

## Chapter 5

Suspending, cancelling and restoring listing and reverse takeovers: All securities

## 5.2 Cancelling listing

### FCA may cancel listing

5.2.1 **R** The *FCA* may cancel the *listing of securities* if it is satisfied that there are special circumstances that preclude normal regular dealings in them. [Note: article 18(2) *CARD*]

### Examples of when FCA may cancel

5.2.2 **G** Examples of when the *FCA* may cancel the *listing of securities* include (but are not limited to) situations where it appears to the *FCA* that:

- (1) the *securities* are no longer admitted to trading as required by these *rules*; or
- (2) the *issuer* no longer satisfies its continuing obligations for *listing*, for example if the percentage of *shares* in public hands falls below 25% or such lower percentage as the *FCA* may permit (the *FCA* may however allow a reasonable time to restore the percentage, unless this is precluded by the need to maintain the smooth operation of the market or to protect investors); or
- (3) the *securities' listing* has been suspended for more than six months;
- (4) the *securities* are *equity shares* with a *standard listing* issued by an *investment entity* where the *investment entity* no longer has a *premium listing of equity shares*.

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

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

### Cancellation at issuer's request

5.2.4 **R** An *issuer* must satisfy the requirements applicable to it in ■ LR 5.2.5 R to ■ LR 5.2.11CR and ■ LR 5.3 before the *FCA* will cancel the *listing of its securities* at its request.

5.2.4A **G** ■ LR 5.2.4 R applies even if the *listing of the securities* is suspended.

**Cancellation of listing of securities with a premium listing**

5.2.5

**R**

Subject to ■ LR 5.2.7 R, ■ LR 5.2.10 R, ■ LR 5.2.11A R and ■ LR 5.2.12 R, an *issuer* with a *premium listing* that wishes the *FCA* to cancel the *listing* of any of its *securities* with a *premium listing* must:

- (1) send a *circular* to the holders of the relevant *securities*. The *circular* must:
  - (a) comply with the requirements of ■ LR 13.3.1 R and ■ LR 13.3.2 R (contents of all circulars);
  - (b) be submitted to the *FCA* for approval prior to publication; and
  - (c) include the anticipated date of cancellation (which must be not less than 20 *business days* following the passing of the resolution referred to in paragraph (2));
- (2) in the case of a cancellation of *listing* of *equity shares*, obtain, at a general meeting, the prior approval of a resolution for the cancellation from:
  - (a) a majority of not less than 75% of the votes attaching to the *shares* voted on the resolution; and
  - (b) where an *issuer* has a *controlling shareholder*, a majority of the votes attaching to the *shares* of *independent shareholders* voted on the resolution;
- (2A) in the case of a cancellation of *listing* of *certificates representing shares*, obtain, at a meeting of the holders of the *certificates*, the prior approval of a resolution for the cancellation from:
  - (a) a majority of not less than 75% in value of the *certificates representing shares* in issue at the time of the meeting that are voted on the resolution; and
  - (b) where an *issuer* has a *controlling shareholder*, a majority in value of the *certificates representing shares* in issue at the time of the meeting that are:
    - (i) held by holders of *certificates* other than the *controlling shareholder*; and
    - (ii) that are voted on the resolution;
- (3) notify a *RIS*, at the same time as the *circular* is despatched to the relevant holders of the *securities*, of the intended cancellation and of the notice period and meeting; and
- (4) notify a *RIS* of the passing of the resolution in accordance with ■ LR 9.6.18 R or (as applicable) ■ LR 21.8.11R

5.2.5A

**R**

[deleted]

- (1) [deleted]
- (2) [deleted]

5.2.6

**R**

[deleted]

- 5.2.7** **R** ■ LR 5.2.5 R (2) and (2A) will not apply where an *issuer of securities* notifies a *RIS*:
- (1) that the financial position of the *issuer* or its *group* is so precarious that, but for the proposal referred to in ■ LR 5.2.7 R (2), there is no reasonable prospect that the *issuer* will avoid going into formal insolvency proceedings;
  - (2) that there is a proposal for a transaction, arrangement or other form of reconstruction of the *issuer* or its *group* which is necessary to ensure the survival of the *issuer* or its *group* and the continued *listing* would jeopardise the successful completion of the proposal;
  - (3) explaining;
    - (a) why the cancellation is in the best interests of those to whom the *issuer* or its *directors* have responsibilities (including the bodies of *securities* holders and creditors, taken as a whole); and
    - (b) why the approval of shareholders or, in the case of *certificates representing shares*, holders of certificates will not be sought prior to the cancellation of *listing*; and
  - (4) giving at least 20 *business days* notice of the intended cancellation.

**5.2.7A** **R** Where an *investment entity* no longer has a *premium listing* of *equity shares* it must apply under ■ LR 5.2.8 R for *cancellation* of the *listing* of any other class of *listed equity shares*.

**Requirements for cancellation of other securities**

**5.2.8** **R** An *issuer* that wishes the *FCA* to cancel the *listing* of *listed securities* (other than *securities* with a *premium listing*) must notify a *RIS*, giving at least 20 *business days* notice of the intended cancellation but is not required to obtain the approval of the holders of those *securities* contemplated in ■ LR 5.2.5 R (2) or (2A).

**5.2.9** **R** *Issuers* with *debt securities* falling under ■ LR 5.2.8 R must also notify, in accordance with the terms and conditions of the *issue* of those *securities*, holders of those *securities* or a representative of the holders, such as a trustee, of intended cancellation of those *securities*, but the prior approval of the holders of those *securities* in a general meeting need not be obtained.

**Cancellation in relation to takeover offers: offeror interested in 50% or less of voting rights**

**5.2.10** **R** ■ LR 5.2.5 R does not apply to the cancellation of *securities* with a *premium listing* in the case of a takeover offer if:

- (1) the *offeror* or any *controlling shareholder* who is an *offeror* is interested in 50% or less of the voting rights of an *issuer* before announcing its firm intention to make its takeover offer;
- (2) the *offeror* has by virtue of its shareholdings and acceptances of its takeover offer, acquired or agreed to acquire issued *share capital* carrying 75% of the voting rights of the *issuer*; and

(3) the *offeror* has stated in the offer document or any subsequent *circular* sent to the holders of the shares that a notice period of not less than 20 *business days* prior to cancellation will commence either on the *offeror* obtaining the required 75% as described in ■ LR 5.2.10 R (2) or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006 (Right of offeror to buy out minority shareholder).

**5.2.10A** **R** For the purposes of ■ LR 5.2.10 R (3), the offer document or *circular* must make clear that the notice period begins only when the *offeror* has announced that it has acquired or agreed to acquire *shares* representing 75% of the voting rights.

**5.2.11** **R** The *issuer* must notify shareholders and, in the case of *certificates representing shares*, holders of certificates that the required 75% has been obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice must state that the notice period has commenced and the anticipated date of cancellation.

**Cancellation in relation to takeover offers: offeror interested in more than 50% of voting rights**

**5.2.11A** **R** ■ LR 5.2.5 R does not apply to the cancellation of *securities* with a *premium listing* in the case of a takeover offer if:

- (1) the *offeror* or any *controlling shareholder* who is an *offeror* is interested in more than 50% of the voting rights of an *issuer* before announcing its firm intention to make its takeover offer;
- (2) the *offeror* has by virtue of its shareholdings and acceptances of its takeover offer, acquired or agreed to acquire issued *share* capital carrying 75% of the voting rights of the *issuer*;
- (3) the *offeror* has obtained acceptances of its takeover offer or acquired or agreed to acquire *shares* from *independent shareholders* that represent a majority of the voting rights held by the *independent shareholders* on the date its firm intention to make its takeover offer was announced; and
- (4) the *offeror* has stated in the offer document or any subsequent *circular* sent to the holders of the *shares* that a notice period of not less than 20 *business days* prior to cancellation will commence either on the *offeror* obtaining the relevant shareholding and acceptances as described in ■ LR 5.2.11A R (2) to ■ (3) or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006.

**5.2.11B** **R** For the purposes of ■ LR 5.2.11A R (4), the offer document or *circular* must make clear that the notice period begins only when the *offeror* has announced that it has acquired or agreed to acquire *shares* representing 75% of the voting rights and, if relevant, has obtained acceptances of its takeover offer or acquired or agreed to acquire *shares* from *independent*

*shareholders* that represent a majority of the voting rights held by the *independent shareholders*.

5.2.11C **R** The *issuer* must notify shareholders and, in the case of *certificates representing shares*, holders of certificates that the relevant thresholds described in ■ LR 5.2.11A R (2) to ■ (3) have been obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice must state that the notice period has commenced and the anticipated date of cancellation.

5.2.11D **R** [deleted]

### Cancellation as a result of schemes of arrangement etc

5.2.12 **R** ■ LR 5.2.5 R and ■ LR 5.2.8 R do not apply to the cancellation of *equity shares* and *certificates representing shares* as a result of:

- (1) a takeover or restructuring of the *issuer* effected by a scheme of arrangement under Part 26 of the Companies Act 2006; or
- (2) an administration or liquidation of the *issuer* pursuant to a court order under the Insolvency Act 1986, Building Societies Act 1986, Water Industry Act 1991, Banking Act 2009, Energy Act 2011 or the Investment Bank Special Administration Regulations 2011; or
- (3) the appointment of an administrator under paragraphs 14 (appointment by holder of floating charge) or 22 (appointment by company or directors) of Schedule B1 to the Insolvency Act 1986; or
- (4) a resolution for winding up being passed under section 84 of the Insolvency Act 1986; or
- (5) the appointment of a provisional liquidator by the court under section 135 of the Insolvency Act 1986; or
- (6) a company voluntary arrangement pursuant to Part 1 of the Insolvency Act 1986, subject to the time limits for the challenge of decisions made set out in Part 1 of the Insolvency Act 1986 having expired; or
- (7) statutory winding up or reconstruction measures in relation to an *overseas issuer* under equivalent *overseas* legislation having similar effect to those set out in (1) to (6).

5.2.13 **G** In determining whether the statutory winding up or reconstruction measures in relation to an *overseas issuer* under equivalent *overseas* legislation have a similar effect to those set out in ■ LR 5.2.12R (1) to ■ LR 5.2.12R (6), the FCA will in particular have regard to whether those procedures require a court order, the approval of 75% of the shareholders entitled to vote on the resolution, or a formal declaration of the *overseas issuer's* insolvency or inability to pay its debts.