncertainties’ facing an investment entity and that all entities will in any case be subject to the Disclosure Rules, the incremental costs arising solely from this proposal are likely to be mitigated because similar information will be collated for compliance with those rules.
51. In any event, we do not believe that this proposal will result in the need for significant monitoring costs as the majority of disclosable incidents (i.e. significant changes to risk profiles) are likely to result from actions instigated by the investment entity itself, rather than as a result of external events.
52. Nevertheless, we have looked at the possible costs of compliance with this rule and in doing so have made the assumption that VCTs would not face significant costs because they usually make relatively few investments and monitor them closely. As a result, they are already in a particularly good position to assess significant changes in their risk profiles. The following figures have therefore been based on a figure of 328, which excludes the VCTs currently listed.
53. We believe that compliance costs could rise as a result of the following three limbs:
 - (a) Monitoring and assessing of possible disclosable events: this would involve both initial and ongoing systems costs (incorporating both IT and human costs).

- While it is difficult to estimate the cost of the IT system, it is possible that the start-up figure might average £15,000 per fund, falling to approximately £5,000 annually per fund and remain at a steady level after that due to ongoing maintenance costs.
 - The amount of time spent in making an ongoing assessment of changes to risk profiles would vary considerably according to the investment strategy and structure of the investment entity. We envisage that it could take one or two hours a week to monitor this requirement, costing on average £200 a week, or £10,000 per annum in the first year, declining rapidly as monitoring processes become better understood and as precedents are established.
- (b) There may also be costs associated with verifying potentially disclosable events as funds, both initially and on an ongoing basis, may take legal advice to reassure themselves that they are not in breach of this rule. The need for such advice would become increasingly rare but we estimate that, in the first year, they might seek advice on up to three occasions at a cost of £5,000 per occasion.
- (c) Making announcements: the cost of announcing is not onerous – it currently stands at £150 for an electronic RNS through the London Stock Exchange. Investment trusts already make daily announcements and have a cap on their RNS fees of £2,500, and hence we do not anticipate that these costs will be significant.
54. However, for the reasons given in paragraphs 3.9-3.10, many investment entities will already have systems and controls in place to be able to comply with this proposed rule, and for other, their investment policies are likely to be so prudent (e.g. index trackers) that changes in their risk profile would be unlikely. Assuming that only about half (or 164) of all investment entities (excluding VCTs) would face these costs in full, the cost of this proposal would be in the region of £6.7m, including start up costs of IT systems of £2.5m. In any event, the costs in subsequent years will fall rapidly.

Indirect costs

55. Other financial costs might also be incurred, such as a rise in directors' and officers' insurance premiums. These currently stand at between £20,000 and £50,000 on average. If insurance costs increase by 1%, this would imply an additional cost of between £200 and £500 for each of the 164 investment entities that we believe may be affected.

56. It is possible that these disclosures may lead to investor uncertainty as they could be faced with additional information which may or may not have risk and/or price implications. There is also the risk that it may obscure price-sensitive information, disclosed under the Disclosure Rules, whose value and purpose is clear to investors.

Benefits

57. The benefits will depend on the extent to which the disclosed information is material to investors' decision-making process. Benefits with respect to securities pricing may be limited since under the Disclosure Rules, listed investment entities are required to disclose price sensitive events. Therefore the benefits of the proposed rule will stem from the degree to which non price-sensitive changes in risk profile are of value to investors.
58. Where such information is not currently being disclosed, shareholders and potential shareholders will benefit from a clearer understanding of the risks they face through investing. For example, knowledge of the level of gearing could be crucial for an investor's assessment of risk of that investment within his own portfolio.

Investment manager experience

Major change – Listed entities must show that investment managers have sufficient and appropriate experience on an ongoing basis (while in practice new investment managers are being vetted under the present regime, this is being introduced as a rule for the first time).

Compliance costs

59. We do not expect investment entities to incur a rise in compliance costs as a result of the now ongoing nature of this requirement. In the unlikely event they decide to appoint a new unauthorised investment manager, they will have to submit themselves to the test the current listing regime imposes.

Indirect costs

60. The new rule could increase moral hazard costs to the extent that investment entities rely on the FSA-authorisation process instead of conducting their own due diligence in evaluating the merits of the investment manager. The requirement for the board to justify annually the continued appointment of the investment manager should, however, mitigate these costs

Benefits

61. It should also help ensure market confidence in that investors can be confident that the investment manager will at all times either (a) be authorised or (b) have met the eligibility requirements set by the UKLA.

Independence of VCT boards from the managers

Major Change – Extending the requirement that the board be independent from investment managers on an ongoing basis to VCTs (at present VCTs are exempt from these detailed measures)

Compliance costs

62. The effect on compliance costs will depend on the current make-up of VCT boards. Some will have to either remove and replace non-independent directors or appoint additional independent directors to the board. Directors of investment companies are usually engaged on a non-executive, non-contracted basis and severance packages are unlikely to amount to any more than the balance outstanding on their annual emoluments. Typical remuneration packages for such directors are in the region of £14,500 per annum from which we can infer an upper limit on average costs of severance. Industry feedback has indicated that under the proposed rules, 34 boards would not be considered independent because directors frequently serve on more than one board. The estimate is that 15% (or 50) directors and 30 chairmen would need to be replaced, meaning that one-off costs of complying with this rule would be in the region of £1m.
63. As mentioned above, recruitment may prove more challenging under the current regime as it has been argued that new independent directors with the appropriate expertise will be difficult to find.
64. After the initial one-off costs, we do not expect their compliance costs to increase as a result of the continuing obligation. If they choose to change a member of the board, they would incur the same level of costs to replace them with an independent board member as with a non-independent board member.

Indirect costs

65. We do not expect there to be any indirect costs arising from this proposal.

Benefits

66. The benefits, as above, are likely to be that investors can be confident, that on an ongoing basis, the board remains independent from the investment manager and acting in the best interests of the company shareholders at all times. This could serve to further strengthen investor confidence in the sector as a whole.

Continuing Obligations – deregulatory changes

67. As explained in the ‘Eligibility’ section above, greater freedoms are to be bestowed on issuers through proposed changes to the eligibility measures. Consistent with this, and having regard to the burdens on issuers, we are also proposing the following rule changes which are designed to reduce the level of regulation:

- Removal of constraints in choice of investment strategies.
- Removal of restrictions applicable to property investment companies.
- Removal of restrictions on dividend payments in certain circumstances.
- Removal of requirement for monthly/quarterly portfolio disclosure.
- Removal of requirement for detailed portfolio analysis in annual report and accounts.
- Removal of requirement for prior consent from the FSA for divergence from the Model Code.
- Removal of restriction on issue of shares below net asset value.
- Removal of requirement for board control for feeder funds.

Removal of constraints in choice of investment strategies

Major Change – Investment entities will be afforded greater flexibility in their choice of investment strategies (removing restrictions on the ability to engage in short selling and sophisticated investment strategies).

Compliance costs

68. This rule change will not entail increased compliance costs, given that it widens the choice of strategies entities can employ.

Indirect costs

69. There is the possibility that this new approach to eligibility (taken in isolation) could result in the listing of entities that are more prone to fail. Investors may be slow to adjust to this shift, and may take on more risk than they had anticipated, which could lead to some suffering economic loss. We believe, however, that the additional requirements regarding both spread of risk and sufficiency of working capital, may act to mitigate this risk.

70. There is the risk that existing and new traditional long-only funds with a substantial retail investor base may take on greater risk by starting to short sell. However, this risk is mitigated by both the requirement to gain shareholder approval before a change is made to the entity's investment policy (which a shift to short selling would certainly qualify as) and the proposed requirement for sufficient working capital for 12 months.

Benefits

71. The benefits will depend on the extent to which investment entities take advantage of the added flexibility and may include, for example, increased hedging capabilities and enhanced competition in the listing market. Product choice may increase as there may be a wider range of portfolio types and risk profiles available to investors.
72. There is also the possibility for improvement in portfolio performance as long-short strategies are arguably more diverse than long-only. Research has shown that hedge funds can achieve higher excess returns per unit of total risk as a result of enjoying greater latitude and flexibility. Allowing investment entities to pursue a wider range of strategies may open up the possibility of retail investors being able to benefit from these higher returns per unit of total risk. In addition, investment entities who take advantage of this greater flexibility and latitude may be able to spread investment risk in a more efficient manner.

Removal of restrictions on property investment companies

Major change – Removal of restrictions applicable to entities that invest in property.

Compliance costs

73. As with all other investment entities, property investment vehicles will have to disclose their tax status. It is unclear the extent to which existing property investment companies will apply for UK-REIT status, when the UK-REITs regime is introduced in January 2007. Those that qualify for REIT status will be forced to comply with the relevant tax rules and restrictions. Those that do not will be treated as any other investment vehicle, with the exception that if they invest more than 20% of their assets in property, they will have to provide a valuation report in their annual report and accounts, and will be subject to specific treatment under LR10. As this is already the case, we do not envisage a change in their compliance costs.

Indirect costs

74. No indirect costs are anticipated as a result of this change.

Benefits

75. This would ensure that the listing rules are compatible with the new UK-REITs regime. Given that many companies seeking UK-REIT status will be admitted to the Official List (it is a condition that they are listed on a Recognised Stock Exchange), they would benefit from this less burdensome regime. To the extent permitted under the tax rules, they would also enjoy greater flexibility.
76. For those property investment companies that do not take advantage of the tax incentives within the UK-REITs regime, the greater flexibility afforded by these proposals will be greater still, as they will not be constrained by the new tax rules. This greater flexibility, including being allowed to increase borrowing, could lead to benefits for the companies concerned in that they could take advantage of more investment opportunities.

Other deregulatory measures

- (a) restrictions on dividend payments;
- (b) requirement for monthly/quarterly portfolio disclosure;
- (c) detailed financial disclosure requirements to be included in an investment entity's annual report and accounts regarding portfolio composition;
- (d) notification of divergence from the Model Code;
- (e) requirement for majority of directors on a feeder fund; and
- (f) restriction on issue of shares below NAV.

Compliance costs

77. Investment entities should experience a fall in their compliance costs as a result of these deregulatory changes.

Indirect costs

78. We do not foresee any indirect costs as a result of the removal of these rules because, as explained in Chapter 4 – Continuing Obligations:
 - (a) this overlaps with the Companies Act;
 - (b) the benefits of these disclosures are in any case limited and the new rules governing risk disclosure will provide a relevant substitute;
 - (c) this could be problematic for those entities who may choose to engage in short selling and reliance can instead be placed on the requirements set by accounting standards;

- (d) this is being streamlined so that companies will simply have to announce to the market the circumstances that give rise to the waiver rather than seeking individual waivers from the UKLA;
- (e) this is in line with our principles-based approach to spread of risk; and
- (f) this is in line with our policy of allowing boards to act in the best interests of their shareholders and of relying instead on provisions applicable to all listed companies.

Benefits

- 79 . The benefits are that these proposals will reduce the compliance burden on investment entities. While proposals (a), (e) and (f) cannot be quantified, proposals (b), (c) and (d) can be quantified as follows:
- (b) The cost saving for these companies is not expected to be significant as systems are already established to prepare the information. Nevertheless, we estimate annual savings of £2,000 per investment entity per annum. Across the industry, this amounts to an approximate total saving of £700,000 per annum.
 - (c) The cost savings here are more substantial as, in addition to preparing and researching the information required, the accounts must be audited. The actual costs depend upon the nature of the investments held, and how easy they are to value. This information is required to be produced in half-yearly reports and preliminary statements, as well as year end accounts. On a similar basis to (b), but assuming average costs of £5,000 per issuer, the total savings for investment entities would be £1.7m.
 - (d) The cost savings from this rule will be relatively modest per fund but assuming that we receive 400 such waiver requests per annum, at a cost to each issuer of £1,000, the saving would amount to £400,000 per annum across the industry.

List of questions

- Q1: Do you agree that the current approach towards the need to spread investment risk should be replaced with one that is principles-based?
- Q2: If so, do you agree that the proposals described, including the requirement for an annual statement, represent an effective method of achieving the desired outcome?
- Q3: Do you agree that investment entities would benefit from greater flexibility in their choice of investment strategies, including short selling, and should the listing regime accommodate investment entities that take advantage of this increased flexibility?
- Q4: Do you agree that the requirement for an investment entity to be a passive investor should be removed?
- Q5: Do you believe it is desirable, or possible, for investment entities listed under this chapter to take controlling stakes in companies in which they invest, without undermining the listing regime for other listed (i.e. trading) companies?
- Q6: Do you agree with the proposal to rely on a more general requirement for feeder funds to control the investment policies of entities in which they invest, rather than the current provisions regarding board representation?
- Q7: Do you think we should consider accommodating master-feeder funds where the investment entity fails to control the investment policy of the investee, and, if so, how?
- Q8: Given that a working capital statement is in any case required under the Prospectus Rules, do you agree that requiring an investment entity to satisfy the FSA that it and its subsidiary

undertakings (if any) have sufficient working capital for at least twelve months on listing is appropriate?

- Q9: Do you agree that the eligibility conditions regarding the level of independence between boards and their investment managers should be extended to VCTs?
- Q10: Do you agree that if an investment entity employs an investment manager authorised by the FSA to conduct investment activity, then it should be considered to have the necessary experience to meet the eligibility test?
- Q11: Do you agree that the restrictions placed on property investment companies should be removed?
- Q12: Do you agree that a secondary listing should not be available to investment entities and that if an overseas investment entity wishes to list, it must submit itself to the full listing regime contained within this document?
- Q13: Do you agree that ICVCs should be considered eligible for listing by virtue of their regulatory status?
- Q14: Do you believe that we should introduce new rules for authorised unit trusts?
- Q15: Do you agree that an overseas collective investment scheme that is a recognised scheme should be subject to the full eligibility regime?
- Q16: Do you agree with our analysis regarding collective investment schemes that are unrecognised schemes?
- Q17: Do you agree that there is a gap in the present disclosure regime and that a new requirement for investment entities to disclose significant changes to their risk profiles is appropriate?
- Q18: Do you agree with the proposal to remove the requirement for detailed monthly and/or quarterly disclosure?
- Q19: Do you agree with the proposal to remove financial information requirements and instead to rely on the requirements set by accounting standards to ensure that shareholders have sufficient information?
- Q20: In relation to the ongoing requirement for boards to be independent of their investment managers, would you support the granting of concessions for VCTs that are already listed and, if so, what would you suggest?

Part 2 - Appendix 1 – Annex 1

Amendments to the Listing Rules

In this Appendix all text is new and not underlined.

LR 15: Investment entities

15.1 Application

- 15.1.1 R (1) *LR 15.1 to LR 15.6 apply to an investment entity with, or applying for, a primary listing of its equity securities.*
- (2) *LR 15.7 applies to:*
- (a) *an ICVC; and*
 - (b) *an overseas collective investment scheme that is a recognised scheme,*
- with, or applying for, a primary listing of its equity securities.*

- 15.1.2 G *An investment entity with, or applying for, a primary listing of its debt securities should see LR 17 (Debt and specialist securities).*

Definition of investment entity

- 15.1.3 R In *LR*, an "*investment entity*" means an entity:
- (1) *which is an undertaking with limited liability, including a company, limited partnership, or limited liability partnership;*
 - (2) *whose instrument of incorporation or other founding instrument provides for it be established with the primary objects of:*
 - (a) *pooling funds that are contributed by holders of listed securities issued by the undertaking;*
 - (b) *investing and managing such funds (together with any borrowed amounts and any accrued interest or income) for the benefit of such holders:*
 - (i) *in property of any description; and*

- (ii) with a view to spreading investment risk; and
 - (3) which maintains and makes public a statement making clear, if necessary with a quantitative analysis, how its investment policies will achieve a spread of investment risk including with respect to asset allocation, risk diversification and gearing.
- 15.1.4 G The requirement for an *investment entity* to have a published policy in accordance with *LR 15.1.3R(3)* as to the approach it will adopt for the ongoing management of its funds distinguishes such an entity from those which should instead apply for *listing* under *LR 6* (Additional requirements for listing for equity securities).
- 15.1.5 R (1) An *investment entity* that has a policy of investing wholly or mainly in *shares* or equivalent interests in the capital of non-corporate entities must not control or seek to control or be involved in the day-to-day management of a *company* (or its *group*) or any other entity in which it has invested funds
- (2) Paragraph (1) does not preclude an *investment entity* from:
- (a) providing strategic advice to a *company, group* or other entity in which it has invested funds; or
 - (b) appointing non-executive representatives to the board of a *company, group* or other entity provided such representatives do not form a majority of that board for voting purposes.
- 15.2 Requirements for listing
- 15.2.1 R To be *listed* an *applicant* must comply with:
- (1) *LR 2* (Requirements for listing);
 - (2) *LR 6.1.16R* to *LR 6.1.24G*;
 - (3) *LR 15.2.2R* to *LR 15.2.7R*; and
 - (4) *LR 15.2.8R* to *LR 15.2.9R*, as applicable.

Sufficient and appropriate experience of directors and investment managers

- 15.2.2 R An *applicant* must satisfy the *FSA* that its *directors* and any *investment managers* have sufficient and appropriate experience in the management of *investments* of the size and type in which the *applicant* proposes to invest.
- 15.2.3 G (1) A *director* or *investment manager* will normally have sufficient and appropriate experience if:
- (a) he has a *permission* to carry out *designated investment business*; or
 - (b) he has experience (over at least the preceding three years) in the management of a portfolio of *investments* of the size and type in which the *applicant* proposes to invest.
- (2) In relation to paragraph (1)(b) a *director* or *investment manager* will have appropriate experience managing a portfolio of the size in which the *applicant* proposes to invest if he has managed a portfolio of *investments* that has a value of at least 50% of the funds the *applicant* is proposing to raise.

Independence

- 15.2.4 R The board of *directors* or equivalent body of the *applicant* must demonstrate that it is able to act independently of any *investment manager* appointed to manage the *investments* of the *applicant*.
- 15.2.5 G To satisfy *LR 15.2.4R* a majority of the board or equivalent body of the *applicant* (including the Chairman) should not be:
- (1) *directors, employees, partners, officers* or professional advisers of or to:
 - (a) an *investment manager* of the *applicant*; or
 - (b) any other *company* in the same *group* as the *investment manager* of the *applicant*; or
 - (2) *directors, employees* or professional advisers of or to other *investment entities* that are:
 - (a) managed by the same *investment manager* as the *investment manager* to the *applicant*; or

(b) managed by any other *company* in the same *group* as the *investment manager* to the *applicant*.

15.2.6 G (1) In complying with *LR 15.2.4R* the board of the *applicant* should have no more than one *director* who is also a *director*, partner, *employee* or professional adviser of or to:

(a) the *investment manager* to the *applicant*; or

(b) any other *company* in the same *group* as the *investment manager* to the *applicant*; and

(2) a *director* described in paragraph (1) must be subject to annual re-election by shareholders.

Cross-holdings

15.2.7 R (1) An *applicant* must not (and must not have an investment policy which would permit it to) invest, in other *listed investment entities*, more than 10%, in aggregate, of the value of its funds (together with any borrowed amounts and any accrued interest or income).

(2) The restriction in paragraph (1) does not apply to *investments* in *investment entities* which themselves have published investment policies to invest no more than 15% of their total fund in other *listed investment entities*.

Feeder funds

15.2.8 R (1) This *rule* applies to an *applicant* that has an investment policy of principally investing its funds in another *company* or fund (“A”) and A invests in a portfolio of *investments*.

(2) An *applicant* must control the policy of A to ensure that A complies with the investment policies and related requirements that apply to *investment entities* set out in *LR 15* (Investment entities).

Accounts

15.2.9 R To the extent that a *new applicant* for the *admission* of *shares* or *securities* convertible into its own *shares* has published or filed audited accounts:

(1) the accounts must satisfy the requirements set out in *LR 6.1.3R*(1)(b) to (e); and

- (2) the *new applicant* must satisfy the requirements set out in LR 6.1.3R(2).

15.3 Listing applications and procedures

15.3.1 R An *applicant* for *admission* must:

- (1) comply with LR 3 (Listing applications), as applicable; and
- (2) produce either a *prospectus* in accordance with the requirements set out in the *Prospectus Rules* or *listing particulars* in accordance with the requirements set out in LR 4 (Listing particulars for professional securities market and certain other securities), as applicable.

Sponsors

15.3.2 R An *applicant* that is seeking *admission* of its *equity securities* must retain a *sponsor* in accordance with LR 8 (Sponsors).

15.3.3 R In addition to the circumstances set out in LR 8.2.1R when a *sponsor* must be appointed, an *applicant* must appoint a *sponsor* on each occasion that it makes an application for *admission* of *equity securities* which requires the production of *listing particulars*.

Multi-class fund or umbrella fund

15.3.4 R An application for the *listing* of *securities* of a multi-class fund or umbrella fund must provide details of the various classes or designations of *securities* intended to be issued by the *applicant*.

15.3.5 G The *FSA* will admit to *listing* such number of *securities* as the *applicant* may request for the purpose of future issues. At the time of issue the *securities* will be designated to the relevant *class*.

Secondary listing

15.3.6 G The *FSA* will not approve an application by an *investment entity* for a *secondary listing* of its *securities*.

15.4 Requirements with continuing application

Compliance with LR 9

- 15.4.1 R *An investment entity* must comply with all of the requirements of LR 9 (Continuing obligations) subject to the modifications and additional requirements set out in this section.

Compliance with published investment policy

- 15.4.2 R *An investment entity* must only invest and manage its funds (together with any borrowed amounts and any accrued interest or income) in accordance with its published investment policy.

- 15.4.3 R *An investment entity* must obtain the prior approval of its shareholders to change its published investment policy.

Management of other entities

- 15.4.4 R *An investment entity* that has an investment policy of investment wholly or mainly in *shares* in *companies* or equivalent interests in the capital of non-corporate entities must comply with LR 15.1.5R at all times.

Sufficient and appropriate experience of directors and investment managers

- 15.4.5 R (1) *An investment entity* must notify the *FSA* of any proposed appointment of an *investment manager* or new *director*.
- (2) Any *investment manager* or new *director* that is appointed to an *investment entity* must satisfy the requirement set out in LR 15.2.2R.

Independence

- 15.4.6 R *An investment entity* must comply with LR 15.2.4R at all times.

Cross-holdings

- 15.4.7 R *An investment entity* must comply with LR 15.2.7R at all times.

Feeder funds

- 15.4.8 R (1) This *rule* applies to an *investment entity* that has an investment policy of principally investing its funds in another *company* or fund

("A") and A invests in a portfolio of *investments*.

- (2) An *investment entity* must comply with LR 15.2.8 at all times.

Conversion of an existing listed class of equity securities

- 15.4.9 R An existing *listed class of equity securities* may not be converted into a new *class* or an *unlisted class* unless prior approval has been given by the shareholders of that existing *class*.

15.5 Transactions

Compliance with the Model Code

- 15.5.1 R (1) An *investment entity* must comply with the provisions of the *Model Code*.
- (2) LR 9.2.7R to LR 9.2.10R do not apply to an *investment entity*.
- (3) The requirement set out in paragraph (1) does not apply to:
- (a) dealings by *persons discharging managerial responsibilities* in an *investment entity*;
 - (b) purchases by the *investment entity* of its own *securities*; and
 - (c) sales of *treasury shares* for cash or transfers (except for sales and transfers by an *investment entity* of *treasury shares* in the circumstances set out in LR 12.6.2R),
- if the *investment entity* satisfies the requirements of paragraph (4).
- (4) Transactions described in paragraph (3) may be entered into during a *close period* if:
- (a) the *investment entity* is satisfied that all *inside information* which the *directors* and the entity may have in periods leading up to an announcement of results has previously been notified to a *RIS*; and

- (b) the *investment entity* notifies a *RIS* that it is satisfied that all *inside information* has previously been notified.

Significant transactions

- 15.5.2 R (1) An *investment entity* must comply with *LR 10* (Significant transactions).
- (2) The requirement in paragraph (1) does not apply to transactions entered into by an *investment entity* that fall within the scope of its published investment policy unless the transaction is one to which paragraph (3) applies.
- (3) An *investment entity* that invests more than 20% of its funds (together with any borrowed amounts and any accrued interest or income) in *property* must treat any acquisition or disposal of property in accordance with *LR 10.7.1R* to *LR 10.7.4G*.

Transactions with related parties

- 15.5.3 R An *investment entity* must comply with *LR 11* (Related party transactions).
- 15.5.4 R In addition to the definition in *LR 11.1.4R* a *related party* includes:
 - (1) any *investment manager* to the *investment entity*; and
 - (2) any *director, employee, partner* or officer of an *investment manager* to the *investment entity*.

15.6 Notifications and periodic financial information

Changes to risk profile

- 15.6.1 R An *investment entity* must notify a *RIS* as soon as possible of any significant changes to its risk profile.
- 15.6.2 G In assessing whether there has been a significant change to its risk profile, an *investment entity* should take into account any factors that may affect a reasonable investor's perception of the risks associated with the *securities* issued by the *investment entity*. Some of the factors that may affect an

investor's perception of the risks associated with *securities* may include:

- (1) changes to the investment portfolio (even if these changes fall within the published investment policy);
- (2) changes to the risks associated with existing *investments*;
- (3) changes in gearing levels; and
- (4) changes to counterparty risk, credit risk, liquidity risk, currency risk or custodial risk.

Changes to tax status

- 15.6.3 R An *investment entity* must notify any change in its taxation status to a *RIS* as soon as possible.

Annual financial report

- 15.6.4 R In addition to the requirements in *LR 9.8* (Annual financial report), an *investment entity* must include in its annual financial report:
- (1) a statement (including a quantitative analysis) explaining how it is investing its funds (together with any borrowed amounts and any accrued interest of income) for the benefit of holders with a view to spreading investment risk in accordance with its published investment policy;
 - (2) a statement, set out in a prominent position, as to whether in the opinion of the *directors*, the continuing appointment of the *investment manager* on the terms agreed is in the interests of holders as a whole, together with a statement of the reasons for this view;
 - (3) a summary of the principal contents of any agreements between the *investment entity* and each of the *investment managers*, including but not limited to any provisions relating to compensation payable in the event of termination of the agreement; and
 - (4) the name of the *investment managers* together with an indication of the terms and duration of their appointment, the basis for their remuneration and any arrangements relating to the termination of their appointment.

Annual financial report – additional requirements for property investment entities

15.6.5 R An *investment entity* that invests, or intends to invest, more than 20% of its funds (together with any borrowed amounts and any accrued interest or income) in *property* must also include in its annual financial report a summary of the valuation of its portfolio, carried out in accordance with LR 15.6.6R.

15.6.6 R A valuation required by LR 15.6.5R must:

(1) either:

(a) be made in accordance with the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors; or

(b) where the valuation does not comply in all applicable respects with the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors, include a statement which sets out a full explanation of such non-compliance; and

(2) be carried out by an external valuer as defined in the Appraisal and Valuation Standards (5th edition) issued by the Royal Institution of Chartered Surveyors.

15.6.7 R The summary described in LR 15.6.5R must include:

(1) the total value of *properties* held at the year end;

(2) totals of the cost of *properties* acquired;

(3) the net book value of *properties* disposed of during the year; and

(4) an indication of the geographical location and type of *properties* held at the year end.

Statement regarding compliance with Combined Code

15.6.8 R (1) This *rule* applies to an *investment entity* that has no executive *directors*.

(2) An *investment entity*'s statement required by LR 9.8.6R(6) need not include details about the following principles and provisions of the *Combined Code* except to the extent that those principles or provisions relate specifically to non-executive *directors*:

- (a) Principle B.1 (including Code Provisions B.1.1 to B.1.6); and
- (b) Principle B.2 (including Code Provisions B.2.1 to B.2.4).

15.7 Collective investment schemes that are open-ended

Application

15.7.1 R This section applies to:

- (1) an *ICVC*; and
- (2) an *overseas collective investment scheme* that is a *recognised scheme*,

with, or applying for, a *primary listing* of its *equity securities*.

Requirements for listing

15.7.2 R To be *listed* an *applicant* must be:

- (1) an *ICVC* that has been granted an *authorisation order* by the *FSA*; or
- (2) an *overseas collective investment scheme* that is a *recognised scheme*.

15.7.3 R To be *listed* an *applicant* must comply with:

- (1) *LR 2* (Requirements for listing); and
- (2) *LR 6.1.19R* to *LR 6.1.21R*.

15.7.4 R An *applicant* that is an *overseas collective investment scheme* must also comply with *LR 15.2* (Requirements for listing).

Listing applications

15.7.5 R An applicant for admission must comply with *LR 3* (Listing applications), as applicable.

Sponsors

- 15.7.6 R An *applicant* that is seeking *admission* of its *equity securities* must retain a *sponsor* in accordance with LR 8 (Sponsors).
- 15.7.7 R In addition to the circumstances set out in LR 8.2.1R when a *sponsor* must be appointed, an *applicant* must appoint a *sponsor* on each occasion that it makes an application for *admission of equity securities* which requires the production of *listing particulars*.
- 15.7.8 G LR 8.4.5R(3) is modified to require the notification of interests of 10% or more for an *ICVC* or an *overseas collective investment scheme*.

Multi-class fund or umbrella fund

- 15.7.9 R An *applicant* which is a multi-class or umbrella fund which seeks to create a new *class* of *security* without increasing its share capital for which *listing* has previously been granted must provide the *FSA* with the details of the new *class* and no further application for *listing* is required.

Secondary listing

- 15.7.10 G The *FSA* will not approve an application by an *overseas collective investment scheme* for a *secondary listing* of its *securities*.

Requirements with continuing application

- 15.7.11 R An *issuer* to which this section applies must comply with:
- (1) LR 9 (Continuing obligations);
 - (2) LR 15.5.1R; and
 - (3) LR 15.6.3R.
- 15.7.12 R LR 15.6.8R applies to an *issuer* to which this section applies if the *issuer* has no executive *directors*.
- 15.7.13 R An *issuer* which is an *overseas collective investment scheme* must also comply with LR 15.4 to LR 15.6.
- 15.7.14 R The interests of a single *person* or entity which exceeds 10% of the issued *shares* (calculated exclusive of treasury shares) of any *class* of *share* in the capital of the *issuer* must, so far as they are known to the *issuer*, be notified to a *RIS* as soon as possible following the *issuer* becoming aware of those

interests.

Part 2 - Appendix 1 – Annex 2

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

LR 6: Additional requirements for listing for equity securities

LR 6.1 Application

...

Investment entities, ICVCs and overseas collective investment schemes

6.1.25 R (1) This rule applies to:

- (a) an investment entity;
 - (b) an ICVC; and
 - (c) an overseas collective investment scheme which is a recognised scheme.
- (2) An issuer to which this rule applies must comply with:
- (a) LR 6 (Additional requirements for listing for equity securities) as modified by LR 15 (Investment entities); and
 - (b) the additional requirements for listing set out in LR 15 (Investment entities).

LR 9: Continuing obligations

LR 9.1 Application

...

Application: investment entities, ICVCs and overseas collective investment schemes

9.1.5 R (1) This rule applies to:

- (a) an investment entity;
 - (b) an ICVC; and
 - (c) an overseas collective investment scheme which is a recognised scheme.
- (2) An issuer to which this rule applies must comply with:
- (a) LR 9 (Continuing obligations) as modified by LR 15 (Investment entities); and
 - (b) the additional continuing obligations set out in LR 15 (Investment entities).

LR 16 is deleted in its entirety.

The following definitions are deleted from the Glossary:

- (1) investment company;
- (2) investment trust;
- (3) property investment company;
- (4) property valuation report; and
- (5) venture capital trust.

The following definition is inserted into the Glossary:

investment entity as defined in LR 15.1.3R

The following definition in the Glossary is amended:

investment manager (1) (except in LR) a person who, acting only on behalf of a *client*:

- (a) manages *designated investments* in an account or portfolio

on a discretionary basis under the terms of a discretionary management agreement; or

(b) manages *designated investments* in an account or portfolio on a non-discretionary basis under the terms of a non-discretionary management agreement.

(2) (in LR) a person who, on behalf of a client, manages investments.

Compatibility with the FSA's general duties in its capacity as the UKLA

1. In presenting the proposals set out in this consultation paper we are satisfied that they are compatible with the general duties conferred upon us under section 73 of FSMA.

The need to use resources in the most efficient and economic way

2. In order to ensure the most effective use of our resources, we are consulting on the Investment Entities Listing Review at the same time as the proposals for the implementation of the Transparency Directive (TD).
3. Our approach to implementing the TD is largely 'copy-out' and is also designed to use our resources efficiently. In areas where the TD provisions lack specific detail, we believe that the market is better placed to develop best practice. However, we invite respondents to tell us about any areas where FSA guidance would be helpful.
4. The proposed changes to the Listing Rules for investment entities will reduce the burden on the UKLA which at present agrees the eligibility of investment managers by assessing their experience and expertise. In future, we will rely on FSA-authorisation where possible. In addition, we are proposing amendments which remove the need for prior approval from the UKLA where directors qualify for dispensation from the Model Code.

The principle that a burden or restriction which is imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of the burden or restriction

5. We have undertaken a cost-benefit analysis (CBA) to help inform this consultation. The results of our analysis on the Transparency Directive and the Investment Entities Listing Review are set out in Annex 1 of parts 1 and 2, respectively. We have pre-consulted with the market to ensure as far as possible that the burdens and restrictions imposed on issuers and other stakeholders are proportionate to the benefits.
6. As part of the Listing Review, we also commissioned the Centre for Financial Markets Research at the University of Edinburgh to provide analysis on the effects of short selling.
7. Both parts to this CP should be viewed against a background of European Directives that in some cases prescribe minimum levels of regulation. Where consistent with our objectives, we have made deregulatory changes. We are seeking to implement the TD in a manner which will minimise compliance and other costs and have attempted where possible to reduce the regulatory burden on issuers with the Listing Review proposals.
8. Examples of this include:
 - Our proposal to give investment entities much greater flexibility in their choice of investment strategy.
 - Our proposal to remove rules requiring detailed analysis of investment entities' portfolios in their interim and annual accounts, and to disclose limited information on a quarterly basis.
 - Our proposal to remove restrictions on the activities of investment entities that invest in property.
 - Our proposal to rely on FSA-authorisation to satisfy the criterion regarding investment managers' experience and expertise.
9. We might have overlooked some significant impacts in the CBA. Differences of opinion may also arise over the nature and extent of some of the impacts we have covered. As a result, we would welcome the input of respondents in helping us identify such areas.

The desirability of facilitating innovation in respect of listed securities

10. The Listing Review proposals allowing greater flexibility of investment strategies should facilitate innovation as they will allow investment entities currently eligible for listing to engage in short selling and make greater use of synthetic instruments.
11. Our copy-out approach to implementing the TD provisions is designed to encourage the market to develop best practice rather than us offering prescriptive guidance.

The international character of capital markets and the desirability of maintaining the competitive position of the UK

12. We are required to implement the minimum requirements of the Transparency Directive. In areas where we have discretion, we have decided to go further than the minimum requirements only where we believe there are important benefits for the UK in terms of ensuring a high level of transparency and attracting better quality issuers. We believe that the existing Listing Rules requirements which we propose to retain that go beyond those required by the TD promote the attractiveness of the UK market to better quality issuers.
13. The Listing Review proposals will enable stock exchanges in the UK to compete for listings of entities employing more sophisticated investment strategies, such as hedge funds, which are already able to list on other European stock exchanges. Accordingly, we believe that our proposals will improve the competitive position of the UK's capital markets.

The need to minimise the adverse effects on competition of anything done in the discharge of the FSA's functions under Part VI.

13. The cost-benefit analyses undertaken (see Annexes 1 and 2) indicate that the proposed changes should not have material adverse effects on competition. However, we remain open-minded and would welcome responses from readers on this.

The desirability of facilitating competition in relation to listed securities

14. The Listing Review proposals to allow greater flexibility in investment strategies should facilitate competition in relation to listed securities as entities employing more sophisticated strategies, including hedge funds, will be permitted to list in the UK for the first time. This will increase the variety of listed investment entities in the UK

15. The information provided to the market under the TD will enable investors to make more timely and informed decision and thereby facilitate competition in relation to listed securities.

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