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CAPITAL MARKETS

Equity capital markets in UK (England and Wales): regulatory overview

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MAIN EQUITY MARKETS/EXCHANGES

1. What are the main equity markets/exchanges in your jurisdiction? Outline the main market activity and deals in the past year.

Main equity markets/exchanges

There are four principal markets in the UK, each of which is operated by the London Stock Exchange (LSE).

Main Market. The Main Market is the flagship market for larger, more established companies. It is a European Economic Area (EEA) Regulated Market and falls within the ambit of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading (EU Prospectus Directive). It is also subject to Directive 2003/6/EC on insider dealing and market manipulation (market abuse) (Market Abuse Directive) and Directive 2004/109/EC on transparency requirements for securities admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive). The Main Market has three different segments:

- The Premium segment that forms part of the Financial Conduct Authority's Official List (Official List). This segment is home to some of the world's largest companies that are subject to the highest standards of regulation and governance.
- The Standard segment that is subject to EU minimum standards (less rigorous than those of the premium segment) and is part of the Official List.
- The High Growth segment that is a new addition to the Main Market. This segment is designed for equity securities of high growth, revenue generating businesses that are, over time, seeking to become Premium listed companies.

AIM. AIM is a market for:

- Smaller, growing companies.
- Growing companies that might not meet the full criteria for admission to the Main Market.
- Growing company for whom a more flexible regulatory environment is more appropriate.

AIM operates, and is regulated, separately from the Main Market. The entry criteria for AIM make it possible to gain admission without a trading record, an established management team or any minimum market capitalisation. AIM is not a Regulated Market for the purposes of the EU Prospectus Directive.

Professional Securities Market (PSM) . The Professional Securities Market is an exchange-regulated market for listed depositary receipts and debt targeted at professional investors. It is a listed market and PSM securities are admitted to the Official List. However, it is not a regulated market for the purposes of the EU Prospectus Directive.

Specialist Funds Market. This is a market for issuers of specialist funds, open to both UK and international funds. It is an EU regulated market and, because securities do not have to be on the Official List, an unlisted market.

Market activity and deals

There were 57 IPOs on the Main Market in 2014 (including two transfers from AIM and four re-listings) and 87 on AIM, which together raised GB£11.9 billion, compared to 132 IPOs the previous year, which raised GB£10.7 billion.

Secondary issues (that is, rights issues, open offers and placings) raised approximately GB£8.0 billion on the Main Market compared to approximately GB£12.9 billion in 2013. On AIM, secondary issues raised GB£3.1 billion compared to GB£2.47 billion in 2013.

While there were peaks and troughs during the year, 2014 continued the improvement in activity shown in 2013.

2. What are the main regulators and legislation that applies to the equity markets/exchanges in your jurisdiction?

Regulatory bodies

The Financial Conduct Authority (FCA) acting in its capacity as the UK's competent authority for the purposes of Part VI of the UK Financial Services and Markets Act 2000 (FSMA) sets and administers the criteria governing admission to the Official List. The UK Listing Authority (UKLA) is the name given to the FCA when acting in its capacity as the competent authority. The UKLA maintains the Financial Conduct Authority's Official List. The UKLA forms part of the Markets Division of the Conduct Business Unit of the FCA.

Legislative framework

The primary legislation under which equity offerings are subject is the FSMA and the statutory instruments implemented under this. The relevant rules are the:

- Listing Rules.
- Prospectus Rules.
- Disclosure and Transparency Rules.

The LSE's admission and disclosure standards also apply. For UK incorporated companies, the Companies Act 2006 also applies.

EQUITY OFFERINGS

3. What are the main requirements for a primary listing on the main markets/exchanges?

Main requirements

Issuers that want their securities admitted to the London Stock Exchange's (LSE) main market for listed securities must follow a two-stage process:

- An application must be made to the UK Listing Authority (UKLA) so that the company's securities can be admitted to the Financial Conduct Authority's Official List.
- An application has to be made to a recognised investment exchange such as the LSE so the securities can be admitted to trading.

Only when both of these processes have been completed will the securities be officially listed on the LSE. As a result, there are two sets of fees payable and two sets of continuing obligations applicable. Trading is a requirement for listing and vice versa, so that a suspension from trading leads to a suspension of listing by the UKLA. In practice, admission to trading and admission to listing is simultaneous.

The Main Market is divided into a number of segments. The main ones addressed in this chapter are:

- Premium listing (equity shares or commercial company).
- Standard listing (shares).
- Standard listing (certificates representing securities, that is, depositary receipts).

There is also a "high growth segment" that was launched in March 2013, which has different requirements including for eligibility, although only one company has listed on this segment since it was launched. The main advantage of listing on the high growth segment is that it has a 10% free float requirement compared to a 25% requirement for premium or standard listing. This route is only available for European Economic Area (EEA) incorporated companies.

An issuer of equity shares usually (depending on whether it satisfies the premium listing eligibility requirements) elects for a premium listing or a standard listing. A standard listing is the EU minimum, whereas a premium listing has more onerous eligibility requirements and continuing obligations. Issuers with a premium listing are eligible for inclusion in the FTSE indices, subject to fulfilling a 25% free float requirement.

A prospectus must be drawn up, approved by the UKLA, filed and published containing the requirements set out in Annexes I and Annex III of Regulation (EC) 809/2004 implementing Directive 2003/71/EC as regards prospectuses and dissemination of advertisements (Prospectuses Regulation) unless an exemption applies (*see Questions 10 and 11*).

To satisfy the conditions for a company's shares to be eligible for admission to the Official List and to trading on the LSE's main market, as well as to comply with the application procedure and the obligations applying to issuers once listed, a company looking to list its shares on the Main Market of the LSE will need to comply with:

- The UKLA's listing rules (Listing Rules) and the Prospectus Rules (that are set out in the Financial Conduct Authority's (FCA) handbook).
- The LSE's admission and disclosure standards.
- Part VI of Financial Services and Markets Act 2000 (FSMA).

Minimum size requirements

The expected aggregate value of the shares (excluding treasury shares) for which a listing is to be sought must be at least GP£700,000 (unless securities of the same class are already listed). The UKLA has the discretion to permit a lower threshold if satisfied there will be a market for the shares.

Trading record and accounts

A new applicant for the admission of equity shares to the premium listing segment must have published or filed historical financial information that:

- Covers at least three years.
- Has a latest balance sheet that is not more than six months before the date of the prospectus and not more than nine months before the date the shares are admitted to listing.
- Includes consolidated accounts for the applicant and all its subsidiary undertakings.
- Has been audited or reported on in accordance with the standards acceptable under item 20.1 of Annex I of the Prospectuses Regulation.
- Is not subject to a modified report, except for certain exceptions.

The historic financial information must both:

- Represent at least 75% of the new applicant's business for the full three-year period.
- Put prospective investors in a position to make an informed assessment of the business for which admission is sought.

The new applicant must demonstrate that:

- It controls the majority of its assets and has done so for at least the three-year period.
- It will be carrying on an independent business as its main activity.

The requirement for a three-year financial track record can be modified for mineral companies and scientific research based companies, or where the FCA is satisfied that it is desirable in the interests of investors and that investors have the necessary information available to arrive at an informed judgment about the applicant and the securities.

An applicant for premium listing must show that it has sufficient working capital for the group's requirements for at least the next 12 months from the date of the prospectus, although the FCA can dispense with this requirement if certain conditions are met (for example, if the applicant's business is that of banking or insurance).

Minimum shares in public hands

At the time of admission to listing, at least 25% of each class of shares being listed must be in the hands of the public in one or more EEA States. Shares are not regarded as being held in public hands where they are locked up for more than 180 days or held directly or indirectly by, for example:

- The directors of the company.
- Any of its subsidiaries.
- By a person connected with such a director.
- By a person holding 5% or more of the shares.

A percentage that is lower than 25% may be acceptable if the market will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of their distribution to the public.

A premium-listed company must have in place a relationship agreement with any "controlling shareholder", which includes any group of persons acting in concert who together control 30% or more of the voting rights attached to the company's shares. The agreement must contain independence provisions as prescribed by the Listing Rules. The FCA has oversight measures for independent shareholders if the independence provisions in a relationship agreement are breached, or if a listed company fails to put a relationship agreement in place.

4. What are the main requirements for a secondary listing on the main markets/exchanges?

Main requirements

A secondary listing is known as a standard listing (that can also take the form of a GDR listing). All commercial companies applying for a listing of shares (whether premium or standard) are required to comply with the requirements in Chapter 2 of the Listing Rules (*see Question 3*). An applicant for admission of shares to a standard listing must comply with the requirements in Chapter 14 of the Listing Rules. The Financial Conduct Authority (FCA) will not admit shares of a company incorporated in a non-European Economic Area (EEA) state that are not listed either in its country of incorporation or in the country in which a majority of its shares are held unless the FCA is satisfied that the absence of the listing is not due to the need to protect investors.

Minimum size requirements

See *Question 3*.

Trading record and accounts

While there are no specific Listing Rules requirements in this regard, for a standard listing of shares and GDRs, the company must have audited historical financial information under the International Financial Reporting Standards (IFRS) or certain other Generally Accepted Accounting Principles (GAAPs) deemed "equivalent" to IFRS covering the latest three financial years (or such shorter period that the issuer has been in operation). It must also contain a statement that in the issuer's opinion the working capital is sufficient for the issuer's present requirements (or, if not, how it proposes to provide the additional working capital needed) for a listing of shares (but not GDRs).

Minimum shares in public hands

See *Question 3*.

5. What are the main ways of structuring an IPO?

The following are the methods by which a company can structure an IPO on the London Stock Exchange's Main Market.

An offer for subscription or sale

An offer for:

- Subscription is an invitation to the public to subscribe for new shares in the company.
- Subscription raises money for the company itself to fund the activities set out in the prospectus.
- Sale is an invitation to the public to purchase existing shares in the issuer.
- Sale raises money for existing shareholders rather than the company itself.

An IPO can consist of both an offer for subscription and an offer for sale. These methods are commonly seen on large retail IPOs, such as the Royal Mail.

Placing

A placing involves the offer of shares (that can be new shares offered by the company or existing shares offered by a selling shareholder) to a specifically chosen set of institutional investors. This is often a cheaper method of raising capital than the offer for subscription or sale and does give the company more control over who its investors will be. However it can result in a narrower shareholder base than a public offer that can reduce liquidity in the company's shares. A placing is often used in conjunction with an offer for sale or subscription.

Introduction

An introduction is where a company joins the market without raising capital and is therefore usually the least expensive way of joining the market. Generally, a company can use this method if over 25% of its shares are in public hands and there is already a good, wide shareholder base, for example, if the company is:

- Already listed in another jurisdiction.
- The subject of a demerger from an existing listed business.

Most large IPOs are "underwritten" by one or more of the investment bank. This means that any shares not bought are purchased by such banks for a fee. This provides the selling shareholders or the issuer with certainty as to the funds that will be raised.

6. What are the main ways of structuring a subsequent equity offering?

Subsequent equity offerings are commonly referred to as "secondary" offerings. In broad terms, there are two types:

- Pre-emptive.
- Non pre-emptive.

A pre-emptive offering is an offering made to existing shareholders pro rata to their existing holdings, usually requiring a prospectus.

Non pre-emptive offerings are offers of shares to either existing or potential new shareholders that do not relate to the number of shares already held, often made without a prospectus.

Pre-emptive offerings consist of:

- Rights issues that are an offering of shares to existing shareholders where the right to acquire the new shares is tradeable in itself. Shareholders that choose not to take up their entitlement are compensated to the extent that if the shares not taken up can be sold in the market at a premium to the offer price, they get the benefit of the premium.
- Open offers that are similar to rights issues, except that the right is not tradeable and there is no sale of rights. Open offers are often combined with a non pre-emptive placing.

A placing is a non pre-emptive offering where new shares are offered to existing or potential new shareholders. Placings can be combined with both rights issues and open offers.

7. What are the advantages and disadvantages of rights issues/other types of follow on equity offerings?

Rights issues and open offers are public offers for which there is typically no exemption from the requirement to produce a Prospectus Directive compliant prospectus. This requirement makes the deals more public and also materially lengthens the timetable, as it can take several months to draft a prospectus and receive approval from the Financial Conduct Authority (FCA). The prospectus approval process takes the form of a series of private filings with the FCA, reviewing and dealing with FCA comments before approval is granted. Both rights issues and open offers can also require shareholder consents and therefore require a general meeting to be convened and held, which will lengthen the timetable by at least 17 days. However, as rights issues give existing shareholders the rights to participate in a new issue of shares on a pro rata basis and to obtain the benefit of any premium if they decide not to take up their rights, they are particularly favoured by investor bodies as they.

Placings can be done much more quickly and are often done in just one day (via an accelerated bookbuild transaction), though they cannot be used for bigger capital raisings where the size of the issue is more than 10% of the existing share capital as this would also require a prospectus (*see Question 11*). Shareholder approval is usually not required, as it is common practice at annual general meetings of shareholders to seek authority to issue shares up to specified limits during the year.

8. What are the main steps for a company applying for a primary listing of its shares? Is the procedure different for a foreign company and is a foreign company likely to seek a listing for shares or depositary receipts?

Procedure for a primary listing

The principle steps for a company applying for a premium listing are as follows:

- Pre-IPO reorganisation.
- Due diligence.
- Prospectus drafting.
- Preparation of reporting accountant and specialist reports.
- Negotiating legal documentation such as the underwriting agreement and agreeing comfort packages.
- Drafting marketing presentations, marketing and bookbuilding.
- Pricing and allocation of shares.
- Admission to Official List and to trading on the Main Market.
- Settlement.
- Exercise of any over allotment option/stabilisation.

Procedure for a foreign company

The procedure is the same for a non-UK incorporated company. The eligibility requirements for a standard listing (whether for equity or GDRs) are less onerous than for a premium listing, but only companies with a premium listing are eligible for inclusion in the FTSE indices. If the non-UK company is incorporated in a jurisdiction where settlement in the UK is not easy (for example, because its securities are not admissible to the UK's electronic settlement system, known as CREST), then they are likely to seek a listing for depositary receipts. London is used to several forms of depository receipts including GDRs and ADRs.

ADVISERS: EQUITY OFFERING

9. Outline the role of advisers used and main documents produced in an equity offering. Does it differ for an IPO?

The main advisers in an IPO are as follows.

Investment bank

The investment bank is primarily responsible for managing the IPO process and for co-ordinating the company's other advisers. The investment bank typically has several roles:

- **Sponsor.** A company seeking a listing for its shares must appoint a sponsor. The sponsor must be an "authorised person" under the Financial Services and Markets Act 2000 (FSMA) and be registered on the UK Listing Authority's (UKLA) register of sponsors. The sponsor assesses the suitability of the company for listing. It advises on the:
  - structure and composition of the board and management team;
  - the best method of bringing the company to the market;
  - the IPO timetable.
- It will act as the conduit for communications between the company and the UKLA. The sponsor also undertakes certain responsibilities to the UKLA in respect of the company that are set out in detail in the Listing Rules.
- **Underwriter.** To the extent that shares are being sold by an existing shareholder or new shares are being issued by the company, these are usually underwritten by the investment bank and by one or more other underwriters. If the IPO is large, there will be a syndicate of underwriters, with one acting as the "lead" (often known as the global co-ordinator).
- **Financial adviser.** The investment bank provides advice on issues such as:
  - timing;
  - structuring;
  - board composition;
  - corporate governance;
  - valuation.
- **Research analyst.** Research on the company is published through the bank's research function.
- **Corporate broker.** The corporate broker acts as the main conduit between the company and the stock market.

Lawyers

For an IPO, legal advisers must advise the company, selling shareholders (if any) and the underwriters.

The role of the company's legal advisers is to:

- Advise on the legal aspects of preparing the company for listing.
- Carry out the legal due diligence.
- Assist the company in the preparation of the prospectus (including verifying the accuracy of every statement of fact in the prospectus).
- Negotiate the agreement the company enters into with the underwriters, accountants, registrars and others.

The role of the underwriter's legal advisers is to:

- Advise on any legal agreements to which the underwriters are a party.
- Assist the sponsor in the preparation of the prospectus.
- Advise the sponsor in relation to its obligations.

Accountants

The reporting accountant is distinct from the company's own auditors (though the role can be fulfilled by a separate team in the same firm). Its main function is to review the company's financial record for the benefit of potential investors. The accountants prepare both a long form and a short form report.

The long form report provides a detailed financial and management history of the business and much of this information is used in the preparation of the prospectus even though the report itself is not published. The short form report is published in the prospectus and contains:

- Profit and loss account.
- Balance sheet information.
- Cash flow statements.
- Accounting policies covering the latest three financial years.
- Audit report in respect of each year.

The reporting accountant also prepares a report for the sponsor on the company's projected working capital position over the 12 to 24 months following the IPO. The accountants must also provide various comfort letters to the sponsor and, in certain cases, to the underwriters.

Public relations consultants

PR consultants can generate press interest and publicity for the company prior to the IPO, as well as helping to monitor public statements and press releases during the IPO process. After the IPO, ongoing press interest in the company can help sustain awareness of the company and liquidity in its shares.

Registrars

The registrars deal with applications for shares and setting up and maintaining the share register of the company. They also deal with arrangements relating to CREST (the UK's electronic share settlement system).

Receiving bank

A receiving bank is usually required if there is a retail offering in order to receive funds from retail investors.

Specialist advisers

Depending on the nature of the company, tax specialists (if this function is not being undertaken by the accountancy firm), actuaries, patent and trade mark experts, technical experts, or other experts may need to be involved in the IPO process, or a "competent person's report" may be required for an oil and gas or mineral company.

EQUITY PROSPECTUS/MAIN OFFERING DOCUMENT

10. When is a prospectus (or other main offering document) required? What are the main publication, regulatory filing or delivery requirements?

Prospectus (or other main offering document) required

Under the Financial Services and Markets Act 2000 (FSMA), a prospectus is required if a company:

- Offers securities to the public in the UK.
- Seeks the admission of securities to trading on a regulated market in the UK.

Main publication, regulatory filing or delivery requirements

Before a prospectus can be published, it must be submitted to, and approved by, the UK Listing Authority (UKLA). The issuer must submit the draft forms of the prospectus and related documents to the UKLA, for an IPO, at least 20 working days before the intended approval date of the prospectus. The documents must be submitted in duplicate in hard copy or an agreed electronic format and must be annotated in the margin to indicate compliance with FSMA and the Prospectus Rules.

The following documents must be submitted:

- A completed Form A.
- The prospectus.
- A cross reference list identifying the pages where each item can be found in the prospectus, if the order of items in the prospectus does not coincide with the orders in the schedules and building blocks.
- A letter identifying non-applicable items in the schedules and building blocks.
- A copy of a document, if information is incorporated in the prospectus by reference to that document.
- Any request for omission of information from the prospectus.
- Contact details of individuals able to answer queries from the Financial Conduct Authority (FCA).
- Any other information the FCA may require.

The issuer must also pay the relevant fee to the FCA.

The draft documents must then be submitted in final form before midday on the day on which approval is required to be granted.

The UKLA must not approve the prospectus unless it is satisfied that:

- The UK is the home state for the issuer.
- The prospectus contains all the necessary information.
- All other requirements of FSMA and the Prospectus Directive have been complied with.

The FCA will not approve the prospectus if it considers that the information provided with the application is not complete and in final form.

Under FSMA, the FCA must notify the issuer of its decision on an application for approval of a prospectus before the end of the period of 20 working days beginning with the date on which the application is received

11. What are the main exemptions from the requirements for publication or delivery of a prospectus (or other main offering document)?

Each element of the prospectus publication requirement has separate exemptions and where an offer is an offer to the public as well as an admission to trading on a regulated market, there must be an appropriate exemption for each element if the prospectus obligation is to be avoided.

Offer to the public

An offer to the public is exempt provided that:

- It is an offer to qualified investors only.
- It is made to less than 150 persons (other than qualified investors) per European Economic Area (EEA) state.
- The minimum consideration that may be paid by any person is at least EUR100,000.
- The securities are denominated in amounts of at least EUR100,000.
- The total consideration cannot exceed EUR100,000.

Separately, the prohibition does not apply to offers where the total consideration for securities offered in the EEA is less than GB£5 million.

There are also exemptions for certain types of offer, such as shares:

- Issued in connection with a takeover offer where a prospectus equivalent document is made available.
- Allotted to employees (if certain conditions are met).

Admission to trading

There are exemptions for certain exempt securities. The main categories are for securities:

- Representing less than 10% of the number of shares of the same class already admitted to trading over a period of 12 months.
- Issued in connection with a takeover offer if a prospectus equivalent document is made available.

- Offered to existing shareholders free of charge, or through a dividend, or to employees, or on conversion of other securities, or where shares are already admitted to trading on another regulated market.

The exemptions are wider than those for an offer to the public.

There is an exemption to the requirement to produce a prospectus where shares are already admitted to trading on another regulated market. However, this exemption applies only if certain conditions are met, including that:

- The shares of the same class have been admitted to trading on that other regulated market for more than 18 months.
- A summary document is made available.

Attention must be paid to both prospectus "triggers" when considering whether shares can be offered to existing or former directors or employees by their employer or by an affiliated undertaking. Under the "public offer" requirement to produce a prospectus, if the company has its head office or registered office in the EU it must make available a document containing information on the number and nature of the securities and the reasons for and details of the offer (known as the information document). If the issuer is established outside the EU and its securities are admitted to trading on a regulated market, the issuer must make an information document available. Otherwise, where its securities are admitted to trading on a market outside the EEA (a third country market), the European Commission must have issued an equivalence decision and "adequate information", including an information document, must be available at least in a language customary in the sphere of international finance.

For the "regulated market" trigger, the exemption applies if the securities involved are of the same class as those already admitted to that regulated market. Again, to rely on this exemption, the issuer must make an information document available.

12. What are the main content or disclosure requirements for a prospectus (or other main offering document)? What main categories of information are included?

The Financial Services and Markets Act 2000 and the Prospectus Rules require that the prospectus contain all the necessary information to enable investors to make an informed assessment of the following in relation to the company:

- Assets and liabilities.
- Financial position.
- Profits and losses.
- Prospects.
- Rights attaching to the securities.

The information must be:

- Presented in a form that is comprehensible and easy to analyse.
- Prepared having regard to the particular nature of the securities and the issuer.

The company and its directors (including proposed directors) have primary legal responsibility for the prospectus. Any person that has authorised any part of the contents of the prospectus will incur liability for that part of the prospectus (this includes the reporting accountants for their reports included in the prospectus and often also the sponsor).

The prospectus can be drawn up either as a single document or three separate documents known as the:

- Registration document, which must contain information relating to the company.
- Securities note, which contains information concerning the shares for which admission is being sought.
- Summary, which must be in non-technical language and convey the essential characteristics and risks associated with the company and the shares. The whole summary should not exceed the longer of 7% of the length of the prospectus or 15 pages.

The Prospectus Rules specify the minimum disclosure requirements for the prospectus and set out the information that must be included in each of the registration document and the securities note.

In summary, the registration document must include details of:

- The persons responsible for the document.
- The auditors and other experts.
- The company and its capital.
- The group's operations and interests.
- The operating and financial review (which is a description of the company's financial position, changes in financial condition and results of operations for each financial year and interim period reported on in the prospectus).
- Recent developments and prospects.
- Risk factors.
- The assets, liabilities, financial position and profits and losses (the prospectus must contain audited historical financial information on the group covering three financial years and the respective audit reports). For EU issuers this must be prepared in accordance with IFRS. For non-EU issuers the accounts must be prepared in accordance with IFRS or with that country's national accounting standards provided these have been accepted as equivalent to IFRS.
- Management.
- Employees.

The securities note must include:

- Risk factors.
- Details of working capital and indebtedness.
- Information concerning the shares and the offer.

A supplementary prospectus is required if a significant new factor arises during the period between the later of either:

- Approval of the prospectus by the Financial Conduct Authority.
- Closure of the offer or admission to trading starts.

13. How is the prospectus (or other main offering document) prepared? Who is responsible and/or may be liable for its contents?

The drafting of the Prospectus is led by the company (generally through its lawyers) and all the IPO advisers must input into its preparation, review it and sign it off. A formal verification exercise is undertaken to test the accuracy of key statements in the prospectus.

The Prospectus Rules impose responsibility for a prospectus relating to equity securities for which the UK is the home member state on, among things:

- The issuer of the securities.
- The issuer's directors including any person who has agreed to become a director.
- Anyone that accepts, and is stated in the prospectus as accepting, responsibility (a person may accept responsibility for part only of a prospectus.

- Any person that has authorised the contents of a prospectus.
- A seller of shares and its directors if it is not the issuer (unless the issuer is responsible for the prospectus, the prospectus was drawn up primarily by the issuer and the seller of shares in the IPO is making the offer in association with the issuer).

An issuer can also be liable to investors in contract or tort. Sponsors and other banks involved in an equity offering can also, in certain circumstances, be liable. In relation to the statutory regime, any person that has acquired securities to which the prospectus relates can claim compensation from those responsible for the prospectus if they have suffered loss as a result of the prospectus either:

- Containing any untrue or misleading information.
- Failing to disclose a matter required under section 87A of the Financial Services and Markets Act 2000 (FSMA) or a matter requiring a supplementary prospectus.

There are a number of statutory defences (for example, due diligence) (*Schedule 10, FSMA*). A claim can also be brought by those that have acquired shares in the market.

MARKETING EQUITY OFFERINGS

14. How are offered equity securities marketed?

Marketing an IPO takes several forms:

- The publication of research reports on the company by connected brokers.
- "Pilot fishing" pre-marketing discussions carried out at an early stage with potential investors that the investment banks have identified.
- More formal "road show" meetings and presentations following the publication of the intention to float announcement.
- For retail offerings, more general advertising in order to generate additional interest in the IPO.

15. Outline any potential liability for publishing research reports by participating brokers/dealers and ways used to avoid such liability.

Liability to investors can arise in several ways for brokers or dealers.

Legislation

The following legislation applies:

- **Financial Services Act 2012.** Sections 89 and 90 of the Financial Services Act 2012 (misleading statements and impressions)
  - market abuse and insider dealing (section 118, Financial Services and Markets Act 2000);
  - insider dealing (section 52, Criminal Justice Act 1993) (*see Question 24)*.
- **Contract law.** If there is a contract between the investor and the broker, the investor may be able to claim for contractual damages against the broker, using normal contractual principles.
- **Tort.** The investor may be able to claim damages in tort against the broker if he can show that:
  - he was owed a duty of care;
  - that the duty was breached;
  - that loss was suffered as a result.
- **Financial Conduct Authority (FCA) Rulebook.** Participating brokers or dealers produce non-independent research. Non-independent research must be correctly labelled as such. Brokers or dealers must:
  - take reasonable steps to identify and manage conflicts of interest that may arise in producing the research;
  - must fairly present their non-independent research (including the identity of the author of the research);
  - disclose any relevant conflicts of interest and other information (see Chapters 12.3 and 12.4, FCA Conduct of Business Sourcebook for further information).
- Breaches of the above can result in disciplinary proceedings by the FCA and in certain cases, civil claims.

Brokers can minimise their liability in the following ways:

- **Disclaimers.** Disclaimers should be used that, for example, state that any investment should only be made on the basis of the information contained in the prospectus.
- **Verification.** It is common for issuers to check the draft research for factual accuracy (but not to influence the commentary or tone).
- **Research blackout.** A blackout for a period prior to publication of the prospectus helps to distance research from the prospectus.
- **Management of conflicts of interest.** Issuers should not be promised favourable coverage by analysts, analysts should not participate in roadshows and their reporting and remuneration arrangements should be structured to avoid conflicts (see Chapter 12 of the FCA Conduct of Business Sourcebook and Chapter 10 of the Systems and Controls Sourcebook for further information).
- **Forecasts and projections.** These should be avoided.
- **Independence.** The analyst writing the report should be independent of others in the same organisation selling the securities.
- **Distribution.** Distribution should be limited to professionals.
- **Prospectus.** The recipients of the research report should be sent the prospectus as soon as it is available.

BOOKBUILDING

16. Is the bookbuilding procedure used and in what circumstances? How is any related retail offer dealt with? How are orders confirmed?

Bookbuilding is commonly used on both IPOs and secondary offerings. The book of demand is compiled following the publication of the prospectus when the banks running the book receive indications of size of demand and at what price. In an institutional offer, the prospectus is sometimes in draft form (known commonly as a pathfinder) and the final prospectus confirming the price for the shares and the number to be offered is only published once the bookbuild has taken place. Alternatively, a "price range" prospectus is produced.

In a retail offer, the prospectus is likely to be a "price range" and, therefore, retail investors can be asked to indicate a total amount that they would be willing to invest or a maximum price per share or both. If the price is fixed outside the range set out in the prospectus, this is considered a "material new matter" and a supplementary prospectus is required.

UNDERWRITING: EQUITY OFFERING

17. How is the underwriting for an equity offering typically structured? What are the key terms of the underwriting agreement and what is a typical underwriting fee and/or commission?

An IPO or secondary offering, which is a rights issue or an open offer, is often fully underwritten, that is, the underwriters agree in the underwriting agreement to procure subscribers for the new or sale shares and if any shares are not taken up, to subscribe for those shares themselves in agreed proportions. It is less common for a placing to be underwritten and the banks can only agree to use "reasonable endeavours to procure subscribers". The underwriting agreement between the company and the banks contain the following key terms:

- Conditions precedent or termination rights.
- Indemnity from the issuer to the bank.
- Warranties from the issuer (and the directors on an IPO).
- Lock up.
- Over allotment (on an IPO).
- Post-admission undertakings from the issuer.
- Commission, usually expressed to be between 2% and 5% of the total amount raised. Sometimes (and more commonly in recent deals) a discretionary separate success fee is payable.

TIMETABLE: EQUITY OFFERINGS

18. What is the timetable for a typical equity offering? Does it differ for an IPO?

Each deal is different, but an indicative timetable for an institutional bookbuilt IPO is set out below (where "T" is the date of pricing):

- **T minus 6 months to T minus 3 months.** Preparation for the IPO, for example, advisers are appointed, eligibility for listing is discussed and due diligence is started. Banks submit eligibility letter to the Financial Conduct Authority (FCA) and prospectus drafting commences.
- **T minus 3 months.** First submission of the prospectus to the FCA.
- **T minus 2 months to T minus 1 month.** First draft reports circulated and announcement of intention to float.
- **T minus 1 month.** Connected brokers' research is published. Research blackout period starts.
- **T minus 14 days.** Pathfinder prospectus is published (or price range approved prospectus if retail offer). Underwriting agreement signed (if retail offer). Roadshows and bookbuilding start.
- **T.** Offer is priced and shares are issued and allotted subject to admission. Approved prospectus is published (or pricing statement if retail offer) and underwriting agreement is signed (if institutional offer). Conditional dealings and stabilisation begin.
- **T plus 3 days.** Shares are admitted to trading and to listing. Unconditional dealings begin.
- **T plus 30 days.** End of stabilisation.

The timetable for a public secondary offering (by way of a rights issue or open offer) will differ from the above as it may be necessary to convene a shareholder meeting to obtain consents for the issue and allotment of the new shares.

STABILISATION

19. Are there rules on price stabilisation and market manipulation in connection with an equity offering?

Stabilisation is the process where the market price of a security is "manipulated" to achieve a successful offer. Stabilisation is effected for the limited purpose of preventing or slowing down a decline in the price of the security. Technically, stabilisation breaches UK rules on insider dealing and market abuse. However, the Financial Conduct Authority (FCA) recognises the need for stabilisation to allow the market to operate more efficiently. Stabilisation must take place under Regulation (EC) 2273/2003 implementing Directive 2003/6/EC as regards exemptions for buyback programmes and stabilisation of financial instruments (Buyback and Stabilisation Regulation) or the FCA Price Stabilisation Rules (Stabilisation Rules) which, among other things, prescribe that:

- Only prescribed stabilising action is permitted.
- Only specified securities can be stabilised on a specified exchange within specified time limits.
- Stabilising transactions must only take place within specified price limits.
- Adequate prior disclosure and records of stabilising activities must be maintained by the stabilising manager.

Breaches of the Stabilisation Rules can result in the FCA bringing disciplinary proceedings and proceedings for injunctions and restitution.

TAX: EQUITY ISSUES

20. What are the main tax issues when issuing and listing equity securities?

A number of tax issues can arise on an equity issue, requiring specialist tax advice. It is important to seek, and follow, expert tax advice at an early stage in the IPO process.

IPO preparation

Tax issues can arise in the context of an IPO as a result of:

- Existing shareholders disposing of shares.
- The company being floated leaving a capital gains group.
- The unwinding of employee share schemes.

Shareholders disposing of shares in the company realising a chargeable gain on the sale of their shares are liable to capital gains tax (individuals) or corporation tax (corporates). It may be possible to reduce this gain by pre-IPO planning to increase the base cost of the shares. The substantial shareholding exemption (SSE) (for companies) or entrepreneurs' relief (for individuals) may be available to mitigate these gains.

Any pre-IPO restructuring involving UK intra-group transfers of assets into the company (or group) to be floated creates the potential for de-grouping tax charges. Provided certain conditions are met, any de-grouping tax charges are borne by the company (or companies) making the disposal of the company being floated. This may allow the company (or companies) making the disposal to shelter the charge within the SSE.

Secondary issues

On a rights issue, bonus issue or trombone issue of ordinary shares, it is generally accepted that the company does not make an income distribution on the issue of either:

- The provisional allotment letter (PAL) (if applicable).

- The shares that are eventually issued after the end of the issue period.

However, there are two main exceptions to this treatment:

- The issue of redeemable share capital or any security in respect of shares or other securities, except the amount of the issue that is equal in amount or value to the consideration received by the company for the issue.
- A bonus issue of shares following a previous repayment of share capital.

Unless certain secondary issues of shares are structured as a reorganisation of the share capital of the issuing company, existing UK shareholders can be treated as though they have made a part disposal of their existing holdings.

If the issuer is raising capital through a rights issue or open offer in a currency other than its accounting currency, any foreign exchange gains or losses on currency hedging instruments are disregarded for tax purposes provided that, in particular, a person unconnected with the issuing company bears the risk of exchange rate fluctuations.

With a trombone rights issue, the company and any corporate shareholders can incur liabilities by reference to any movements in the value of the embedded derivative financial instrument or equity instrument between the issue date and the conversion date.

VAT on fees

The issue of shares is a non-supply for VAT purposes. If the capital raised is used for the purposes of a fully taxable or partially exempt business (for the purposes of VAT), the VAT incurred by a UK issuer on supplies made to it in connection with the share issue should be recoverable, either in full or in part.

Stamp duty/stamp duty reserve tax

Transfers of shares in UK companies generally give rise to a charge to stamp duty reserve tax (SDRT) or stamp duty, subject to applicable exemptions. The intermediary exemption and stock lending exemption may be available for stamp duty and SDRT that would arise for stabilisation, stock lending and greenshoe option transfers.

The issue of shares (not being a transfer) to persons including places (or to brokers as agent for the places) should not generally give rise to stamp duty or SDRT. A 1.5% SDRT charge previously arose on the issue of shares to persons providing depositary receipt or clearance services. However, following litigation, that charge is no longer applied, provided that such arrangements form an integral part of an issue of share capital.

To ensure that PALs are exempt from stamp duty, rights under a PAL or fully paid letter of allotment are only renounceable within six months from issue. No SDRT is generally payable on the issue of PALs. No stamp duty is payable on the renunciation of a PAL or a fully paid letter of allotment. However, SDRT are generally payable at the rate of 0.5% of the consideration on any renunciation or other dealings.

CONTINUING OBLIGATIONS

21. What are the main areas of continuing obligations applicable to listed companies and the legislation that applies?

A company with a premium listing must comply with continuing obligations set out in the Listing Rules. The main areas relate to the following:

- **Transactions.** Certain transactions, depending on size, require either prior shareholder approval or disclosure to the market.
- **Related party transactions.** Transactions with related parties may require prior independent shareholder approval and disclosure.
- **Share dealing.** All persons discharging managerial responsibility (PDMRs) must comply with the Model Code (set out in the Listing Rules) or a share dealing code with equivalent restrictions on when such a person may deal in the company's securities.
- **Corporate governance.** A UK incorporated issuer is expected to "comply or explain" in relation to the Corporate Governance Code and must explain the extent to which it does so in its report and accounts.

A company with a premium listing must also comply with the following:

- **Disclosure and Transparency Rules (DTRs).** The main areas relate to the:
  - disclosure of inside information;
  - periodic financial reporting;
  - notification of major shareholdings;
  - disclosure of dealings by PDMRs.
- **LSE Admission and Disclosure Standards.** These impose some minor obligations in relation to certain corporate actions (for example, declaration of dividends).

The Listing Rules impose some further requirements if a listed company has a controlling shareholder, namely that the company must have in place at all times:

- A written and legally binding agreement between the company and the controlling shareholder to ensure that the controlling shareholder complies with the Listing Rule independence provisions.
- A constitution that allows the election and re-election of independent directors to be conducted in accordance with the Listing Rule election provisions.

A dual voting structure applies to the election or re-election of any independent directors of a premium listed company with a controlling shareholder. This means that such appointments need to be approved both by the shareholders as a whole and also by the independent shareholders (that is, any person entitled to vote on the election of directors of a listed company that is not a controlling shareholder of the listed company). If the election (or re-election) is not approved by both the shareholders and the independent shareholders and the company would still like to propose the director's appointment, it must propose a shareholder resolution to be tabled at a meeting to be held at least 90 but not more than 120 days after the original vote. To address concerns that there may be uncertainty regarding the status of the director during this period, guidance clarifies that a director that has been appointed can remain in office until the second vote.

The dual voting structure must be provided for in the company's constitution when it seeks a premium listing but transitional provisions mean that the dual voting requirement does not apply until the next annual general meeting for which notice has not already been given. A similar transitional period applies for the dual election process in the situation where a premium listed company gains a controlling shareholder.

22. Do the continuing obligations apply to listed foreign companies and to issuers of depositary receipts?

A non-UK incorporated company is subject to the Financial Conduct Authority Rules in the same way as a UK incorporated company except that:

- There are exemptions from certain Disclosure and Transparency Rules (DTRs) for issuers incorporated in certain countries and issuers incorporated elsewhere in the European Economic Area (EEA).
- An issuer of depositary receipts on the Professional Securities Market is subject only to Chapter 2 of the DTRs and Chapter 18 of the Listing Rules.
- An issuer of a depositary receipt on the London Stock Exchange's Main Market is subject to Chapter 18 of the Listing Rules, but is not subject to the major shareholding notification regime or the requirement to produce half-yearly or interim management statements.

23. What are the penalties for breaching the continuing obligations?

If an issuer or any of its directors (or both) breaches the continuing obligations set out in the Financial Conduct Authority (FCA) Rules, the FCA can:

- Issue a private censure.
- Issue a public censure.
- Suspend or cancel the company's listing.
- Impose a penalty on the company and the director (if he was knowingly concerned in the contravention).

FCA guidance on how it applies these powers is found in the Decision Procedure and Penalties Manual.

MARKET ABUSE AND INSIDER DEALING

24. What are the restrictions on market abuse and insider dealing?

Restrictions on market abuse/insider dealing

While the UK has implemented Directive 2003/6/EC on insider dealing and market manipulation (market abuse) (Market Abuse Directive), certain elements of the previous regime remain and as a result the UK currently has a wider definition of what constitutes market abuse than under the Market Abuse Directive. Market abuse as defined in section 118 of the Financial Services and Markets Act 2000 is behaviour in relation to qualifying instruments admitted to trading on a regulated market (or in respect of which a request has been made for admission) that falls within any one or more of seven types of behaviour as set out below:

- Insider dealing.
- Improper disclosure of inside information (tipping off).
- Misuse of information.
- Manipulating transactions.
- Manipulating devices.
- Dissemination of false or misleading information.
- Misleading behaviour and market distortion.

The Financial Conduct Authority (FCA) has published the Code of Market Conduct that gives guidance to market participants as to what may or may not constitute market abuse.

Penalties for market abuse/insider dealing

The civil market abuse regime allows the FCA to impose unlimited fines.

There are also separate criminal offences in relation to misleading statements and market manipulation. The maximum penalties are seven years' imprisonment or a limited fine or both.

There is also a separate criminal regime for insider dealing where the penalties are the same as for the above criminal offences (*Part V, Criminal Justice Act 1993*).

DE-LISTING

25. When can a company be de-listed?

De-listing

An issuer with a premium listing can only cancel its listing if it has obtained the consent of a majority of not less than 75% of shareholders. It must also send a circular, approved by the Financial Conduct Authority (FCA), to shareholders that gives the anticipated date of cancellation, which must not be less than 20 business days following the passing of the resolution.

Shareholder approval is not required where the issuer notifies the market that:

- The financial position of the issuer is so precarious that, but for the de-listing, there is no reasonable prospect that the issuer will avoid formal insolvency proceedings.
- There is a proposal for a reconstruction that would ensure the survival of the issuer and the continued listing would jeopardise this.
- Cancellation is in the best interests of those to whom the issuer has responsibilities. The issuer must provide an explanation describing why shareholder approval is not being sought.

In any event, the issuer must give at least 20 business days' notice of the intended cancellation.

The FCA can cancel a listing if it is satisfied that there are special circumstances that preclude normal regular dealings in them (for example, the percentage of shares in public hands falls below 25%, or when the issuer completes a reverse takeover). Special rules apply in relation to takeover offers.

There were 74 de-listings from the Main Market in 2014, compared to 70 in 2013.

Suspensions

The FCA can suspend, from a time it may determine, the listing of any securities if the smooth operation of the market is, or may be, temporarily jeopardised or it is necessary to protect investors. The Listing Rules sets out a non-exhaustive list of examples of when the FCA can suspend listings, for example:

- A failure to meet its continuing obligations.
- The failure to publish financial information in accordance with the Listing Rules.
- If the issuer is unable to assess accurately its financial position and inform the market accordingly.

An issuer that has the listing of any of its securities suspended must continue to comply with all the listing rules applicable to it. Further, if the FCA suspends the listing of any securities it can impose such conditions on the procedure for lifting the suspension as it considers appropriate.

An issuer can request a suspension and must give a clear explanation of the background and reasons for the request. The FCA will not suspend a listing if it is not satisfied that the circumstances justify the suspension.

REFORM

26. Are there any proposals for reform of equity capital markets/exchanges? Are these proposals likely to come into force and, if so, when?

On 5 June 2015, the FRC published a consultation paper (CP 15/19) in which it proposes the following amendments to the Listing Rules:

- Amending the Glossary definition of the UK Corporate Governance Code in the FCA Handbook to provide a single definition applicable to the entire Handbook.
- Amending the disclosure requirement of LR 9.8.6R so that a company's annual financial report must address both the amended going concern reporting requirement of Code Provision C.1.3 and Code Provision C.2.2 requiring an assessment of the longer term viability of the company.
- Removing inconsistencies in the application of the concession for the admission to trading of the securities of scientific research based companies (LR 6.1.11R and 6.1.12R).
- Deleting the electronic settlement eligibility requirements for premium-listed equities, to accord with the provisions of Article 3.2 of the CSD Regulation (LR 6.1.23R).

ONLINE RESOURCES

Financial Conduct Authority

W www.fca.org.uk

Description. Website of the Financial Conduct Authority.

London Stock Exchange

W www.londonstockexchange.com

Description. Website of the London Stock Exchange.

legislation.gov.uk

W www.legislation.gov.uk

Description. The official home of UK legislation, managed by The National Archives on behalf of H M Government (note that this website includes legislation that may have been amended by subsequent legislation).

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