

## LISTING RULES (REVERSE TAKEOVERS) INSTRUMENT 2012

### **Powers exercised**

- A. The Financial Services Authority makes this instrument in the exercise of the powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

### **Commencement**

- B. This instrument comes into force on 1 October 2012.

### **Amendments to the Handbook**

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Listing Rules sourcebook (LR) is amended in accordance with Annex B to this instrument.

### **Notes**

- E. In Annex B to this instrument, the “note” (indicated by “**Note:**”) is included for the convenience of readers but does not form part of the legislative text.

### **Citation**

- F. This instrument may be cited as the Listing Rules (Reverse Takeovers) Instrument 2012.

By order of the Board  
27 September 2012

**Annex A****Amendments to the Glossary of definitions**

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

*reverse takeover* (in *LR*) a transaction classified as a *reverse takeover* under *LR*  
~~40~~ 5.6.

*target* (in *LR*) the subject of a *class 1 transaction* or *reverse takeover*.

## Annex B

### Amendments to the Listing Rules sourcebook (LR)

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

#### 5 **Suspending, cancelling and restoring listing and reverse takeovers: All securities**

...

- 5.2.3 G The FSA will generally seek to cancel the *listing of ~~a listed company's~~ an issuer's equity shares or certificates representing equity securities* when ~~it~~ the issuer completes a *reverse takeover*.

[Note: LR 5.6 contains further detail relating to *reverse takeovers*.]

After LR 5.5 insert the following new section. The text is not underlined.

#### 5.6 **Reverse takeovers**

##### Application

- 5.6.1 R This section applies to an *issuer* with:
- (1) a *premium listing*;
  - (2) a *standard listing (shares)*; or
  - (3) a *standard listing of certificates representing equity securities*.

Categories of reverse takeover to which this section does not apply

- 5.6.2 R *LR 5.6* does not apply where an *issuer* acquires the *shares or certificates representing equity securities* of a *target* with the same category of *listing* as the *issuer*.

##### Class 1 requirements

- 5.6.3 R Notwithstanding the effect of *LR 5.6.2R*, an *issuer* with a *premium listing* must in relation to a *reverse takeover* comply with the requirements of *LR 10.5* (Class 1 requirements) for that transaction.

##### Definition

- 5.6.4 R A *reverse takeover* is a transaction, whether effected by way of a direct acquisition by the *issuer* or a subsidiary, an acquisition by a new *holding*

*company* of the *issuer* or otherwise, of a business, a *company* or assets:

- (1) where any *percentage ratio* is 100% or more; or
- (2) which in substance results in a fundamental change in the business or in a change in board or voting control of the *issuer*.

When calculating the *percentage ratio*, the *issuer* should apply the *class tests*.

- 5.6.5 G For the purpose of LR 5.6.4R(2), the *FSA* considers that the following factors are indicators of a fundamental change:
- (1) the extent to which the transaction will change the strategic direction or nature of its business; or
  - (2) whether its business will be part of a different industry sector following the completion of the transaction; or
  - (3) whether its business will deal with fundamentally different suppliers and end users.

#### Requirement for a suspension

- 5.6.6 R An *issuer*, or in the case of an *issuer* with a *premium listing*, its *sponsor*, must contact the *FSA* as early as possible:
- (1) before announcing a *reverse takeover* which has been agreed or is in contemplation, to discuss whether a suspension of *listing* is appropriate; or
  - (2) where details of the *reverse takeover* have leaked, to request a suspension.
- 5.6.7 G Examples of where the *FSA* will consider that a *reverse takeover* is in contemplation include situations where:
- (1) the *issuer* has approached the *target's* board;
  - (2) the *issuer* has entered into an exclusivity period with a *target*; or
  - (3) the *issuer* has been given access to begin due diligence work (whether or not on a limited basis).
- 5.6.8 G Generally, when a *reverse takeover* is announced or leaked, there will be insufficient publicly available information about the proposed transaction and the *issuer* will be unable to assess accurately its financial position and inform the market accordingly. In this case, the *FSA* will often consider that suspension will be appropriate, as set out in LR 5.1.2G(3) and (4). However, if the *FSA* is satisfied that there is sufficient publicly available information about the proposed transaction it may agree with the *issuer* that a suspension is not required.

- 5.6.9 G *LR 5.6.10G to LR 5.6.18R* set out circumstances in which the *FSA* will generally be satisfied that a suspension is not required.

Target admitted to a regulated market

- 5.6.10 G The *FSA* will generally be satisfied that there is sufficient information in the market about the proposed transaction if:

- (1) the *target* has *shares* or *certificates representing equity securities* admitted to a *regulated market*; and
- (2) the *issuer* makes an announcement stating that the *target* has complied with the disclosure requirements applicable on that *regulated market* and providing details of where information disclosed pursuant to those requirements can be obtained.

- 5.6.11 R An announcement made for the purpose of *LR 5.6.10G(2)* must be published by means of an *RIS*.

Target subject to the disclosure regime of another market

- 5.6.12 G The *FSA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction if the *target* has *securities* admitted to an investment exchange or trading platform that is not a *regulated market* and the *issuer*:

- (1) confirms, in a form acceptable to the *FSA*, that the disclosure requirements in relation to financial information and *inside information* of the investment exchange or trading platform on which the *target's securities* are admitted are not materially different from the disclosure requirements under *DTR*; and
- (2) makes an announcement to the effect that:
  - (a) the *target* has complied with the disclosure requirements applicable on the investment exchange or trading platform to which its securities are admitted and provides details of where information disclosed pursuant to those requirements can be obtained; and
  - (b) there are no material differences between those disclosure requirements and the disclosure requirements under *DTR*.

- 5.6.13 R Where an *issuer* has a *premium listing*, a written confirmation provided for the purpose of *LR 5.6.12G(1)* must be given by the *issuer's sponsor*.

- 5.6.14 R An announcement made for the purpose of *LR 5.6.12G(2)* must be published by means of an *RIS*.

Target not subject to a public disclosure regime

- 5.6.15 G Where the *target* in a *reverse takeover* is not subject to a public disclosure regime, or if the *target* has *securities* admitted on an investment exchange or trading platform that is not a *regulated market* but the *issuer* is not able to give the confirmation and make the announcement contemplated by LR 5.6.12G, the *FSA* will generally be satisfied that there is sufficient publicly available information in the market about the proposed transaction such that a suspension is not required where the *issuer* makes an announcement containing:
- (1) financial information on the *target* covering the last three years. Generally, the *FSA* would consider the following information to be sufficient:
    - (a) profit and loss information to at least operating profit level;
    - (b) balance sheet information, highlighting at least net assets and liabilities;
    - (c) relevant cash flow information; and
    - (d) a description of the key differences between the *issuer's* accounting policies and the policies used to present the financial information on the *target*;
  - (2) a description of the *target* to include key non-financial operating or performance measures appropriate to the *target's* business operations and the information as required under *PR* Appendix 3 Annex 1 item 12 (Trend information) for the *target*;
  - (3) a declaration that the *directors* of the *issuer* consider that the announcement contains sufficient information about the business to be acquired to provide a properly informed basis for assessing its financial position; and
  - (4) a statement confirming that the *issuer* has made the necessary arrangements with the *target* vendors to enable it to keep the market informed without delay of any developments concerning the *target* that would be required to be released were the *target* part of the *issuer*.
- 5.6.16 R An announcement made for the purpose of LR 5.6.15G must be published by means of an *RIS*.
- 5.6.17 R Where an *issuer* has a *premium listing*, a *sponsor* must provide written confirmation to the *FSA* that in its opinion, it is reasonable for the *issuer* to provide the declarations described in LR 5.6.15G(3) and (4).
- 5.6.18 R Where the *FSA* has agreed that a suspension is not necessary as a result of an announcement made for the purpose of LR 5.6.15G the *issuer* must comply with *DTR* 2.2.1R on the basis that the *target* already forms part of the enlarged *group*.

## Cancellation of listing

- 5.6.19 G The *FSA* will generally seek to cancel the *listing* of an *issuer's equity shares* or *certificates representing equity securities* when the *issuer* completes a *reverse takeover*.
- 5.6.20 G *LR 5.6.23G* to *LR 5.6.29G* set out circumstances in which the *FSA* will generally be satisfied that a cancellation is not required.
- 5.6.21 R Where the *issuer's listing* is cancelled following completion of a *reverse takeover*, the *issuer* must re-apply for the *listing* of the *shares* or *certificates representing equity securities* and satisfy the relevant requirements for *listing*, except that for an *issuer* with a *premium listing*, *LR 6.1.3R(1)(b)* and *LR 6.1.3R(1)(e)* will not apply in relation to the *issuer's* accounts.
- 5.6.22 G Notwithstanding *LR 5.6.21R*, financial information provided in relation to the *target* will need to satisfy *LR 6.1.3R(1)(b)* and *LR 6.1.3R(1)(e)*.

## Acquisitions of targets from different listing categories: issuer maintaining its listing category

- 5.6.23 G Where an *issuer* acquires the *shares* or *certificates representing equity securities* of a *target* with a different *listing* category from its own and the *issuer* wishes to maintain its existing *listing* category, the *FSA* will generally be satisfied that a cancellation is not required on completion of a *reverse takeover* if:
- (1) the *issuer* will continue to be eligible for its existing *listing* category following completion of the transaction;
  - (2) the *issuer* provides an eligibility letter setting out how the *issuer* as enlarged by the acquisition satisfies each *listing rule* requirement that is relevant to it being eligible for its existing *listing* category; and
  - (3) the *issuer* makes an announcement or publishes a *circular* explaining:
    - (a) the background and reasons for the acquisition;
    - (b) any changes to the acquiring *issuer's* business that have been made or are proposed to be made in connection with the acquisition;
    - (c) the effect of the transaction on the acquiring *issuer's* obligations under the *listing rules*;
    - (d) (where appropriate) how the acquiring *issuer* will continue to meet the eligibility requirements referred to in *LR 5.6.21R*; and

(e) any other matter that the *FSA* may reasonably require.

- 5.6.24 R An announcement or circular published for the purpose of *LR 5.6.23G* must be published by means of an *RIS*.
- 5.6.25 R An eligibility letter prepared for the purposes of *LR 5.6.23G* must be provided to the *FSA* not less than 20 *business days* prior to the announcement of the transaction referred to in *LR 5.6.24R*.
- 5.6.26 R Where an *issuer* has a *premium listing*, the eligibility letter provided for the purposes of *LR 5.6.23G* must be provided by a *sponsor*.

Acquisitions of targets from different listing categories: issuer changing listing category

- 5.6.27 G The *FSA* will generally be satisfied that a cancellation is not required on completion of a *reverse takeover* if the *target* is *listed* with a different *listing* category from that of the *issuer* and the *issuer* wishes to transfer its *listing* to a different *listing* category in conjunction with the acquisition and the *issuer* as enlarged by the relevant acquisition complies with the relevant requirements of *LR 5.4A* to transfer to a different *listing* category.
- 5.6.28 G An *issuer* wishing to transfer a *listing* of its *equity shares* from a *premium listing (investment company)* to a *standard listing (shares)* should note *LR 5.4A.2G* which sets out limitations resulting from the application of *LR 14.1.1R* (application of the *listing rules* to a *company* with or applying for a *standard listing* of *shares*).
- 5.6.29 G Where an issuer is applying *LR 5.4A* in order to avoid a cancellation as contemplated by *LR 5.6.27G*, the *FSA* will normally waive the requirement for shareholder approval under *LR 5.4A.4R(2)(c)* where the *issuer* is obtaining separate shareholder approval for the acquisition.

Amend the following as shown.

## 10.2 Classifying transactions

...

- 10.2.2 R Except as otherwise provided in this chapter, transactions are classified as follows:

...

(2) ...; and

(3) ...; ~~and~~

(4) ~~*Reverse takeover: a transaction consisting of an acquisition by a listed company of a business, an unlisted company or assets where*~~



~~any percentage ratio is 100% or more or which would result in a fundamental change in the business or in a change in board or voting control of the *listed company*. [deleted]~~

- 10.2.2A G If an *issuer* is proposing to enter into a transaction classified as a *reverse takeover* it should consider LR 5.6.

~~Certain reverse takeovers to be treated as class 1 transactions~~

- 10.2.3 R ~~A *reverse takeover* is to be treated as a *class 1 transaction* if all of the following conditions are satisfied in relation to the transaction:~~
- ~~(1) none of the *percentage ratios* resulting from the calculations under each of the *class tests* in LR 10 Annex 1G (as modified or added to by LR 10.7 where applicable) exceed 125%;~~
  - ~~(2) the subject of the acquisition is in a similar line of business to that of the *acquiring company*;~~
  - ~~(3) the undertaking the subject of the acquisition complies with all relevant requirements of LR 6;~~
  - ~~(4) there will be no change of board control of the *listed company*; and~~
  - ~~(5) there will be no change of voting control of the *listed company*. [deleted]~~

...

## 10.6 Reverse takeover requirements [deleted]

- 10.6.1 R ~~A *listed company* must in relation to a *reverse takeover* comply with the requirements of LR 10.5 (Class 1 requirements) for that transaction. [deleted]~~

~~Material change to terms of reverse takeover~~

- 10.6.1A G ~~LR 10.5.2R and LR 10.5.3G will apply if there is a material change to the terms of a *reverse takeover*. [deleted]~~

~~Cancellation of listing~~

- 10.6.2 G ~~When a *listed company* completes a *reverse takeover*, the FSA will generally cancel the *listing* of its *equity shares* (see LR 5.2.3G) and the *company* will be required to re-apply for the *listing* of the *equity shares* and satisfy the relevant requirements for *listing* (except that LR 6.1.3R(1)(b)) will not apply in relation to the *listed company's* accounts). [deleted]~~

~~Suspended listing~~

- 10.6.3 G ~~Before a *listed company* announces a *reverse takeover* which has been agreed or is in contemplation or where details of the *reverse takeover* have~~

leaked, a *listed company* should consider whether a suspension of *listing* is appropriate. Generally, when a *reverse takeover* is announced or leaked, because of its significant size there will be insufficient information in the market about the proposed transaction and the company will be unable to assess accurately its financial position and inform the market accordingly. So, suspension will often be appropriate (see *LR 5.1.2G(3)* and (4)). But, if the *FSA* is satisfied that there is sufficient information in the market about the proposed transaction it may agree with the company that a suspension is not required. [deleted]

...

**15.5 Transactions**

...

15.5.2 R A *closed-ended investment fund* must comply with *LR 10* (Significant transactions) and *LR 5.6*, except in relation to transactions that are executed in accordance within the scope of its published investment policy.

...

**Appendix 1.1 Relevant definitions**

<i>holding company</i>	(as defined in section 1159(1) of the Companies Act 2006 (Meaning of "subsidiary" etc) (in relation to another <i>body corporate</i> ("S")) a <i>body corporate</i> which:
	(a) holds a majority of the voting rights in S; or
	(b) is a member of S and has the right to appoint or remove a majority of its board of directors; or
	(c) is a member of S and controls alone, under an agreement with other shareholders and members, a majority of the voting rights in S.
<i>reverse takeover</i>	a transaction classified as a <i>reverse takeover</i> under <i>LR 10 5.6</i> .
<i>target</i>	the subject of a <i>class 1 transaction</i> or <i>reverse takeover</i> .

**Transitional Provisions**

...

**TR 10 Transitional Provision in relation to new sponsor services**

(1)	<b><u>(2) Material to which the transitional provisions 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 5.6.6R</u>	R	<p><u>(1) LR 5.6.6R does not apply to an issuer with a premium listing.</u></p> <p><u>(2) An issuer with a premium listing must contact the FSA as early as possible:</u></p> <p><u>(a) before announcing a reverse takeover which has been agreed or is in contemplation, to discuss whether a suspension of listing is appropriate; or</u></p> <p><u>(b) where details of a reverse takeover have leaked, to request a suspension.</u></p>	From 1 October 2012 up to and including 30 December 2012	1 October 2012
2.	<u>LR 5.6.13R, LR 5.6.17R, LR 5.6.26R</u>	R	<u>An issuer with a premium listing is not required to comply with LR 5.6.13R, LR 5.6.17R or LR 5.6.26R from 1 October 2012 to 30 December 2012.</u>	From 1 October 2012 up to and including 30 December 2012	1 October 2012

3.	<u>LR 13.5.27BR</u>	<u>R</u>	<p><u>(1) LR 13.5.27BR does not apply.</u></p> <p><u>(2) Where a <i>listed company</i> proposes to rely on <u>LR 13.5.27R(1)(b)</u>, it <u>must submit to the FSA an assessment of the appropriateness of the standards applicable to an investment exchange or <i>multilateral trading facility</i> against the factors set out in <u>LR 13.5.27AG (1) to (7)</u> and any other factors that it considers should be noted. The assessment must be submitted before or at the time the <i>listed company</i> submits the draft <i>class 1 circular</i>.</u></u></p>	<p><u>From 1 October 2012 up to and including 30 December 2012</u></p>	<p><u>1 October 2012</u></p>
----	---------------------	----------	---	--	------------------------------