

FINANCIAL DIRECTOR

BRIEFING listing rules**FSA's PROPOSALS FOR LISTING RULES**

The Financial Services Authority has been consulting on how to simplify the Listing Rules and how to implement the EU Prospectus Directive. In October 2004, it published a set of draft rules and feedback on its earlier consultation document, CP203, issued in October 2003. This briefing summarises the main proposals.

The regulatory framework will be affected by the adoption of three EU directives: the Prospectus Directive (PD), the Market Abuse Directive (MAD) and the Transparency Directive (TD). They impose obligations on companies that issue securities ("issuers", in the parlance) on regulated markets in the EU, such as the London Stock Exchange, though having shares traded on such markets offers certain benefits, such as the ability to 'passport' across EU borders. Separate rules apply to AIM, which does not have regulated market status; the FSA retains responsibility for the junior market (see *Financial Director*, Briefing, October 2004).

Currently, many of the rules governing the admission of securities to the Official List of the UK Listing Authority (UKLA) are based on the Consolidated Admission and Reporting Directive (CARD), though the FSA operates tougher 'super-equivalent' standards to provide better investor protection and deeper and more liquid markets. Its consultation suggests that market participants value these higher standards.

Listing Rules changes

Listing Principles: The FSA's

current Listing Rules will be supplemented with Listing Principles, intended to ensure fewer "compliance failures" through the spirit as well as the letter of the rules being followed. While the FSA believes that most breaches will relate to specific rules, it says that the Listing Principles will help to take enforcement action against issuers who deliberately circumvent the rules. During the consultation, respondents raised the concern that Listing Principles would be used as an easy enforcement option if a specific rule breach would be difficult to prove. The FSA says it will use enforcement powers reasonably and on a proportionate basis. The FSA has also reworded the proposed rules to eliminate the onerous requirement to take *all* reasonable steps to ensure compliance.

Listing Principle 2: "An issuer must take reasonable steps to establish and maintain adequate procedures, systems and controls, to enable it to comply with its obligations."

Listing Principle 4: "An issuer must communicate information to holders and *potential holders* of its listed equity securities in such a way as to avoid the creation or continuance of a false market." The FSA explains that this obligation does *not* mean that companies must prevent inappropriate market reaction to an accurate piece of information.

Sponsor regime: The FSA will retain the need for companies to use a sponsor (ie, an investment bank) for certain types of transaction. Sponsors will be more tightly regulated and supervised.

Eligibility: The FSA is keeping the

existing requirement for companies seeking a listing to have a three-year, revenue-earning record and unqualified accounts. The regulator took the view that the listed market is inappropriate for startups. Exceptions will be allowable for investment companies, mining and other mineral companies, and scientific research-based companies. However, the FSA will eliminate the Chapter 25 eligibility criteria for innovative high-growth companies. Instead, any other company looking to list without a three-year record will have to demonstrate that a listing (rather than admission to another market) is necessary. Companies currently subject to the Chapter 25 requirement for quarterly reporting will no longer be required to report quarterly, but obviously may do so if they wish.

The FSA is eliminating the requirement relating to the experience and expertise of directors and senior management, believing that disclosure is the appropriate way to deal with it.

Continuing obligations: The FSA has been encouraged by respondents to retain the class test regime under which companies are required to seek shareholder approval for Class 1 transactions. The regime is not being extended to cover joint ventures. The turnover test is being eliminated.

Model Code: This code covers director and "relevant employee" dealings in a company's shares and will be extended to include persons with managerial responsibilities.

Prospectus Directive

A consultation document on the Prospectus Directive will shortly be issued by HM Treasury. The FSA's consultation paper refers to the elements of the PD that can be implemented through FSA rules rather than legislation.

The proposed rules are not

fundamentally different from those under CARD, but the FSA has little discretion in implementing the new rules because of the 'maximum harmonisation' nature of the PD.

'Mini-prospectuses' will be replaced by the PD rule that all prospectuses include a summary to make it easier for investors to understand the core provisions.

A tripartite document system will enable companies to file a registration document that will be valid for a year then, when they make a public offering or admit securities to listing, they publish a security note and a summary. All the documents are to be vetted by the FSA. The aim is to shorten the timetable for approving the security note and summary, compared with a full single prospectus, though that will remain an option for issuers.

The current rules relating to the information in prospectuses will be replaced by PD rules, though these were based on the existing CARD and International Organisation of Securities Commissions rules.

Key dates

The consultation period runs until 14 January 2005. The final version of the rules will be published in spring 2005 with a view to being implemented on 1 July 2005, at which point the PD will also come into force. The government is expected to publish the necessary legislation for the directive shortly.

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Useful links

- The draft rules can be found at www.fsa.gov.uk/pubs/cp/04_16 or by phoning 0845 608 2372