

# Capital Markets Group Legal Alert

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## The FSA consults on amendments to the Listing Rules

### Background

In January 2008, the Financial Services Authority (the “FSA”) published a discussion paper reviewing the structure of the UK listing regime. The paper considered, in particular, ways to re-label the primary and secondary listing segments to help market participants understand better the obligations on issuers of the various types of listed securities. In addition, several market participants had expressed concern about a lack of clarity and therefore some confusion in the market as a result of the different segments offered by the FSA (including primary listing, secondary listing and global depository receipts (“GDRs”)) and markets (such as PLUS market and the London Stock Exchange’s AIM). The FSA has now issued a consultation paper containing:

- its feedback and proposed policy approach in respect of the issues raised in the discussion paper; and
- a consultation on amendments to the Listing Rules to reflect its proposed policy.

It is hoped that the proposed changes will bring greater clarity to the listing regime.

## The FSA's proposed policy

The FSA's key proposed policy is to retain the two-tier segmentation of the listing regime (referred to as Option 2 in the FSA's discussion paper), rather than to pursue the alternative (referred to as Option 1) of having a single listing segment for equity securities, with secondary listing and the listing of GDRs removed from the Official List but still admitted to trading on a regulated market. The two segments will be re-labelled "premium" and "standard" (rather than primary and secondary).

The FSA is also proposing to:

- retain the UK "super-equivalent" listing regime. The FSA will continue to set and enforce that regime;
- defer the possibility of allowing equity securities to be admitted to the Official List if they are only to be admitted to a MTF (a multilateral trading facility) operated by an RIE (a Recognised Investment Exchange) or an investment firm;
- make the EU Directive minimum listing standards available to UK companies wishing to list equity securities;
- amend the corporate governance disclosure requirements of overseas companies with a primary listing to make them more meaningful and introduce a new pre-emption rights disclosure rule for these types of companies; and
- retain the current disclosure regime for GDRs and not require sponsors to be appointed for a transaction involving the issuance of GDRs.

## Consultation on draft Listing Rules

The FSA's consultation includes draft amendments to the Listing Rules. Some of the more substantive amendments are considered below.

### Segmentation

As explained earlier, the FSA is proposing to retain the existing two-tier segments and re-label them as premium and standard listings. Premium listing will denote a listing with super-equivalent standards and standard listing will denote a listing with EU minimum standards. These two segments will be further sub-divided into a lower level of sub-segments - the "listing categories".

The premium listing segment will comprise equity securities issued by:

- commercial companies (currently known as a primary listing); and
- closed-ended investment funds and open-ended investment companies.

The standard listing will comprise:

- equity securities (currently known as a secondary listing, but this category will now be accessible to UK companies as well as overseas companies);
- GDRs;
- debt;
- securitised derivatives; and
- a miscellaneous category for securities that do not fit in the other categories.

To discourage issuers from giving a false or misleading impression about the type of listing the issuer has, the FSA is proposing to introduce a new rule which prohibits misrepresentation of the type of listing an issuer has. The FSA is also proposing to require companies who operate an RIS to provide additional headline categories which reflect the type of listing companies have when they make an announcement, so that a company's listing segment and category is displayed each time an announcement is made in respect of that company. These measures should all assist in bringing clarity and transparency to the listing regime.

#### Corporate governance for overseas primary listed companies

Currently an overseas company with a primary listing must disclose in its annual report and accounts:

- whether or not it complies with the corporate governance regime of its country of incorporation; and
- the significant ways in which its actual corporate governance practices differ from those set out in the Combined Code.

To enable investors to gauge more accurately the extent to which a company's actual corporate governance corresponds with the corporate governance practices in the Combined Code, the FSA is proposing to replace these disclosure requirements with a requirement for an overseas company with a premium listing to disclose in its annual report and accounts:

- the corporate governance regime to which it is subject;
- whether or not it complies with that regime;
- an explanation of the main ways in which its corporate governance regime differs from the Combined Code; and
- the extent to which it complies with those provisions of the corporate governance regime to which it is subject that correspond with the Combined Code, and if it does not comply with any such provisions, an explanation of why it does not comply.

### Pre-emption rights for premium listed overseas companies

The FSA is proposing to introduce a new rule which will require an overseas premium listed company to disclose annually whether or not it offers pre-emption rights.

### Secondary listing for UK companies

The FSA is proposing to amend the application of LR 14, which is based on EU minimum standards, so that it applies to all companies regardless of their country of incorporation. LR 14 currently applies to an overseas company with, or applying for, a secondary listing of equity. The effect of this proposed change is that LR 14 will apply to UK companies as well as overseas companies.

### Corporate governance for all companies with equity and GDR listings

The FSA is proposing to apply the Company Reporting Directive (the “CDR”) (as implemented in DTR 7.2) to all listed companies with equity securities or GDRs listed. The CDR automatically applies to UK companies, and under DTR 7.2 a UK incorporated listed company must include a corporate governance statement in its directors’ report.

The FSA believes that applying the CDR to overseas companies will provide a level playing field for all companies within the standard segment - which will be available to UK companies as well as overseas companies under the proposed listing regime. The FSA also believes it is prudent to apply the CDR to listed companies with GDRs listed to provide further transparency on internal controls and risk management systems of those GDR issuers (as it stands, those GDR issuers can make statements about weaknesses or limitations in their internal controls, but are still able to state that they are complying with their obligations under the DTRs).

### Migrating between segments

The FSA is proposing an express administrative mechanism to enable issuers with a listing of equity securities to migrate from one segment to another without having to cancel their existing listing and reapply for listing in the new segment.

Comments on the consultation are due by 1 March 2009. The FSA is aiming to provide feedback on its consultation by the summer of 2009. The FSA has not indicated when the proposed changes to the Listing Rules will become effective but has stated that it will give the market sufficient notice before the new structure becomes effective.

**If you have any questions or require specific advice on any matter discussed in this publication, please contact Eric Campbell (T: +44 (0)20 7782 8965 or E: [ecampbell@mayerbrown.com](mailto:ecampbell@mayerbrown.com), Justine Usher (T: +44 (0)20 7782 8517 or E: [jusher@mayerbrown.com](mailto:jusher@mayerbrown.com)) or your regular contact at Mayer Brown.**

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