

**LISTING, PROSPECTUS AND DISCLOSURE RULES (MISCELLANEOUS
AMENDMENTS NO 2) INSTRUMENT 2012**

Powers exercised

- A. The Financial Services Authority makes this instrument in the exercise of:
- (1) the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
 - (a) section 73A (Part 6 Rules);
 - (b) section 84 (Matters which may be dealt with by prospectus rules);
 - (c) section 89A (Transparency Rules); and
 - (d) section 157(1) (Guidance); and
 - (2) the other powers and related provisions listed in Schedule 4 (Powers exercised) of the Listing Rules.

Commencement

- B. This instrument comes into force on 1 October 2012.

Amendments to the Handbook

- C. The modules of the FSA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Prospectus Rules sourcebook (PR)	Annex C
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex D

Citation

- D. This instrument may be cited as the Listing, Prospectus and Disclosure Rules (Miscellaneous Amendments No 2) Instrument 2012.

By order of the Board
27 September 2012

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

external management company (in *LR* and *PR*) has the meaning in *PR* 5.5.3AR.

Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text, unless otherwise stated.

Externally managed companies

6.1.26 R A company applying for the admission of equity shares to premium listing must satisfy the FSA that the discretion of its board to make strategic decisions on behalf of the company has not been limited or transferred to a person outside the issuer's group, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a person outside the issuer's group.

6.1.27 G In considering whether a company applying for the admission of equity shares to premium listing has satisfied LR 6.1.26R, the FSA will consider, among other things, whether the board of the issuer consists solely of non-executive directors and whether significant elements of the strategic decision-making of or planning for the company take place outside the issuer's group, for example with an external management company.

...

9.2.8A G (1) The Act provides that an individual who is not a director can still be a person discharging managerial responsibilities in relation to an issuer if they are a "senior executive of such an issuer" and they meet the criteria set out in the Act.

(2) An individual may be a "senior executive of such an issuer" irrespective of the nature of any contractual arrangements between the individual and the issuer and notwithstanding the absence of a contractual arrangement between the individual and the issuer, provided the individual has regular access to inside information relating, directly or indirectly, to the issuer and has power to make managerial decisions affecting the future development and business prospects of the issuer.

...

Externally managed companies

9.2.20 R An issuer must at all times ensure that the discretion of its board to make strategic decisions on behalf of the company has not been limited or transferred to a person outside the issuer's group, and that the board has the capability to act on key strategic matters in the absence of a recommendation from a person outside the issuer's group.

...

Externally managed companies

15.4.26 R A closed-ended investment fund is not required to comply with LR 9.2.20R.

...

16.4.1 R An open-ended investment company must comply with:

- (1) LR 9 (Continuing obligations) except LR 9.2.6BR, LR 9.2.15R, LR 9.2.20R and LR 9.3.11R;
- (2) LR 15.5.1R;
- (3) LR 15.6.1R; and
- (4) the condition set out in LR 16.1.1R(1) or (2).

...

Appendix 1 Relevant definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

<i>external management company</i>	has the meaning in <i>PR 5.5.3AR</i> (i.e., in relation to an <i>issuer</i> that is a <i>company</i> which is not a collective investment undertaking, a <i>person</i> who is appointed by the <i>issuer</i> (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by <i>officers</i> of the <i>issuer</i> and to make recommendations in relation to strategic matters).
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Transitional Provisions

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TR 9 Transitional Provision for a company that has a premium listing of equity shares but does not comply with LR 9.2.20R

<u>(1)</u>	<u>(2) Material to which the transitional provisions applies</u>	<u>(3)</u>	<u>(4) Transitional provision</u>	<u>(5) Transitional provision: dates in force</u>	<u>(6) Handbook provision: coming into force</u>
<u>1.</u>	<u>LR 9.2.20R</u>	<u>R</u>	<u>(1) This rule applies to a company that has a premium listing of equity</u>	<u>From 1 October 2012 up to and including 31 December 2013</u>	<u>1 October 2012</u>

		<p><u>shares but does not comply with LR 9.2.20R on 1 October 2012.</u></p> <p><u>(2) LR 9.2.20R is not applicable to a company to which this rule applies.</u></p>		
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Annex C

Amendments to the Prospectus Rules sourcebook (PR)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

- Equity shares
- 5.5.3 R ...
- (2) Each of the following *persons* are responsible for the *prospectus*:
- ...
- (b) if the *issuer* is a *body corporate*:
- (i) each *person* who is a *director* of that *body corporate* when the *prospectus* is published; ~~and~~
- (ii) each *person* who has authorised himself to be named, and is named, in the *prospectus* as a *director* or as having agreed to become a *director* of that *body corporate* either immediately or at a future time; and
- (iii) each *person* who is a senior executive of any *external management company* of the *issuer*;
- ...
- 5.5.3A R In PR 5.5.3R(2)(b)(iii), *external management company* means in relation to an *issuer* that is a *company* which is not a collective investment undertaking, a *person* who is appointed by the *issuer* (whether under a contract of service, a contract for services or any other commercial arrangement) to perform functions that would ordinarily be performed by *officers* of the *issuer* and to make recommendations in relation to strategic matters.
- 5.5.3B G In considering whether the functions the *person* performs would ordinarily be performed by *officers* of the *issuer*, the *FSA* will consider, among other things:
- (1) the nature of the board of the *issuer* to which the *person* provides services, and whether the board has the capability to act itself on strategic matters in the absence of that *person's* services;
- (2) whether the appointment relates to a one-off transaction or is a longer term relationship; and
- (3) the proportion of the functions ordinarily performed by *officers* of the *issuer* that is covered by the arrangement.

...

Appendix 1 Relevant definitions

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

<i>limited liability partnership</i>	(a)	a <i>body corporate</i> incorporated under the Limited Liability Partnerships Act 2000;
	(b)	a <i>body corporate</i> incorporated under legislation having the equivalent effect to the Limited Liability Partnerships Act 2000.
<i>officer</i>	(in relation to a <i>body corporate</i>) (as defined in section 400(5) of the <i>Act</i> (Offences by bodies corporate etc)) a director, member of the committee of management, <i>chief executive</i> , <i>manager</i> , secretary, or other similar officer of the body, or a <i>person</i> purporting to act in that capacity or a <i>controller</i> of the body.	
<i>partnership</i>	(in accordance with section 417(1) of the <i>Act</i> (Definitions)) any partnership, including a partnership constituted under the law of a country or territory outside the <i>United Kingdom</i> , but not including a <i>limited liability partnership</i> .	

Annex D**Amendments to the Disclosure Rules and Transparency Rules sourcebook (DTR)**

In this Annex, underlining indicates new text.

Notification of transactions by persons discharging managerial responsibilities

...

- 3.1.2A G (1) The Act provides that an individual who is not a *director* can still be a *person discharging managerial responsibilities* in relation to an issuer if they are a “senior executive of such an issuer” and they meet the criteria set out in the Act.
- (2) An individual may be a “senior executive of such an issuer” irrespective of the nature of any contractual arrangements between the individual and the *issuer* and notwithstanding the absence of a contractual arrangement between the individual and the *issuer*, provided the individual has regular access to inside information relating, directly or indirectly, to the *issuer* and has power to make managerial decisions affecting the future development and business prospects of the *issuer*.