



Welcome to markettalk issue 14

The regulatory landscape is under review on the global stage. A key focus for us at the London Stock Exchange is to represent the interests of issuers on our markets. We endeavour to ensure that there are appropriate standards of regulation providing investors and other key stakeholders with sufficient levels of confidence and encouraging ongoing investment - thus keeping the cost of capital down for issuers, while ensuring that regulation is both proportionate and cost effective.

In this issue of markettalk, you can read how we seek to influence the regulatory debate on your behalf to ensure that the listing regime retains its badge of quality, the rights issue process is as efficient as possible and that the requirements for smaller quoted companies producing a prospectus for public offers are less rigid. All of these efforts are essential in making it easier and cheaper for issuers to raise capital on our markets.

Understand how your shares are traded

Our two-day course [Trading on the London Stock Exchange](#) on 16-17 April will help your Investor Relations teams understand the rules for those trading your securities on our markets using live demonstrations to explain how the markets operate. [Click here](#) to view the full agenda and reserve your place.

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Financial Services Authority's Consultation Paper 09/7

Regulatory fees and levies - rate proposals for 2009/10

The Financial Services Authority (FSA) reviews its fees policy annually to determine its fee rates for the forthcoming financial year. The annual consultation regarding the FSA's proposals is split into two phases. In October 2008, the FSA published CP08/18 which consulted on proposed changes to the underlying policy for FSA fees, the Financial Ombudsman Service (FOS) and the Financial Services Compensation Scheme (FSCS). In February 2009, the FSA published CP 09/7 which consults on proposed fee and levy rates that the FSA intends to raise for the FSA, the FSCS and FOS for 2009/10.

In its latest consultation, the FSA states that the industry, as a whole, will pay an additional £707.3 million in 2009/10 than it did in 2008/09. Their annual funding requirement (AFR) has increased by £117 million to £437.7 million which is attributed to ongoing increased expenditure on improved supervisory activities mainly affecting higher impact firms. Other increased operating costs include:

- recovery of expenditure on improved supervisory activities from 2008/09
- increased technology
- property infrastructure for expanded operations
- additional contingency
- other financial adjustments including pension and reserves movements.

The FSA highlights that much has changed within the financial sectors they regulate since the budget was set in 2008/09. As the economic situation remains volatile and continues to influence the international regulatory landscape, the FSA is expecting that they will need to maintain a level of flexibility within their budget for ongoing regulatory activity in case they are required to respond to emerging risks as the need arises.

As the UK Listing Authority (UKLA) is part of the FSA, the annual fee rates for listed companies and vetting fees have also been revised in light of the FSA's increased AFR and ongoing regulatory activity.

The UKLA's total fee increase will be 16.3 per cent. It is proposed that fee rates for vetting transactions increase by 10 per cent to reflect in part the increase in costs associated with the vetting of more complex transactions.

As the vetting fees have remained unchanged since 2004, the FSA has revised the fee rates this year to cover the increased costs.

The new proposed fee table for UKLA's annual fees for listed issuers is as follows:

Fee payable*	Proposed 2009/10		Actual 2008/09		Variance
	Rate	Fee at maximum	Rate	Fee at maximum	
£ million of market capitalisation					
Minimum fee	n.a.	3,425	n.a	3,425	0%
>100 – 250	24.106	7,041	15.066	5,685	23.9%
> 250 – 1,000	9.642	14,272	6.026	10,205	39..9%
>1,000 – 5,000	5.935	38,011	2.005	18,224	108.6%
>5,000 – 25,000	0.151	41,027	0.038	18,977	116.2%
>25,000	0.048	-	0.010	-	-

*Overseas issuers with a listing that is not primary pay 80% of the fee otherwise payable.

For more information about the fee changes, or if you would like to respond, please find below a link to CP 09/07:

http://www.fsa.gov.uk/pages/Library/Policy/CP/2009/09_07.shtml

The deadline for responses to CP 09/7 is split into two dates. For annual fees for listed issuers the deadline is 6 April 2009. For vetting fees, the deadline was 6 March 2009.

Rights issue subscription period reduced

Extremely volatile market conditions made it challenging last year for issuers to raise capital via rights issues. In two instances, during the HBOS and Bradford & Bingley's rights issues, the issuer's share price fell below the issue price leaving the underwriters and sub-underwriters to provide the required capital. As a consequence, this method of raising capital has come under scrutiny and the overall length and efficiency of the process has been called into question.

The Chancellor commissioned a review of the process and established the Rights Issue Review Group (RIRG) in the summer to examine market practices concerning equity capital raising by public companies. The Group published a report at the end of last year, with a series of short and mid-term recommendations of how the rights issue process can be made more efficient and orderly.

Since the publication of the report, two actions highlighted within it have already been progressed. Firstly, the ABI has revised its guidelines on share issues. Secondly, the FSA and the London Stock Exchange have both made changes to their rules on Tuesday 10 February, following the FSA's consultation on the reduction of rights issue subscription periods.

This article summarises these two key developments and looks at the implications that they will have on issuers.

ABI guidelines

On 5 January 2009, the ABI announced that it had changed its guidelines as part of its commitment to speed up the rights issue process. Companies are now able to issue new shares worth up to two-thirds of their existing capital without holding an extraordinary shareholder meeting. The previous limit was one-third of shares. The purpose of the change is to make it easier for companies to launch further issues at a discount.

If an issuer pursues the option of issuing new shares worth up to two-thirds of their existing capital, the new guidance requires all of its board members to stand for re-election at the next AGM.

In order to take advantage of the ABI's new guidelines, issuers will need to have obtained the necessary shareholder authorities at their general meetings. An option available to companies is for them to seek the higher, two-thirds allotment authority at a general meeting so that any subsequent

rights issue could be made without going back to shareholders at the start of the rights issue process.

The ABI guidelines are not legally binding but are considered best practice and may influence shareholder voting decisions. The guidance will be reviewed after three years. In the meantime the ABI will monitor the use of the new limit by companies.

The reduction of the rights issue subscription period

1. Consultation

The FSA issued Consultation Paper 09/4 (CP) on 12 January 2009, seeking feedback on whether the current 21 day minimum rights issue subscription period should be reduced to a minimum of either 14 calendar days or ten business days. The benefits of reducing the subscription period were cited as:

- speed of access to equity capital
- market and financial risk – not only will the issuer's exposure to changes in market and financial conditions be reduced, but the decrease in risk for underwriters could potentially be reflected in lower underwriting costs for issuers
- a reduction in the risk of market abuse during rights issues.

However, the FSA highlighted that existing retail and institutional shareholders would have less time to consider their options and respond to a rights issue which could lead to lower quality decisions. In addition, private client managers, retail stockbrokers and custodians would need to adapt communications processes with clients and their back-office systems.

The FSA did reference the fact that the electronic availability of prospectuses would facilitate quicker and more efficient communication between issuers and investors during rights issues and to this end, issuers and advisors would need to ensure that the relevant information is immediately accessible to their shareholder base.

The Exchange responded to the CP supporting the FSA's proposal to shorten the subscription period. We also recommended that the FSA maximise the opportunity to harmonise the rules for timetables of open offers between the Exchange and the FSA so that rights issue acceptance periods were a minimum of ten business days.

2. Policy statement and rule changes

On 10 February, the FSA issued its policy statement on the CP confirming that, based on feedback that had been received, they had decided to reduce the rights issue subscription period from 21 calendar days to 10 business days. The changes to the Listing Rules were effective immediately.

Co-ordinated with the FSA, on the same day the Exchange issued a Stock Exchange Notice to communicate this change to the market and to highlight the reduction of its open offer timetable (which includes rights issues) from 15 to 10 business days within its Admission and Disclosure Standards and AIM rules.

Next steps

The FSA will be consulting at a later date on two other issues that came out of the RIRG report; compensatory open offers and a small change to document vetting fees in relation to equity shelf registration. The other recommendations in the report will be consulted upon on an informal basis.

For more information, please find below some useful links:

Link to the FSA's CP:

http://www.fsa.gov.uk/pages/Library/Policy/CP/2009/09_04.shtml

Link to the Stock Exchange Notice:

<http://www.londonstockexchange.com/NR/rdonlyres/BA98D7FC-5ABF-4D4A-9B5B-4398D96ECB5B/0/N0709.pdf>

Link to the FSA's Policy Statement:

http://www.fsa.gov.uk/pages/Library/Policy/Policy/2009/09_02.shtml

FSA confirms disclosure requirements for PDMRs

(Disclosure and Transparency Rules and model code)

In the FSA's news release on 9 January, the FSA clarified the disclosure obligations in respect of persons discharging managerial responsibilities (PDMRs) and their connected persons granting security over their shares.

Disclosure and Transparency Rules

Chapter 3 of the Disclosure and Transparency Rules details the 'notification obligations of issuers, persons discharging managerial responsibilities and their connected persons in respect of transactions conducted on their own account in shares of the issuer, or derivatives or any other financial instrument relating to those shares'. These rules are essentially a copy out of the relevant provisions of the Market Abuse Directive and there is no definition as to what should be deemed a 'transaction' for the purposes of satisfying the obligations.

The FSA has now clarified that the granting of security over shares (which includes pledges, mortgages or charges) will fall within the definition of 'transaction'. Consequently, PDMRs and their connected persons must notify the issuer in writing of grants of security over shares in that issuer within four business days of the transaction occurring and the issuer must notify the market of this transaction via an RIS as soon as possible.

In its statement, the FSA recognises that there is an inconsistent approach to this issue across Europe, largely due to differing local practice, structures and process for granting security over shares. As such, the FSA intends to reach a common understanding on the detail of the MAD requirements with the European Commission and CESR.

Model code

In its release, the FSA has reminded issuers and PDMRs of their obligation to seek clearance before dealing as required under the Model Code (Annex 1 to Chapter 9 of the Listing Rules). The Model Code defines 'dealing' to include 'using as security, or otherwise granting a charge, lien or other encumbrance over the securities of the company'. In its statement, the FSA raises an expectation that issuers will deal with breaches by PDMRs of the Model Code in this area.

Further information

<http://www.fsa.gov.uk/pages/Doing/UKLA/company/disclosure/index.shtml>

Short-selling - where do we go from here?

Over the last few months short-selling has been heavily scrutinised across the financial services industry. Internationally, some regulators and stakeholders have considered short selling as one of the factors contributing to market volatility and for this reason, a number of countries introduced restrictions on short selling.

In the UK, the FSA initially imposed a regime for the disclosure of short positions in stocks admitted to trading on prescribed markets that were undertaking rights issues. On 18 September 2008, the FSA introduced a ban on the active creation or increase of net short positions in 34 UK quoted financial sector companies and extended the disclosure regime to these securities. The ban was lifted on 16 January 2009, but the disclosure regime has been further extended to 30 June 2009. The regime requires that all positions in financial sector companies in excess of 0.25 per cent be disclosed. Further disclosure is also required if a short position changes by a further 0.1 per cent of issued share capital (ie at 0.35 per cent, 0.45 per cent etc). The FSA stated the ban might be reintroduced in the future without prior consultation, should FSA deem it necessary.

European and international regulators also introduced temporary restrictions on short-selling. In the U.S. for instance, the SEC prohibited the creation of naked and covered physical short positions and imposed a disclosure obligation at an initial threshold of 0.25 per cent. Most countries have subsequently lifted their prohibitions, except for Australia where the ban on covered short-selling has been kept in place until 31 May 2009 and Austria where the prohibition on naked short selling has been extended until 30 April 2009.

Impact of the short-selling ban on market quality

In order to better understand the impact of short-selling on our markets, the Exchange asked Capital Markets CRC Limited to research the consequences of the FSA's ban of short-selling, introduced last September. The study compared the trading in 15 affected FTSE 100 index constituents with the trading in 78 non-affected FTSE 100 index constituents during three 30 trading day periods; two prior to the introduction of the ban and one afterwards.

The key findings of the study are as follows:

- Spreads increased following the ban on short selling - after the ban was introduced the spread in banned stocks increased by 140 per cent from 15 basis points (bps) to 36 bps. This compares with a rise of 56 per cent from 13 bps to 20 bps in the control stocks.
- Depth deteriorated - depth reduced in both the control and banned stocks, though more statistically in the latter. It declined by approximately 59 per cent for banned stocks and by 43 per cent in control stocks.
- Trades and volume fell in the banned stocks but rose in control stocks - the number of trades and traded volumes fell by roughly 10 per cent in banned stocks whereas they increased by 50 per cent in control stocks.
- Turnover reduced in banned stocks but rose for control stocks – turnover in banned stocks fell by 21 per cent after the ban compared to a rise in turnover of 42 per cent in the control stocks.
- Liquidity reduced following the ban on short-selling - the results of two separate regression analyses show that the observed decline in liquidity occurs independently of market-wide changes and increased volatility, respectively. The models are economically and statistically significant and suggest that banned stocks in the post-ban period have lower liquidity compared to the control sample and after controlling for market-wide variables.

These findings demonstrate that market quality (defined as price volatility and liquidity) reduced in the affected stocks following the ban. The restrictions on short-selling were not only ineffective in addressing concerns about market volatility but they also increased costs for market participants. Similar research conducted by Cornell University, Texas University and Columbia Business School also concluded that the ban on short-selling in the US distorted markets for the targeted stocks, degrading market quality and reducing liquidity.

Next steps

In February 2009 the FSA published a Discussion Paper (DP) setting out its analysis of the main issues regarding short-selling, potential constraints and options for enhanced transparency. The FSA is proposing introducing disclosure requirements for significant short positions for all UK listed stocks. It has been suggested that disclosure obligations should be restricted to UK incorporated issuers. While the FSA has recognised that there are some arguments in favour of disclosing the aggregate short positions in stocks, it has stressed that public disclosure of individual short positions is preferable. The FSA is also seeking an international consensus on short selling regulation. Therefore it has not set out a blueprint for a disclosure regime, but

will use the feedback from the DP to inform the international debate. The deadline for responses is 8 May 2009.

The international debate is well underway: the International Organisation of Securities Commissions (IOSCO) has set up a task force on short-selling to provide guidance and coordinate national policies with a particular focus on naked short-selling. The Committee of European Securities Regulators (CESR) has also created a task force to monitor and possibly coordinate their members' policies in this area.

Conclusion

Although the practice of naked short-selling has been criticised for increasing risk, the Exchange believes that it is not in itself damaging, provided that the seller settles the outstanding position. We believe that practices such as 'buying-in' and guaranteed delivery provide adequate safeguards where necessary.

As an alternative to banning the practice, a disclosure regime can achieve more effective results in terms of market transparency as long as a balance between the increased costs of transparency and the provision of meaningful information to the market, is achieved.

We would encourage those affected by short-selling to contribute to the debate by responding to the FSA's DP. The deadline for responses is 8 May 2009. The link is:

http://www.fsa.gov.uk/Pages/Library/Policy/DP/2009/09_01.shtml

For further information, please contact Giada Piccini on 020 7797 3358 or gpiccini@londonstockexchange.com

FSA's review of the structure of the Listing Regime

In December 2008, the FSA published 'CP08/21 Consultation on amendments to the Listing Rules and feedback on DP08/1 (a review of the structure of the Listing Regime).'

DP08/1 put forward some options that would have had a significant impact on the listing regime. However, in response to overwhelming market sentiment, the current consultation has clarified that the FSA is now not intending to make major structural changes to the existing regime. Instead, its proposed policy will be to:

- retain the super-equivalent Listing Regime and for the FSA as an independent body to continue to set the standards
- defer the possibility of allowing listed equity securities to be admitted solely to a non-EU Regulated Market and to reconsider this issue when the implementation of MiFiD has bedded down
- retain the current two-tier segmentation of the Listing Regime but to make some labelling changes to the regime and to market these changes through a concerted educational campaign to the market
- opt for the Premium (currently Primary) and Standard (currently Secondary) labelling for listing
- make the EU Directive minimum listing standards available to UK companies wishing to list equity securities, thereby creating a level playing field
- amend the corporate governance disclosure requirements for overseas companies with a Primary Listing in order to make them more meaningful and introduce a new pre-emption rights disclosure rule for such companies
- retain the current disclosure regime for Global Depositary Receipts (GDRs) and not require sponsors for transactions involving the issuance of GDRs.

Additionally, the FSA is proposing to:

- apply the Company Reporting Directive (CRD) to all listed companies with equity securities or GDRs listed
- provide a mechanism for all listed companies with equity securities listed to be able to migrate to another type of listing of equity securities without necessitating a cancellation of listing

- embark on an educational campaign to the market – working in particular with regulated information services. The FSA has been engaging with key primary information providers (eg RNS) and secondary information providers (eg Bloomberg) to determine how they may collaborate to alter their IT systems to accurately describe the Listing Regime.

The diagram below shows the proposed structure of the UK Listing Regime and therefore the Main Market.

The UK Listing Regime								
Issuer segment	Premium			Standard				
Securities category	Equities	Equities	Equities	Equities	GDRs	Debt	Securitised derivatives	Misc securities
	Commercial companies	Closed-ended investment companies	Open-ended investment companies	Commercial companies				

As well as seeking comments on draft rule amendments within CP08/21, the FSA also re-consulted on a number of areas, seeking market feedback on:

- the proposed segmentation and labelling of the Listing Regime as illustrated above
- the labels ‘Premium’ and ‘Standard’ and whether there are any other suggestions for alternative labels
- whether the proposed segmentation of the Listing Regime provides sufficient clarity
- the proposal to open the EU Directive minimum listing route (chapter 14 of the Listing Rules) to UK companies.

Responding to the consultation

Given the importance of the debate, the Exchange has worked with advisers and issuers as well as other market participants (including FTSE, the GC100 group, the CBI and the QCA) in an effort to ensure the FSA receives as much feedback to the consultation as possible.

Separately, the Exchange’s Primary Markets Group (consisting of a representative group of market practitioners and issuers) submitted their own response.

In the Exchange's own response, we applaud the FSA's efforts to increase transparency around the Listing Regime, but request that the FSA gives additional consideration to how it will position the proposed standard Listing route for UK companies in order to avoid confusion amongst market participants (particularly investors).

We also raised concerns that the current issues surrounding the financial services industry may deflect the attention of key stakeholders from giving the consultation the consideration it demands.

Next steps and further information

This latest consultation closed on the 1 March 2009 and the FSA aims to provide feedback on responses received by the summer. The FSA has stated that it will give the market sufficient notice before the new structure becomes effective.

Given the importance of the Listing Regime we will continue to lobby to ensure an appropriate outcome is reached.

Further details on the consultation can be found at:

http://www.fsa.gov.uk/pages/Library/Policy/CP/2008/08_21.shtml

European Commission's consultation on the Prospectus Directive

In January 2009 the European Commission launched a public consultation on the review of the Prospectus Directive (PD). The Commission aimed to gather stakeholders' views on its proposals to simplify the application of the PD while maintaining high standards of investor protection.

The PD review is part of the Commission's Action Programme for reducing administrative burdens in the European Union by 25 per cent before 2012. Ahead of this consultation, reports on the effectiveness of the PD in achieving its objectives were published by the Committee of European Securities Regulators, the European Securities Market Expert Group and the Centre for Strategy and Evaluation Services.

The consultation offered the opportunity to influence changes in the PD at a statutory level. The Exchange sent a response on behalf of issuers after consulting with a number of market participants who deal with, and advise on, a range of companies on AIM and the Main Market.

The key aspects of the Exchange's response are set out below:

Main implications for issuers

We stated our support for this review and the market consultation. Overall, we believe the PD has been successful, but there are still a number of improvements that could be made to simplify its application, reduce the burden on companies and make the capital raising process in the EU more efficient. Our comments relate mainly to changes in the PD which would help facilitate capital raising by smaller companies and pre-emptive offers to existing members.

Disclosure obligations for small quoted companies

Under the current PD requirements, companies are exempt from the obligation of producing a prospectus for offers with a total consideration below €2.5 million. Issuers, particularly small and medium sized enterprises (SMEs) consider this threshold too low. The Commission, therefore, has presented two alternative solutions; raising the threshold of €2.5 million or reducing the amount of information required when a SME offers equity to the public.

Following feedback we have received from various market participants, the Exchange supports the first option, proposing to raise the threshold of exempt

offers to €10 million. In the context of offers with a smaller total consideration, the costs of producing a prospectus are deemed too high by issuers relative to the benefits of such offers. As a result, SMEs have opted to raise capital through private placings. This results in a reduced number of public offers, a dilution of investors and decreased liquidity particularly for SMEs. In turn, this increases the cost of capital for issuers, making it difficult for them to raise further funds. Our recommendation of raising the threshold to €10 million would alleviate the financial burden of a prospectus for SMEs freeing up capital for the benefit of companies. It would also enable SMEs to undertake takeovers of other companies for share consideration. Such takeover activity is currently restricted due to the burden of producing a prospectus.

In relation to the second option, we do not think this route would provide a significant difference to the existing regime as the “mini” prospectus would still need to be approved by the relevant competent authority. Moreover, such a document would not be dissimilar to a full prospectus because advisors will prefer to include more information, rather than less for risk management reasons.

Rights issues

In the view of stakeholders, the costs involved in producing a prospectus are not justified in the context of rights issues and open offers. In response to this argument the Commission proposed to extend the exemptions of producing a prospectus under Article 4 of the PD to include rights issues.

The Exchange has agreed with this analysis especially in the context of SMEs and particularly where the issuer is already admitted to a Regulated Market or Multilateral Trading Facility (MTF). However we are of the view that it is important to extend this exemption to other pre-emptive offers of securities to existing shareholders, in particular to open offers. We believe that if a company is already admitted to a Regulated Market or MTF, it is already complying with a sufficient disclosure regime. Investors will already therefore have the necessary information to allow them to make an informed decision in relation to a proposed offer.

We also noted that many companies, particularly those with an overseas investor base, may consider it necessary and advisable to produce a prospectus regardless of whether rights issues are exempt. The key point being that issuers should have the choice of whether a prospectus is necessary, subject to their own circumstances and the input they receive from their investors and stakeholders.

In the current market environment, companies need to be able to turn to public equity capital markets to raise much needed funds. In our response, we have reiterated that this route to capital needs to be as expeditious and efficient as possible, whilst preserving investor protection.

Other issues

The Exchange broadly supports the Commission's proposals on a number of other issues such as the definition of qualified investors, the prospectus summary and investors' withdrawal rights after the publication of a supplement to the prospectus. More information on the Commission's proposals can be found on:

http://ec.europa.eu/internal_market/consultations/index_en.htm

Next steps

On the basis of the market feedback that is received, the Commission will present a formal proposal to the European Parliament in due course.

For more information on the Exchange's response to the PD review, please follow the link: <http://www.londonstockexchange.com/en-gb/about/Newsroom/regulatorypolicy/>

For further information about this news article, please contact Giada Piccini on 020 7797 3358 or gpiccini@londonstockexchange.com