



26 April 2012

Our ref: ICAEW Rep 52/12

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Dear Ms Richardson

CP12/2 Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules

ICAEW is pleased to respond to your request for comments on *CP12/2 Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules*.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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ICAEW REPRESENTATION

CP12/2 AMENDMENTS TO THE LISTING RULES, PROSPECTUS RULES, DISCLOSURE RULES AND TRANSPARENCY RULES

Memorandum of comment submitted in April 2012 by ICAEW, in response to the Financial Services Authority's consultation paper CP12/2 Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules published in January 2012

Contents	Paragraph
Introduction	1
Who we are	2
Major points	5
Responses to specific questions	7

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *CP12/2 Amendments to the Listing Rules, Prospectus Rules, Disclosure Rules and Transparency Rules* published by the Financial Services Authority (FSA) in January 2012, a copy of which is available from this [link](#).

WHO WE ARE

2. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
4. The Corporate Finance Faculty is the voice of corporate finance within ICAEW. The faculty is responsible for submissions to regulators on behalf of ICAEW. It provides a range of services to its members including a monthly magazine *Corporate Financier*.

MAJOR POINTS

Support for the initiative

5. We welcome the proposed changes to the Listing Rules so that they reflect up to date market practices. We also support the aim to incorporate into the main body of the Listing Rules other relevant material, including from the UKLA's Technical Notes.
6. With its proposals for externally managed commercial companies the FSA is seeking to limit investor protection failures that it perceives could occur when significant management functions are outsourced to an offshore advisory firm. While we broadly support these proposals we hope that they do not signal a change to the current approach towards similar corporate structures adopted by investment companies.

RESPONSES TO SPECIFIC QUESTIONS

7. We take this opportunity to make two general points. The first point is in relation to the numbering system in the Listing Rules which has become extremely difficult to navigate. There is already a risk that even experienced users of the Listing Rules pick up incorrect references but the proposed changes simply add to the challenge in accessing the embedded cross-references. We would urge the FSA to explore how to resolve this in its next review of the Listing Rules in the interest of clear and user-friendly regulation.
8. The second point is in relation to the proposed changes to the text. In our view it would be far easier to consider the implications of these if the consultation paper had included a mark-up of the complete Listing Rules to provide the context for the changes. We respectfully suggest that this approach be considered in future consultation exercises.

Premium listing: wider issues

Q1: What, if any, changes to the Listing Rules do you believe may be necessary to provide additional protection to investors?

9. We agree it is right that the FSA should periodically conduct an assessment of and take soundings from market participants on the requirements for a premium listing and the standards set by the Listing Regime.
10. We see no particular need for the potential enhancements to investor protection that are set out in para 1.23 of the consultation paper. Our members believe that the premium listing standard is correctly positioned and distinguishable from other markets and disclosure requirements enable prospective investors to make informed decisions.

Reverse Takeovers

Q2: Do you agree with the proposal to amend the Listing Rules (LR5.6.2R) to narrow the reverse takeover exemption so that it only applies to listed issuers acquiring another listed issuers listed within the same listing category?

11. We agree and believe that it will help maintain the quality of the premium listing category.

Q3: Do you agree that the proposed guidance on a fundamental change (LR5.6.5G) contains the key indicators? Do you think there are other factors that should be considered and if so what are they?

12. We agree that reference to the key indicators would be useful although we would observe that proposed LR5.6.5G(1) will be judged with a considerable degree of subjectivity.

Q4: Do you agree with the proposed changes to codify within the Listing Rules (LR5.6) the existing practice to contact the FSA as soon as possible once a takeover is agreed or details of the transaction have leaked, to discuss whether a suspension is appropriate?

13. We agree.
14. Although not the subject of a specific question, we draw your attention to LR5.6.6R(1). We believe that the phrase 'which has been agreed or is in contemplation' lends ambiguity to the trigger point for contacting the FSA and that the drafting could be clearer.

Q5: Do you agree with the proposal to amend the Listing Rules (at LR5.6) to require an issuer to make an RIS announcement in relation to disclosure requirements, in addition to confirmation from the issuer?

15. We agree with the proposal. We note that the clarification in the Technical Note that the information required to a listing suspension does not need to be audited has not been carried forward in the proposed amendments. We believe that it would be helpful for this clarification to be made in LR5.6.

Q6: Do you agree with the proposal to amend the Listing Rules (at LR5.6) to allow a premium listed issuer to have a modification within its track record when undertaking a reverse takeover, without rendering the enlarged group ineligible?

16. We agree.

Q7: Do you agree with the proposal to amend the Listing Rules (LR5.6) to follow the principles of our transfer provisions in the case of issuers acquiring targets which are also listed but in another category?

17. We agree.

Q8: Do you agree with the proposal to delete LR10.2.3R allowing an issuer with a premium listing undertaking a reverse takeover, to be treated in certain circumstances as a class 1 transaction?

18. We agree.

Sponsors

Q9: Do you support the proposal to amend the Listing Rules (LR8.2.1R(6)) so that for smaller related party transactions a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?

19. We agree that a sponsor should be appointed but note that the proposal may limit the choice of adviser for companies who may previously have used a non-sponsor firm to provide the 'fair and reasonable' confirmation.

Q10: Do you support the proposal to amend the Listing Rules (LR8.2.1R(7)) so that for Related Party Circulars a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?

20. We support the proposal.

Q11: Do you support the proposal to amend the Listing Rules (LR8.2.1(9)) to require a premium listed company to appoint a sponsor to discuss with the FSA whether a suspension of the listing is appropriate, before announcing a reverse takeover (that has been agreed or is in contemplation or where details of the reverse takeover have been leaked)?

21. We support the proposal but please note our point in paragraph 14 regarding drafting of LR5.6.6R(1).

Q12: Do you support the proposal to amend the Listing Rules (LR8.2.1R(10) and LR8.2.1R(11)) so that where the target of a reverse takeover is not subject to a public disclosure regime, the premium listed company is required to appoint a sponsor in order to make a confirmations regarding the issuer's declarations, to the FSA?

22. We support the proposal.

Q13: Do you support the proposal to amend the Listing Rules (LR8.2.1R(12)) to require a premium listed company to appoint a sponsor for the purpose of submitting the eligibility letter required as a result of a reverse takeover?

23. We support the proposal.

Q14: Do you support the proposal to amend the Listing Rules (LR8.2.1R(13)) to require a sponsor to be appointed in relation to severe financial difficulty letters?

24. We support the proposal.

Q15: Do you support the proposal to amend the Listing Rules (LR8.2.1R(14)) to require a sponsor to be appointed in relation to the acquisition of a publicly traded company?

25. We support the proposal.

Q16: Do you support the proposal to amend the Listing Rules in respect of the definition of sponsor services to include all sponsor communications with the FSA in connection with the sponsor service?

26. We support the proposal.

Q17: Do you support the proposal to amend the Listing Rules (LR8.3.1R(1A)) so that a sponsor is required to provide any explanation or confirmation as the FSA reasonably requires for the purposes of ensuring that the Listing Rules are being complied with by an applicant or listed company?

27. We agree with the proposal.

Q18: Do you support the proposed amendments to the Listing Rules (LR8.3.1AR) in relation to sponsor communications and standard of care?

28. We support the amendments with the exception of the obligation on the sponsor, in LR8.3.1AR(1), to take 'all' reasonable steps to ensure that any communication or information it provides to the FSA in carrying out a sponsor service is to the best of its knowledge and belief, accurate and complete in all material respects. In our view this standard could be onerous for a sponsor to verify they have met and could be omitted as the standard ensured by 'the best of its knowledge and belief' is sufficiently high.

Q19: Do you support the proposed amendments to the Listing Rules (LR8.3.2AG) in relation to sponsor communications that seek to reinforce the responsibility of the sponsor for communications with the UKLA, in instances where a sponsor relies on representations made by the listed company or applicant or a third party?

29. We support the proposed amendments.

Q20: Do you support the proposal to amend the Listing Rules (LR8.3.5BR) to introduce a principle of Integrity for sponsors?

30. We support the proposed amendments.

Q21: Do you support the proposal to amend the Listing Rules (LR8.3) to clarify that a sponsor must, as part of its ongoing conflicts checking procedures, take all reasonable steps to identify conflicts that could adversely affect its ability to perform its functions under LR8?

31. We support the proposed amendments.

Q22: Do you support the proposal to amend the Listing Rules (LR8.6.16) so that sponsors are required to retain accessible records which are sufficient to demonstrate the basis on which sponsor services have been provided?

32. We support the proposed amendments.

Q23: Do you agree with the proposal to amend the Listing Rule (LR8.7.8) so that sponsors are required to notify the FSA of matters that would be relevant to the FSA in respect to: market confidence; reorganisations; and, ongoing approval as sponsor?

33. We support the principle of the proposed amendments however we believe some of the text in LR8.7.8R is insufficiently clear. The phrases 'intended to be' in clause (10) and 'expected to be' in clause (11) provide vague indications as to when a sponsor should notify the FSA and could be interpreted either too widely or too narrowly.

34. The FSA may wish to adapt the clearer wording in proposed LR8.7.21AG(2) for clause (11).

Q24: Do you support the proposal to amend the Listing Rules (LR8.7.21AG) so that sponsors are required to submit a cancellation request in the event that they are unable to provide the requisite assurance of ongoing eligibility?

35. We support the proposed amendments.

Q25: Do you support the proposal to amend the Listing Rules (LR8.7 and LR8.3.13G) so that sponsors are no longer required to submit Conflicts Declarations?

36. We support the proposed amendments.

Q26: Do you support the proposal to amend the Listing Rules (LR8.6.17R and LR8.7.8R(9)) so that sponsors are no longer required to carry out regular reviews?

37. We support the proposed amendments.

Q27: Do you support the proposal to amend the Listing Rules (LR8.6.5R) to introduce a specific obligation on premium listed companies and applicants to co-operate with their sponsor to enable the sponsor to discharge its obligations to the FSA?

38. We support the proposed amendments.

Q28: Do you agree with the proposed amendments set out in paragraph 3.45?

39. We support the proposed amendments.

Transactions

Q29: Do you support the proposal to remove reference to 'revenue nature' from LR10.1.3R(3) and LR11.1.5R of the Listing Rules?

40. We support the proposal.

Q30: Do you support the proposal to amend the Listing Rules to dispense with the notification requirements for class 3 transactions by deleting LR10.3 from the Listing rules?

41. We support the proposal.

Q31: Do you agree that the proposed guidance on operation of our proposed new definition of break fee arrangements (LR10.2.6 and LR10.2.7) provides sufficient direction?

42. We agree.

Q32: Do you support the proposal to amend the Listing Rules (LR10.5.2, LR10.5.4 and LR11.1.7) to require premium listed companies to send a supplementary circular to shareholders in the event a significant change or a significant new matter is considered to constitute necessary information?

43. We support the proposal.

Q33: Do you support the proposal to remove the reference to 'revenue nature' from LR11.1.5R of the Listing Rules?

44. We support the proposal.

Q34: Do you support our proposals in relation to directors' indemnities and similar arrangements (LR10 and LR11)?

45. We disagree with the proposals in relation to directors' indemnities and similar arrangements; we believe it is important that shareholders retain control over the ability of a listed company to enter into potentially sizeable loans.

Q35: Do you agree with the proposed amendments to the Listing Rules (LR12.2, LR12.4 and LR13.7) in relation to the purchase of own equity shares?

46. We agree.

Q36: Do you agree with the 0.5% threshold proposal (LR12.6.4R) requiring companies to announce any issue, sale or cancellation of treasury shares under an employee share scheme over 0.5% of a company's issued share capital (excluding treasury shares)?

47. We agree.

Q37: Do you support the proposal to amend the Listing Rules (LR13.1 and LR13.2) so that the circular must be posted to shareholders as soon as it has been approved and our proposals to require circulars to be sent to shareholders no later than seven days before the date of a meeting?

48. We support the proposal.

Q38: Do you support the proposal to amend the Listing Rules (LR13.4.1R(4)) so that both the issuer and its directors will be referred to as taking responsibility for the contents of a class 1 circular?

49. On balance we agree and would support consistency on this matter between the regimes for circulars and prospectuses.

Q39: Do you support the proposal to remove the requirement (LR13.6.1R(7)) for listed issuers to include class 1 disclosures within a related party circular, in the event a transaction has a percentage ratio greater than 25%?

50. We support the proposal.

Financial Information

Q40: Do you support the proposal to amend the Listing Rules (LR6.1.1R and LR6.1.1A) to reflect the FSA's current approach of not applying Chapter 6 where an existing premium listed company sets up a new holding company, provided that no transaction is being undertaken that would increase the assets or liabilities of the group?

51. We support the proposal.

Q41: Do you support the proposal to amend the Listing Rules (LR6.1.3R(1)(b)) to limit the date of admission of the securities to listing to a date not more than 3 months after the date of the prospectus?

52. We broadly believe that the proposal is reasonable in the case of straightforward IPOs.

53. We are concerned that the FSA has not indicated how the proposed rule intends to address reverse takeovers. We suggest that a different approach could be adopted to reverse takeovers and the draft text could allow for consultation with the FSA in these situations.

Q42: Do you agree with the proposal to amend the Listing Rules (LR6.1.3R(2)) to remove the reference to auditors and focus on the independence of the person providing the opinion?

54. We agree.

Q43: Do you agree with the proposal to amend the Listing Rules (LR6.1.3AG) to include new guidance describing the types of modification to the opinion on audited accounts which may be acceptable to the FSA based on our current practice?

55. We welcome the proposal for new guidance.

Q44: Do you support our proposals in the related rules and guidance on the sufficiency of the historical financial information (LR6.1)?

56. We support the proposals subject to the points raised below.

57. We believe that the drafting in proposed LR6.1.3BR(2) is misleading in its suggestion that a prospective investor could be in a position to make an 'informed assessment of what the future prospects of the applicant's business might be' on the basis of historical financial information (HFI). To do so a prospective investor would also need access to data on future prospects.

58. The requirement of consistent revenue, cash flow or profit growth in the period of the HFI as set out in LR6.1.3EG(4) might be too stringent a general standard.

59. In addition, proposed LR6.1.3EG(5) and LR6.1.4R(2) appear to ignore the impact of acquisitions.

Q45: Do you agree with the proposed clarification of our approach in the Listing Rules (LR6.1.8R and LR6.1.11R) that if a mineral or scientific research company has not been operating for the required period of three years, it must have published or filed accounts since the inception of its business activities?

60. We agree.

Q46: Do you agree with the proposed clarification in the Listing Rules (LR6.1.12R) that a scientific research company must have proved its ability to attract funds from sophisticated investors prior to the marketing at the listing date?

61. We agree.

Q47: Do you agree with the proposed consequential amendments to the guidance (LR6.1.13G and LR6.1.14G) relating to the cases where the FSA can modify accounts and track record and the amendment to clarify that the guidance is only relevant to the accounts and track record requirements?

62. We agree.

Q48: Do you agree with the proposed new guidance in the Listing Rules (LR6.1.20AG) clarifying that holdings of individual fund managers in an organisation will be treated separately, provided investment decisions with regard to the acquisition of shares are made independently?

63. We agree.

Q49: Do you agree with the proposed new guidance in the Listing Rules (LR6.1.20BG) explaining that we consider 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 normally count as an interest for the purpose of the public hands threshold?

64. We agree.

Q50: Do you agree with the proposal to amend the Listing Rules (LR6.1.23R) so that a company's constitution and the terms of its shares must be compatible with electronic settlement, rather than requiring the shares to be settled electronically, or do you think we should delete the requirement altogether?

65. We agree.

Q51: Do you agree with the proposed amendments (LR13.4.7G) to the requirements for class 1 acquisitions of mineral assets?

66. We agree with the proposed amendment.

Q52: Do you agree with the proposed amendments to the Listing Rules (LR13.5), which detail the acceptable treatment for entities that have been or will be equity accounted or treated as an investment in the accounts of the listed issuer?

67. We agree with the proposed amendments.

Q53: Do you support the proposal to amend the Listing Rules (LR13.5.3CR) so that, where financial information is required but cannot be provided in the appropriate form, a valuation report should be included in the class 1 circular?

68. We note that the proposal to require a valuation report appears at odds with the proposal in LR13.4.7G which provides for potential relaxation of the requirement for a mineral expert's report as a result of consultation with the FSA. It would be helpful to understand the apparent difference in approach.

69. We are also concerned that the proposed amendment in LR13.5.3CR to require a valuation report does not cater for the situation where it is not possible to obtain an independent valuation report. We think that the proposed amendment should provide for consultation with the FSA in line with the analysis in para 5.32 of the consultation paper and, in addition, suggest that the word 'must' in the draft text be replaced with 'should'.

Q54: Do you find helpful the proposal to clarify in the Listing Rules (LR13.5.4R(2)) the exceptions to the rule that financial information in a class 1 circular must be prepared according to the accounting policies adopted in the issuer's latest annual consolidated accounts?

70. We agree however we suggest that the word 'restated' in the draft text for LR13.5.4R(f) be replaced with 'consistent'.

Q55: Do you support the proposal to amend the Listing Rules (LR13.5.9AR) so that listed issuers are required to make specific disclosures in respect of synergy benefits?

71. We support the proposal.

Q56: Do you agree with the proposal to amend the Listing Rules (LR13.5.17) to clarify that the financial information on companies acquired by targets should represent at least 75% of the enlarged target, or in the case of a reverse takeover 75% of the enlarged group?

72. We find it odd that the proposed amendment sets a more onerous threshold for class 1 transactions compared with that for a reverse takeover. We suggest that the threshold for a class 1 is aligned with that proposed for reverse takeovers ie at 75% of the enlarged group [LR13.5.17AR(1)].

Q57: Do you support the proposed amendments to the Listing Rules (LR13.5.21R) to require financial information tables to detail the accounting policies used and that the accountant's opinion need only state that the table gives a true and fair view?

73. We support the proposed amendments.

Q58: Do you support the proposal to amend the Listing Rules (LR13.5.27R) relating to acquisitions of companies traded on 'overseas' investment exchanges to allow the concession to apply where the FSA is satisfied as to the appropriateness of a particular investment exchange or MTF?

74. We support the proposal.

Q59: Do you agree with the proposal to include in the Listing Rules (LR13.5.27AG) guidance as to the matters the FSA will consider and the timetable, when reviewing the appropriateness of a particular investment exchange or MTF?

75. We agree with the FSA's objective but note that some of the matters currently included are not matters for an exchange to determine; namely, items (1)-(3) and (7). In particular we wonder whether other matters such as the requirement for external audit would be more relevant and suggest that the draft text could include 'and any other conditions required by the market' at the end of the paragraph preceding the numbered matters.

Q60: Do you support the proposal to amend the Listing Rules (LR13.5.27) to allow certain modified opinions in financial information tables and require a positive assertion that the accounting policies are consistent?

76. We support the proposal.

Q61: Do you support the proposal to amend the Listing Rules (LR13.5.27) to allow the issuer to choose whether to include interim and quarterly financials in a circular and the proposed amendments to LR13.5.30R?

77. We support the proposal.

Q62: Do you support the proposal to amend the Listing Rules (LR13.5.30) to amend the order of preference for the sourcing of disposal entity financial information and to allow the limited use of allocated financial information where such allocation is necessary and appropriately explained?

78. We support the proposal.

Q63: Do you agree with the proposal to amend the Listing Rules (LR13.5.30CR) so that in circumstances where accounting policies (or GAAP) may have changed, the FSA will require issuers to disclose the required financial information under both the old and new bases? As before, we would be interested to know how often the 75% rule above would be applied in practice.

79. We agree.

Q64: Do you agree with the proposal to amend the Listing Rules (LR13.5.30DG) in relation to the allocation of central costs to disposal entities to clarify that the concession applies only to non-operating costs such as interest and tax?

80. We understand the objective of the proposal however inclusion of 'such as' in the draft text could still be interpreted to apply to other financial information. This will not therefore solve the problem of inappropriate application that the FSA has encountered.

Q65: Do you agree with the proposal to amend the Listing Rules (LR13.5) relating to profit forecasts to clarify that the fact the profit forecast or estimate was prepared for a reason other than the class 1 circular does not itself indicate invalidity and that the phrase 'a significant part of the listed company group' in LR13.5.33(1)R should be interpreted as at least 75% of that entity?

81. We agree.

Q66: Do you agree with our proposal to delete LR13.5.35G so that the requirements for profit forecasts are extended to class 1 disposals?

82. We agree.

Externally managed companies

Q67: Do you support the proposals to amend the Prospectus rules (PR5.5.3) and the Disclosure rules and Transparency rules (DTR3.1) to ensure the principals of the advisory firm are responsible (in addition to the company and its directors) for any prospectus the company publishes in the UK and to clarify that they are subject to transparency rules in their share dealings?

83. We support the proposals.

Q68: Do you support the proposals to amend the Listing Rules (LR6.1) so that commercial companies featuring this structure do not qualify for the premium listing accreditation?

84. We agree providing this does not signal a change to the FSA's current approach to investment companies that feature a structure with significant management functions outsourced to an offshore advisory firm.

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