

Final amendments to the Listing Rules following the listing regime review now published

Introduction

The Listing Rules are being amended on 6 April 2010. These amendments follow the review of the structure of the UK listing regime by the Financial Services Authority (the “FSA”). The purpose of that review, which was initiated in January 2008 and included three separate consultations, has been to ensure that there is greater clarity of the regime’s structure and issuers’ obligations under it. The FSA is hoping that this will enable investors to make more informed investment decisions and enable issuers to have more flexibility over the route they wish to pursue to raise capital. This alert summarises some of the key changes to the Listing Rules.

Segments and categories

The Listing Rules are being amended to reflect the FSA’s decision to retain the existing two-tier segments of the listing regime but to re-label them as premium and standard listings. The primary listing segment will be re-labelled as premium listing and will denote a listing with the more stringent super-equivalent standards (which exceed the requirements laid down in the EU Prospectus Directive). The secondary listing segment will be re-labelled as standard listing and will denote a listing that meets EU minimum standards. These two segments will be further sub-divided into listing categories according to the characteristics of a security and the type of issuer.

Categories for premium listings:	Categories for standard listings:
Equity shares (commercial companies)	Shares (both equity shares and non-equity shares)
Equity shares (closed-ended investment funds)	Debt and debt-like securities (including ABS, convertible securities and preference shares)
Equity shares (open-ended investment companies)	Certificates representing certain securities
	Securitised derivatives
	Miscellaneous securities

The listing regime review has resulted in some adjustments to the types of securities that are eligible for inclusion in some of the listing categories. For instance:

- a UK company can have a standard listing of its shares. This change (the only one which was introduced on 6 October 2009) is aimed at creating a level playing field for all issuers. Before that date, only overseas companies could have a secondary listing (to be re-labelled standard listing);
- only equity shares will be eligible for the premium listing segment. Currently, equity securities are capable of having a primary listing (to be re-labelled premium listing). Apart from equity shares, equity securities also includes securities convertible into equity shares. As a result of this change, securities convertible into equity shares, preference shares and warrants will no longer be able to have a premium listing. As from 6 April 2010, these types of securities will only be able to have a standard listing, although equity shares which had a primary listing before the rule change on 6 April 2010 but which do not confer full voting rights so do not qualify for a premium listing on 6 April 2010 may retain a premium listing until 31 May 2012. Some legacy super-equivalent obligations that apply to securities convertible into equity shares, preference shares and warrants have been removed from the chapters of the Listing Rules that apply to the premium listing segment; and
- a listed investment entity (i.e. closed-ended investment funds and open-ended investment companies) will only be able have a standard listing for a further class of equity shares if it already has and maintains a premium listing of a class of its equity shares. If an investment entity cancels its premium listing it will also have to cancel the listing of any other class of listed equity shares.

Other key changes

Other key changes to the Listing Rules that apply from 6 April 2010 include the following:

- overseas companies with a premium listing will have to “comply or explain” against the UK Combined Code. For an overseas company that has a premium listing on 5 April 2010 this will only apply in respect of financial years beginning after 31 December 2009;
- all listed companies with shares or GDRs listed will have to comply with the EU Company Reporting Directive (as implemented in DTR 7.2). Broadly, this will require them, among other things, to provide a corporate governance statement and to describe the main features of their internal control and risk management systems. Overseas companies need only comply with this requirement for financial years beginning after 31 December 2009;
- overseas companies in the premium segment will have to offer pre-emption rights to their existing shareholders when they make an offer for cash unless they have received shareholder approval to disapply pre-emption rights. Overseas companies with a premium listing at the time of the rule changes will not be required to comply with this requirement until 5 April 2011, allowing them time to make any changes to their constitutional documents necessary to effect this requirement at their next AGM;
- securities must be admitted to trading on a regulated market in order to be admitted to the Official List. The rules currently provide that listed equity securities must be admitted to trading on a market for listed securities of a recognised investment exchange (an “RIE”), but do not specify that this market must be a regulated market. The new rules will include a carve out for those securities to which LR4 (Listing Particulars for professional services market and certain other securities) applies. These securities need only be admitted to trading on an RIE market even after the rules change;

- an issuer which is not an issuer with a premium listing of its equity shares must not describe itself or hold itself out as having a premium listing. In addition, such an issuer must not make a representation which suggests that it has a premium listing or complies or is required to comply with the requirements that apply to a premium listing; and
- all listed issuers will need to display the segment and category to which their securities belong when making regulatory announcements.

Comment

One interesting issue to watch during 2010 and beyond will be the extent to which UK issuers opt for a standard listing for their equity shares rather than a premium listing or an AIM admission. The FSA is not expecting there to be much take up initially.

To some extent the appeal of a standard listing to a UK issuer will partly depend on its aspirations as well as investor attitude. Issuers may be concerned that if they opt for a standard listing of their shares, they will not be eligible for inclusion in the UK series of the FTSE indices.

The new rules do not contain wholesale changes to the procedure for migrating from one segment to another so we will have to wait to see the number of issuers who would opt to do this in the future.

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