

# LISTING RULES - GUIDANCE NOTE No. 05/2000

**Date first issued: 10.01.2000**

**Date of Revision: n/a**

## **Status of Guidance Notes**

*This Guidance Note reflects the views and experience of the UK Listing Authority. Its contents do not represent rules or regulations. The purpose is to improve understanding of how the Listing Rules operate or may be applied in practice and to assist companies and their advisers in working with the UK Listing Authority.*

*This Guidance note should be read in conjunction with the Listing Rules, which alone have binding effect.*

## **Class One Disposals by Companies in Severe Financial Difficulty**

### **Introduction**

- 1.1 This guidance note has been issued to facilitate class one disposals by companies in severe financial difficulty. Such companies may find themselves with no alternative other than to dispose of a substantial part of their business within a short time frame in order to secure their ongoing working capital requirements.
- 1.2 Many companies in severe financial difficulty require an immediate working capital injection and, therefore, due to time constraints are not in a position to prepare a circular and convene an Extraordinary General Meeting to obtain prior shareholder approval. In these cases, where the situation is so serious that failure to complete the disposal immediately would result in the company no longer being able to continue to trade, many companies argue that it is not practical to obtain shareholder approval prior to completion of the disposal. Often, in these situations, the costs incurred when producing a class one circular represent a significant proportion of the funds realised.
- 1.3 If a company can demonstrate that it is in severe financial difficulty the UK Listing Authority will waive the requirements to prepare a circular and to obtain shareholder approval for the disposal, providing the criteria set out in sections 2.1 and 2.2 below are met.
- 1.4 All applications for such waivers must be brought to the attention of the UK Listing Authority at the earliest available opportunity and at least 5 clear business days prior to the terms of the disposal being agreed. Waivers will not be granted retrospectively under any circumstances.

### **Applicable criteria**

- 2.1 Companies applying for a waiver must be able to demonstrate to the UK Listing Authority that they could not reasonably have entered into negotiations earlier to enable shareholder approval to be sought.

2.2 The following documents ("the documents") must be submitted to the UK Listing Authority:

- confirmation from the company that negotiation does not allow time for shareholder approval with an explanation why, or, if there is time, why it is not appropriate in the circumstances to obtain shareholder approval. The company must also confirm that all alternative methods of financing have been exhausted and the only option remaining is to dispose of a substantial part of their business. In addition the company must state that by taking the decision to dispose of part of the business to raise cash, the directors are acting in the best interests of the company and shareholders as a whole and that unless the disposal is completed receivers /administrators/liquidators are likely to be appointed;
- confirmation from the sponsor that the company is in severe financial difficulty and that it will not be in a position to meet its obligations as they fall due unless the disposal takes place according to the proposed timetable;
- confirmation from the persons or institutions providing finance stating that further finance or facilities will not be made available and that unless the disposal is effected immediately, current facilities will be withdrawn; and
- a full announcement ("the announcement").

#### **Disclosure in the announcement**

2.3 The announcement containing the disclosures set out in this section must be released over the Regulatory News Service ("RNS") no later than the date the terms of the disposal are agreed:

- all relevant disclosures required under paragraph 10.31 of the Listing Rules;
- the name of the acquirer and the expected date of completion of the disposal;
- the full disclosure required under paragraph 6.G.1(b) of the Listing Rules in respect of the continuing group's prospects for at least the current financial year;
- a statement that the directors believe that the disposal is in the best interests of the company and shareholders as a whole. In addition the directors must also state that if the disposal is not completed the company will be unable to meet its financial commitments as they fall due and consequently will be unable to continue to trade resulting in the appointment of receivers / liquidators / administrators;
- a statement incorporating the details of all the confirmations provided to the UK Listing Authority as set out in section 2.2 above;
- details of any financing arrangements (either current or future) if they are contingent upon the disposal being effected;
- if the disposal is to a related party as defined in Chapter 11.1 of the Listing Rules, then a statement as set out in paragraph 11.10(e) of the Listing Rules must be given. In this case, there must also be confirmation to the UK Listing Authority and a statement in the announcement that the disposal by the company to the related party is the only available option in the current circumstances;

- a statement by the company that in its opinion the working capital available to the continuing group is sufficient for the group's present requirements, that is, for at least 12 months from the date of the announcement, or, if not, how it is proposed to provide the additional working capital thought by the issuer to be necessary.

2.4 In addition, the announcement must contain any further information that the company and its advisers consider necessary. This should incorporate historical price sensitive information, which has already been published in relation to the disposal along with any further information required to be disclosed pursuant to paragraphs 9.1 and 9.2 of the Listing Rules.

### **Review and Approval**

2.5 The documents referred to in section 2.2 above, together with the announcement to be released by RNS must be reviewed and approved by the UK Listing Authority prior to any waiver being granted and any announcement being released. Other than in exceptional circumstances the documents must be lodged with the UK Listing Authority in draft form at least 5 clear business days before the terms of the transaction are agreed and in final form on the day of approval.

### **General**

2.6 Irrespective of the financial position of the company, paragraphs 9.1 and 9.2 of the Listing Rules continue to apply whilst the company is in the process of seeking a waiver. The market must be kept informed at all times of any major new developments in the company's sphere of activities which are not public knowledge which may lead to a substantial movement in the price of its listed securities, or of any other relevant information which, if made public, would be likely to lead to a substantial movement in the price of the company's listed securities. The directors should also consider whether the company's financial situation is such that they should request the suspension of the company's listing pending publication of an announcement and clarification of the company's financial position.

### **Effective date**

3.1 This guidance represents best practice from the date of issue and will continue in effect until the UK Listing Authority otherwise indicates.

**These issues and arrangements have been set out as guidance only and may be updated or revised from time to time.**

## **APPENDIX**

### **Further Information**

Requests for further information or queries about this Guidance Note should be made to the UK Listing Authority Help Desk on 020 7 797 3333 using Option 1.

### **Related rules**

9.1, 9.2  
10.4  
10.31  
10.37

10.40 to 10.44  
11.1  
11.10 (e)

**Related documents**

None