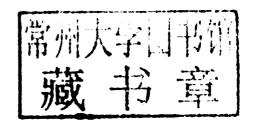


A Practitioner's Guide to THE FINANCIAL SERVICES AUTHORITY LISTING REGIME

Introduced by
Sally Dewar
Managing Director of Risk
Financial Services Authority

2010/2011 Edition





Published in 2010 by
Thomson Reuters (Legal) Limited (Registered in England & Wales,
Company No. 1679046. Registered Office and address for service:
100 Avenue Road, Swiss Cottage,
London NW3 3PF) trading as City & Financial.

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Typeset by LBJ Typesetting Ltd of Kingsclere Printed and bound in Great Britain by CPI Anthony Rowe, Chippenham and Eastbourne

ISBN: 978 0 414 04308 4 No natural forests were destroyed to make this product; only farmed timber was used and replanted.

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A Practitioner's Guide to THE FINANCIAL SERVICES AUTHORITY LISTING REGIME

Biographies

Sally Dewar has been a Managing Director at the FSA since January 2008, initially of the Wholesale Business Unit and most recently, since the FSA restructure of 2009, of the Risk Business Unit. She joined the London Stock Exchange's Listing Authority in 1998 and from 2002 to 2005 was the Head of Primary Markets in the Markets Division of the FSA before becoming Director in October 2005.

As Managing Director of the Risk Business Unit, Sally is responsible for sectoral and market-wide risk identification and mitigation, the overall risk management process, specialist support to supervision and policy formation, covering prudential policy, conduct policy and markets policy. Sally also holds responsibility for supervision of all regulated markets and the related infrastructure, including clearing and settlement and the UK Listing Authority.

During her time as Markets Director, Sally held wide-ranging responsibilities spanning the UK capital markets. She was responsible for setting and implementing the strategy for the Markets Division and worked closely with the sectors to identify emerging risks across the capital markets and accounting & auditing sectors through close liaison with trade associations, market practitioners and internally through the expertise and market knowledge within the FSA, ensuring the risks are appropriately assessed and any mitigation action taken forward by the relevant business areas.

In relation to policy, Sally was responsible for setting the FSA's current market abuse strategy, as well as all aspects of domestic and EU policy affecting the Markets Division, including issues around clearing and settlement, market fragmentation and increased competition. She successfully implemented the Prospectus Directive (2005), the Transparency Directive (2007) and oversaw a fundamental review of the Listing Rules (2005). In addition, she was responsible for

monitoring compliance with the Market Abuse Directive and Code of Market Conduct, and for the development and successful implementation of a new state of the art market surveillance and monitoring system.

On the primary markets side, Sally held overall responsibility for the operation of the UK's Competent Authority for Listing (UKLA). On the secondary markets side, she was responsible for the supervision of all regulated markets and related infrastructure, including nine recognised bodies ensuring the regulatory approach was appropriate, proportionate and outcome focused.

Lucy Fergusson has been a Partner in the Corporate Department of Linklaters since 1996. She assisted the London Stock Exchange in its review and rewriting of the Listing Rules between 1990 and 1993. She has experience in corporate, securities and stock exchange law and regulation, mergers and acquisitions, and domestic and international capital raising. She is a member of the Law Society's Company Law Committee, the City of London Law Society's Company Law Committee, and the CBI's Companies Committee.

Simon Thomas is a Partner at Clifford Chance LLP. Simon joined Clifford Chance in 1996 and specialises in advising issuers and investment banks on international equity capital markets transactions. Most recently, Simon advised Kraft Foods on its successful offer for Cadbury. He regularly acts for issuers and underwriters on secondary issues, including those for Barclays, Travis Perkins, DTZ and FirstGroup. He also advises issuers and underwriters on London listings and international IPOs, including those for Max Property Group, Commercial Bank of Qatar, DP World, Salamander Energy and Cineworld.

Iñigo Esteve is a Senior Associate at Clifford Chance LLP. Iñigo joined Clifford Chance in 2002 and specialises in international equity capital markets and has recently completed a nine month secondment in the legal department at J.P. Morgan Cazenove. Whilst on secondment, Iñigo worked on numerous UK rights issues, open offers and placings. Recent

experience at Clifford Chance includes advising the underwriters on the proposed IPO of New Look, Barclays on its three equity raisings in 2008, Storebrand ASA on its \$1.8 billion rights offering and Barclays on its placing of up to \$19 billion of its shares with China Development Bank and Temasek, as well as Safestore and Southern Cross on their IPOs and London listings.

John Papanichola is a Partner in Slaughter and May. He has a broad corporate and corporate finance practice, with a focus on public and private M&A and equity capital markets. John spent nine months on secondment to the legal department of Goldman Sachs International in 2004 focusing on equity capital markets and private equity matters. His equity capital markets experience includes advising Standard Life on its demutualisation and flotation on the London Stock Exchange and HM Treasury on the share capital raisings of RBS, Lloyds TSB and HBOS.

Linda Main is the head of KPMG's UK Capital Markets Group which provides services to companies of all sizes from all over the world which are considering an IPO in London. Linda's role is to advise clients on all stages of the IPO process from initial planning through to preparation for life as a public company. Her clients include companies of all sizes from the UK and overseas seeking admission to the London markets. Linda is a member of the UKLA's Listing Authority Advisory Committee and the LSE's Aim Advisory Group. She is a regular speaker at conferences about the Listing Rules and the AIM Rules and contributes to various technical publications on the subject.

Louise Wolfson is a Corporate Partner at Allen & Overy LLP. Her experience is in a wide range of equity capital markets transactions as well as in general corporate transactions including mergers and acquisitions, joint ventures and strategic investments. She has acted for underwriters and issuers. She worked in Allen & Overy's New York office from 2000 to 2002. She was seconded to Merrill Lynch's equity capital markets team from June to December 2006.

Richard May is a partner in the Corporate Department at Simmons & Simmons. Richard specialises in advising governments, companies and financial institutions on public and private mergers and acquisitions, joint ventures and securities offerings and on related corporate governance and securities law issues. Richard is recommended in the Chambers & Partners Directory 2009 as one of the UK's leading corporate finance lawyers. Richard is a member of the London Stock Exchange's Primary Markets Group.

Chris Horton is a partner in the Corporate Department at Simmons & Simmons. Chris specialises in advising on equity capital markets transactions, private mergers and acquisitions and joint ventures. He also regularly advises on corporate governance matters and continuing obligations. Chris is recommended as an up-and-coming individual for equity capital markets in the Chambers and Partners Directory 2009.

Simon FT Cox has been a Partner in the Corporate Finance Department of Norton Rose LLP since 1988. He has a wideranging corporate practice covering domestic and international securities and mergers and acquisitions work, with an emphasis on natural resources, transition and emerging markets and collective investment projects.

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Chapter 1

The FSA Listing Rules

Sally Dewar

Managing Director of Risk Financial Services Authority

1.1 Introduction

The FSA's Listing Regime came into force on 1 May 2000 following the transfer of the UK Listing Authority (the "UKLA") from the London Stock Exchange ("LSE") to the Financial Services Authority (the "FSA"). Since the FSA took over responsibility of the Listing Regime, we have substantially revised and amended the rules to take account of new European legislation and our own domestic review of the rules.

This Chapter outlines the development of the overall regime, including the impact that the principal European Directives have had on the formal role and objectives of the FSA in relation to the Listing Rules and our philosophy in seeking to achieve those objectives. We also detail the principal changes made to the Listing Regime in the past year and set out the areas of the Listing Regime where consultation or discussion papers have recently been published, with a view to possible future changes to it. Finally, this Chapter gives a brief overview of the main building blocks of the Listing Regime.

1.2 Development of the UK's Listing Regime: The EU Financial Services Action Plan and major subsequent changes

In the early 2000s The Financial Services Action Plan ("FSAP"), a framework for action to develop the Single

Market in financial services, was formulated and initiated. FSAP had the following specific objectives:

- the completion of a single wholesale market;
- the development of an open and secure retail market, and
- to ensure the continued stability of EU financial markets, especially through state of the art prudential rules and supervision.

The principal FSAP directives that have impacted most significantly on the listing regime are: the Prospectus Directive ("PD"), the Market Abuse Directive ("MAD"), and the Transparency Directive ("TD").

Alongside, and subsequent to the FSAP process, there have also been many other significant changes to the listing regime. These modifications were made with the intention of simplifying and modernising the Listing Regime; ensuring that the UK regime continues to provide an appropriate level of regulation alongside the flexibility and transparency required by those wishing to raise capital in the London markets; and to accommodate EU regulatory changes.

As a result of all these changes, including the amendments made to Part VI of the Financial Services and Markets Act 2000 ("FSMA") to implement the PD, the Listing Rules were restructured into their present format, with separate parts for the Prospectus Rules, Listing Rules and Disclosure Rules (further information on these Directives and their implementation is in Sections 1.4 and 1.9 below). Other key changes to note include:

- the retention, strongly supported by the market, of the super-equivalent standards in the Listing Rules for Premium-listed issuers¹;
- the introduction of Listing Principles in Chapter 7 of the Listing Rules; and
- the strengthening of the sponsor regime.

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¹ For more information on what Premium-listed issuers are, refer to Section 1.8.1 of this chapter, or alternatively, consult http://www.fsa.gov.uk/pubs/cp/cp09_28.pdf.

It is important to note that the implementation of the FSAP Directives resulted in a significant change in the regulatory framework of the Listing Regime. Previously the Listing Rules contained the main regulatory provisions, while admission to trading was largely an administrative process. The FSAP Directives, by contrast, are not referenced to the Official List, but instead to admission to trading on a regulated market. Some of the previous listing requirements are now contained in the rules we have implemented as the competent authority for the Directives. We do, however, retain the function of applying the requirements of the Consolidated Admission and Reporting Directive (CARD) – from which some parts of the former Listing Rules were derived – and super-equivalent requirements to issuers seeking admission to the Official List.

In the period since the FSAP Directives came into force, we have continued to assess how the Listing Regime has bedded down in practice, whether it remains effective in the context of a sometimes rapidly changing external environment and, in particular, whether we are striking the right balance between the competitiveness of the UK market and the protection of investors. To this end, between 2007 and 2009 we conducted a further comprehensive review of the Listing Regime and these changes took effect from 6 April 2010.

In doing so, we have focused in particular over this last year on improving the clarity of the Listing Rules and further enhancing transparency in the UK markets. We have done this in particular by carrying forward our review of the current structure of the Listing Regime. The overall purpose of this Listing Regime review has been to ensure that there is greater clarity of the Regime's structure and the obligations on issuers under it, so that: (i) investors will be able to make more informed investment decisions, and (ii) issuers have additional flexibility over the route they wish to pursue to raise capital. (For more information on the Listing Regime review, please refer to Section 1.8.2 later in this Chapter.)

We have also progressed on our work both domestically and internationally to achieve enhanced transparency for investors and other market participants through our continued work on the disclosure of contracts for difference (CfDs) and short selling.

The next sections describe in more detail the role and approach of the FSA, the impact of the key FSAP Directives and summarise recent and proposed policy initiatives that we have taken to achieve our objective of maintaining the effectiveness of the overall Listing Regime.

1.3 Role and philosophy of the FSA

1.3.1 Role of the FSA acting as the competent authority under FSMA

Under Section 72 FSMA, the FSA is the UK's competent authority to regulate the admission of securities to the Official List. In this role, the FSA has responsibility for maintaining the Official List and for admitting to listing those securities that are covered by Part VI FSMA, which include securities previously outside the scope of Part IV of the Financial Services Act 1986. The FSA has also been appointed as the UK competent authority in relation to the PD, TD and MAD under the provisions in Part VI FSMA. (Note: the part of the FSA that deals with listing and prospectus issues still uses the name "the UK Listing Authority" ("UKLA"), and is often referred to in this way.)

The FSA makes rules governing admission to listing, the continuing obligations of issuers, the enforcement of those obligations and suspension and cancellation of listing. These rules are collectively known as the Listing Rules, the Prospectus Rules and the Disclosure and Transparency Rules ("DTR"). They reflect the following requirements:

- that are mandatory under the European Community Directives or under FSMA;
- set by the FSA, under its powers as competent authority, in relation to securities covered by Part VI FSMA; and
- in relation to other securities admitted to listing.

The regulatory objectives of the FSA, set by HM Treasury, in its capacity as the competent authority are to formulate and enforce Listing Rules that:

- provide an appropriate level of protection for investors in listed securities;
- facilitate access to listed markets for a broad range of enterprises; and
- seek to maintain the integrity and competitiveness of UK markets for listed securities.

The Listing Rules also contain rules made pursuant to Section 87 FSMA, relating to approval of prospectuses (whether or not in connection with an application).

In discharging its general functions, the FSA must have regard to the criteria specified in Section 73(1) FSMA, namely the:

- need to use FSA resources in the most efficient and economic manner;
- principle that a burden or restriction imposed on a person should be proportionate to the benefits, considered in general terms, which are expected to arise from the imposition of that burden or restriction;
- desirability of facilitating innovation in respect of listed securities;
- international character of capital markets and the desirability of maintaining the competitive position of the UK;
- need to minimise the adverse effects on competition of anything done in discharge of those functions; and
- desirability of facilitating competition in relation to listed securities.

Section 155 FSMA requires that the FSA, when seeking to make rules as the competent authority for listing, must publish the proposed rules together with an explanation of the proposed amendments, how they are compatible with the general duties described above and a cost benefit analysis (where required) of the proposed rules.