IPMA RESPONSE TO LIST OF QUESTIONS

CP 04/16- The Listing Review and implementation of the Prospectus Directive

Q2: *Do you agree with the proposal that issuers should publish prospectuses on their website? If not, please state your reasons.*

We agree that there are advantages in terms of accessibility of information if prospectuses for public offers are available electronically. However, issuers and others posting prospectuses and related material on websites must be allowed to mitigate potential liability, for example, under the public offer rules such as those in the EU and US. Those posting prospectuses should be permitted to take measures to comply with laws in other jurisdictions, including any EU jurisdiction, for example, by including selling restrictions, or managing access in a manner consistent with the relevant legal requirements. It would be helpful if the FSA or HM Treasury confirmed that posting a prospectus on a website does not constitute a public offer in the UK.

Material such as prospectuses should also be separated from other material on a website (such as sales material) which is not prepared to the same standard, to avoid investor confusion, and to mitigate any risk which might arise under the laws of some jurisdictions that 'other material' may become part of the offering materials for the securities being offered.

If an issuer has issued securities in a manner which does not require the publication of a prospectus under the Prospectus Directive, for example on the proposed London Exchange-regulated market, an issuer should be free to choose whether or not to post any prospectus or other material related to the securities on its website, and to take any other measures to ensure that no public offer is made which would require a Prospectus Directive compliant prospectus.

An issuer who has a Base Prospectus approved should not be required to publish on its website final terms which relate to unlisted securities issued under the Base Prospectus, or final terms for other securities which are exempt public offers.

We also note that some smaller issuers, such as special purpose and finance vehicles are unlikely to have websites, and the cost of setting up and maintaining one may be a disincentive to raising capital in the markets. In any event, an issuer whose securities are supported by the credit of a related third party (for example, parent guarantee or keepwell), should be able to satisfy any requirements for website publication by publishing on the website of the third party.

We do not know the meaning of 'if applicable', in the context of any requirement for a financial intermediary or paying agent to include an issuer's

prospectus on its website. A financial intermediary or paying agent should be able to choose whether or not to include an issuer's prospectus on its website, and should be allowed to remove it at any time if it has chosen to do so, for example in connection with the initial public offer. Financial intermediaries and paying agents are involved in many hundreds of securities' issues every year. It would not be practical for them to maintain libraries of prospectuses, or related information, such as documents incorporated by reference, on their websites, and of no particular use to investors.

We suggest that the UKLA should also issue guidance which permits issuers to remove prospectuses from their websites when they are no longer relevant or have been superseded. We propose that issuers should be allowed to remove an equity registration document after twelve months (the period for which it is valid), and debt prospectuses either after twelve months if the terms and conditions of specific issues are available to investors elsewhere, or otherwise when the debt has matured. In both cases, issuers should be allowed to remove prospectuses which contain information that is, or has become, incorrect, and which have been appropriately supplemented, if necessary.

Ultimately, our strong preference is for a centralised, searchable database of prospectuses fed by all competent authorities, similar to the EDGAR system in the United States, as this will be the most useful source of information for all market users.

Q3: *Do you agree with our proposal on advertisements? If not, please state your reasons.*

We agree with the FSA's conclusion in paragraph 2.21 that most advertisements will be in the form of the notice described in paragraph 2.20.

We also welcome the FSA's proposal to continue the current approach under the Financial Promotions Regime which exempts advertisements in connection with public offers and admission to trading on relevant EEA markets as described in paragraph 2.22.

It would be helpful if the Rules made it clear that "announcement" refers to communications which are distributed to the public at large, and excludes any communication that is exempt under the current Financial Promotions Regime, in order to avoid uncertainty about the types of communication which are subject to the regime. This approach reflects Article 15 (3) of the Prospectus Directive which provides that communications should be "clearly recognisable" as advertisements.

Q4: *Do you agree with the approach in paragraph 2.25 that only summaries produced in relation to a public offer should be required to be translated into English? If not, please state your reasons.*

We agree with this proposal in principle on the understanding that the UKLA would not require translation of a summary for offers in the UK which would fall within the definition of "offer of securities to the public", but which would not have needed a summary, for example, because the offer is only to professional investors in the UK. We are also assuming that the FSA is using 'public offer' in this context to refer to an offer to members of the public in the UK, not the Prospectus Directive definition of a 'public offer'. In any event, we suggest that any requirement for translation of a summary should not apply to securities to be admitted to the London Exchange-regulated market.

Q5: *Do you agree with our approach?*

We do not agree that a case-by case analysis of individual prospectuses is efficient or necessary. We encourage the UKLA to develop a standardised approach to approving prospectuses drawn up to international standards, while retaining the flexibility to consider particular cases on their merits. This will facilitate global offerings of securities and encourage issuers to include Europe, and a London listing, in their issuance plans.

For example, UK issuers approaching the US debt markets will typically seek admission to trading of the securities in London, and issuers of global debt securities placed in both the US and Europe may also seek a listing in Europe based on a prospectus which complies with US and/or SEC requirements. We suggest it should be possible for the UKLA to agree in principle that a prospectus prepared to US or Canadian standards, or based on US or Canadian standards, is drawn up to international standards, and does contain equivalent information.

We suggest in any event that it is important that the UKLA should retain an option for more flexibility in this area in relation to Prospectuses for securities which are admitted to the London Exchange-regulated market.

Q6: *Do you consider other factors should be taken into account when determining whether an issuer meets these criteria?*

Please see our answer to Question 5.

Q7: *Do you agree with the requirement for a list of information only?*

We agree that a list of information is sufficient. Issuers and their advisers should be allowed to include appropriate disclaimers when they publish the list, in addition to the statement proposed in *PR* 5.2.7, and this should be reflected in the guidance to *PR* 5.27. It would be helpful if the UKLA were able to agree general principles for the content of such disclaimers with the market before 1st July 2005, in order to minimise time and costs for the UKLA, issuers and their advisers. IPMA would be willing to provide the forum to do this, if it would be helpful.

Q8: *Do you agree with the guidance provided on the content of the list?*

We agree generally with the proposals in PR 5.2.3G. We suggest for the sake of clarity that PR 5.2.3G repeat the condition in 5.2.1 that the information required in the annual update is information '[made available……] in compliance with an issuer's obligations under… laws and rules dealing with the regulation of securities, issuers ***of securities*** and securities markets'.

Q9: *Do you consider that prospective qualified investors should be certified by their solicitors or accountants that they are qualified investors or should there be self-certification? Please provide the reasons for your preferred option.*

We support the implementation of this option, although we agree with the FSA that initial interest may be low. But it is not practical to require solicitors or accountants to provide such certifications, and they cannot readily assess if the criteria have been met. The regime should be based on self-certification if it is to be viable. (We note that the Government response to the review of the effectiveness of the certification system under the Financial Promotion Order also concluded that self certification is the practical way to proceed).[1]

Q10: *Which charging options would you prefer? Please provide reasons.*

We do not support either option. The Prospectus Directive exemption is intended to provide certain expert investors direct access to investment opportunities. If there is to be any practical benefit to such investors, they should be able to register, and issuers, their advisers, and market participants wishing to sell to, or trade with, such investors should have access to the register, free of charge. We agree that any such register should be accessible electronically, in order to be of practical use.

Q11. *Are there any specific pieces of guidance in the UKLA Guidance Manual that remain directly relevant to the New Listing Rules that we have not included in the new sourcebook?*

We agree that Chapter 5 of the UKLA Guidance Manual ('Interpretation of Listing Rules and Requests for Individual Guidance') largely replicates Chapter 9 of the Supervision Manual, and note that certain changes to Chapter 9 are proposed in Annex 10 of the Consultation. We note however that *LR* 1.1.6 G refers only to issuers and sponsors. We understand that the UKLA will continue its current practice of assisting legal advisers and lead managers and arrangers of debt issues with individual advice on the interpretation and application of particular listing rules and suggest that this should be noted in *LR* 1.1.6 G (or addressed in *LR* 17). We are aware that the FSA is also re-assessing its approach to guidance. Ready access to the UKLA is particularly important during the early months of the new Listing Rules, but the need for issuer- and product-specific guidance will continue thereafter. The willingness

[1] Informal Capital Raising and High Net Worth and Sophisticated Investors. Changes to Financial Promotion Order. Government Response November 2004.

and ability of the UKLA to provide appropriate guidance will be key factors in an issuer's choice of home Member State for debt issuance.

Q15: *Do you have any comments in relation to our proposals relating to debt and Specialist Securities admitted or admitting to a listed but not regulated market, on the one hand, or to a listed and regulated market, on the other hand?*

We welcome the FSA's and the London Stock Exchange's proposal to establish a listed, Exchange-regulated market. Such a market is analogous to the successful professionals market (so-called Rule 144A) in the United States.

We support strongly the FSA's view that choice of markets is important for the continuance of international debt and equity-linked markets in Europe. In 2003, international issuance of debt securities in Europe was approximately US$ 1.7 trillion (equivalent) with over 3,000 issues by issuers from 68 countries. The London Stock Exchange has around 9,500 issues listed currently under the UKLA's Chapter 23 regime for specialist debt issues with an estimated value on admission of approximately US$ 63.5 trillion (equivalent). This includes 4,500 debt issues for 600 non-UK issuers from 54 countries. Investors from around the world invest in securities listed or admitted to trading in Europe. Many issuers, particularly non-EU issuers, face many uncertainties about how the new Directives will operate in practice, and whether it will be cost effective or feasible for them to comply with the full Financial Services Action Plan regime. It is essential that London retains its leadership position as a key market for international debt issuance.

We also welcome the FSA's proposal to allow Specialist Securities Programmes to transfer to this new market on 1st July 2005 without the need for new listing particulars. It is important however that the transfer should be at the choice of the issuer, not automatic, and should be possible after 1st July. Many issuers, especially those who issue debt securities infrequently, will prefer to make the decision about which market they access, with the benefit of the experience of other issuers of the two markets, and in light of their particular investor base. We also suggest that an issuer which has produced a wholesale prospectus for a debt Programme which is Prospectus Directive compliant, should be able to use the same prospectus to list securities under the Programme on the Exchange-regulated market.

Existing lines of securities should in any event not be transferred to the new market automatically. Some issuers will want their existing securities to remain on the regulated market. This will depend on the circumstances of the issuer (for example, an issuer with an EU equity listing may take a different view to an issuer without an EU equity listing), who invests in their securities, and the impact of the Transparency Directive when it is implemented, including the Commission's decisions on GAAP equivalence.

Q16: *Are there any other specific requirements of the Prospectus Rules applicable to issuers of Specialist Securities that you think are inappropriate? Please explain your reasoning for this fully.*

The FSA's proposal to permit non-IFRS accounts addresses one key concern of all non-EU issuers, as the interpretation and application of the equivalence requirement in the Prospectus and Transparency Directives remain uncertain. We agree that the proposal to permit disclosure based on the Wholesale Registration Document and Securities Note schedules regardless of denomination is also very helpful. However, the Directive regime includes other requirements which differ significantly from the requirements of the existing debt regime which may act as unnecessary barriers to issuers accessing the new professionals market.

It is impossible to provide a complete list of all of those requirements, as many existing issuers have agreed issuer-specific variations with the UKLA and its predecessor. However, 'headline' points include: requirement for non-EU issuers to adopt International Auditing Standards; requirement for a guarantor to set out disclosure as though it were itself the issuer (affecting particularly, for example, structured transactions with cross-stream, upstream and/or intermediate guarantees (and conversely, the lack of any derogations from information requirements for issuers, such as finance vehicles, which are fully guaranteed by an entity which is the credit for the issue); treatment of sovereigns (under the current London regime, states and their regional or local authorities can be admitted with an equivalent offering document, and are not therefore subject to the same liability provisions that apply to other listed issuers; Government agencies and Government-guaranteed issues also benefit from treatment tailored to the nature of the issuer, and we suggest that this approach should be continued on the Exchange-regulated market). Other potential points include; the UKLA's interpretation and application of CESR Level 3 (see our comment on Level 3 below); possible requirement for profit forecasts not made in the context of a particular offering to be included in a prospectus; possible requirement for non-EU issuers to provide valuation reports for debt issues, and in accordance with EU standards; and any requirement to produce a summary.

Other issues may arise as it becomes clear how the UKLA approaches derogations under the new Directives. It would be very helpful for existing issuers and their advisers, if the UKLA could give an early indication, perhaps through List!, of how it proposes to deal with existing derogations under both the new regulated market and Exchange-regulated market regimes. For example, in what circumstances will existing derogations be carried over? What steps, if any, would an existing issuer with a derogation have to take to retain the derogation?

We urge the FSA to be open to providing rules for the Exchange-regulated market which permit sufficient flexibility to deal with particular problems that non-EU issuers are likely to face with the new Directives, and which will

encourage the success of the market. The Rules and Guidance should permit the UKLA to vary the requirements for issuers and products on the Exchange-regulated market, if it chooses to do so, in particular, bearing in mind that professional, not retail, investors will use these markets. *LR* 4.2.4, *LR* 4.2.5, *LR* 4.2.6, *LR* 4.2.8, *LR* 4.2.10 and *LR* 4.2.11 appear to give little flexibility.

We note that the FSA expects that it will not require issuers in this market to adopt IFRS or equivalent GAAP as a continuing obligation under the Transparency Directive. This is a welcome indication, but issuers will want certainty on their continuing obligations before joining the market. It is therefore essential that the UKLA commits not to introduce such a requirement. Issuers will also need more information about whether there are other aspects of the Transparency Directive which the UKLA intends to apply to this market. For example, will issuers be required to produce semi-annual reports? Will there be derogations from Transparency Directive requirements on audit and management reporting?

Q20: *Do you agree with our approach to the treatment of a company's purchase of its own securities?*

We suggest that the FSA considers retaining the existing requirements on announcement of debt buy backs, perhaps by way of Guidance. They were introduced in response to particular concerns of investors about liquidity, which we believe are still likely to be relevant, and have served as a useful benchmark for issuers and their advisers.

We have the following comments on the Consultation Paper which do not fall within the specific questions.

Transfer to another competent authority (Paragraph 2.17)

The 'best interest of investors' should not be the sole criterion for agreeing to transfer approval of a prospectus to another competent authority. The Directive recognises in Recital 41 that other criteria, such as reduction of costs, and increase in access to capital, are relevant. It is important that there is a practical, transparent and consistent approach for the sake of market efficiency. For example, it may be that more than one Member State would be the competent authority for approving a multi-issuer, low denomination Medium Term Note prospectus, perhaps guaranteed by a parent company. In this case, it should be agreed practice among CESR Members that the issuers can choose one competent authority, and that this choice can be agreed and executed quickly.

Certificate of approval *(*Paragraph 2.29))

In practice, if an issuer has applied for a certificate of approval to passport, at the same time as submitting a prospectus for approval, the certificate should be issued on the same day as the prospectus is approved, as we understand is currently usually the case. If the certificate is not issued on the same day, the relevant new issue cannot be distributed at the same time in the UK and the host Member State involved. This will lead to costs and market risk for underwriters, and potentially disrupt new issue trading in the security. It is also disadvantages other EU investors.

CESR Level 3 Recommendations (Paragraph 2.33)

We urge the UKLA to be flexible in its approach to implementation and interpretation of CESR Level 3 Recommendations. Although we have not yet seen the final Recommendations, the draft on which CESR consulted contained many very detailed Recommendations with which it would be onerous or impossible for many non-EU issuers to comply (for example, valuation requirements for mineral companies) and which could increase significantly the cost of capital raising for all issuers.

Listing Principles (Paragraph 3.13)

We support strongly the FSA's policy decision to align the requirements for debt and secondary listings of equity with the Directives. We would not support the proposal raised by the UKLA in some recent seminars to extend listing principles to debt securities.

Overseas Issuers (Paragraph 3.92)

We agree with the FSA's decision not to introduce super-equivalence for secondary listed issuers.

IPMA RESPONSE TO CP 04/16 – THE LISTING REVIEW AND IMPLEMENTATION OF THE PROSPECTUS DIRECTIVE

PART 2 – COMMENTS ON PROPOSED RULES AND GUIDANCE

Annex 5 – Draft Handbook text - Prospectus Rules

Chapter 1 – Preliminary

1.1 Preliminary

Extracts from the Act and PD Regulation

PR 1.1.6 G (4) – the CESR recommendations should not be included in the list of documents which need to be considered together to determine **obligations** under the Prospectus Directive as they are guidelines as opposed to provisions which create obligations. We agree with the inclusion of the reference to the CESR recommendations in *PR* 1.1.8G.

Chapter 2 – Drawing up the Prospectus

2.1 General contents of Prospectus

Contents of summary

PR 2.1.5 G – this states that the summary should **generally** not exceed 2,500 words whereas Recital 21 of the Prospectus Directive states that this limit should not **normally** be exceeded. It would be helpful if clarification could be given as to whether the change of term is intentional and if so the reason for this.

PR 2.1.7 R – we assume that the risk warning language set out here will fall outside the 2,500 word limit referred to in *PR* 2.1.5 G. Can you confirm that this is the case?

2.2 Format of Prospectus

Base prospectus

PR 2.2.9 R – we understand that it is the FSA's intention to continue current market practice in the MTN market in respect of pricing supplements, which has evolved over the last 10 years or so as the market has established itself and on which the success of the market is based. It is important that this is the case in practice, including, for example, use of the standard form IPMA pricing supplements. We understand from recent discussions with the UKLA that it will continue to expect issuers and their advisers to determine the circumstances in which a supplemental prospectus is required rather than final terms under the new regime.

2.4 Incorporation by Reference

Incorporation by reference

PR 2.4.1 R – given that only information previously **filed** with the **FSA** can be incorporated by reference it would be helpful to include a rule that documents referred to in the annual information update list required by *PR* 5.2 can be filed with the FSA for the purposes of incorporating these by reference in a prospectus. However, the filing of possibly thousands of documents with the FSA for the purposes of incorporation of reference and the need for the establishment of a tracking and copying service by the FSA to enable it to provide copies of such documents to investors should they so request would not seem to be in the interests of market efficiency. We would therefore suggest as an alternative that the rule should provide that information **referred to** in the list produced in compliance with the annual information update requirement and filed with the FSA may be incorporated by reference to the extent that such information complies with the language requirements under *PR* 4.1, without any need for filing of such information. The rule should provide that translations of, say, annual accounts can be filed with the FSA for the purposes of incorporation by reference. We understand from recent discussions with the UKLA that it would not require any such translations to be certified.

Chapter 3 – Approval and Publication of Prospectus

3.1 Approval of Prospectus

Applying for approval

PR 3.1.1 R (8) – this requires submission of "a copy of the resolution of the board of the issuer allotting the securities" when applying for approval of a prospectus. *LR* 3.4.5 requires submission to the FSA of "(a) a copy of the resolution of the board authorising the issue of securities; or (2) written confirmation from the issuer that the board has authorised the issue of the securities". The wording in *LR* 3.4.5 should be adopted in *PR* 3.1.1 R (8) as this covers debt issues where securities are not "allotted" and where it is less common for there to be specific board resolutions for individual issues (particularly in the context of Medium Term Note Programmes).

PR 3.1.3 R – this provides that applicants who do not have securities admitted to trading must submit information to the FSA at least 20 working days before the intended approval date of the prospectus. The definition of admission to trading in the Prospectus Rules refers to a regulated market which means that an issuer who is already admitted to trading on the Exchange-regulated market would effectively be treated as a new issuer. This rule should therefore be amended to reflect that such an issuer will be treated as an existing issuer in this context.

Transfer to another competent authority

PR 3.1.11R and *PR* 3.1.12 G – See comments made under the heading "Transfer to another competent authority" in Part 1 of this response.

3.2 Filing and publication of Prospectus

Method of publishing

PR 3.2.4 R - See the response to Question 2 in Part 1 of this response. We also note that paragraph 2.20 of CP 04/16 states that "Issuers of non-equity securities are only required to make a Regulatory Information Service announcement. This conforms with our existing practice.". This approach should be reflected in this rule.

3.3 Advertisements

Advertisements

PR 3.3.2 R – See the response to Question 3 in Part 1 of this response.

Chapter 4 –Use of Languages and Third Country Issuers

4.1 Use of Languages

Summary to be translated into English language

PR 4.1.6 R – See response to Question 4 in Part 1 of this response.

4.2 Third Country Issuers

Approval of prospectus drawn up in accordance with third country laws

PR 4.2.1 R – See response to Question 5 in Part 1 of this response.

Chapter 5 – Other Provisions

5.2 Annual Information Update

Annual information update

PR 5.2.1 R/*PR* 5.2.2 R/*PR* 5.2.3 G - See responses to Questions 7 and 8 in Part 1 of this response.

Details to be provided in information update

PR 5.2.6 G – it is not clear what is meant by "short description" and clarification would therefore be helpful. For practical purposes we suggest that the title of the document will be sufficient.

5.5 Miscellaneous Calculation of amounts not denominated in euros

PR 5.5.4 R – this states that the euro equivalent of a non-euro amount will be "calculated at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made or **admission to trading is sought** (as the case may be)". The language used in this rule is different to

that used in the HM Treasury Regulations which state that the equivalent value will be calculated "at the latest practicable date before (but in any event not more than 3 working days before) the date on which the offer is first made or **approval is granted** (whichever is the earlier)". (Please note that this wording is incorrectly repeated at *PR* 1.2.1 D as section 85 (8) does not include "or approval is granted" there, whereas section 85(8) as set out on page 36 of the HM Treasury consultation document does include these words.) In addition, although it is appreciated that unless the equivalent amount is fixed at the date on which approval of the prospectus takes place it will be difficult for the UKLA to confirm that a prospectus has been prepared in accordance with the requirements of the appropriate annexes to the Prospectus Directive Regulation, this definition is out of line with the wording of the Transparency Directive which provides that equivalent value is calculated on the date of issue of the securities. The difference in these approaches could potentially create an odd situation where an issuer is able to avail itself of the wholesale disclosure regime when preparing its prospectus, but because of movements in the exchange rate between the date of approval and the date of issue will fall outside the wholesale regime under the Transparency Directive. For example, this could happen particularly in the context of a Medium Term Note programme where the date of approval of the base prospectus could be, say, 11 months before an admission to trading of securities issued under it is sought. One solution which would reduce the likelihood of a discrepancy in practice is for the rule to provide that the equivalent will be calculated at the date of approval in the context of a stand-alone issue and the date of issue for securities issued under a programme. We are also concerned that there should be some consistency of approach across Member States.

Property company valuation reports

PR 5.5.5 G – we do not agree with this guidance. As set out in our response to the CESR recommendations, we do not agree that a valuation report would in all cases be necessary to comply with Article 5.1 of the Prospectus Directive. There are many factors to consider when determining whether an independent valuation report could provide material information for investors and issuers need to be able to determine materiality on a case-by case basis. A valuation report should not be mandatory for unsecured non-equity issues (including convertible debt securities) or for global depositary receipts with a minimum denomination of EUR50,000 or more. This approach would be consistent with Article 7.2 of the Prospectus Directive.

Annex XVIII – Table of combinations

We have produced a table which sets out the differences between the operative Articles of the Prospectus Directive and the "roadmap" – this is attached as Annex 1. Whilst the Articles override the "roadmap" it is noted that Article 21 of the Prospectus Directive Regulation provides that "the use of the combinations provided for in the [roadmap] shall be mandatory when drawing up prospectuses for the types of securities to which those combinations correspond according to this table.". Given the discrepancies between Articles 4 to 20 of the Prospectus Directive Regulation and the roadmap and the wording of Article 21 the Prospectus Rules should include guidance on this and address any known inconsistencies, as well as guidance on how to approach disclosure if a security falls wholly or partly into several schedules or building blocks.

ANNEX 6 – Draft Handbook text - Listing Rules

Chapter 1 – Preliminary (All Securities)

Modifying or dispensing with rules

LR 1.1.3 R (3) – how will this rule be applied in the context of existing derogations? See also the comments relating to existing derogations in the response to Question 16 in Part 1 of this response.

Early consultation with FSA

LR 1.1.6 G – this refers to an **issuer** or sponsor (in the case of equity) consulting with the FSA when in doubt or seeking a derogation. As indicated in our response to CP 203, we support the abolition of the authorised adviser regime for debt securities. We seek confirmation that, as is currently the case, legal advisers and investment banks acting as lead managers/arrangers in relation to debt issues/programmes will continue to be able to communicate with the FSA on an issuer's behalf.

Notification when a RIS is not open for business

LR 1.1.10 R – as it is intended under the new regime that many notifications should go through an RIS, including stabilisation related announcements, this rule should be modified to provide that where the notification is to professionals only then distribution of information to two newswire services only where an RIS is not open for business is sufficient. The requirement relating to distribution to national newspapers should be disapplied altogether in relation to the Exchange-regulated market as this will be a professionals market.

FSA may require appointment of sponsor

LR 1.1.11 R – Chapter 1 is expressed to apply to all securities, but although this particular rule does not specifically limit its application to equity securities it is clear from *LR*8.1.2 R that sponsors are only required in relation to equity securities. It should therefore be clarified that there will not be any circumstances in the context of an issue of non-equity securities which will require the appointment of a sponsor.

Overseas companies

LR 1.1.12 R and *LR* 1.1.13 R – there should be clarification that these rules do not apply to securities to which Chapter 17 applies. It would be helpful if clarification as to which parts of *LR* 1 apply to debt securities could be included at *LR* 17.2 – *Requirements for listing and listing applications.*

English language

LR 1.1.16R – we are concerned that compliance with this rule in the context of *LR* 1.1.14 R by overseas issuers may be problematic following the repeal of Article 82 of CARD which will result from the implementation of the Transparency Directive. Article 82 of CARD provides that equivalent information need only be made available "if such information may be of importance for the evaluation of the debt securities", but there is no such filter under the Transparency Directive. *LR* 1.1.16 R will potentially require a, say, Tokyo listed issuer which is required by the rules of the Tokyo Stock Exchange to provide profit forecasts quarterly to translate these into English even though they are not of wider importance. It should also be noted that Article 20(6) of the Transparency Directive allows issuers of debt securities with a minimum denomination of at least EUR50,000 to disclose regulated information in "a language customary in the sphere of international finance".

Electronic Communication

LR 1.1.19 R – we are unclear how this rule will apply in relation to securities in global form held in the clearing systems and suggest that it should not do so.

Chapter 2 – Requirements for Listing - All Securities

LR 2.1 Preliminary

Special requirements – LR 2.1.4R – We welcome the FSA's proposal not to apply super-equivalent standards to issuers of debt securities and would appreciate confirmation that this rule is not intended to be used to introduce super-equivalence on a case by case basis.

LR2.2 Requirements for all securities

Warrants or options to subscribe – LR 2.2.14 R – we note that existing Listing Rule 3.24 includes the following after "to be subscribed": "unless the UK Listing Authority otherwise agrees. The UK Listing Authority must be consulted at any early stage." We see no reason why this wording should not be included in *LR* 2.2.14 R.

Chapter 3 – Listing Applications (All Securities)

3.2 Application for admission to listing

*LR*3.2.3 G – this does not appear to come from the existing Listing Rules (according to the Listing Review Table of Destinations *LR*3.2.2 R comes from 2.9.1 and 2.9.2 of the UKLA guidance manual) and is out of line with existing practice in the debt market and should therefore be modified in relation to debt securities.

Chapter 4 – Listing Particulars (All Securities)

4.1 Application and purpose

LR 4.1.1 R – Please confirm that it is not intended that this listing rule be used to require a full disclosure document in circumstances where there has been an application for admission to trading on a regulated market and an exemption is available from the requirement to publish a prospectus in that context. This rule should be amended to make it clear that listing particulars will only be required in connection with an application for admission to trading on the Exchange-regulated market where admission to the Official List is also sought.

4.2 Contents and format of listing particulars – see also the response to Question 16 in Part 1.

Summary

LR 4.2.2 R – we support the FSA's proposal to apply the contents requirements of the Prospectus Rules applicable to wholesale debt to debt securities and convertible bonds listed on the Exchange- regulated market regardless of their minimum denomination. Under the Prospectus Directive there is an exemption from the requirement to produce a summary in relation to issues of wholesale debt (other than where a host Member State exercises its option under Article 19(4) to require a summary to be drawn up in its official language where the prospectus is in another language – the FSA proposes to require this only where the prospectus is being used to make a public offer of securities in the UK). As it is the intention that the Exchange-regulated market should replicate the wholesale debt regime under the Prospectus Directive, this rule should be deleted.

Minimum information to be included

LR 4.2.4(5) R – flexibility should be built into this requirement to accommodate structured transactions with cross-stream, upstream and/or intermediate guarantees as is currently the case under Chapter 23. Please see the response to Question 16 in Part 1 of this response.

LR 4.2.5 G - We do not agree with the proposal to apply the requirements of schedules to the Prospectus Regulation in addition to the wholesale debt schedule to securities to be listed on the Exchange-regulated market.

Incorporation by reference

LR 4.2.7 R – incorporation of future documents should be permissible under the Exchange- regulated market regime.

4.3 Approval and publication of listing particulars

LR 4.3.5 R – this rule should be deleted as the effect of providing that the requirements of *PR* 3.2 and the PD Regulation must be complied with will be that the listing particulars are published in such a way as may constitute a public offer which would trigger the requirement for a Prospectus Directive compliant prospectus. Please also note our comment in the response to Question 2 in Part 1 of this response that it

would be helpful if the FSA or HM Treasury confirmed that posting a prospectus on a website does not constitute a public offer in the UK.

4.4 Miscellaneous

Notice – LR 4.4.1 R – as issues listed on the Exchange-regulated market will be specialist securities and by definition therefore not offered to the public the reference in this rule to where the listing particulars can be obtained by the public should be deleted.

Advertisements – LR 4.4.1 R – see comments on *PR* 3.3.2 above.

Chapter 17 - Debt Securities

17.1 – Application and *17.2 – Requirements for listing and listing applications* – see the comment on *LR* 1.1.12 R and *LR* 1.1.13 R above. These Rules would benefit from the inclusion of clearer statements as to which chapters apply to which type of securities. For example, Chapter 17 is expressed to apply to "*convertible securities which convert to equity securities*" which are also specialist securities, but Chapters 6 to 16 are expressed to apply to "equity securities" which is defined in LR Appendix 1 as "*equity shares and securities convertible into equity shares*". Wording should be added here to clarify which parts of Chapters 1, 4 and 5 apply to Chapter 17 issuers and to clarify that issuers of convertibles which are specialist securities do not need to comply with Chapters 6 to 16.

17.3 – Requirements with Continuing Application

The bulk of the requirements set out in this section are derived from provisions of *CARD* which will be repealed when the Transparency Directive is implemented. Clarification as to how the repeal statement in Article 28 of the Transparency Directive will be applied to the Exchange-regulated market is necessary to avoid continuing uncertainty in the market. That is, a statement to the effect that rather than the wholesale substitution of the existing provisions with the relevant provisions in the Transparency Directive only those bits of the Transparency Directive which cover the same points as the existing provisions will be copied across should be published. It should also be noted that the Transparency Directive exempts issuers of debt securities with a minimum denomination of EUR50,000 from the financial reporting requirements of the Directive.

Annual Accounts

*LR*17.3.6G – it is not clear why the requirement in *LR* 17.3.4 R is only relaxed in relation to subsidiaries of UK companies. The relaxation should be expanded to cover overseas companies.

Disclosures to be made without delay to a RIS

LR 17.4.1. R (2) – we note that this requirement may need to be varied in respect of security for asset-backed and other securities secured on fluctuating portfolios of assets.

LR 17.4.1 R (3) – we assume that there should be a variation of this requirement for routine announcements such as LIBOR rate fixings.

ANNEX 1

COMPARISON BETWEEN ARTICLES AND "ROADMAP"

General points

Articles 8, 15 and 16: As there are no definitions of "debt security" or "derivative security" (either in the Prospectus Directive Regulation or the Prospectus Directive), it is not clear from looking at the roadmap when a particular security would be classified as a debt security as opposed to a derivative security. The FSA should consider including some guidance to the roadmap confirming that there are no definitions of "debt security" and "derivative security" but that reference should be made to the second paragraph of each of Articles 8, 15 and 16.

Convertibles and exchangeables: It is not easy to identify from the "types of securities" description in the roadmap into which type of security a convertible or exchangeable bond would fall. It would seem that:

- "Bonds exchangeable or convertible into third party shares or issuers' or group shares which are admitted on a regulated market" is probably a reference to *exchangeable bonds* (given that the reference is to shares admitted on a regulated market);

- "Bonds exchangeable or convertible into the issuer's shares not admitted on a regulated market" is probably a reference to *convertible bonds* (where the shares the subject of the conversion are not allotted and so are not admitted on a regulated market); and

- "Bonds exchangeable or convertible into group's shares not admitted on a regulated market" is probably a reference to *intra-group exchangeable bonds* (where the shares the subject of the exchange are group shares which are not admitted to a regulated market).

It would be helpful to have FSA guidance along these lines clarifying the descriptions of "types of securities" in the roadmap according to commonly used market labels for those securities. Otherwise, there is a risk of confusion when attempting to identify the correct schedules to be followed when drawing up a prospectus for a convertible or exchangeable bond.

Differences between Articles and roadmap

What particular Article states	**What "roadmap" shows**	**Comment**
Article 5: "For pro-forma financial information, information shall be given	The roadmap indicates that the pro-forma information building	Article 5 is poorly drafted. It does not state when the pro-forma information

in accordance with the building block set out in Annex II."	block is required for shares, convertible bonds, bonds/shares with warrants to acquire the issuer's shares not admitted to trading on a regulated market and derivative securities giving the right to subscribe or to acquire the issuer's shares not admitted on a regulated market.	building block actually applies. This requirement emanates from the share registration document schedule (Annex I), as repeated in the roadmap. The UKLA should give guidance regarding this in its copy out of Article 5 in order to clarify.
Article 7: "For the debt and derivative securities registration document concerning securities *which are not covered in Article 4* with a denomination per unit of less than EUR 50,000….*information shall be given in accordance with the schedule set out in Annex IV*."	For asset-backed securities (**ABS**), the roadmap indicates that an ABS registration document is required. The debt & derivatives registration document is not shaded. ABS are not covered in Article 4.	Whilst it is logically correct that the ABS registration document should be required for ABS, Article 7 is not accurate in that it states that Annex IV should be followed for (<EUR 50,000) securities not covered in Article 4. ABS are not covered in Article 4 but do not require an Annex IV registration document. Article 4 is inaccurately drafted in that it should say, e.g., "which are not covered in Article 4 *or elsewhere"*. The UKLA should consider including guidance clarifying this.
Articles 12/14: See comment on Article 7.	See comment on Article 7.	See comment on Article 7.
Article 10: "For the asset backed securities registration document information shall be given in accordance with the schedule set out in Annex VII."	For ABS, the roadmap indicates that an ABS registration document must be produced.	Article 10 is poorly drafted (amounting to only half an article) and, unlike e.g. Article 4, does not state to which securities the ABS registration document actually applies. Logically it should apply to ABS and the roadmap gives guidance in this respect. The UKLA should give guidance

		regarding this in its copy out of Article 10 in order to clarify.
Article 11: "For the additional information building block to the securities note for asset backed securities information shall be given in accordance with the building block set out in Annex VIII".	For asset-backed securities, the roadmap indicates that one of the debt securities notes must be used (as specified in Articles 8 and 16) together with the ABS additional information building block.	Article 11 is poorly drafted. It does not state when the ABS additional information building block actually applies. Fortunately, the roadmap gives guidance here. The UKLA should give guidance regarding this in its copy out of Article 11 in order to clarify.
Article 13: "For depository receipts issued over shares information shall be given in accordance with the schedule set out in Annex X."	There is no information on the roadmap for depository receipts.	This may be confusing where reference is first made to the roadmap for guidance as to what schedules to follow. The UKLA should consider clarifying this in guidance beneath the roadmap (in order to give a pointer to Article 13).
Article 15: The derivatives securities note schedule in Annex XII applies to "securities which are not in the scope of application of the other securities note schedules referred to in Articles 6, 8 and 16, including certain securities where the payment and/or delivery obligations are linked to an underlying.".	The roadmap indicates that *paragraph 4.2.2. only of the derivatives securities note* applies to bonds exchangeable or convertible into third party shares or issuers' or group shares which are admitted on a regulated market.	Such exchangeable bonds are covered by Articles 8 and 16. According to the letter of Article 15(2) the derivatives securities note schedule should not therefore apply. So, the roadmap requirement relating to 4.2.2 is not based in any article. To prevent confusion (and prospectuses being prepared without 4.2.2 information), the UKLA should include guidance underneath Article 15 referring to the 4.2.2 roadmap requirement.
	The roadmap indicates that, except for item 4.2.2, the derivatives securities note also applies (in addition to the debt	Presumably this is on the basis that such securities can be said to have "payment and/or delivery obligations linked to an

	securities notes specified to apply in Articles 6, 8 and 16) to bonds/shares with warrants to acquire the issuer's shares not admitted to trading on a regulated market.	underlying". Is it worth including guidance to Article 15 stating that, for such securities, 4.2.2 is not required (in accordance with the roadmap) (to prevent confusion and prospectuses including unnecessary information)? (Presumably 4.2.2 is not required because the underlying share additional building block is required.)
	The roadmap indicates, following Article 15, that a derivatives securities note should be produced for derivatives securities giving the right to subscribe or to acquire the issuer's shares not admitted on a regulated market and for derivatives securities giving the right to acquire group's shares not admitted on a regulated market. However, it excludes from this Article 4.2.2 of Annex XII.	Presumably, the 4.2.2 exclusion is because the prospectuses for such securities have to be produced following the underlying share additional building block. Is it worth including guidance to Article 15 regarding the exclusion of 4.2.2 for such securities (to prevent confusion and prospectuses including unnecessary information)?
Article 17: "In addition, if the issuer of the underlying share is an entity belonging to the same group, the information required by the schedule referred to in Article 4 shall be given in respect of that issuer."	The roadmap is silent on this point. It does not indicate that, in the case of bonds exchangeable into group shares, information as required by Annex I needs to be given about the group issuer of the underlying shares.	Clear guidance should be given under the roadmap to address this omission.