RESPONSE TO HIGH GROWTH SEGMENT DRAFT RULE BOOK

MARCH 2013

This response has been prepared by the Listing Rules Joint Working Party of the Company Law Committees of the Law Society of England and Wales and the City of London Law Society.

The Law Society of England and Wales is the representative body of over 120,000 solicitors in England and Wales. The Society negotiates on behalf of the profession and makes representations to regulators and Government in both the domestic and European arena. This response has been prepared on behalf of the Law Society by members of the Company Law Committee.

The City of London Law Society (**CLLS**) represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees.

The Listing Rules Joint Working Party is made up of senior and specialist corporate lawyers from both the Law Society and the CLLS who have a particular focus on the Listing Rules and the UK Listing Regime.

We set out below our comments on the High Growth Segment draft rule book ("**Rules**") using the same headings and numbering as the Rules.

A1: Eligibility for admission

Rule 2.3

We think that the definition of CAGR and the example provided in that definition effectively means that a new applicant must have been trading for four years to be able to demonstrate growth in revenue on a CAGR basis of at least 20% over the prior three financial years. We wonder if this is what the Exchange intends? We note that under LR 6.1.3R, a premium listing applicant is required to have published financial information covering the last three years and therefore is only required to have been trading for three years (plus the time it takes to publish its latest financial results).

Rule 2.5

We understand that the value of securities to be held in public hands must be at least £30 million. It is not clear, however, why the majority of this value must be raised at admission by an issue of new securities or the sale of existing securities of the same class to be admitted. Would large public companies, which already have securities in public hands amounting to £30 million (for example, a company already admitted to AIM), be precluded from admission if they could not raise a further £30 million when wishing to join this market?

Perhaps the rationale is similar to the one behind the application requirements for a premium listing of scientific research based companies, of which some are set out in Listing Rule (LR) 6.1.12(R). This LR, amongst other things, requires such companies to demonstrate their ability to attract funds from sophisticated investors and have a market capitalisation of £20 million prior to the marketing at the time of listing. They must also demonstrate that they intend to raise at least £10 million at the time of listing. We assume that the rationale for this is that companies should prove to the FSA that there is sufficient interest in their business and that they are worth investing in and consequently, deserve their place on the public market. However, these requirements only apply to scientific research based companies as they are not required to satisfy other application

requirements, such as the requirement to publish three year historical financials representing 75% of the new applicant's business, or to demonstrate that they control the majority of their assets or have done so for at least three years.

New applicants to the High Growth Segment however, are required to demonstrate that they control the majority of their assets and are also required to demonstrate high growth in revenue of at least 20% annualised over the prior three financial years – as well as raise £30 million at admission, which is higher than the £10 million required for scientific research companies seeking a premium listing – although that appears to be required to be in the form of new shares, whereas the sale of existing shares is an alternative under the proposed rules. This could be perceived as a barrier to enter this market amongst high growth companies that have sufficient funding for their current requirements. Consequently, it would be helpful if the Exchange could explain why the minimum amount to be raised at admission is set at this level and whether there is scope for reducing this threshold?

Rule 2.6

Please could the Exchange provide some guidance as to what is meant by a "sufficient number" in respect of the required number of registered holders of securities to be admitted to provide an orderly market in the securities following admission?

On a related point, Rule B1,11 carves out Rule 2.6 from the continuing eligibility requirements. We assume that, where there is not a sufficient number of registered holders of securities to provide an orderly market post admission, pursuant to Admission & Disclosure Standard Rule 3.16, the Exchange would suspend trading of securities where it believes that its ability to ensure the orderly operation of markets has been jeopardised?

Furthermore, whilst there are requirements for securities on the Main Market to be transferable and freely negotiable under the Admission and Disclosure Standards, we suggest that the Rules should also include an express requirement that securities must be freely transferable (as is similarly provided for in the LRs and the AIM Rules).

Rule 3.1

We query the appropriateness of the prescribed statement in Rule 3.1 that the admission to the High Growth Segment "….*is primarily intended for high growth companies*". Whilst applicants must demonstrate high growth in order to be eligible for the market, this does not mean that they will continue to grow once admitted, and so this section of the statement could be misleading. Consequently, we suggest that these words are omitted and the first section of the statement reads:

"*Admission to the High Growth Segment of the Main Market of the London Stock Exchange is intended for companies which are likely to have a lower proportion of securities in public hands at admission than companies admitted to the Official List……*"

Rule 3.2

We understand that the High Growth Segment is designed to be a 'stepping-stone' for companies who wish to obtain a premium listing in the future. The Exchange requires applicants to evidence this intention by making a non-binding indicative statement in the prospectus.

Please could the Exchange confirm what, if anything, is required if a company decides that it no longer wishes to obtain a premium listing following its admission. For example, if the market becomes successful, the company may decide that there is no benefit in seeking a premium listing. The company may wish to announce that it no longer wishes to pursue a premium listing,

given its statement at the time of admission but will there be any other implications flowing from the change of mind?

Could the Exchange give guidance on, or prescribe the form of, the statement to be made?

We also note that Rule 3.2 does not require the new applicant to state its intention to list on the premium segment of the Official List but simply on the "Official List" and therefore, we assume that an intention to list on the standard segment would be sufficient. Does this assumption reflect the Exchange's view?

A2: Procedure for Admission

Rule 6.2

We suggest Rule 6.2 be amended so that a Key Adviser is also able to submit the admission application documents to the Exchange on the Issuer's behalf. We suggest that the Rule is amended as follows:

"*an Issuer, **or a Key Adviser on its behalf**, must submit to the Exchange at least two business days before the Exchange is to consider the application for admission….*"

B1: Continuing eligibility requirements

Rule 12.3

Could the Exchange confirm that it will not require an Issuer to be under an obligation to provide information which is subject to legal privilege, on the basis that it is not "*reasonable*" to do so? Section 413 of the Financial Services and Markets Act 2001 provides that a person may not be required to produce legally privileged information under the Act. Whilst information may not be requested by the Exchange under this Act, it would be helpful if the Exchange would confirm that it will adopt the same approach to information requested to be provided under this Rule.

B3: Notifiable Transactions

Rule 16

Footnote 4 to Rule 16 states that the "*principles*" of Listing Rules 10.2.4 to 10.2.9R should be regarded as guidance when assessing whether a transaction is notifiable. We query whether there is any significance in the reference to the principles, rather than the LRs themselves.

On a separate point, as certain of the Rules refer Issuers or Key Advisers to specific LRs as guidance, can we assume that Issuers and Key Advisers are also able to rely on (as guidance) the UKLA Technical and Procedural Notes in respect of the relevant LRs? If that is the case, perhaps this could be specified somewhere in the Rules?

B5: Reverse takeovers and B6: Cancellation of admission

Rules 26 and 33

There appears to be some confusion in the Rules on the procedure required to effect a reverse takeover. Where an Issuer wishes to undertake a reverse takeover, Rule 26 provides that it will need to apply for a cancellation of admission at, or prior to, the point at which the reverse takeover takes effect. Rule 26 further provides that Section B9 of the Rules deals with the cancellation of shares, including the need for shareholder consent, and that completion of the reverse takeover "*must be conditional upon the obtaining of such shareholder consent*".

Section B9 states in Rule 33, that an Issuer that wishes to cancel its admission of securities "*(including in relation to a reverse takeover)*" must obtain at a general meeting the prior approval of a resolution for the *cancellation* of not less than 75% of its shareholders.

There are two issues here. First, the Rules provide that the completion of the reverse takeover is conditional upon "such shareholder consent" which is provided for in B9. This appears to mean that a reverse takeover requires the approval of a majority of no less than 75% of shareholders – which is higher than the simple majority required under the LRs (LRs 5.6.3 and 10.5.1) and the AIM Rules (AIM Rule 14). We do not believe that it is logical for a higher threshold of approval to apply to this market, as compared to both the premium listing segment and the less regulated AIM market.

Secondly, once a reverse takeover has been approved by its shareholders, LR 5.6.19G provides that the FSA will generally seek a cancellation of the issuer's listing when it completes the reverse takeover, subject to specific circumstances. Furthermore, AIM Rule 14 provides that once shareholder approval has been obtained in relation to the reverse takeover, the AIM securities will be cancelled.

We do not understand the rationale in B9 for providing that shareholder approval must be sought in relation to a cancellation of shares, "*including in relation to a reverse takeover*". Once the issuer has obtained shareholder approval of the reverse takeover, it should be for the relevant competent authority, in this case, the Exchange, to require the cancellation of the securities.

Consequently, we suggest that Rule 26 is amended to read:

"*Any agreement to effect a reverse takeover must be conditional on the consent of a majority of the Issuer's shareholders given in general meeting. Where shareholder approval is given for the reverse takeover, the Exchange will cancel the admission of the securities of the Issuer*."

We would also suggest that in the first line of Rule 33, the words "*(including in relation to a reverse takeover)*" be deleted.

B6: Requirement for notifications to a RIS

Rule 30.1

Rule 30.1 provides that an Issuer must notify an RIS without delay of, amongst other things, the appointment of a new director. Please could the Exchange confirm whether the "*usual biographical information about such director as might be found in a prospectus*" requires full disclosure of the information required to be disclosed by paragraph 14.1 of Annex 1 of the Prospectus Directive Regulation.

Rule 30.4

There is a typo at the end of the Rule 30.4. The word "***shares***" should be deleted from the end of the Rule.

B8: Corporate governance

Rule 32

We have no strong objection to this proposal but, in line with the recent movement to de-clutter annual reports, we suggest that it should be open to issuers to cross refer to the relevant information on their website which is required to be disclosed under Rule 31.10.

Furthermore, in relation to Rule 32.3.2, the Exchange may wish to insert a footnote with a cross reference to the Financial Reporting Council's latest guidance (February 2012) on what constitutes an adequate explanation under the 'comply or explain' approach.

Rule 34.3

We suggest that Rule 34.3 is amended to reflect the recent changes to LR 5.2.12R which extends the exemption from the requirements for the cancellation of shares to include insolvency events which do not involve court approved events. We note that LR 5.2.12R is referred to as guidance but it would be more appropriate for the insolvency events to be set out in the body of the Rules.

As a general point, we suggest that if footnotes contain important points regarding the application of the Rules, or as in this case, refer to Listing Rules which should also apply to this segment, we suggest that it may be appropriate for such points to be included in the body of the Rules or noted as formal technical guidance, rather than as footnotes.

Annex 2 – Notifiable transactions

In relation to supplementary notifications, an Issuer is required to notify an RIS as soon as possible if it becomes aware of a significant change or new matter since the first notification of the transaction. We suggest that it is made clear that this obligation expires on completion of the relevant transaction.

Annex 3 – Key Advisers

Rule 12

This Rule provides that a Key Adviser is not permitted to delegate any of its functions or permit another person to perform those functions. It may be the case, however, that certain banks have structured their operations across their group which may require certain functions of a Key Adviser to be delegated to certain of its group companies. We suggest that the Rule is amended to allow for group companies to carry out delegated functions, provided that such companies have been notified to the Exchange as part of the process to be approved as a Key Adviser.

Rule 32.5

There is a typo in Rule 32.5. The Rule should be amended to read:

"*the Key Adviser, or any of its employees **or** staff performing the Key Adviser role, ……..*"

Glossary

"***group***"

We suggest that the definition would be clearer if it is amended as follows:

"*a person's group of companies being its subsidiary undertakings, its parent undertakings and any other subsidiary undertakings of its parent undertakings"*.

"***Key Adviser service***"

The definition provides that a "Key Adviser service" is a service relating to a matter referred to in Rule 4 that a Key Adviser provides or is requested or appointed to provide. Rule 4 provides that an Issuer must appoint a Key Adviser in relation to admission. The footnote to this Rule states that "*the role of the Key Adviser after admission is to advise the Issuer only and the Key Adviser will not owe duties to the Exchange in relation to such advice*".

Whilst we do not object to the principle of this footnote, there are certain Rules which seem to suggest that a Key Adviser service applies to services provided after admission. For example, Annex 3, paragraph 1 states that the Key Adviser must in relation to a Key Adviser service provide to the Exchange any explanation or confirmation as the Exchange reasonably requires for the purpose of ensuring that "*these rules*" are being complied with by an Issuer. If a Key Adviser service is in relation to admission only – should the Rules specifically refer to section A2? If the Exchange intends to capture situations where the Issuer may no longer satisfy the eligibility after admission, then presumably Annex 3, paragraph 8 would require the Key Adviser to inform the Exchange of this matter?

Furthermore, Annex 3, paragraph 23 provides that a Key Adviser should maintain records which should "*include material communications which relate to the provision of Key Adviser services, **including any advice or guidance given to an Issuer in relation to their responsibilities under these rules***". The latter part of this paragraph suggests that advice or guidance given to an Issuer in relation to the Rules is also a Key Adviser service - it seems unlikely that this relates to Rule 4 only.

Consequently, please could the Exchange clarify in the Rules the exact scope of what is a "*Key Adviser service*", in particular, whether it extends to advice that a Key Adviser provides to the Issuer pursuant to Rule 14.

On a related point, the footnote to Rule 14 implies that the Key Adviser owes duties to the Exchange in relation to the services it provides at or before admission. If that is the case, could the Exchange confirm whether these are contractual duties which stem from its application to be a Key Adviser?

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