

# **Response to CP13/15 – Enhancing the effectiveness of the Listing Regime**

May 2014





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In this Policy Statement we report on the main issues arising from Consultation Paper13/15 (*Feedback on CP12/25: Enhancing the effectiveness of the Listing Regime and further consultation*) and publish the final rules.

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## Abbreviations used in this paper

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<b>AGM</b>	Annual General Meeting
<b>CFD</b>	Contract for Difference
<b>the Code</b>	UK Corporate Governance Code
<b>DEPP</b>	The Decisions Procedure and Penalties Manual
<b>EGM</b>	Extraordinary General Meeting
<b>FCA</b>	Financial Conduct Authority
<b>FSMA</b>	Financial Service and Markets Act 2000
<b>GDR</b>	Global Depositary Receipt
<b>IPO</b>	Initial Public Offering
<b>LR</b>	Listing Rule
<b>PS</b>	Policy Statement
<b>RIS</b>	Regulatory Information Service
<b>UKLA</b>	UK Listing Authority

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# 1. Introduction

- 1.1** On 2 May 2014 we published the final rules resulting from our work to enhance the effectiveness of the Listing Regime. In this PS we provide those rules and also provide feedback on the responses received to CP13/15 – *Feedback on CP12/25: Enhancing the effectiveness of the Listing Regime and further consultation*. The consultation period for CP13/15 closed on 4 February 2014.

**Who does this consultation affect?**

- 1.2** This PS should be read by:

- UK and overseas issuers with UK-listed securities or considering a UK listing of their securities.
- Firms advising on the issuance of UK-listed securities.
- Firms or persons investing in or dealing in UK-listed securities.

**Is this of interest to consumers?**

- 1.3** This PS will interest consumers who deal or invest in UK-listed securities either directly or indirectly through institutions. The rules that we are publishing in this PS are designed to strengthen the protection of investors.

## 2. Executive summary

- 2.1** In CP13/15, *Feedback on CP12/25: Enhancing the effectiveness of the Listing Regime and further consultation*, we presented a package of measures designed to strengthen minority shareholder rights and protections where they are at risk of being abused. The measures were particularly intended to deal with cases when a controlling shareholder does not maintain an appropriate relationship with a premium listed company.
- 2.2** The package we have now finalised is balanced and implements targeted measures that provide protections for minority shareholders by:
- Placing requirements on the interaction between a premium listed company and a controlling shareholder, where one exists, via a mandatory agreement, and imposing enhanced oversight measures where a relevant agreement is not entered into or complied with.
  - Providing additional voting power for minority shareholders when electing or re-electing independent directors for a premium listed company where a controlling shareholder is present.
  - Enhancing voting power for the minority shareholders where a premium listed company with a controlling shareholder wishes to cancel or transfer its premium listing.
- 2.3** This final package of rules will lead to increased confidence for investors, promoting greater access to capital for businesses and facilitating growth. It is therefore fully in line with our strategic objective of making relevant markets function well and will advance both our consumer protection and market integrity objectives.

## 3. Overview

### Background

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- 3.1** We originally consulted on these issues in October 2012 in CP12/25. In CP13/15, we provided feedback to CP12/25 and a set of near-final rules based on these proposals. These near-final rules related to those aspects of CP12/25 where we had finalised our policy position but were not at the time formally made by the FCA Board. However, there were other aspects of CP12/25 where, in view of the feedback and our continuing discussions with market participants, we revised our proposals to ensure that they were effective, proportionate and did not create unintended consequences. Therefore, in CP13/15 we also included further consultation on these specific aspects, together with associated draft rules.
- 3.2** We decided to present both the feedback to CP12/25, near-final rules and the further consultation as one document in CP13/15, to allow the market and our stakeholders to assess the package of proposals in its entirety. We said in CP13/15 that, depending on the results of the further consultation, we intended to implement the full and final package of rules in mid-2014. The rules were made by the FCA Board on 1 May 2014 and come into effect on 16 May 2014.
- 3.3** The background to our consultations in both CP12/25 and CP13/15 was the expression of concerns by the investment community about the governance of premium listed companies with a controlling shareholder and the protection of the interests of minority shareholders.
- 3.4** The package we have now finalised meets these concerns by introducing the following protections for minority shareholders:
- Placing requirements on the premium listed company, where it has a controlling shareholder, to enter into an agreement with that shareholder and abide by it at all times. The agreement must contain mandatory independence provisions that are fundamental to the ability of the company to operate as an independent business. Where a controlling shareholder risks damaging the interests of minority shareholders, the new rules provide for specific sanctions to allow minority shareholders the means to veto all transactions between the company and controlling shareholder.
  - Providing additional voting power for minority shareholders when electing or re-electing independent directors for a premium listed company where a controlling shareholder is present.
  - Enhancing voting power for the minority shareholders where a premium listed company with a controlling shareholder wishes to cancel or transfer its premium listing.
  - Clarifying the voting arrangements that are deemed suitable for a premium listed company to avoid circumvention of protections provided by the Listing Rules.

- Providing improved information for shareholders about smaller related party transactions and the selection of independent directors to enable shareholders to meaningfully exercise their enhanced rights.
- 3.5** We have also introduced other measures that, when combined with the entry requirements and continuing obligations, act as a restatement of the high standards of governance required of premium listed companies. The new Premium Listing Principles describe the types of companies that are appropriate for a premium listing and ensure that its protections cannot be circumvented (for example, by preventing votes that occur due to the premium listing being decided by classes of shares that are not themselves premium listed). The changes also apply some of the original Listing Principles to standard listed issuers (for example, requiring them to deal with the FCA in an open and co-operative manner).
- 3.6** Finally, we are delivering greater transparency over the application of the free float provisions, but leaving the requirement for a 25% free float unchanged.
- 3.7** While we have made amendments, the package is broadly as was presented in CP13/15. The amendments are intended to ease the practical implementation and use of the new rules but the substance of the requirements is unchanged.

### Summary of feedback and our response

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- 3.8** The consultation period ended on 4 February 2014. We received 27 responses from a wide range of market participants and we are very grateful for the input that we have received from stakeholders throughout this process. Overall there was a broad consensus that our package of measures has struck an appropriate balance between the different interests and priorities of the market. Stakeholders generally supported the changes we made to the proposals set out in CP12/25, including the rationale behind the enhanced oversight measures. Most responses focused on the definition of ‘controlling shareholder’, the operation of both the independence provisions and the mandatory agreement, and the scope of the enhanced oversight measures. Some of these comments related to issues that we set out in CP13/15 as final policy rather than issues presented for further consultation. But we have, where appropriate, provided our response to these comments in this PS in addition to our feedback on the areas where we formally consulted.
- 3.9** The main areas of feedback to CP13/15 and a summary of our responses are set out below.
- 3.10** **Definition of ‘controlling shareholder’ and ‘associate’.** Some respondents raised a concern that the definitions of a ‘controlling shareholder’ and ‘associate’ of a controlling shareholder were too broad and complex to be applied with certainty. As a result, we have amended our approach to align the definitions as closely as possible to those already used elsewhere in the Listing Rules.
- 3.11** **Acting in concert.** Respondents requested more guidance on the use of the term ‘acting in concert’. We have not provided further guidance or incorporated the Takeover Panel’s guidance, as several stakeholders asked us to do, as we do not think it is appropriate to restrict either our or the Takeover Panel’s discretion. However, we think it is unlikely in practice that our conclusions on who is acting in concert would be substantially different to any that the Takeover Panel might reach.

- 3.12 Number of mandatory 'agreements' containing independence provisions.** Concerns were expressed by respondents about the use of the term 'with reasonable certainty', which was introduced in the context of a concession to limit the number of agreements that might otherwise be required. We have amended our drafting so that the requirements are clearer, in particular regarding how a company may use its understanding of the relationship between controlling shareholders to reduce the number of mandatory agreements.
- 3.13 Scope of independence provisions.** Respondents asked for further guidance on the scope of the independence provisions we set out as our final policy position in CP13/15. Although it was not included for consultation in CP13/15, we have clarified our approach in this area. In particular we highlight our support for shareholder engagement and for the legitimate and transparent exercise of influence.
- 3.14 Enhanced oversight measures.** Some respondents expressed concern that our proposals were too rigid and stringent, but responses overall were supportive of our policy objective of ensuring that the new regime is properly complied with while remaining within the scope of FCA powers. While we have noted the concerns expressed, we have not changed our proposals as the independence provisions are fundamental to the independent operation of any premium listed company. We believe they are proportionate and that we should be concerned when they are not followed.
- 3.15 Transitional provisions for entering into mandatory agreements containing the independence provisions.** We have clarified our approach here in response to comments received on the point at which the six-month period begins and whether existing agreements need to be reviewed.
- 3.16 Annual report disclosure.** Some respondents requested clarification of a number of points. We have made appropriate amendments and are proceeding on the basis of our proposals.
- 3.17 Circulars relating to election of independent directors.** Respondents expressed concern that the proposed disclosures in circulars relating to the election or re-election of independent directors were not limited in time or by any materiality threshold. We have not limited the disclosure requirements in this way as we believe that full disclosure is important and will allow shareholders themselves to form their own view. We have explained that less significant disclosures can be made in more general terms. In response to comments received, we have introduced the initial and on-going transitional periods for complying with the new requirements.
- 3.18 Election of independent directors.** The main comments received related to the transitional provisions that intend to give companies sufficient time to comply with the new rules when they come into force or when a controlling shareholder emerges. We have amended the provisions to address these concerns.
- 3.19 Free float.** This area did not generate significant comment. Respondents were broadly in favour of increased transparency and clarity on the circumstances where we would be minded to modify the free float requirements.
- 3.20 Continuing obligations.** These proposals received less comment and were well supported. We have made some minor amendments in response.
- 3.21 Listing Principles.** We received no substantive responses and are proceeding on the basis on which we consulted.

**3.22 Cancellation of listing.** As expected, responses were split, with the buy-side generally favouring enhanced protections (option 1) over maintaining the current rules (option 2). We strongly believe that, as cancellation removes from shareholders significant rights of participation in the governance of a premium listed company, it is essential that minority shareholders are given a proper say in this decision. So we have decided that we should proceed with option 1.

### **Next steps**

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**3.23** At its meeting on 1 May, the FCA Board made the rules set out in CP13/15 as amended following consultation. These rules in their entirety are set out at Appendix 1 and come into effect, including relevant transitional provisions, on May 16 2014.

**3.24** We would advise any listed companies that believe that any current or planned transactions or corporate arrangements may be affected by the new rules to contact the FCA as soon as practicable to discuss their individual circumstances.

## 4. Independent business

- 4.1** This part contains feedback to responses to Q1 through to Q9 about the measures aimed at ensuring that a premium listed company carries on an independent business. It covers areas such as definitions of controlling shareholder and associate, as well as enhanced oversight measures.
- 4.2** Overall, respondents were broadly supportive of our policy objective of ensuring that the new regime is properly complied with while remaining within the scope of FCA powers. However, there was some concern that the way we had positioned the enhanced oversight measures made them too stringent and that we risked causing unnecessary damage to an affected premium listed company and its shareholders.

### Definitions of a ‘controlling shareholder’ and an ‘associate’

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**Q1:** *Do you agree with our proposed definition of a ‘controlling shareholder’ as described above?*

**Q2:** *Do you agree with our proposal to amend the definition of an ‘associate’ as described above?*

- 4.3** The draft definitions generated detailed feedback mainly from premium listed companies and the advisory community. This feedback focused on the complexity of the draft definitions and potential difficulties with their practical application. Given the significant impact of the enhanced oversight measures, respondents asked for more clarity about how they would identify a controlling shareholder for the purposes of the new rules. Without such clarity, premium listed companies (and their advisors) were concerned that they would not be able to have a satisfactory basis on which to give (or advise on) the annual compliance confirmation and the FCA would inevitably receive significantly more requests for guidance on individual circumstances.
- 4.4** Respondents’ concerns fell broadly into the following areas:
- The draft definitions of ‘controlling shareholder’ and ‘associate’ were too wide and difficult to apply with certainty. The proposals required all associates to be aggregated in deciding whether a controlling shareholder existed and defined all associates as controlling shareholders, forcing yet more associates to be identified in turn. This problem does not exist in related party transactions as associates only become relevant after the related party has been identified.
  - By including associates with insignificant shareholdings under the umbrella of the controlling shareholder definition, we were giving them significant influence (at the IPO stage in particular) were they to refuse to cooperate and sign an agreement with the company mandating compliance with the independence provisions set out in LR 6.1.4DR.

- Our statement in CP13/15 that we would not be issuing guidance on the term ‘acting in concert’ also generated much commentary. Respondents felt that it was important, given the consequences of getting the decision wrong, that we issue guidance on this subject to clarify how we intend to apply this concept in practice and questioned its application in certain real situations.
- 4.5** A number of respondents asked whether an associate of a controlling shareholder who does not hold shares in the issuer is deemed to be a controlling shareholder. The reference to ‘any person who exercises or controls’ at the start of the definition in LR 6.1.2AR was interpreted as meaning that only associates who hold shares that contributed to the establishment of a controlling shareholder are deemed to be controlling shareholders. We were also asked to confirm whether or not ‘together with’ in LR 6.1.2AR(3) (now LR 6.1.2AR) should be interpreted as requiring a simple mathematical aggregation of the voting rights rather than necessitating an active demonstration that parties act in concert.
- 4.6** Respondents also queried whether it is necessary to identify associates of a controlling shareholder and concert parties where a controlling shareholder already exists because the new protections would appear to apply at that point regardless.
- 4.7** We were also asked about the interpretation of LR 6.1.2AR(3)(a) (which is now LR 6.1.2AR(1)) and particularly the use of the word ‘associate’ in that rule.

### Our response

We have carefully reviewed all feedback that we received on these questions and we are grateful to respondents for helping us to identify issues that could cause listed companies problems when applying the rules in practice.

#### Definition of ‘controlling shareholder’ and ‘associate’

Our intention in drafting the proposals was that they should be as clear and objective as possible, while at the same time including appropriate parties in their scope so as to protect against avoidance. In addition, as far as possible, we wished to avoid imposing unnecessarily burdensome requirements on premium listed companies.

We proposed to include associates as potential controlling shareholders in their own right as an anti-avoidance measure against the deliberate dispersal of voting rights around a group of companies to circumvent the requirements. We used a definition of ‘associate’ that we closely aligned to the definition used in the context of related party transactions in LR11. The only part of the definition that was new concerned a controlling shareholder that is a company, as we proposed to widen this aspect of the definition to also include associates of corporate controlling shareholders that are individuals, recognising that individuals’ shares are often held via corporate entities.

However, given our intention as noted above and the responses received to the consultation, we have concluded that it is appropriate to fully align the definitions of ‘controlling shareholder’ and ‘associate’ (when used in the context of a controlling shareholder) with those already used elsewhere in the Listing Rules. Therefore, as explained in more detail below, we have used the existing definition of ‘associate’ and the existing definition of ‘substantial

shareholder’ (albeit with a different percentage threshold and the concept of acting in concert) in the new rules.

As a result, we have deleted the reference to associates from the definition of ‘controlling shareholder’. It was not our intention to give control to entities that did not have control before the draft rules come into force. Also, we are sympathetic to concerns expressed by stakeholders that, by bringing associates into the definition of ‘controlling shareholder’, we cast our net too wide and introduced unnecessary complexity into the draft rules.

Given that parties acting in concert will be controlling shareholders, associates may still be caught under the definition of ‘controlling shareholder’ if they are in fact acting in concert. But they will not be presumed to be acting in concert by virtue of their associate relationship alone as, in practice, that would have the same effect as including associates in the definition. Where associates hold shares in a premium listed company, but are not acting in concert, then they are not in a position to exercise genuine influence and so we think it appropriate for them to be outside the scope of the rules.

We would also like to clarify that ‘control of voting rights’, as used in the draft definition of ‘controlling shareholder’, would include situations where the shares are held on a person’s behalf by a nominee or, in the case of shares held by a company, de facto control – i.e., control of more than 50% of the company that holds the shares as traced through a chain of controlled companies, if necessary. Therefore, such persons would be caught by the definition of a controlling shareholder, even where they do not hold shares in the company directly.

We can also confirm that the ‘together with’ wording in LR 6.1.2AR is intended to require a simple mathematical aggregation of the voting rights.

With regard to the draft definition of ‘associate’, as noted above we have reverted to the existing definition of ‘associate’ as used in the context of related party transaction rules in LR 11. We have deleted the new part of the definition dealing with situations where an individual is an associate of a corporate controlling shareholder.

Thus a controlling shareholder effectively becomes a large substantial shareholder, with the additional question being the extent to which parties are acting in concert.

These changes are intended to mitigate concerns that a company could be in ‘technical’ breach of the rules and be subject to the enhanced oversight regime despite its best efforts to comply. They are aimed at ensuring maximum clarity and proportionality while preserving the policy intent to catch situations where entities can exert genuine influence over a premium listed company.

We also received a number of responses commenting on the parts of the draft definition of ‘associate’ that have existed as part of the existing definition of ‘associate’ within the related party transaction regime in LR 11 (child/trust/partnership aspects of the definition). The definition of ‘associate’ is longstanding and we have not received such feedback as part of its day-to-day operation. As a result, we have not proposed any amendments to the substance of the associate definition where it is similar to that in operation currently as part of

LR 11. However, we may consider amendments in the future if there are problems with its practical application.

### **Acting in concert**

With regard to the term 'acting in concert', we will not be providing any further guidance in the rules themselves. As is the case with all LRs, individual guidance on the application of a rule may be sought from the FCA on a case-by-case basis. In practice, we would ask the company or its advisers to set out their own analysis of whether parties are acting in concert, including any view taken by the Takeover Panel. However, we are not proposing to incorporate the Takeover Panel's guidance on acting in concert into the LRs and we believe that it is right that each agency should not seek to fetter its own or another's discretion. That said, in practice we think it is unlikely that the outcome of our deliberation on who is acting in concert would be different from the Takeover Panel's conclusion (if any) or a conclusion they would have reached.

With regard to its practical application in certain specific circumstances, such as where shareholders come together to improve a company's governance structure (for example, to remove an incompetent management team), or where a bid is launched for a company, it was not our intention to dissuade shareholders from using their powers in this way. We would also highlight the presence of the rolling six-month transitional period in the new rules for when a premium listed company 'acquires' a controlling shareholder, within which a mandatory agreement containing the independence provisions would not be required.

In circumstances where there is a controlling shareholder in their own right, we would still expect a company to undertake all necessary steps to identify any potential concert parties that would then become controlling shareholders. This is because of the consequences that flow from being a controlling shareholder, such as the requirement to enter into an agreement containing the independence provisions set out in LR 6.1.4DR.

We have amended LR 9.2.2AR to clarify that the eligibility requirement to carry on an independent business, along with the specific arrangements that a premium listed company must have in place when a controlling shareholder is present, is a continuing obligation. We have added LR 9.2.2BR to replicate the concession in LR 6.1.4CR (as discussed in the following section), allowing premium listed companies with more than one controlling shareholder to avoid having to enter into multiple agreements where certain conditions have been satisfied. While this does not alter the substance of the requirement to operate an independent business, we believe that the greater clarity of this formulation will assist users in understanding and applying our rules.

Finally, LR 6.1.2AR(1) (consulted upon as LR 6.1.2AR(3)(a)) duplicates the provision in LR 11.1.4AR(1) that excludes persons in certain particular relationships from the related party transaction rules. In response to the query regarding which definition of 'associate', as referred to in LR 6.1.2AR(1), to use, this confusion should no longer arise, given that we have now fully aligned the definitions of 'associate' in the two areas of the rules. The term exists in LR 6.1.2AR(1) and LR 11.1.4AR(1) so that only those persons that are performing their duties under the particular relationships unrestricted by their associates should properly qualify for the carve-out.

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### Number of agreements required

- 4.8** CP 13/15 included draft guidance in LR 6.1.4CG to enable new applicants (and existing premium listed companies) not to enter into agreements that contained independence provisions with each controlling shareholder, where a controlling shareholder could with ‘reasonable certainty’ procure the compliance of another controlling shareholder with the independence provisions contained in the agreement. This was introduced as a consequence of widening the scope of the controlling shareholder definition to include associates (regardless of whether they were acting in concert or not) and requiring all controlling shareholders to enter into agreements that contain the independence provisions. Our proposed guidance met with considerable concern due to the introduction of the term ‘reasonable certainty’.
- 4.9** Respondents asked us to clarify what level of responsibility, if any, we were placing on companies for identifying controlling shareholder groups where the existence of such a group was not apparent from the information available to the company.
- 4.10** Respondents felt that it was likely, other than in the most straightforward of cases such as a wholly owned group structures, that companies would err on the side of caution and enter into multiple agreements in the absence of any guidance from us on what constituted ‘reasonable certainty’.
- 4.11** One respondent suggested that a *de minimis* exemption should be available, particularly as such an interest cannot on its own have any significant influence over the company.
- 4.12** Several respondents also asked us to confirm that the amendment of, or entry into, an agreement with a controlling shareholder, merely to comply with the requirement in LR 6.1.4BR(1) (and the equivalent continuing obligation) will not be treated as a related party transaction requiring shareholder approval.
- 4.13** It was also pointed out that LR 6.1.4BR(1) does not state that the agreement has to be with the controlling shareholder.

### Our response

We proposed this guidance as a result of the number of potential mandatory agreements that might be required given the wide scope of the controlling shareholder definition set out in CP13/15. We did not consult specifically on this concession and it was intended to allow companies to make sensible judgements and to ease the practical implementation of the new rules. However, to mitigate the issues expressed by respondents, we have amended the drafting to clarify that a company may use its understanding of the relationship between the relevant controlling shareholders to form a view as to whether a controlling shareholder that signs the agreement can procure the compliance of other, non-signing, controlling shareholders. In addition, the revised rules (LR 6.1.4CR and LR 9.2.2BR) provide that the agreement required under LR 6.1.4BR or LR 9.2.2AR must contain an additional ‘procurement’ provision, under which the signing controlling shareholder agrees to procure compliance by a non-signing controlling shareholder (and its associates) with the independence provisions. The agreement must also contain a list of names of any non-signing controlling shareholders.

We have set this out as a rule, rather than guidance, so that where a company has more than one controlling shareholder and chooses not to enter into agreements with all of them, it must comply with the provisions that are set out in LR 6.1.4CR or LR 9.2.2BR.

Should a company choose to use the concession in LR 6.1.4CR, we would expect it to exercise its judgement reasonably with the aim of ensuring that the intention of the obligation in LR 6.1.4R to carry on an independent business as its main activity is safeguarded.

We have also made consequential adjustments to LR 9.2.24R(3) (LR 9.2.25R(3) as consulted upon), LR 9.8.4R(14)(c)(iii), LR 9.8.4R(14)(d) and LR 11.1.1AR(3), to ensure that a breach of the procurement term of the agreement is reflected in the continuing obligations, disclosure requirements and enhanced oversight regime triggers respectively.

With regard to the diligence that a company should undertake in considering whether it has a controlling shareholder, directors of companies should act in accordance with their duties as directors, which in our view do not permit them to be wilfully blind to the existence of a controlling shareholder. We would expect that an applicant's or a premium listed company's systems and controls should be capable of allowing reasonable efforts to be undertaken to identify controlling shareholders, just as they would identify substantial shareholders at present.

We have decided against a *de minimis* exemption on the grounds that those entities that were so exempted (and their associates) would then be excluded from the scope of the independence provisions.

On the question of whether entry into an agreement with a controlling shareholder under the new requirements would constitute a related party transaction, we would not see either the amendment of an existing agreement or entry into a new one as being related party transactions where this is purely intended to address the requirements in LR 6.1.4BR(1) or LR 9.2.2AR(2)(a).

We have noted the point in relation to LR 6.1.4BR(1) and LR 9.2.2AR(2)(a) that it does not indicate who the other party to the agreement is, but we have not amended the rule as we believe that it is clear from the context that the agreement has to be with the controlling shareholder.

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### Scope of the independence provisions

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- 4.14** While the scope of the independence provisions in LR 6.1.4DR has, in general, been received positively, some respondents expressed concerns that the draft independence provisions would be interpreted in a way that would prevent controlling shareholders from exercising their rights as shareholders. They also argued that references to associates of controlling shareholders in that draft rule were problematic because these may not be controlled by a controlling shareholder, but their actions may cause a breach of the rules.

- 4.15** With regard to LR 6.1.4DR(1), which requires transactions and relationships to be conducted at arm's length and on normal commercial terms, respondents pointed out or questioned the following:
- Uncertainty about what was meant to be captured by a reference to 'transactions' or 'relationships' because, unlike in related party transaction regime in LR 11, these concepts have not been defined and have not been subject to a materiality threshold.
  - Whether premium listed companies have to ensure that existing contracts with a controlling shareholder or any of its associates comply with this rule, and what is to be done if they do not.
  - How the test – 'conducted on arm's length and on normal commercial terms' – is to be applied when making the annual compliance statement under LR 9.8.4R(14), i.e. at the time that the transaction is entered into or at the time of making the compliance statement.
  - Whether a transaction on more favourable terms, as far as the premium listed company is concerned, breaches the independence provision in LR 6.1.4DR(1).
- 4.16** With regard to LR 6.1.4DR(2) and (3), under which controlling shareholders should not take any action that would have the effect of preventing the company from complying with its obligations under the Listing Rules, or propose a shareholder resolution that is intended to circumvent the proper application of the Listing Rules, respondents raised the following issues:
- Whether LR 6.1.4DR(2) should be interpreted as implying that the controlling shareholder is prevented from taking any action that might lead to the cancellation of listing, even if such an action might, on a technical reading of the rule, prevent the company from complying with its LR obligations.
  - Whether it is significant that LR 6.1.4DR(3) refers to 'proper application' rather than 'proper compliance' with the rules.

### Our response

LR 6.1.4DR sets out three independence provisions that must be included in the agreement with a controlling shareholder. These provisions are aimed at ensuring that the company carries on an independent business as its main activity. They were not presented for consultation as part of CP13/15, having been considered as part of CP12/25. Two of the three independence provisions (LR 6.1.4DR(1) and (2)) remain unchanged from the original consultation paper (CP12/25) and the main purpose of the third independence provision in LR 6.1.4DR(3) is to strengthen the new cancellation rules.

#### **Controlling shareholder's relationship with its associates**

We are not sympathetic to concerns about the lack of control on the part of a controlling shareholder over its associates. Arguments that an associate may breach LR 6.1.4DR(1) by entering into a transaction with a company on a non-arm's length basis appear to us to be unrealistic. It would presume that the company has willingly transacted with such an associate other than at arm's length and on normal commercial terms. Such a transaction with an associate is likely to be caught under the related party transaction rules as the controlling shareholder will also be a substantial shareholder and, therefore, a related party

under LR 11. Further, actions that caused concerns around the breach of the remaining independence provisions in LR 6.1.4DR(2) and (3) would require proactive steps to be taken by an associate. This would potentially reveal them as acting in concert under the controlling shareholder definition, resulting in them being controlling shareholders in their own right.

### **Transactions and arrangements**

We have amended LR 6.1.4DR(1) to refer to ‘transactions and arrangements’ rather than ‘transactions and relationships’ to align the drafting as closely as possible with the terminology used in the related party transaction regime in LR 11. We accept that the lack of a materiality threshold contrasts with our approach under LR 11. However, we believe that it is appropriate that we distinguish between the two approaches – LR 11 seeks to regulate individual transactions between related parties whereas the independence provisions in LR 6.1.4DR speak to the nature of the entire relationship with the controlling shareholder.

We would also like to clarify that LR 6.1.4DR(1) only applies to transactions entered into after the new rules come into force. For the annual compliance statement in LR 9.8.4R(14), the test in LR 6.1.4DR(1) is to be applied as at the date the transactions and arrangements are entered into. As noted in our response in the Transitional Provisions section below, this is generally at the point that the premium listed company is legally committed to the course of action. This would also be consistent with the assessment that would have to be made under the existing LR 11 regime for related party transactions. The latter point is worth noting in light of the alignment of the controlling shareholder definition with the existing substantial shareholder definition.

Where a transaction or arrangement is on more favourable terms as far as the premium listed company is concerned, we would first look to whether the transaction or arrangement may benefit a controlling shareholder or any of its associates, as we would under the related party regime in LR 11. The provisions in LR 6.1.4DR act as safeguards to prevent an inappropriate relationship with a controlling shareholder developing, which may manifest itself in part through transactions with a controlling shareholder’s associates. On a *prima facie* basis there may not be much in a transaction that is undertaken on more favourable terms for the premium listed company that offends this, but there may also be other aspects to the transaction. As such, we propose to leave this judgement to boards (and independent directors) and hence would not see transactions on more favourable terms as automatically offending this principle.

### **Legitimate actions**

In terms of providing greater clarity on what is a legitimate (as opposed to an illegitimate) use of shareholder powers, we would not view LR 6.1.4DR(2) and (3) as preventing a controlling shareholder from engaging in activities such as the following, even where they may lead to the cancellation of listing, and, therefore, prevent the company from complying with its Listing Rule obligations:

- Accepting or making a takeover offer or voting in favour of or proposing a scheme of arrangement to effect a takeover offer.
- Giving an irrevocable undertaking to a third party in connection with a takeover offer.

- Purchasing shares in the market in connection with a takeover offer.

One respondent asked us to reassure the market that we do not intend to restrict shareholders' rights to engage fairly in company matters but rather are targeting behaviour that will be unfairly detrimental to the minority shareholder and we are happy to give that reassurance.

We have also been asked to comment on the acceptability or otherwise of the following under the new regime:

- A controlling shareholder proposing a resolution for the company to pay a dividend.
- Pressure from a controlling shareholder to adopt or desist from any particular acquisition strategy.

We strongly support shareholder engagement and it is not our intention to prevent a controlling shareholder from engaging fairly with a company or to prohibit them from legitimately disagreeing with the company. Our proposals do not prevent shareholders from exercising their rights as shareholders, but do seek to prevent influence being exercised improperly and in a way that is unfairly detrimental to minority shareholders. As such, the response to the points above would in practice depend on the totality of the controlling shareholder's interactions with the listed company, rather than being judged in isolation.

We would also like to make clear that LR 6.1.4DR(3) has been designed with the main intention of strengthening the cancellation provisions that we consulted on as option 1 in Q21 of CP 13/15. For example, were a controlling shareholder to procure an issue of shares by the premium listed company to enable it to pass the cancellation vote, we would view this as an intention to circumvent the proper application of the Listing Rules, despite that the premium listed company may otherwise be in compliance with the applicable legal and regulatory framework. Therefore the rule has been drafted as 'proper application' rather than 'proper compliance'.

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### Enhanced oversight measures in LR 11

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**Q3:** *Do you agree with our proposals relating to the circumstances for imposition of the enhanced oversight measures (LR 11.1.1AR) and the consequences of their imposition (LR 11.1.1CR), as discussed above?*

**Q4:** *Do you agree with the proposed guidance in LR 11.1.1DG?*

**Q5:** *Do you agree with the guidance proposed in LR 11.1.1BG?*

**Q6: Do you agree that the enhanced oversight by minority shareholders should continue to apply until a clean statement has been made in an annual report and the report does not contain a statement that an independent director disagrees with the board assessment (LR 11.1.1ER)?**

- 4.17** Overall, respondents supported our objective in this area. However, there was concern that the way we had positioned the enhanced oversight measures made them too stringent and that we risked causing unnecessary damage to an affected premium listed company and its shareholders.
- 4.18** A number of respondents expressed concerns with the lack of a materiality threshold, without which any breach of the independence provisions contained in the agreement could trigger the measures, and argued that the circumstances of the breach should be taken into account.
- 4.19** These respondents also argued against the inclusion of ordinary course transactions within the scope of the measures, particularly where a company has a large number of such transactions. They argued that it would be disproportionate and damaging to the interests of shareholders to require independent shareholder approval for each and every transaction with that particular controlling shareholder, if the measures had been triggered.
- 4.20** A number of stakeholders proposed alternatives to the imposition or full effect of the enhanced oversight regime, such as subjecting small, smaller or ordinary course transactions (as those terms are used in LR 11) to the requirement to obtain a fair and reasonable opinion from a sponsor, or to allow a grace period after the event to rectify the breach.
- 4.21** Generally, the feedback on our proposed guidance in LR 11.1.1BG and LR 11.1.1DG regarding the circumstances in which we may consider (under LR 1.2.1R) waiving either the triggering of the enhanced oversight measures overall or the scope of the enhanced oversight measures once triggered, was favourable. But several stakeholders wanted us to go further and suggested that independent shareholders or independent directors should also have this ability via a vote. They also requested guidance as to the circumstances that we would deem exceptional, when considering under LR 1.2.1R a waiver of LR 11.1.1CR.
- 4.22** Several respondents were concerned that the time that a company may have to spend in the enhanced oversight measures (i.e. until the publication of the next annual report that contains a clean statement of compliance) may be disproportionate to the breach and proposed alternative ways for exiting the measures, for example by an independent shareholder or an independent director vote. Another proposal was for the measures to be lifted by an announcement outside an annual report in compliance with LR 9.8.4R(14) in respect of a minimum 12-month period after the imposition of restrictions.
- 4.23** A few respondents suggested that our proposal could lead to an arbitrary length of time that the company would have to spend in the regime, depending on the premium listed company's year-end and the date of the breach relative to that year-end.
- 4.24** Our proposal to give an independent director the power to trigger the enhanced oversight measures were they to dissent from the board's view that:
- all relevant agreements had been entered into, and
  - all of the independence provisions had been complied with
- also generated comment.

- 4.25** Some stakeholders were concerned that this would subject the independent directors to too much pressure and independent directors may be unwilling to make their dissent known if subjecting the company to the enhanced oversight measures risked having a disproportionately negative impact. One respondent expressed a concern that independent directors may be subject to intimidation by a controlling shareholder.

#### Our response

Given the purpose of the independence provisions and the enhanced oversight measures, we are not persuaded that we should change our position. The independence provisions are fundamental to the independent operation of any premium listed company and, if these are breached, we believe that it is appropriate that the company should spend a certain time in the regime, which will end only when it can demonstrate that it has behaved appropriately over a period of time. However, we will keep the duration that the company spends in the regime under review and will consider changing our approach if this seems appropriate once the new rules have had time to bed down. Further, our amendments to the definition of ‘controlling shareholder’ and ‘associate’ reduce the complexity and improve clarity so that there is less scope for a company to ‘inadvertently’ breach the rules by failing to categorise a shareholder as controlling shareholder and become subject to the enhanced oversight measures as a result.

The enhanced oversight measures are not intended to prohibit ordinary course transactions, but to subject them to increased scrutiny. We would expect that, if a premium listed company entered the enhanced oversight measures, the types of transactions that could continue to be treated as ordinary course will be discussed and agreed with the FCA upfront.

We do not believe that the alternative measures suggested in the feedback will provide the same level of assurance to the market/shareholders as our measures are designed to provide. We consider that changing our draft rules to include a materiality threshold and/or exclude ordinary course transactions from the ambit of the enhanced oversight regime risks diluting one of the key aspects of our package, and would undermine the intended deterrent effect.

In relation to LR11.1.1BG, we are not proposing to include guidance as to those circumstances that we would regard as being exceptional. Once the rules have been in place for some time and we have practical experience of their application we may consider providing guidance where appropriate.

With respect to concerns that our proposals put too much pressure on independent directors, we believe that it is the role of independent directors to be able to challenge the board and, in this context, the proposals go to the heart of what independence means. Also, by clarifying the definition of ‘controlling shareholder’, we have narrowed the scope for a breach of our rules to occur, so that an independent director is unlikely to be in a position where they have to deliberate upon subjecting the company to the enhanced oversight regime because of a minor or inadvertent breach.

As suggested in the feedback and in line with the wording of LR 1.2.1R (which deals with modification or dispensation with the rules), we have made minor

changes to LR 11.1.1BG and LR 11.1.1DG to reflect that we may dispense with the rules as well as modify them.

We have also made an amendment to LR 11.1.1CR, which sets out consequences of triggering the enhanced oversight regime, to make clear that the enhanced oversight measures apply to transactions for the benefit of a controlling shareholder, to fully align the wording on affected transactions with the language used in LR 11.1.5R.

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### Transitional provisions

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**Q7:** *Do you agree with our proposals for transitional provisions for existing premium listed companies with controlling shareholders, as well as for premium listed companies that in due course ‘acquire’ a controlling shareholder (proposed LR TR 11, section 1 and LR 9.2.2BR(1))?*

- 4.26** Under LR TR 11 section 1 (now LR TR 12), we proposed to allow existing premium listed companies that have a controlling shareholder at the time the rules come into force six months to comply with the requirement to have in place an agreement containing the independence provisions.
- 4.27** Premium listed companies that responded were concerned whether the requirement on being subject to the new rules is to simply put in place an agreement that contains the independence provisions in LR 6.1.4DR or to review all existing commercial agreements with a controlling shareholder and any of its associates to ensure that they comply with the independence provisions in LR 6.1.4DR.
- 4.28** Commenting on draft LR 9.2.2BR(1) (now LR 9.2.2CR(1)), which gives a premium listed company six months to comply where they ‘acquire’ a controlling shareholder, a number of respondents suggested that the six-month period should start from the time when the listed company acquires knowledge of the fact that the person has become a controlling shareholder, rather than from the point that the controlling shareholding arises.
- 4.29** Several respondents pointed out that, as draft LR 9.2.2BR (now LR 9.2.2CR) provides for a transitional period for a company to bring itself into compliance with the rules on controlling shareholders, the premium listed company is not technically breaching a requirement during that transitional period and thus that it is incorrect to refer to ‘rectifying a breach’ in LR 9.2.2BR (now LR 9.2.2CR).

### Our response

Our view of the necessity (or otherwise) to review existing contracts when a controlling shareholder first emerges is that the decision would be similar to the one made under LR 10 (Significant transactions) and LR 11 (Related party transactions) in terms of looking at the timing of entry into a transaction. The principle underlying the identification of the point in time that a transaction occurs for both those chapters is that reference should be made to the point

at which discretion is lost. Thus, if a premium listed company is already legally committed to a course of action when a controlling shareholder emerges, then the transaction has already occurred from a Listing Rules standpoint. However, if discretion remains, then the transaction would occur at the point that such discretion is exercised. Consequently, we would expect a large majority of commercial contracts to be excluded from the need to be reviewed for compliance with the new provisions. We would also highlight that aligning the controlling shareholder and substantial shareholder definitions means that many of these decisions would have to have been already made for the purposes of LR 11.

We don't believe it is appropriate to make the start of the six-month period in LR 9.2.2CR (that deals with situations where a premium listed company "acquires" a controlling shareholder after it has listed) contingent on the point at which a company becomes aware of a controlling shareholder. As noted earlier, we would expect a premium listed company's systems to be capable of identifying a controlling shareholder in normal circumstances. Where such a shareholder has taken steps to obscure its true holding so as to avoid detection, we believe that it is unlikely that they would be able to exercise the sort of influence we are seeking to prevent.

We have noted the feedback about rectifying a breach for which a transitional provision applies and have amended the preamble of LR 9.2.2CR accordingly.

In all other respects, we are taking this proposal forward.

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## Annual report disclosure

**Q8:** *Do you agree with our proposals to impose an obligation to make a statement as reflected in draft LR 9.8.4R(14) and the associated notification obligation in draft LR 9.2.25R?*

**Q9:** *Do you agree with our proposals in draft LR 9.8.4AR requiring a statement to be included in an annual report where an independent director has declined to support the relevant statements of compliance made by the board and the associated notification obligation in draft LR 9.2.26R?*

- 4.30** Overall the proposals in this area were well supported, with a large majority of respondents agreeing with both questions. Subject to the changes noted below, we are proceeding as proposed.
- 4.31** Several respondents suggested that the statement of compliance in LR 9.8.4R(14) should be given by reference to the board's awareness because the board may not be aware of a new controlling shareholder that should have given the relevant undertaking.
- 4.32** Similarly, the same respondents argued that the notification required in LR 9.2.25R (as consulted upon – now LR9.2.24R) should be given by reference to the company's awareness.

- 4.33** We were also asked to clarify that, for a company that listed during its accounting period, the requirement in LR 6.1.4BR(1) only applies from admission to listing.
- 4.34** One respondent questioned whether it was sufficiently clear that any dissent by an independent director would be within the scope of LR9.8.4CR. LR9.8.4CR is the requirement to set out in one section of the annual report (or include a table with appropriate cross-references) many of the annual report disclosures required by the Listing Rules.

#### Our response

In our final rules, LR 9.2.25R (as consulted upon) is now LR 9.2.24R. On the basis of the feedback, we have concluded that a premium listed company's assessment of the compliance by a controlling shareholder (or its associates) with the independence provisions should be based on its awareness. We have amended LR 9.2.24R to reflect this. In doing so, we have expanded LR 9.8.4R(14)(c) to deal with compliance by a listed company and a controlling shareholder separately. Where assessment of compliance requires a judgement to be made about a controlling shareholder's (or its associate's) compliance, we have also added 'as far as the listed company is aware'.

In response to the feedback, we have amended LR 9.8.4R(14)(d) to clarify that the obligation to confirm compliance with the independence provisions relates to the period under review. This amendment reflects that the period to which the Listing Rules apply may be shorter than that covered by the annual report – for example, where a company is admitted to premium listing part way through its financial year.

The intention of LR 9.8.4AR is to make clear that the annual statement of compliance required by LR 9.8.4R(14) must include any dissent by an independent director. As such, we believe that it would be within the scope of LR 9.8.4CR and so we have not made any amendments to the rules in this regard.

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## 5. Other proposals

- 5.1** This part contains feedback to responses to Q10 through to Q22 relating to the remainder of the areas that we consulted on. It covers subjects such as independence of directors, shares in public hands, continuing obligations, the Listing Principles and cancellation of listing.

### Independence of directors

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**Q10:** *Do you agree with our proposal to require disclosure to be included in circulars relating to election of independent directors?*

**Q11:** *Do you agree that our proposals in this area should be limited to commercial companies with a controlling shareholder or should they be applied to all premium listed commercial companies or all premium listed companies (regardless of whether there is a controlling shareholder or not)?*

**Q12:** *Do you agree with our proposal to include specific disclosure requirements as described above (LR 13.8.17R(i) and (ii)? Are there other requirements we should consider?*

- 5.2** Our proposal to include additional disclosure in circulars about the election of independent directors generated a fair amount of comment.
- 5.3** Those that disagreed with the proposal to require additional disclosure did so on the basis of assertions that this was already adequately covered by the UK Corporate Governance Code, given that the disclosure may already appear in the annual accounts and the Listing Rules require disclosure of the company's compliance with the Code.
- 5.4** The substance of the disclosure attracted more comments. Respondents expressed reservations about the lack of a time limit on the disclosure of relationships, the lack of guidance on what type of relationships were covered by the requirement, and the lack of a materiality threshold.
- 5.5** Respondents also asked for a clarification of whether this requirement applies on re-election of the director and whether a cross-reference to a similar disclosure in a prior or accompanying annual report would suffice.
- 5.6** While most respondents agreed with our proposal that the requirement to include additional disclosure should only apply to premium listed companies with a controlling shareholder, several

respondents urged us to go further and require additional disclosure on all directors proposed for election, and for brief biographies to be included in the circular.

- 5.7** It was also pointed out to us that there was a need to introduce a transitional provision to allow an orderly implementation and to reflect the fact that a controlling shareholder may emerge shortly before a scheduled meeting.

### Our response

We have decided not to limit the disclosure required in circulars regarding the election or re-election of an independent director (under LR13.8.17R) to a certain time period or to set a materiality threshold and so will proceed as proposed in this regard. Our intention is that clear and full disclosure should be provided so that shareholders can themselves form a view as to materiality.

We originally sought views in CP12/25 on whether boards of premium listed companies with a controlling shareholder should have a majority of independent directors. As a result of feedback to that proposal, we were persuaded that it was the quality rather than the quantity of independent directors that was important. Given this conclusion, we recognised that the Listing Rules could not serve to guarantee quality but could ensure that appropriate information is provided so as to allow shareholders to make fully informed judgements in this area.

A key part of this is the judgement over whether an ostensibly independent candidate can actually be relied upon to be independent. The decision to omit information is subjective and, as such, we believe that there is a greater risk in omitting details than having excess disclosure in the relevant circulars. But we are comfortable that less material and more extensive dealings can be described in more general terms. Rather than describing the required level of detail in the rules, we would expect boards to take a view on the appropriate extent of disclosure to shareholders, having regard to facilitating an informed voting decision.

It was not our intention to draw any distinction between election and re-election of directors and so we have amended LR13.8.17R to reflect this. On including cross-references to similar disclosure in prior or concurrent annual reports, the decision as to whether this is appropriate or not would fall under the existing LR 13.1.3R to LR 13.1.5R, which deal with incorporating information by reference.

We are also proceeding with the requirement for additional disclosure only for the election (or re-election) of independent directors for premium listed commercial companies with a controlling shareholder. Therefore, we anticipate that the scope for application of the additional requirements is reasonably narrow.

Respondents raised concerns that there is a significant lead time in preparing a circular for shareholders and that, as a result, a transitional provision would be appropriate. As a result we have introduced a three-month transitional provision for LR 13.8.17R in section 6 of TR 12, which deals with transitional provisions in relation to continuing obligations. Similarly, we have added a rolling transitional provision in LR 13.8.18R where we have allowed, on an on-going basis, a three-

month transitional period after the emergence of a controlling shareholder in a premium listed commercial company. We believe that this should allow all those meetings for which preparation is already at a reasonably progressed stage to proceed on their intended timescales. This transitional period is shorter than that applying to the potential changes required to a company's constitution under LR 9.2.2AR(2)(b). This is because the underlying requirement in LR 13.8.17R does not necessitate any change to the constitution.

Given the amendments to the definition of 'controlling shareholder' as outlined earlier, we have amended the drafting of LR 13.8.17R(1) to include specific reference to associates of controlling shareholders as they are no longer included as self-standing controlling shareholders.

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### Election of independent directors

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**Q13: Do you agree with our proposal for transitional provisions as set in draft sections 2 and 3 of LR TR11 and LR 9.2.2BR(2)?**

- 5.8** Relevant transitional provisions are now set out LR TR12 sections (2) and (3) as well as LR 9.2.2CR(2).
- 5.9** A number of responses to this question suggested that listed companies may be in the middle of preparing the documentation for the annual general meeting (AGM) at the time that the new rules come into force or at the time that a controlling shareholder emerges. The respondents suggested that the need to add resolutions to amend the constitution and appoint independent directors via the dual voting mechanism (to meet LR 9.2.2AR(2)(b) and LR 9.2.2ER) would significantly disrupt the AGM preparations. As a result, respondents asked us to consider introducing an additional transitional period to apply, not only after the new rules come into force, but also upon learning about a controlling shareholder on an ongoing basis.
- 5.10** One respondent also commented on the interaction between draft LR 9.2.2CG (now LR 9.2.2DG) and LR 9.2.2ER (now LR 9.2.2FR). A combination of LR 9.2.2CG and the permissive nature of LR 9.2.2ER meant that an independent director who failed to be elected at the first meeting could stay in post until the next annual general meeting because the company was not required to call a second vote under draft LR 9.2.2ER. It was suggested to us that the rules should set a deadline when the second vote must be held and that the independent director must vacate office if not elected. It was also noted that LR 9.2.2ER(2) as proposed could have been read to suggest that the second vote was optional.
- 5.11** We were also asked whether an amendment would need to be made to the constitution in all circumstances to positively require the new voting procedures or if the absence of anything preventing such voting would suffice. It was also requested that we clarify whether the dual approval requirement could be met via a single resolution or if it necessitated two resolutions.
- 5.12** One respondent suggested that, if our intention was not to apply these rules to funds, then LR 15.4.27R should be extended to cover LR 9.2.2GG (now LR 9.2.2HG).

### Our response

In response to feedback, we have augmented the transitional provisions in LR TR12 sections (2) and (3) in relation to the need to appoint directors via the dual voting mechanism (LR 9.2.2ER) and the potential need to amend the constitution (LR 9.2.2AR(2)(b)). Therefore, if notice of an AGM has already been given by the premium listed company, or is given within three months of the implementation of the new rules, the grace period will run until the next AGM. This is because the event that results in a person becoming a controlling shareholder is the implementation of the new rules. It is at this point that the definition of a controlling shareholder is first introduced.

We have made a similar amendment to the ongoing transitional provision in LR 9.2.2CR(2) for premium listed companies that did not have a controlling shareholder when they listed, but have 'acquired' one as a result of changes in ownership of the company. The premium listed company has until the next AGM to comply with the relevant rules if notice of an AGM has already been given, or is given within three months of a controlling shareholder emerging. This will allow affected premium listed companies sufficient time to plan for and make any required amendments after the emergence of a controlling shareholder without causing undue disruption to preparing for their AGM.

We have also added reference to the annual general meeting of the company to avoid the suggestion that the transitional provision attaches to any general meeting that may be considering unrelated business.

We have also amended the drafting of LR 9.2.2FR that deals with situations where the vote to elect an independent director was inconclusive (previously LR 9.2.2ER), to clarify that the second vote must occur (where required) and is not optional.

We have amended LR 9.2.2FR (previously LR 9.2.2ER) to require that the second vote takes place within 120 days of the first. We would also like to clarify that as a result of using 'allows' in LR 9.2.2AR, premium listed companies are not required to amend their constitution to comply with this rule as long as their constitution does not prohibit such elections from taking place. Furthermore, on the assumption that the votes of independent shareholders can be identified by the premium listed company, then LR 9.2.2ER can be met through holding a single vote or proposing a single resolution.

We have not amended LR 15.4.27R (that excludes closed-ended investment entities from additional requirements on independence where there is a controlling shareholder) to dis-apply LR 9.2.2HG as it provides guidance on a rule that does not apply to closed-ended investment funds.

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### Shares in public hands (or 'free float')

**Q14:** *Do you support our proposal to delete LR 6.1.20G and replace it with LR 6.1.20AG as described above?*

**Q15:** *Do you agree that the provisions that are being introduced for the premium segment as discussed above should be introduced for shares listed on the standard segment (LR14) and GDRs (LR18), including consequential amendments to 'group' definition?*

- 5.13** Our proposals on specific criteria that should be referred to in agreeing a modification of the free float requirements received strong support.
- 5.14** Given that the grounds for modifying the free float requirements in both the standard shares and standard Global Depositary Receipt (GDR) listing categories are also based on liquidity considerations, we asked whether we were right to propose the exclusion of locked-up securities from the calculation of the free float where standard listed shares and GDRs were concerned. The majority of respondents supported this proposal.
- 5.15** We received several comments from respondents on various rules that were not subject to consultation. In particular, regarding the draft LR 6.1.19R(4)(f) excluding shares subject to a lock-up period of longer than 180 days from the free float, one respondent noted that our drafting excluded all shares that are held by a person from the free float, whereas only some of those shares may be locked up. This respondent proposed that only shares that are actually subject to a lock-up, and not the total holding, should be excluded from the free float. Respondents also questioned the interpretation of LR 6.1.19R (4)(f) (now LR 6.1.19R (4)(b)) and whether the 180 days was relevant on initial grant or to the unexpired term.
- 5.16** With regard to draft LR 6.1.20BG, LR 14.2.3AG and LR 18.2.9AG, which deal with shareholdings of individual fund managers, it was pointed out to us that this guidance may be interpreted to require listed companies to apply for a waiver of the free float requirement each time they encountered this issue.
- 5.17** We also received several comments on draft LR 6.1.20CG, LR 13.2.3BG and LR 18.2.9BG, which deal with financial instruments with long economic exposure to shares. The comments questioned our intention for the operation of this provision, with several respondents interpreting it as being intended to prevent the use of Contract For Difference (CFD) to build up controlling provisions without giving exposure to the underlying shares.

#### Our response

We have amended the drafting in LR 6.1.19R(4)(b), LR 14.2.2R(4)(b) and LR 18.2.8R(4)(b) in response to the feedback to clarify that only shares that are subject to a lock-up are excluded from the free float. We would also like to clarify that it is the term on entry that is relevant for whether the shares are included in the free float, not the term remaining until expiry.

In response to feedback, we have amended LR 6.1.20BG, LR 14.2.3AG and LR 18.2.9AG that deal with shareholdings of individual fund managers to omit reference to the FCA so as to allow this judgement to be made without requiring our input.

The proposed guidance in LR 6.1.20CG and its equivalents in draft LR 14.2.3BG and LR 18.2.9BG explained that financial instruments that give a long economic exposure to shares, but do not control the buy/sell decision in respect of the shares, should not count as an interest for the purpose of public hands threshold. It was clear from the responses that the intention of this proposal had been misunderstood by several respondents. Given this confusion, and the fact that the guidance ultimately reiterates the position in LR 6.1.19R(4)(a)(v), which used to be in LR 6.1.19R(4)(e) (and its LR 14 and LR 18 equivalents), which sets out circumstances when shares should not to be treated as held in public hands, we have decided not to take this proposal forward.

As we have noted previously, these sections of the Listing Rules are concerned with the level of shares (or GDRs in LR 18) in public hands and not governance of the company. If market developments after implementing this package of rule changes suggest that the use of CFDs is occurring to circumvent these proposals, then we would consider the need for appropriate amendments.

Other than the amendments noted above, we are proceeding as proposed.

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### Continuing obligations

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**Q16:** *Do you agree with our proposal to allow existing premium listed companies two years to comply with LR 9.2.22R?*

**Q17:** *Do you agree with the transitional provisions as described above?*

**Q18:** *Do you agree with our proposal as explained above?*

**Q19:** *Do you agree with our proposals for the treatment of smaller related party transactions as discussed above?*

- 5.18** All of the proposals in this section were well supported by respondents and few made detailed comments in response to these questions.
- 5.19** All respondents who responded to these questions supported our proposals for a two-year transitional period for existing premium listed companies to bring themselves into compliance with our requirement that votes driven by premium Listing Rules must be decided by holders of premium listed shares (Q16), for a transitional period for annual report disclosure (Q17), and miscellaneous amendments to LR 9 to ensure that we use defined terms where appropriate (Q18).
- 5.20** Q19 sought views on our proposal to cease pre-approval of the documentation for transactions that are classified as smaller related party transactions in LR 11. Instead, we proposed to require that they are announced via an RIS at the time they take place. This proposal was well supported although a few respondents asked to clarify the timing of such announcement. One respondent suggested that a more immediate announcement of such transactions risked giving them undue prominence.

### Our response

Following our review of the draft rules we have renumbered the proposed LR 9.2.22R as LR 9.2.21R and amended it to make clear that the new votes in LR 5.2.5R(2) (cancellation of listing), LR 5.4.AR(3) (transfer of listing out of the premium segment) and LR 9.2.2ER (election of independent directors) that are limited to independent shareholders, should be interpreted as referring to independent shareholders that hold shares that are premium listed.

On the timing of the announcement of the smaller related party transaction, the requirement in LR 11.1.10R(2)(c) is to announce it as soon as possible upon entering into the transaction. We have purposefully used the same language as the one used in LR 10.4.1R(1) that sets out a requirement for notification of class 2 transaction. As far as we are aware, this requirement has not caused premium listed companies any problems.

It was clear from our discussions with investors that they valued the disclosure of related party transactions and, as such, we believe it is appropriate that such transactions are given prominence through timely disclosure.

Other than the amendment above, we are proceeding with these proposals.

## The Listing Principles

### **Q20: Do you agree that the consequential changes described above are appropriate?**

- 5.21** We had no substantive responses to Q20, which dealt with consequential amendments to LR 7 and DEPP 6 as a result of our redrafting of the Listing Principles. All those who responded to this question agreed with the proposal.
- 5.22** One respondent asked us to clarify why the guidance for Premium Listing Principle 4 included the extent of dispersion and relative liquidity of the classes as an important factor in assessing whether the voting rights attaching to different classes of premium listed shares are proportionate (LR 7.2.4G(2)).

### Our response

We are proceeding with our proposal.

We are mindful that there are many legitimate reasons for companies to have more than one class of shares listed. For example, it is particularly common in the closed-ended investment fund listing category (LR15) where different share classes are intended to meet the differing investment needs of their investors. The purpose of Listing Principle 4 is to prevent artificial structures involving multiple classes with different voting powers, which are designed to allow control to rest with a small group of shareholders. LR 7.2.4G sets out a non-exhaustive list of factors that we would look at in assessing whether the voting rights attaching to different classes of premium listed shares are proportionate.

The reference to relative liquidity in that guidance reflects that a contrast in the dispersion and trading levels of the two classes may (rather than must) indicate that an artificial structure is present.

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### Cancellation of listing

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**Q21:** *Do you agree with Option 1 or Option 2?*

**Q22:** *Have we set the 80% threshold in draft LR 5.2.11DR at the appropriate level?*

- 5.23** Given that the key policy objective of the revised rules is to strengthen minority shareholder rights where they are at risk of being abused, we perceived there to be a risk that the package was deficient without additional protections relating to a cancellation of premium listing that would have led to such rights being extinguished. Therefore, as part of CP13/15 we developed an enhanced suite of cancellation provisions designed to give minority shareholders in premium listed companies a greater say where a controlling shareholder was present. At the same time we recognised the support that the existing requirements had and therefore we chose to present two options for consultation.
- 5.24** The responses were split with, in general, the buy-side favouring option 1 (enhanced voting power for minority shareholders on cancellation in certain circumstances where a controlling shareholder is present) and the sell-side preferring option 2 (status quo, with a minor refinement).
- 5.25** The proposals also included a proposed amendment to the 75% voting threshold in LR 5.2.5R(2) to bring it in line with the developments in the Companies Act 2006 regarding the conduct of shareholder votes. One respondent asked us to clarify whether we intended the amended rule to mean 75% of the votes cast at the meeting or 75% of the votes attaching to all shares owned by those who vote (irrespective of whether they vote all or only some of those shares).
- 5.26** One respondent questioned why we distinguished between the offeror and a controlling shareholder who is an offeror in LR 5.2.10R.
- 5.27** Some respondents also suggested that LR 5.2.11AR(3) and LR 5.2.11BR were unclear in that they could be read to suggest that, provided some shares were acquired from a majority of independent shareholders, then the actual amount of shares so purchased was not important.

#### Our response

Taking all the feedback into account we remain strongly of the view, as we set out in the Executive Summary to CP13/15, that cancellation of a listing removes from shareholders significant rights of participation in the governance of a company and so it is essential that minority shareholders are given a proper say in this decision. Hence we have decided to adopt option 1 (enhanced minority shareholder vote). Minority shareholders will therefore have a greater say in the cancellation of premium listed companies and proposed transfers from the premium to the standard listing segment, where a controlling shareholder is present.

On the 'more than 80%' threshold set out in the draft rules in LR 5.2.11DR, as we highlighted in CP13/15, the enhanced cancellation proposals relating to takeover offers carry the implicit suggestion that we would be prepared to tolerate any level of free float resulting from an offer that failed to secure sufficient acceptances from independent shareholders to allow cancellation but nonetheless resulted in an increased shareholding for the offeror. We are resistant to this, particularly given the debate that led to these proposals. As a result, we believe that the '80%' threshold is appropriate as the point at which the additional cancellation rule relating to takeover offers ceases to apply. It strikes the right balance between protecting minority shareholders and market integrity resulting from an adequate level of the free float.

In response to the feedback, we have amended LR 5.2.5R(2) (requiring a shareholder vote on cancellation) to clarify that our intention is to refer to votes cast on the resolution rather than to all votes held by a person voting, even if they did not cast them all. We have made similar amendments to LR 5.4A.4R(3) relating to a transfer of listing category out of the premium segment.

We have included references to both an offeror and a controlling shareholder in LR 5.2.10R(1) and LR 5.2.11AR(1) as we believe that there is a risk that the holdings of parties acting in concert may be excluded from the assessment of whether the 50% threshold has been exceeded based purely on the definition of 'offeror' in the Listing Rules (which cross-refers to the definition used in the Takeover Code). Given that our definition of 'controlling shareholder' refers to parties acting in concert we have used both terms to ensure certainty of application in practice.

We have amended LR 5.2.11AR(3) and LR 5.2.11BR (cancellation in the case of a takeover offer) to make clear that a majority of voting rights attaching to independently held shares must actually be secured as opposed to an acquisition of an undefined number of shares from sufficient independent shareholders. To achieve this we have substituted "...acquire shares from independent shareholders that represent a majority of the voting rights..." for "...acquire shares from independent shareholders holding a majority of the voting rights...". This amendment reflects our intention set out in CP13/15 (section 11.16).

We did not consult on, nor have we introduced, any transitional provisions in relation to these revised cancellation and transfer rules. As such, we are aware that the new rules on cancellation and transfer of listing may affect premium listed companies that have already embarked on relevant transactions. We would advise any listed companies that believe that any current or planned transactions or corporate arrangements may be affected by the new rules to contact the FCA as soon as practicable to discuss their individual circumstances.

# Annex 1

## List of non-confidential respondents

C. Allen Jones

Association of British Insurers (ABI)

Association for Financial Markets in Europe (AFME)

Association of Investment Companies

Caledonia Investments

Camellia Plc

Capita Asset Services

Deloitte LLP

Expert Corporate Governance Service

GC 100 Group

The Institute of Chartered Secretaries and Administrators (ICSA)

ICSA – Registrar’s Group (includes the views of Capital Registrars, Computershare Investor Services and Equiniti)

JPMorgan Cazenove

Law Society of England and Wales and City of London Law Society

Legal & General Investment Management

London Stock Exchange

National Association of Pension Funds Limited (NAPF)

Nomura

Prism Cosec

Proxinvest

The Quoted Companies Alliance (QCA)

Rothschild

Wittington Investments Limited

# Appendix 1

## Made rules (legal instrument)

## LISTING RULES (LISTING REGIME ENHANCEMENTS) INSTRUMENT 2014

### Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
  - (2) section 77 (Discontinuance and suspension of listing);
  - (3) section 93 (Statement of policy);
  - (4) section 96 (Obligations of issuers of listed securities);
  - (5) section 137A (General rule-making power);
  - (6) section 137T (General supplementary powers); and
  - (7) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

### Commencement

- C. This instrument comes into force on 16 May 2014.

### Amendments to the Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.
- F. The Listing Rules sourcebook (LR) is amended in accordance with Annex C to this instrument.

### Notes

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

### Citation

- H. This instrument may be cited as the Listing Rules (Listing Regime Enhancements) Instrument 2014.

By order of the Board of the Financial Conduct Authority  
1 May 2014

## Annex A

### Amendments to the Glossary of definitions

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

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

*controlling shareholder* as defined in LR 6.1.2AR.

*independent director* a director whom a new applicant or listed company has determined to be independent under the UK Corporate Governance Code.

*independent shareholder* any person entitled to vote on the election of directors of a listed company that is not a controlling shareholder of the listed company.

Amend the following as shown.

*associate* ...

- (4) (in LR) (when used in the context of a controlling shareholder who is an individual):
- (a) that individual's spouse, civil partner or child (together "the individual's family");
  - (b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an occupational pension scheme or an employees' share scheme which does not, in either case, have the effect of conferring benefits on persons all or most of whom are controlling shareholders);
  - (c) any company in whose equity securities the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:
    - (i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or

(ii) to appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters;

(d) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:

(i) a voting interest greater than 30% in the partnership; or

(ii) at least 30% of the partnership.

For the purpose of paragraph (c), if more than one *controlling shareholder* of the *listed company*, its *parent undertaking* or any of its *subsidiary undertakings* is interested in the *equity securities* of another *company*, then the interests of those *controlling shareholders* and their *associates* will be aggregated when determining whether that *company* is an associate of the *controlling shareholder*.

(5) (in *LR*) (when used in the context of a *controlling shareholder* which is a company):

(a) any other *company* which is its *subsidiary undertaking* or *parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;

(b) any *company* whose *directors* are accustomed to act in accordance with the *controlling shareholder's* directions or instructions;

(c) any *company* in the capital of which the *controlling shareholder* and any other *company* under paragraph (a) or (b) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (4)(c)(i) or (ii) of this definition;

group ....

(4) (in *LR*):

(a) (except in *LR* 6.1.4AG, *LR* 6.1.19R, *LR* 6.1.20BG and *LR* 8.7.8R(10), *LR* 14.2.2R, *LR* 14.2.3AG, *LR* 18.2.8R and *LR* 18.2.9AG) an *issuer* and its *subsidiary undertakings* (if any);  
and

(b) (in *LR* 6.1.4AG, *LR* 6.1.19R, *LR* 6.1.20BG, and *LR*

8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R and LR 18.2.9AG); as defined in section 421 of the *Act*.

...

*mineral expert's report* (in *LR*) a competent person's report prepared in accordance with paragraph 133 of the *ESMA recommendations*.

*offeror*

- (1) (in *MAR 1* (The Code of Market Conduct) and *LR 5.2.10R to LR 5.2.11D*) an offeror as defined in the *Takeover Code*.
- (2) (in *MAR 2* (Buy-backs and Stabilisation)) (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) the prior holders of, or the entity issuing, the *relevant securities*).
- (3) (in *LR* (except *LR 5.2.10R to LR 5.2.11D*), *PR* and *FEES* provisions in relation to *PR*) a *person* who makes an *offer of transferable securities to the public*.

## Annex B

### Amendments to the Decision Procedure and Penalties manual (DEPP)

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

#### Discipline for breaches of the Listing Principles and Premium Listing Principles

- 6.2.16 G The Listing Principles and Premium Listing Principles are set out in *LR 7*. The Listing Principles ~~set out in *LR 7.2.1R*~~ are a general statement of the fundamental obligations of all listed companies. In addition to the Listing Principles, the Premium Listing Principles set out in *LR 7.2.1AR* are a general statement of the fundamental obligations of all listed companies with a premium listing of equity shares. The Listing Principles and Premium Listing Principles derive their authority from the *FCA's* rule making powers set out in section 73A(1) (Part 6 Rules) of the *Act*. A breach of a Listing Principle or, if applicable, a Premium Listing Principle, will make a *listed company* liable to disciplinary action by the *FCA*.
- 6.2.17 G In determining whether a Listing Principle or Premium Listing Principle has been broken, it is necessary to look to the standard of conduct required by the Listing Principle or Premium Listing Principle in question. Under each of the Listing Principles and Premium Listing Principles, the onus will be on the *FCA* to show that a *listed company* has been at fault in some way. This requirement will differ depending upon the relevant Listing Principle or Premium Listing Principle.
- 6.2.18 G In certain cases, it may be appropriate to discipline a *listed company* on the basis of ~~the Listing Principles~~ a Listing Principle or, if applicable, a Premium Listing Principle, alone. Examples include the following:
- (1) where there is no detailed ~~listing rule~~ listing rule which prohibits the *behaviour* in question, but the *behaviour* clearly contravenes a Listing Principle or, if applicable, a Premium Listing Principle;
  - (2) where a *listed company* has committed a number of breaches of detailed ~~rules~~ rules which individually may not merit disciplinary action, but the cumulative effect of which indicates the breach of a Listing Principle or, if applicable, a Premium Listing Principle.

## Annex C

## Amendments to the Listing Rules sourcebook (LR)

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

## 5.2 Cancelling listing

...

Cancellation at issuer's request

- 5.2.4 R An *issuer* must satisfy the requirements applicable to it in LR 5.2.5R to ~~LR 5.2.11R~~ 5.2.11DR before the *FCA* will cancel the *listing* of its *securities* at its request.

...

Cancellation of listing of equity shares

- 5.2.5 R Subject to LR 5.2.7R, LR 5.2.10R, LR 5.2.11AR and LR 5.2.12R, an *issuer* with a *premium listing* that wishes the *FCA* to cancel the *listing* of any of its *equity shares* with a *premium listing* must:
- (1) send a *circular* to the holders of the ~~*securities*~~ *shares*. The *circular* must:
    - (a) comply with the requirements of LR 13.3.1R and LR 13.3.2R (contents of all circulars);
    - (b) be submitted to the *FCA* for approval prior to publication; and
    - (c) include the anticipated date of cancellation (which must be not less than 20 *business days* following the passing of the resolution referred to in paragraph (2));
  - (2) obtain, at a general meeting, the prior approval of a resolution for the cancellation from: ~~a majority of not less than 75% of the holders of the *securities* as (being entitled to do so) vote in person or, where proxies are allowed, by proxy;~~
    - (a) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
    - (b) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares* of *independent shareholders* voted on the resolution;
  - (3) notify a *RIS*, at the same time as the *circular* is despatched to the

relevant ~~security~~ holders of the shares, of the intended cancellation and of the notice period and meeting; and

- (4) ~~also~~ notify a *RIS* of the passing of the resolution in accordance with *LR 9.6.18R*.

...

Cancellation in relation to takeover offers: offeror interested in 50% or less of voting rights

- 5.2.10 R *LR 5.2.5R* does not apply to the cancellation of *equity shares* with a *premium listing* ~~when~~ in the case of a takeover offer if:
- (1) the offeror or any controlling shareholder who is an offeror is interested in 50% or less of the voting rights of an issuer before announcing its firm intention to make its takeover offer;
  - (~~1~~2) the offeror has by virtue of its shareholdings and acceptances of ~~the~~ its takeover offer, acquired or agreed to acquire issued *share* capital carrying 75% of the voting rights of the *issuer*; and
  - (~~2~~3) the offeror has stated in the offer ~~document~~ document or any subsequent *circular* sent to the ~~security~~ holders of the shares that a notice period of not less than 20 *business days* prior to cancellation will commence either on the offeror attaining obtaining the required 75% as described in ~~LR 5.2.10R(1)~~ (2) or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006 (Right of offeror to buy out minority shareholder).
- 5.2.10A ~~G~~ R For the purposes of *LR 5.2.10R*(~~2~~3), the offer ~~document~~ document or *circular* must make clear that the notice period begins only when the offeror has announced that it has acquired or agreed to acquire *shares* representing 75% of the voting rights.
- 5.2.11 R ~~In the circumstances of LR 5.2.10 R, the company~~ The *issuer* must notify shareholders that the required 75% has been ~~attained~~ obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice must state that the notice period has commenced and the anticipated date of cancellation.

Cancellation in relation to takeover offers: offeror interested in more than 50% of voting rights

- 5.2.11A R ~~LR 5.2.5R~~ does not apply to the cancellation of *equity shares* with a *premium listing* in the case of a takeover offer if:
- (1) the offeror or any controlling shareholder who is an offeror is interested in more than 50% of the voting rights of an issuer before

announcing its firm intention to make its takeover offer;

- (2) the offeror has by virtue of its shareholdings and acceptances of its takeover offer, acquired or agreed to acquire issued share capital carrying 75% of the voting rights of the issuer;
- (3) unless LR 5.2.11DR applies, the offeror has obtained acceptances of its takeover offer or acquired or agreed to acquire shares from independent shareholders that represent a majority of the voting rights held by the independent shareholders on the date its firm intention to make its takeover offer was announced; and
- (4) the offeror has stated in the offer document or any subsequent circular sent to the holders of the shares that a notice period of not less than 20 business days prior to cancellation will commence either on the offeror obtaining the relevant shareholding and acceptances as described in LR 5.2.11AR(2) to (3) or as described in LR 5.2.11DR or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006.

5.2.11B     R     For the purposes of LR 5.2.11AR(4), the offer document or circular must make clear that the notice period begins only when the offeror has announced that it has acquired or agreed to acquire shares representing 75% of the voting rights and, if relevant, has obtained acceptances of its takeover offer or acquired or agreed to acquire shares from independent shareholders that represent a majority of the voting rights held by the independent shareholders.

5.2.11C     R     The issuer must notify shareholders that the relevant thresholds described in LR 5.2.11AR(2) to (3) or LR 5.2.11DR have been obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice must state that the notice period has commenced and the anticipated date of cancellation.

5.2.11D     R     LR 5.2.11AR(3) does not apply where the offeror has by virtue of its shareholdings and acceptances of its takeover offer acquired or agreed to acquire issued share capital carrying more than 80% of the voting rights of the issuer.

...

### **5.3           Requests to cancel or suspend**

...

- 5.3.2       R     The issuer must also include with a request to cancel the listing of its securities the following:
- (1) ...
  - (2) for a cancellation referred to in LR 5.2.10R or LR 5.2.11AR an extract from, or a copy of, the offer document or relevant circular

clearly showing the intention to cancel the offeree's *listing* and a copy of the announcement stating the date on which the cancellation was expected to take effect; and

(3) ...

...

#### 5.4A Transfer between listing categories: Equity shares

...

Shareholder approval required in certain cases

- 5.4A.4 R (1) This rule applies to a transfer of the *listing of equity shares* with a *premium listing* into or out of the category of *premium listing (investment company)* or a transfer of the *listing of equity shares* out of the category of *premium listing (commercial company)*.
- (2) The *issuer* must:
- (a) send a *circular* to the holders of the *equity shares*;
  - (b) notify a *RIS*, at the same time as the circular is despatched to the relevant holders of the *equity shares*, of the intended transfer and of the notice period and meeting date; and
  - (c) ~~obtain at a general meeting, the prior approval of a resolution for the transfer from not less than 75% of the holders of the *equity shares* as (being entitled to do so) vote in person or, where proxies are allowed, by proxy; and [deleted]~~
  - (d) notify a *RIS* of the passing of the resolution required under (3) below.
- (3) (a) In the case of a transfer of the *listing of equity shares* with a *premium listing* into or out of the category of *premium listing (investment company)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; or
- (b) in the case of a transfer of the *listing of equity shares* with a *premium listing (commercial company)* into the category of *standard listing (shares)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from:
- (i) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
  - (ii) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares* of *independent*

shareholders voted on the resolution.

...

## 6 Additional requirements for premium listing (commercial company)

### 6.1 Application

...

#### Definition of controlling shareholder

6.1.2A R A "controlling shareholder" means any person who exercises or controls on their own or together with any person with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company. For the purposes of calculating voting rights, the following voting rights are to be disregarded:

- (1) any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long-term insurer in respect of its linked long-term business if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long-term insurer);  
or
- (2) any voting rights which a person may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:
  - (a) underwriting the issue or sale of securities; or
  - (b) placing securities, where the person provides a firm commitment to acquire any securities which it does not place; or
  - (c) acquiring securities from existing shareholders or the issuer pursuant to an agreement to procure third-party purchases of securities;

and where the conditions below are satisfied:

- (i) the activities set out in (2)(a) to (c) are performed in the ordinary course of business;
- (ii) the securities to which the voting rights attach are held for a consecutive period of 5 trading days or less, beginning with the first trading day on which the securities are held;

- (iii) the voting rights are not exercised within the period the securities are held; and
- (iv) no attempt is made directly or indirectly by the person to intervene in (or attempt to intervene in) or exert (or attempt to exert) influence on the management of the issuer within the period the securities are held.

...

~~Control of assets and independence~~ Independent business

- 6.1.4 R ~~A new applicant for the admission of equity shares to a premium listing must demonstrate that: it will be carrying on an independent business as its main activity.~~
- (1) ~~{deleted}~~
- (2) ~~it controls the majority of its assets and has done so for at least the period referred to in LR 6.1.3R(1)(a); and~~
- (3) ~~it will be carrying on an independent business as its main activity.~~
- 6.1.4A G LR 6.1.4R is intended to ensure that the protections afforded to holders of equity shares by the premium listing requirements are meaningful. Notwithstanding any agreement entered into under LR 6.1.4BR(1), factors that may indicate that a new applicant does not satisfy LR 6.1.4R include situations where:
- (1) a majority of the revenue generated by the new applicant's business is attributable to business conducted directly or indirectly with a controlling shareholder (or any associate thereof) of the new applicant; or
- (2) a new applicant does not have:
- (a) strategic control over the commercialisation of its products; and/or
- (b) strategic control over its ability to earn revenue; and/or
- (c) freedom to implement its business strategy; or
- (3) a new applicant cannot demonstrate that it has access to financing other than from a controlling shareholder (or any associate thereof); or
- (4) a new applicant has granted or may be required to grant security over its business in connection with the funding of a controlling shareholder or a member of a controlling shareholder's group; or
- (5) except in relation to a mineral company, a new applicant's business consists principally of holdings of shares in entities that it does not control, including entities where:
- (a) the new applicant is only able to exercise negative control; and/or
- (b) the new applicant's control is subject to contractual arrangements which could be altered without its agreement

or could result in a temporary or permanent loss of control;  
or

- (6) a controlling shareholder (or any associate thereof) appears to be able to influence the operations of the new applicant outside its normal governance structures or via material shareholdings in one or more significant subsidiary undertakings.

6.1.4B      R      Where a new applicant for the admission of equity shares to a premium listing will have a controlling shareholder upon admission, it must have in place:

- (1) a written and legally binding agreement which is intended to ensure that the controlling shareholder complies with the independence provisions set out in LR 6.1.4DR; and
- (2) a constitution that allows the election and re-election of independent directors to be conducted in accordance with the election provisions set out in LR 9.2.2ER and LR 9.2.2FR.

6.1.4C      R      In order to comply with LR 6.1.4BR(1), where a new applicant will have more than one controlling shareholder, the new applicant will not be required to enter into a separate agreement with each controlling shareholder if:

- (1) the new applicant reasonably considers, in light of its understanding of the relationship between the relevant controlling shareholders, that a controlling shareholder can procure the compliance of another controlling shareholder and that controlling shareholder's associates with the independence provisions contained in the relevant agreement; and
- (2) the agreement, which contains the independence provisions set out in LR 6.1.4DR, entered into with the relevant controlling shareholder also contains:
- (a) a provision in which the controlling shareholder agrees to procure the compliance of a non-signing controlling shareholder and its associates with the independence provisions contained within the agreement; and
- (b) the names of any such non-signing controlling shareholder.

6.1.4D      R      The independence provisions referred to in LR 6.1.4BR (1) are undertakings that:

- (1) transactions and arrangements with the controlling shareholder (and/or any of its associates) will be conducted at arm's length and on normal commercial terms;
- (2) neither the controlling shareholder nor any of its associates will take any action that would have the effect of preventing the new

applicant or listed company from complying with its obligations under the listing rules; and

- (3) neither the controlling shareholder nor any of its associates will propose or procure the proposal of a shareholder resolution which is intended or appears to be intended to circumvent the proper application of the listing rules.

...

#### Mineral companies

...

- 6.1.9 R Where LR 6.1.8R applies, LR 6.1.3BR(1) and ~~LR 6.1.4R~~ does not apply to a mineral company that applies for the admission of its equity shares.

...

#### Scientific research based companies

...

- 6.1.12 R Where LR 6.1.11R applies, An ~~an~~ applicant for the admission of equity shares to a premium listing of a scientific research based company does not need to satisfy LR 6.1.3BR or ~~LR 6.1.4R~~ but must:

...

...

#### Shares in public hands

- 6.1.19 R (1) If an application is made for the *admission* of a *class* of *shares*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.
- (2) For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not *EEA States*, if the *shares* are listed in the state or states.
- (3) For the purposes of paragraph (1), a sufficient number of *shares* will be taken to have been distributed to the public when 25% of the *shares* for which application for *admission* has been made are in public hands.
- (4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are ~~held, directly or indirectly by:~~
- (a) held, directly or indirectly by:

- (a) (i) a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
  - (b) (ii) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
  - (c) (iii) the trustees of any *employees' share scheme* or pension fund established for the benefit of any *directors* and *employees* of the *applicant* and its *subsidiary undertakings*; or
  - (d) (iv) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
  - (e) (v) any *person* or *persons* in the same *group* or *persons* acting in concert who have an interest in 5% or more of the *shares* of the relevant class; or
- (b) subject to a lock-up period of more than 180 calendar days.

...

6.1.20 G ~~The *FCA* may modify *LR* 6.1.19R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public. For that purpose, the *FCA* may take into account *shares* of the same *class* that are held (even though they are not listed) in states that are not *EEA States*.~~

~~[Note: article 48 *CARD*] [deleted]~~

6.1.20A G (1) The *FCA* may modify *LR* 6.1.19R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of *shares* of the same *class* and the extent of their distribution to the public.

[Note: article 48 *CARD*]

(2) In considering whether to grant a modification, the *FCA* may take into account the following specific factors:

- (a) *shares* of the same *class* that are held (even though they are not listed) in states that are not *EEA States*;
- (b) the number and nature of the public shareholders; and
- (c) in relation to *premium listing (commercial companies)*, whether the expected market value of the *shares* in public hands at *admission* exceeds £100 million.

6.1.20B G When calculating the number of *shares* for the purposes of *LR*

6.1.19R(4)(a)(v), holdings of investment managers in the same group where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the group to which the investment manager belongs will be disregarded.

...

#### Voting on matters relevant to premium listing

6.1.28 R A new applicant must satisfy the FCA that its constitution will allow it to comply with LR 9.2.21R.

...

## **7.1 Application and purpose**

### Application

7.1.1 R (1) The Listing Principles in LR 7.2.1R apply to every *listed company* ~~with a premium listing of equity shares~~ in respect of all its obligations arising from the *listing rules*, ~~and the disclosure rules~~, ~~and transparency rules~~ and corporate governance rules.

(2) In addition to the Listing Principles referred to in (1), the Premium Listing Principles in LR 7.2.1AR apply to every listed company with a premium listing of equity shares in respect of all its obligations arising from the listing rules, disclosure rules, transparency rules and corporate governance rules.

### Purpose

7.1.2 G The purpose of the Listing Principles and the Premium Listing Principles is to ensure that *listed companies* pay due regard to the fundamental role they play in maintaining market confidence and ensuring fair and orderly markets.

7.1.3 G The Listing Principles and, if applicable, the Premium Listing Principles are designed to assist *listed companies* in identifying their obligations and responsibilities under the *listing rules*, ~~and the disclosure rules~~, ~~and transparency rules~~ and corporate governance rules. The Listing Principles and Premium Listing Principles should be interpreted together with relevant *rules* and *guidance* which underpin the Listing Principles and the Premium Listing Principles.

7.1.4 G *DEPP 6* (Penalties) and *EG 7* set out *guidance* on the consequences of breaching ~~the Listing Principles~~ a Listing Principle or, if applicable, a Premium Listing Principle.

## 7.2 The Listing and Premium Listing Principles

7.2.1 R The Listing Principles are as follows:

<u>Listing Principle 1</u>	<del><i>A listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors. A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.</i></del>
<u>Listing Principle 2</u>	<del><i>A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations. A listed company must deal with the FCA in an open and co-operative manner.</i></del>
<u>Principle 3</u>	<del><i>A listed company must act with integrity towards the holders and potential holders of its listed equity shares. [deleted]</i></del>
<u>Principle 4</u>	<del><i>A listed company must communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation of a false market in such listed equity shares. [deleted]</i></del>
<u>Principle 5</u>	<del><i>A listed company must ensure that it treats all holders of the same class of its listed equity shares that are in the same position equally in respect of the rights attaching to such listed equity shares. [deleted]</i></del>
<u>Principle 6</u>	<del><i>A listed company must deal with the FCA in an open and co-operative manner. [deleted]</i></del>

7.2.1A R The Premium Listing Principles are as follows:

<u>Premium Listing Principle 1</u>	<del><i>A listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors.</i></del>
<u>Premium Listing Principle 2</u>	<del><i>A listed company must act with integrity towards the holders and potential holders of its premium listed shares.</i></del>
<u>Premium Listing Principle 3</u>	<del><i>All equity shares in a class that has been admitted to premium listing must carry an equal number of votes on any shareholder vote.</i></del>
<u>Premium Listing</u>	<del><i>Where a listed company has more than one class of equity shares admitted to premium listing, the aggregate voting rights of the shares in each class should be</i></del>

<u>Principle 4</u>	<u>broadly proportionate to the relative interests of those classes in the equity of the <i>listed company</i>.</u>
<u>Premium Listing Principle 5</u>	<u>A <i>listed company</i> must ensure that it treats all holders of the same class of its <i>listed equity shares</i> that are in the same position equally in respect of the rights attaching to those <i>listed equity shares</i>.</u>
<u>Premium Listing Principle 6</u>	<u>A <i>listed company</i> must communicate information to holders and potential holders of its <i>listed equity shares</i> in such a way as to avoid the creation of a false market in those <i>listed equity shares</i>.</u>

### Guidance on ~~Principle 2~~ the Listing and Premium Listing Principles

- 7.2.2 G Listing Principle 2 1 is intended to ensure that *listed companies* have adequate procedures, systems and controls to enable them to comply with their obligations under the *listing rules*, ~~and disclosure rules~~, ~~and transparency rules~~ and corporate governance rules. In particular, the FCA considers that *listed companies* should place particular emphasis on ensuring that they have adequate procedures, systems and controls in relation to, where applicable:
- (1) identifying whether any obligations arise under *LR 10* (Significant transactions) and *LR 11* (Related party transactions); and
  - (2) the timely and accurate disclosure of information to the market.
- 7.2.3 G Timely and accurate disclosure of information to the market is a key obligation of *listed companies*. For the purposes of Listing Principle 2 1, a *listed company* ~~with a premium listing~~ should have adequate systems and controls to be able to:
- (1) ensure that it can properly identify information which requires disclosure under the *listing rules*, ~~or disclosure rules~~, ~~and transparency rules~~ or corporate governance rules in a timely manner; and
  - (2) ensure that any information identified under (1) is properly considered by the *directors* and that such a consideration encompasses whether the information should be disclosed.
- 7.2.4 G In assessing whether the voting rights attaching to different classes of premium listed shares are proportionate for the purposes of Premium Listing Principle 4, the FCA will have regard to the following non-exhaustive list of factors:
- (1) the extent to which the rights of the classes differ other than their voting rights, for example with regard to dividend rights or entitlement to any surplus capital on winding up;

- (2) the extent of dispersion and relative liquidity of the classes; and/or
- (3) the commercial rationale for the difference in the rights.

...

## 8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

- 8.2.1 R *A company with, or applying for, a premium listing of its equity shares must appoint a sponsor on each occasion that it:*

...

- (6) *is required by LR 11.1.10R(2)(b) to provide ~~the FCA~~ a listed company with a confirmation that the terms of the proposed related party transaction are fair and reasonable; or*

...

...

## 9.2 Requirements with continuing application

...

~~Control of assets and independent~~ Independent business

- 9.2.2A R ~~*A listed company that has equity shares listed must comply with LR 6.1.4R(2) and (3) at all times. This rule does not apply to a mineral company, a scientific research based company, a closed-ended investment fund or an open-ended investment company.*~~

- (1) *A listed company must carry on an independent business as its main activity at all times.*
- (2) *Where a listed company has a controlling shareholder, it must have in place at all times:*
  - (a) *a written and legally binding agreement which is intended to ensure that the controlling shareholder complies with the independence provisions set out in LR 6.1.4DR; and*
  - (b) *a constitution that allows the election and re-election of independent directors to be conducted in accordance with the election provisions set out in LR 9.2.2ER and LR 9.2.2FR.*

- 9.2.2B R *In order to comply with LR 9.2.2AR(2)(a), where a listed company will have more than one controlling shareholder, the listed company will not*

be required to enter into a separate agreement with each *controlling shareholder* if:

- (1) the *listed company* reasonably considers, in light of its understanding of the relationship between the relevant *controlling shareholders*, that a *controlling shareholder* can procure the compliance of another *controlling shareholder* and that *controlling shareholder's associates* with the independence provisions contained in the relevant agreement; and
- (2) the agreement, which contains the independence provisions set out in LR 6.1.4DR, entered into with the relevant *controlling shareholder* also contains:
  - (a) a provision in which the *controlling shareholder* agrees to procure the compliance of a non-signing *controlling shareholder* and its *associates* with the independence provisions contained within the agreement; and
  - (b) the names of any such non-signing *controlling shareholder*.

9.2.2C      R      Where as a result of changes in ownership or control of a *listed company*, a *person* becomes a *controlling shareholder* of the *listed company*, the *listed company* will be allowed:

- (1) a period of not more than 6 months from the event that resulted in that *person* becoming a *controlling shareholder* to comply with LR 9.2.2AR(2)(a); and
- (2) in the case of a *listed company* which did not previously have a *controlling shareholder*, until the date of the next annual general meeting of the *listed company*, other than an annual general meeting for which notice:
  - (i) has already been given; or
  - (ii) is given within a period of 3 months from the event that resulted in that *person* becoming a *controlling shareholder*;

to comply with LR 9.2.2AR(2)(b).

9.2.2D      G      In complying with LR 9.2.2AR(2)(b), a *listed company* may allow an existing *independent director* who is being proposed for re-election (including any such *director* who was appointed by the board of the *listed company* until the next annual general meeting) to remain in office until any resolution required by LR 9.2.2FR has been voted on.

9.2.2E      R      Where LR 9.2.2AR(2) applies, the election or re-election of any *independent director* by shareholders must be approved by:

- (1) the shareholders of the *listed company*; and
- (2) the *independent shareholders* of the *listed company*.

9.2.2F     R     Where *LR 9.2.2ER* applies, if the election or re-election of an *independent director* is not approved by both the shareholders and the *independent shareholders* of the *listed company*, but the *listed company* wishes to propose that *person* for election or re-election as an *independent director*, the *listed company* must propose a further resolution to elect or re-elect the proposed *independent director* which:

- (1) must not be voted on within a period of 90 days from the date of the original vote;
- (2) must be voted on within a period of 30 days from the end of the period set out in (1); and
- (3) must be approved by the shareholders of the *listed company*.

9.2.2G     R     A *listed company* must comply with the independence provisions contained in any agreement entered into under *LR 6.1.4BR(1)* or *LR 9.2.2AR(2)(a)* at all times.

9.2.2H     G     In addition to the annual confirmation required to be included in a *listed company's* annual financial report under *LR 9.8.4R(14)*, the *FCA* may request information from a *listed company* under *LR 1.3.1R(3)* to confirm or verify that an independence provision contained in any agreement entered into under *LR 6.1.4BR(1)* or *LR 9.2.2AR(2)(a)* or a procurement obligation (as set out in *LR 6.1.4CR(2)(a)* or *LR 9.2.2BR(2)(a)*) contained in an agreement entered into under *LR 6.1.4BR(1)* or *LR 9.2.2AR(2)(a)* is being or has been complied with.

...

#### Shares in public hands

9.2.15     R     A *listed company* must comply with *LR 6.1.19R* at all times.

9.2.15A    G     Where the *FCA* has modified *LR 6.1.19R* to accept a percentage lower than 25% on the basis that the market will operate properly with a lower percentage, but the *FCA* considers that in practice the market for the *shares* is not operating properly, the *FCA* may revoke the modification in accordance with *LR 1.2.1R(4)*.

9.2.16     R     ~~A *listed company* that no longer complies with *LR 6.1.19R* must notify the *FCA* as soon as possible of its non-compliance. [deleted]~~

9.2.17     G     ~~A *listed company* should consider *LR 5.2.2G(2)* in relation to its compliance with *LR 6.1.19R*. [deleted]~~

...

Voting on matters relevant to premium listing

- 9.2.21     R     Where the provisions of LR 5.2, LR 5.4A, LR 9.4, LR 9.5, LR 10, LR 11, LR 12 or LR 15 require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the listed company's shares that have been admitted to premium listing. Where the provisions of LR 5.2.5R(2), LR 5.4A.4R(2) or LR 9.2.2ER require that the resolution must in addition be approved by the independent shareholders, only independent shareholders who hold the listed company's shares that have been admitted to premium listing can vote.
- 9.2.22     G     The FCA may modify the operation of LR 9.2.21R in exceptional circumstances, for example to accommodate the operation of:
- (1) special share arrangements designed to protect the national interest;
  - (2) dual listed company voting arrangements; and
  - (3) voting rights attaching to preference shares or similar securities that are in arrears.

Notifications to the FCA: notifications regarding continuing obligations

- 9.2.23     R     A listed company must notify the FCA without delay if it does not comply with any continuing obligation set out in LR 9.2.2AR, LR 9.2.2ER, LR 9.2.2FR, LR 9.2.15R or LR 9.2.21R.

Notifications to the FCA: notifications regarding compliance with independence provisions

- 9.2.24     R     A listed company must notify the FCA without delay if:
- (1) it no longer complies with LR 9.2.2GR;
  - (2) it becomes aware that an independence provision contained in an agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a) has not been complied with by the controlling shareholder or any of its associates; or
  - (3) it becomes aware that a procurement obligation (as set out in LR 6.1.4CR(2)(a) or LR 9.2.2BR(2)(a)) contained in an agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a) has not been complied with by a controlling shareholder.

Notifications to the FCA: notifications regarding LR 9.8.4AR

- 9.2.25     R     A listed company must notify the FCA without delay if its annual financial report contains a statement of the kind specified under LR 9.8.4AR.

Inability to comply with continuing obligations

- 9.2.26 G Where a *listed company* is unable to comply with a continuing obligation set out in LR 9.2, it should consider seeking a cancellation of *listing* or applying for a transfer of its *listing* category. In particular, the *listed company* should note LR 5.2.2G(2) and LR 5.4A.16G.

...

**9.8 Annual financial report**

...

## Information to be included in annual report and accounts

- 9.8.4 R In addition to the requirements set out in DTR 4.1 a *listed company* must include in its annual financial report, where applicable, the following:
- ...
- (3) ~~details of any small related party transaction as required by LR 11.1.10R(2)(e);~~ [deleted]
- ...
- (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~~ 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~~ 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; and

- (14) a statement made by the board:
- (a) that the *listed company* has entered into any agreement required under LR 9.2.2AR(2)(a); or
  - (b) where the *listed company* has not entered into an agreement required under LR 9.2.2AR(2)(a):
    - (i) a statement that the *FCA* has been notified of that non-compliance in accordance with LR 9.2.23R; and
    - (ii) a brief description of the background to and reasons for failing to enter into the agreement that enables shareholders to evaluate the impact of non-compliance on the *listed company*; and
  - (c) that:
    - (i) the *listed company* has complied with the independence provisions included in any agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a) during the period under review;
    - (ii) so far as the *listed company* is aware, the independence provisions included in any agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a) have been complied with during the period under review by the *controlling shareholder* or any of its *associates*; and
    - (iii) so far as the *listed company* is aware, the procurement obligation (as set out in LR 6.1.4CR(2)(a) or LR 9.2.2BR(2)(a)) included in any agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a) has been complied with during the period under review by a *controlling shareholder*; or
  - (d) where an independence provision included in any agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a) or procurement obligation (as set out in LR 6.1.4CR(2)(a) or LR 9.2.2BR(2)(a)) included in any agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a) has not been complied with during the period under review:
    - (i) a statement that the *FCA* has been notified of that non-compliance in accordance with LR 9.2.24R;

and

- (ii) a brief description of the background to and reasons for failing to comply with the relevant independence provision or procurement obligation that enables shareholders to evaluate the impact of non-compliance on the *listed company*.

- 9.8.4A R Where an *independent director* declines to support a statement made under LR 9.8.4R(14)(a) or (c), the statement must record this fact.
- 9.8.4B G Where a *listed company*'s annual financial report contains a statement of the type referred to in LR 9.8.4R(14)(b) or (d), the *FCA* may still take any action it considers necessary in relation to the underlying breach by the *listed company* of LR 9.2.2AR(2)(a) or LR 9.2.2GR.
- 9.8.4C R The *listed company*'s annual financial report must include the information required under LR 9.8.4R in a single identifiable section, unless the annual financial report includes a cross reference table indicating where that information is set out.

...

## **11.1 Related party transactions**

Application

- 11.1.1 R This chapter applies to a *company* that has a *premium listing*.
- 11.1.1A R Where a *company* has a *premium listing* and:
- (1) it is not in compliance with:
    - (a) the provisions in LR 9.2.2AR(2)(a); or
    - (b) LR 9.2.2GR; or
  - (2) it becomes aware that a *controlling shareholder* or any of its *associates* is not in compliance with an independence provision contained in an agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a);
  - (3) it becomes aware that a procurement obligation (as set out in LR 6.1.4CR(2)(a) or LR 9.2.2BR(2)(a)) contained in an agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR(2)(a) has not been complied with by a *controlling shareholder*; or
  - (4) an *independent director* declines to support a statement made under LR 9.8.4R(14)(a) or (c);

LR 11.1.1CR applies.

- 11.1.1B    G    In exceptional circumstances, the FCA may consider dispensing with or modifying the application of LR 11.1.1AR, in accordance with LR 1.2.1R.
- 11.1.1C    R    The company cannot rely on any of the following provisions in relation to a transaction or arrangement with or for the benefit of the relevant controlling shareholder or any associate of that controlling shareholder:
- (1)    the concessions specified in LR 11.1.5R(1), (2) and (3) in relation to transactions or arrangements in the ordinary course of business;
- (2)    LR 11.1.6R; and
- (3)    LR 11.1.10R.
- 11.1.1D    G    If the FCA considers that it would be appropriate to do so, the FCA may dispense with or modify the application of LR 11.1.1CR(1), in accordance with LR 1.2.1R.
- 11.1.1E    R    Where a company that has a premium listing has been subject to the provisions of LR 11.1.1AR, LR 11.1.1CR will continue to apply to the company until the publication of an annual financial report which:
- (1)    contains the statements required under LR 9.8.4R(14) (a) and (c); and
- (2)    does not contain a statement made under LR 9.8.4AR.

...

## Modified requirements for smaller related party transactions

- 11.1.10    R    (1)    This rule applies to a related party transaction if each of the percentage ratios is less than 5%, but one or more of the percentage ratios exceeds 0.25%.
- (2)    Where this rule applies, LR 11.1.7R does not apply but instead the listed company must ~~before entering into the transaction or arrangement (as the case may be):~~
- (a)    ~~inform the FCA in writing of the details of the proposed transaction or arrangement; [deleted]~~
- (b)    provide the FCA with before entering into the transaction or arrangement, obtain written confirmation from a sponsor that the terms of the proposed transaction or arrangement with the related party are fair and reasonable as far as the shareholders of the listed company are concerned; and
- (c)    ~~undertake in writing to the FCA to include details of the transaction or arrangement in the listed company's next published annual accounts, including, if relevant, the~~

~~identity of the related party, the value of the consideration for the transaction or arrangement and all other relevant circumstances. as soon as possible upon entering into the transaction or arrangement, make an *RIS* announcement which sets out:~~

- (i) the identity of the *related party*;
- (ii) the value of the consideration for the transaction or arrangement;
- (iii) a brief description of the transaction or arrangement;
- (iv) the fact that the transaction or arrangement fell within *LR 11.1.10R*; and
- (v) any other relevant circumstances.

...

## 13.8 Other circulars

...

### Election of independent directors

- 13.8.17     R     Where a *listed company* has a *controlling shareholder*, a circular to shareholders relating to the election or re-election of an *independent director* must include:
- (1) details of any existing or previous relationship, transaction or arrangement the proposed *independent director* has or had with the *listed company*, its *directors*, any *controlling shareholder* or any *associate* of a *controlling shareholder* or a confirmation that there have been no such relationships, transactions or arrangements; and
  - (2) a description of:
    - (a) why the *listed company* considers the proposed *independent director* will be an effective *director*;
    - (b) how the *listed company* has determined that the proposed *director* is an *independent director*; and
    - (c) the process followed by the *listed company* for the selection of the proposed *independent director*.
- 13.8.18     R     In relation to a *listed company* which did not previously have a *controlling shareholder*, *LR13.8.17R* does not apply to a circular sent to shareholders within a period of 3 months from the event that resulted in a

person becoming a controlling shareholder of the listed company.

## 14.2 Requirements for listing

...

Shares in public hands

### 14.2.2 R ...

- (4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are ~~held, directly or indirectly by:~~
- (a) held, directly or indirectly by:
    - ~~(a)~~ (i) a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
    - ~~(b)~~ (ii) a *person* connected with a *director* of the *applicant* or of any of its *subsidiary undertakings*; or
    - ~~(c)~~ (iii) the trustees of any *employees' share scheme* or pension fund established for the benefit of any *directors* and *employees* of the *applicant* and its *subsidiary undertakings*; or
    - ~~(d)~~ (iv) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
    - ~~(e)~~ (v) any *person* or *persons* in the same *group* or *persons* acting in concert who have an interest in 5% or more of the *shares* of the relevant class; or
  - (b) subject to a lock-up period of more than 180 days.

...

- 14.2.3A G When calculating the number of *shares* for the purposes of LR 14.2.2R(4)(a)(v), holdings of *investment managers* in the same *group* where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the *group* to which the *investment manager* belongs will be disregarded.

...

## 14.3 Continuing obligations

...

## Shares in public hands

- 14.3.2 R (1) A *company* must comply with *LR 14.2.2R* at all times.
- (2) A *company* that no longer complies with *LR 14.2.2R* must notify the *FCA* as soon as possible of its non-compliance.
- 14.3.2A G Where the *FCA* has modified *LR 14.2.2R* to accept a percentage lower than 25% on the basis that the market will operate properly with a lower percentage, but the *FCA* considers that in practice the market for the *shares* is not operating properly, the *FCA* may revoke the modification in accordance with *LR 1.2.1R(4)*.
- 14.3.3 G A *company* should consider *LR 5.2.2G(2)* in relation to its compliance with *LR 14.2.2R*.

...

**15.2 Requirements for listing**

- 15.2.1 R To be *listed*, an *applicant* must comply with:
- ...
- (2) the following provisions of *LR 6* (Additional requirements for premium listing (commercial company));
- ...
- (c) *LR 6.1.16R* to *6.1.25R* and *LR 6.1.28R*; and
- ...

...

**15.4 Continuing obligations**

...

Independent business

- 15.4.27 R A *closed-ended investment fund* is not required to comply with *LR 9.2.2AR* to *LR 9.2.2GR*.

Notifications to the FCA

- 15.4.28 R (1) A *closed-ended investment fund* is not required to comply with *LR 9.2.23R* in so far as it relates to *LR 9.2.2AR*, *LR 9.2.2ER* and *LR 9.2.2FR*.
- (2) A *closed-ended investment fund* is not required to comply with *LR 9.2.24R* to *LR 9.2.25R*.

Annual financial statement

- 15.4.29 R A closed-ended investment fund is not required to comply with LR 9.8.4R(14).

Election of independent directors

- 15.4.30 R A closed-ended investment fund is not required to comply with LR 13.8.17R.

...

**16.4 Requirements with continuing application**

- 16.4.1 R An open-ended investment company must comply with:
- (1) LR 9 (Continuing obligations) except LR 9.2.2AR to LR 9.2.2GR, LR 9.2.6BR, LR 9.2.15R, LR 9.2.20R, LR 9.2.21R, LR 9.2.23R, LR 9.2.24R, LR 9.2.25R, and LR 9.3.11R and LR 9.8.4R(14);

...

- 16.4.6 [deleted]

Election of independent directors

- 16.4.7 R A open-ended investment company is not required to comply with LR 13.8.17R.

...

**18 Certificates representing certain securities: Standard listing**

...

**18.2 Requirements for listing**

...

- 18.2.8 R ...
- (4) For the purposes of paragraphs (1), (2) and (3), certificates are not held in public hands if they are ~~held, directly or indirectly by:~~
- (a) held, directly or indirectly by:
- (a) (i) a director of the applicant or of any of its subsidiary undertakings; or
- (b) (ii) a person connected with a director of the applicant or of any of its subsidiary undertakings; or

- (e) (iii) the *trustees* of any *employees' share scheme* or pension fund established for the benefit of any *directors* and *employees* of the *applicant* and its *subsidiary undertakings*; or
- (e) (iv) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*; or
- (e) (v) any *person* or *persons* in the same *group* or *persons* acting in concert who have an interest in 5% or more of the certificates of the relevant class; or
- (b) subject to a lock-up period of more than 180 calendar days.

...

18.2.9A    G    When calculating the number of certificates for the purposes of LR 18.2.8R(4)(a)(v), holdings of *investment managers* in the same *group* where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the *group* to which the *investment manager* belongs will be disregarded.

...

## Appendix 1 Relevant definitions

*associate*

- (A) in relation to a *director, substantial shareholder, or person exercising significant influence*, who is an individual:  
...
- (B) in relation to a *substantial shareholder or person exercising significant influence*, which is a *company*:  
...
- (C) when used in the context of a *controlling shareholder* who is an individual:
- (1) that individual's spouse, civil partner or child (together "the individual's family");
- (2) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an occupational pension scheme or an employees' share scheme which does not, in either case, have the effect of conferring benefits on persons all or most of whom are *controlling shareholders*);
- (3) any *company* in whose *equity securities* the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:
- (a) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
- (b) to appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters;
- (4) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:
- (a) a voting interest greater than 30% in the partnership; or

(b) at least 30% of the partnership.

For the purpose of paragraph (3), if more than one controlling shareholder of the listed company, its parent undertaking or any of its subsidiary undertakings is interested in the equity securities of another company, then the interests of those controlling shareholders and their associates will be aggregated when determining whether that company is an associate of the controlling shareholder.

(D) when used in the context of a controlling shareholder which is a company:

(1) any other company which is its subsidiary undertaking or parent undertaking or fellow subsidiary undertaking of the parent undertaking;

(2) any company whose directors are accustomed to act in accordance with the controlling shareholder's directions or instructions;

(3) any company in the capital of which the controlling shareholder and any other company under paragraph (1) or (2) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (C)(3)(a) or (b) of this definition.

controlling shareholder

as defined in LR 6.1.2AR.

group

- (1) except in LR 6.1.4AG, LR 6.1.19R, LR 6.1.20BG, and LR 8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R and LR 18.2.9AG, an issuer and its subsidiary undertakings (if any); and
- (2) in LR 6.1.4AG, LR 6.1.19R, LR 6.1.20BG, and LR 8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R and LR 18.2.9AG, as defined in section 421 of the Act.

independent director

a director whom a new applicant or listed company has determined to be independent under the UK Corporate Governance Code.

independent shareholder

any person entitled to vote on the election of directors of a listed company that is not a controlling shareholder of the listed company.

mineral expert's report

a competent person's report prepared in accordance with paragraph 133 of the ESMA recommendations.

offeror

- (a) in LR 5.2.10R to LR 5.2.11D, an offeror as defined in the Takeover Code; and

- (b) elsewhere in *LR*, a ~~person~~ *person* who makes an *offer of transferable securities to the public*.

...

**TR 12 Transitional Provisions in relation to continuing obligations regarding premium listing**

<b><u>(1)</u></b>	<b><u>(2) Material to which the transitional provision applies</u></b>	<b><u>(3)</u></b>	<b><u>(4) Transitional provision</u></b>	<b><u>(5) Transitional provision: dates in force</u></b>	<b><u>(6) Handbook provision: coming into force</u></b>
1.	<u>LR 9.2.2AR(2) (a)</u>	<u>R</u>	<u>LR 9.2.2AR(2)(a) does not apply.</u>	<u>From 16 May 2014 up to and including 16 November 2014</u>	<u>16 May 2014</u>
2.	<u>LR 9.2.2AR(2) (b)</u>	<u>R</u>	<u>LR 9.2.2AR (2)(b) does not apply.</u>	<u>From 16 May 2014 up to and including the date of the next annual general meeting of the listed company, other than an annual general meeting for which notice:</u> <u>(i) has already been given; or</u> <u>(ii) is given within a period of 3 months from the event that resulted in a person becoming a controlling shareholder of a listed company.</u>	<u>16 May 2014</u>
3.	<u>LR 9.2.2ER</u>	<u>R</u>	<u>LR 9.2.2ER does not apply.</u>	<u>From 16 May 2014 up to and including the date of the next annual general meeting of the listed company other than an annual general meeting for which notice:</u> <u>(i) has already been</u>	<u>16 May 2014</u>

				given; or <u>(ii) is given within a period of 3 months from the event that resulted in a person becoming a controlling shareholder of a listed company.</u>	
<u>4.</u>	<u>LR 9.2.21R</u>	<u>R</u>	<u>Where a listed company is admitted to the premium listing category of the official list on or before 15 May 2014, LR 9.2.21R does not apply.</u>	<u>From 16 May 2014 up to and including 16 May 2016</u>	<u>16 May 2014</u>
<u>5.</u>	<u>LR 9.8.4C</u>	<u>R</u>	<u>LR 9.8.4CR does not apply to a listed company with a financial year ending on or before 31 August 2014.</u>	<u>From 16 May 2014</u>	<u>16 May 2014</u>
<u>6.</u>	<u>LR 13.8.17</u>	<u>R</u>	<u>LR13.8.17R does not apply.</u>	<u>From 16 May 2014 up to and including 16 August 2014</u>	<u>16 May 2014</u>



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