USS
UNIVERSITIES SUPERANNUATION SCHEME LIMITED

UKLA Consultation CP 12/2
Response from UK Institutional Investors

1 May 2012

1 Introduction

The co-signatories to this submission include the Environment Agency Active Pension Fund, the Local Authority Pension Fund Forum, NEST, Railpen, Royal London Asset Management the Universities' Superannuation Scheme. We are significant, long term investors in the UK and take our stewardship responsibilities seriously. We seek to promote robust corporate governance in all companies in which we invest as we believe this is critical to ensure the protection of our clients'/members' interests.

We welcome the UKLA's consultation, and support the 'direction of travel' in relation to tightening controls over reverse takeovers, the sponsor regime, and externally managed companies. We also firmly endorse the UKLA's proposals to introduce additional protections for investors in the premium market. This is particularly timely given the rising number of closely held companies entering into the premium market. Ensuring minority shareholder rights is vital, in our view, to maintaining the long term attractiveness and integrity of the UK market for both investors and issuers.

In Section 2, we highlight those measures that we feel are most important for UKLA to move forward on, and our rationale. Section 3 contains our answers to individual questions where we have a clear view.

2 Key positions

2.1 Protecting investors

We believe UKLA's Listing Requirements need to be strengthened to ensure adequate protection of minority shareholder rights as required by UKLA's statutory objectives as well as LR 2.1.3 (1)[1]. While in the past the chief risk to investors has been that companies' management does not act in shareholders' interests (the principal – agent problem), a marked increase in the number of closely held foreign companies seeking entry into London's Premium Market has introduced new risks from controlling shareholders. UKLA needs to update its Listing Rules to prevent controlling shareholders/ management taking advantage of minority shareholders. We outline specific proposals in Section 3, including:

- Double majority vote required (majority of all eligible shareholders, and a majority of minorities) in votes for independent directors where companies have controlling shareholders;
- An explicit requirement that only independent directors can vote on related-party transactions (RPTs);
- The reintroduction of 'controlling shareholder agreements', enforced by UKLA;
- A 30-40% free-float requirements that are explicitly linked to minority shareholder protection;

[1] LR 2.1.3 (1) is itself in line with Section 75 of FSMA 2000, which provides that "An application for listing may be refused if, for a reason relating to the issuer, the competent authority considers that granting it would be detrimental to the interests of investors."

- Meaningful disclosure of RPTs in annual reports;
- The extension of rules for aggregation of RPTs over a 36-month time frame, rather than 12 months; and
- Adding more robust oversight of explanations provided under the UK Corporate Governance Code.

2.2 Reverse takeovers

We support the UKLA's move to tighten controls over reverse takeovers and the consolidation of all rules relating to reverse takeovers into one place. We believe all companies in the Premium Market should comply with relevant listing requirements, and in the case of a reverse takeover where the takeover target is not in the Premium Market, the new entity should have to reapply for entry into this market.

2.3 Sponsors

While we feel the proposed changes to the Listing Rules in this section move in the right direction, there is an underlying design fault at the heart of the system (this was also highlighted in an earlier consultation on Sponsor in 2008 – see Box below). The UKLA depends upon sponsors to oversee/monitor listed entities, who are in turn the sponsors' pay-masters. The inherent conflicts of interest may not always lead to inadequate supervision, but the incentive framework is perverse. Moreover, the close relationship between the UKLA and sponsors means the sponsors are in a position to use their knowledge of the UKLA's monitoring capacity for their clients' benefit.

We recognise that while the sponsor regime has embedded conflicts, it also offers a relatively efficient system for overseeing implementation of the Listing Rules. This system can, in our view, work as long as the UKLA puts in place **a more robust system for monitoring sponsors**. The changes proposed are all welcome for improving clarity over where responsibility lies for keeping track of issuer compliance with the Listing Rules. However, UKLA relies too heavily on self-regulation. We believe that UKLA needs to increase the resources devoted to monitoring sponsors and, thus, raise the probability that violations of the rules are caught. In addition, the **associated sanctions should be raised**.

With respect to sanctions, those available to the UKLA appear limited, and furthermore seem not to have been actively applied. Public censure (LR 8.7.19) has reputational impacts for sponsors, but may not provide as great a disincentive as a broader set of penalties including fines. Moreover, the strength of this sanction is also closely tied to the amount of negative publicity it generates. Investors would benefit from greater disclosure about those companies that have been censured / suspended. Ideally, UKLA would make an easily accessible list of companies that have either been censured/ suspended available on its website, alongside the list of approved sponsors. Finally, the removal from the approved list of sponsors appears to have been used rarely even in cases where sponsors have received public censure (e.g. case of BDO LLP failing to notify UKLA of a reverse takeover in 2009 – publicly censured in May 2011).

Box 1: "Consultation CP 08/5: Sponsor Regime: a targeted review"

It is worth noting that the UKLA undertook a targeted consultation on the Sponsor regime in 2008 to which is had 27 responses – virtually all from sponsors themselves or their advisors. Only one investor body responded (ABI), and only one issuer submitted its views. A key proposal that the respondents rejected was that to "require an issuer to appoint an independent sponsor" and where the FSA was not satisfied that the sponsor was independent, it could deny the approval of a circular or admission of securities to the official list. The proposal was dropped due to sponsor objections that the onus lay with the issuer to prove sponsor independence. Instead the UKLA stated that "*we propose to achieve the same aim (of preventing a sponsor from acting when not independent) through other means such as dialogue with a sponsor and, if necessary, enforcement action should a sponsor ignore our serious concerns."*[2]

Moreover, some of the proposed changed in 2008 appear to have reduced the responsibilities of sponsors. For instance, the application of Principles for sponsors only to apply when required under LR 8.2, and the "Principles for sponsors: independence" (which had clearly defined threshold for determining independence) was replaced with a less prescriptive "Principles for sponsors: identifying and managing conflicts"[3].

2.4 Transactions

We would like to see LR 11 require "meaningful" and timely disclosure of related party transactions (RPTs) to shareholders – especially with respect to aggregation. As noted above, we further support the aggregation of class 3 transactions over a rolling three year time frame. As we believe that current rules around aggregation are easily gamed.

2.5 Financial information requirements

We are supportive of all measures to improve transparency for investors. We are not supportive of any measures that shorten the IPO process. Rather, we would ask that UKLA explore measures to improve market efficiency around IPOs, and believe there is merit in a staged entry process for all companies, whereby companies wishing to list in London are first admitted into the Standard Market for a period of not less than 12 months before they are permitted to seek entry into the Premium Market.

2.6 Externally managed companies

We strongly support UKLA's moves to ensure proper oversight and disclosure at companies that have effectively outsourced the executive/strategic decision making to an offshore "advisory company". We believe such a corporate structure undermines shareholder protection and should be prohibited for all companies in the Premium market.

While we believe this rule change should apply to existing members of the Premium market as well as new entrants, we have concerns that investors will be harmed by high break fees / charges associated with the ending of current contractual relationships between the listed entity and the management company (e.g. Resolution Ltd). An example of where shareholders have experienced such damage in the past is provided by London and Stamford Property (see Box in Q68 below).

[2] PS 08/12: "Sponsor regime: a targeted review", p. 18.

[3] It is perhaps not surprising given the make-up of respondents that "All respondents agreed that appropriate conflict management arrangements should be sufficient in most cases to enable a sponsor to act where its group has more than one interest in a transaction." (PS 08/12: "Sponsor regime: a targeted review", p. 12). But even these respondents highlighted the risk that "a principles-based approach in this area is open to abuse for commercial gain".

3 Responses to specific questions

3.1 Protecting investors

Q1: What, if any, changes to the listing rules do you believe may be necessary to provide **additional protection to investors**?

We believe the following measures would provide a minimum level of protection for investors:

- Where companies have large/controlling shareholders, UKLA should require a **double majority** vote (a majority of all eligible shareholders, and a majority of minorities) in favour of **independent directors**.
- A more explicit requirement that **only independent directors are permitted to vote on RPTs**. Currently this is implicit in Listing Rule 11.4 ("the listed company must ensure that the related party: a) Does not vote on the relevant resolution; and b) Takes all reasonable steps to ensure that the related party's associates do not vote on the relevant resolution.") and in Listing Rule 13.6.2 ("For the purposes of a related party circular: 1) any director who is, or an associate of whom is, the related party, or who is a director of the related party should not have taken part in the board's consideration of the matter; 2) the statement should specify that such persons have not taken part in the board's consideration of the matter.").
- Reinstating the listing rule (under Chapter 3) to require companies with controlling shareholders to publish **controlling shareholder agreements** that explicitly state that they are capable of carrying out business independently of large shareholders. UKLA should ensure proper implementation of such agreements, and have the power to sanction companies for any breaches.
- Strengthening UKLA's **free-float (FF) requirement** to 30-40% so that minorities have sufficient voting power to block Special Resolutions (min of 25% vote against required). While we understand that the current FF requirement is set with regard to maintaining a minimum level of market liquidity in a stock, we believe there is no legal barrier to the UKLA setting a higher threshold with a view to protecting minority shareholders. Article 8 of CARD allows for super equivalent requirements to be imposed. In the case of very large listings, transitional arrangements are likely to be necessary to allow companies to reach the minimum threshold in a phased manner. Likewise, for existing members of the premium market with FF below the minimum requirement, transitional arrangements will be necessary.
- Ensuring **meaningful disclosure of RPTs** under LR 11 such that shareholders are fully informed of the economic impact of the proposed transaction for the company concerned in a timely manner and have an accurate understanding of the aggregate volume of transactions with the same related party(ies). Currently, under LR 11 if the aggregated percentage ratios of certain RPTs are less than 5% but one or more is more than 0.25%, a company must provide written confirmation to the FSA that the terms of the latest RPT are "fair and reasonable" as far as the shareholders are concerned and include details of the RPT in the company's next published annual accounts (LR 11.1.10). We have found that disclosures on RPTs that fall into this category are opaque and cannot be meaningfully interpreted or aggregated (please see our letter to Jim Moran dated 3rd October 2011 highlighting difficulties in interpreting ENRC's RPT disclosures).
- **Lengthening the time frame over which RPT are aggregated** to determine whether a shareholder vote is required. We would like to see this period increased from a rolling 12 month

to a rolling 36 month window to discourage gaming by related parties. An example of gaming is where a company splits larger transactions with a related party into smaller transactions completed over a time frame just longer than 12 months to avoid aggregation and thus a shareholder vote.

- **Robust oversight of explanations under the UK's Corporate Governance Code:** Currently the UKLA operates a 'comply or explain' regime under LR 9.8.6 (6), and its Disclosure and Transparency Rule 7.2 sets out the details for the contents of Corporate Governance Statements by listed companies. We would welcome more robust oversight of explanations for non-compliance and, in particular, a system for ensuring that companies with inadequate explanations move to compliance, or provide a satisfactory explanation. The UKLA could consider setting up an investor ombudsman, mediator, or independent panel, to adjudicate. The system should allow for shareholders to report poor disclosure to an independent body, which then conducts an investigation and recommend action/impose sanctions.

3.2 Reverse takeovers

Q2: Do you agree with the proposal to amend the Listing Rules (LR 5.6.2R) to narrow the **reverse takeover exemption** so that it only applies to listed issuers acquiring another listed issuer within the same listing categories?

Yes. It makes sense that all companies in the Primary Market should comply with relevant listing requirements. In the case of a reverse takeover where the (larger) company being taken over is not in the Primary Market, the new entity should have to re-apply for listing and comply with all the relevant requirements.

Q3: Do you agree that the proposed guidance on a fundamental change (LR5.6.5G) contains the key indicators? Do you think there are other factors that should be considered and if so what are they?

These indicators seem reasonable.

Q4: Do you agree with the proposed changes to codify within the Listing Rules (LR5.6) the existing practice to contact the FSA as soon as possible once a takeover is agreed or details of the transaction have leaked, to discuss whether a suspension is appropriate?

Yes.

Q5: Do you agree with the proposal to amend the Listing Rules (at LR5.6) to require an issuer to make an RIS announcement in relation to disclosure requirements, in addition to confirmation from the issuer?

Yes.

Q6: Do you agree with the proposal to amend the Listing Rules (at LR 5.6) to allow a premium listed issuer to have a modification within its track record when undertaking a reverse takeover, without rendering the enlarged group ineligible?

In the case of a reverse takeover where the enlarged group must reapply for listing in the premium market, we believe all eligibility tests should be met by the enlarged group. We cannot see the benefit to investors of exempting the issuer (but not the target) from the requirement of no modification to audit reports.

Q7 Do you agree with the proposal to amend the Listing Rules (LR5.6) to follow the principles of our transfer provisions in the case of issuers acquiring targets which are also listed but in another category?

Yes.

Q8: Do you agree with the proposal to delete LR 10.2.3R allowing an issuer with a premium listing undertaking a reverse takeover, to be treated in certain circumstances as a class 1 transaction?

Yes. We would prefer all reverse takeovers to be treated as such, and the relevant protections for investors applied.

3.3 Sponsors

Q9: Do you support the proposal to amend the Listing Rules (LR 8.2.1R(6)) so that for **smaller related party transactions** a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?

We are broadly supportive of this proposal. While the current rules require confirmation over terms of a transaction from an "independent advisor acceptable to the FSA", this could lead to less accountability of the sponsor. Given the broader oversight of sponsors by the FSA, they have a strong interest in maintaining their credibility and ensuring valuations are reliable. This may not be the case with a third party adviser that does not have an ongoing relationship with the FSA.

It is vital, however, that the proposed change does not in any way reduce the quality of the opinion, and that sponsors' have the requisite skills to provide a proper evaluation of the transaction. In addition, this proposal should not reduce directors' responsibility to ensure RPTs are fair and reasonable for the company.

We would also like such disclosures to the FSA to be made available to shareholders.

Q10: Do you support the proposal to amend the Listing Rules (LR 8.2.1R(7)) so that for **Related Party Circulars** a premium listed company is required to appoint a sponsor for the purpose of providing the FSA with confirmation that the terms of the proposed transaction are 'fair and reasonable' as far as shareholders are concerned?

Broadly – see reasoning above.

Q16: Do you support the proposal to amend the Listing Rules in respect of the **definition of sponsor services to include all sponsor communications** with the FSA in connection with the sponsor service?

Yes – this is a key building block under the FSA's effort to clarify and extend the sponsors' standard of care, which we support.

Q17: Do you support the proposal to amend the Listing Rules (LR8.3.1R(1A)) so that a **sponsor is required to provide any explanation or confirmation** as the FSA reasonably requires for the purposes of ensuring that the Listing Rules are being complied with by an applicant or listed company?

Yes

Q18: Do you support the proposed amendments to the Listing Rules (LR8.3.1AR) in relation to **sponsor communications and standard of care**?

Yes. It is absolutely vital that sponsors are held responsible for providing full and reliable information to the FSA/shareholders, and that their compliance with these rules is unencumbered by potential commercial interests with listed entities.

Q19: Do you support the proposed amendments to the Listing Rules (LR 8.3.2AG) in relation to sponsor communications that seek to reinforce the responsibility of the sponsor for communications with the UKLA, in instances where a sponsor relies on representations made by the listed company or applicant or a third party?

Yes.

Q20: Do you support the proposal to amend the Listing Rules (LR 8.3.5BR) to introduce a Principle of Integrity for sponsors?

Yes

Q21: Do you support the proposal to amend the Listing Rules (LR8.3) to clarify that a sponsor must, as part of its ongoing conflicts checking procedures, take all reasonable steps to identify conflicts that could adversely affect its ability to perform its functions under LR8?

We strong agree with this proposal, but would like to see greater clarity as to what action the sponsor is expected to take to manage the conflicts it is necessarily exposed to. Also, greater clarity may be required as to when the sponsor must decide to give up a particular client relationship due to excessive conflicts.

Q22: Do you support the proposal to amend the Listing Rules (LR8.6.16) so that sponsors are required to retain accessible records which are sufficient to demonstrate the basis on which sponsor services have been provided?

Yes

Q23: Do you agree with the proposal to amend the Listing Rules (LR 8.7.8) so that sponsors are required to notify the FSA of matters that would be relevant to the FSA in respect to: market confidence; reorganisations; and, ongoing approval as sponsor?

Yes

Q24: Do you support the proposal to amend the Listing Rules (LR 8.7.21AG) so that sponsors are required to submit a cancellation request in the event that they are unable to provide the requisite assurance of ongoing eligibility?

Yes

Q25: Do you support the proposal to amend the Listing Rules (LR8.7 and LR 8.3.13G) so that sponsors are no longer required to submit Conflicts Declarations?

No. We believe these Conflicts Declarations provide an important concrete reminder that sponsors have done a conflict check.

Q26: Do you support the proposal to amend the Listing Rules (LR8.6.17R and LR 8.7.8R(9)) so that sponsors are no longer required to carry out regular reviews?

No. We believe it is important that Sponsors have explicit and regular reviews.

Q27: Do you support the proposal to amend the Listing Rules (LR8.6.5R) to introduce a specific **obligation on premium listed companies** and applicants to co-operate with their sponsor to enable the sponsor to discharge its obligations to the FSA?

Yes

3.4 Transactions

Q29: Do you support the proposal to remove reference to 'revenue nature' from LR 10.1.3R (3) and LR 11.1.5R of the Listing Rules?

We are generally supportive that more information/disclosure on RPTs is better for shareholders. However, we have a concern that there may be unintended consequences for large companies who regularly deal across their subsidiaries (e.g. holding companies, big mining, financial firms), without much benefit for shareholders. We would welcome more information on these potential impacts.

Q30: Do you support the proposal to amend the Listing Rules to dispense with the notification requirements for class 3 transactions by deleting LR 10.3 from the Listing rules?

Information published years after the event is likely to be immaterial to shareholders. However, we would support additional information regarding the aggregation of class 3 transactions over a longer-time frame. Therefore, we would only be able to support this proposal if the information about the transactions can be disclosed (in aggregation over a rolling three years) at ongoing regular periods (e.g. in the annual report). The disclosure should include details of the transactions and who has been involved in these actions and specifically highlighting where directors, or a directors interest, is the counterparty.

Q31: Do you agree that the proposed guidance on operation of our proposed new definition of **break fee arrangements** (LR10.2.6 and LR10.2.7) provides sufficient direction?

Yes, we agree with the new definition of 'break fee arrangement' with regard to the time scale and aggregation of payments. This captures any arrangement which is longer than one spot payment and would be beneficial in protecting shareholder rights. However, we have concerns that providing examples of arrangements which have a 'commercial rationale' would allow break fee arrangements to be structured in a certain way to be exempt from the new requirements.

Q32: Do you support the proposal to amend the Listing Rules (LR 10.5.2, LR10.5.4 and LR 11.1.7) to require premium listed companies to send a **supplementary circular** to shareholders in the event a significant change or a significant new matter is considered to constitute necessary information?

Yes. We support the additional circular, but shareholders will require sufficient time to receive and then act on the new information (see Q 37).

Q33: Do you support the proposal to remove the reference to **'revenue nature'** from LR 11.1.5R of the Listing Rules?

See Q 29 above.

Q34: Do you support our proposals in relation to **directors' indemnities** and similar arrangements (LR10 and LR11)?

No. Loans to directors are still a RPT, even if part of an indemnity agreement. If the indemnity is underwritten by the company, it would be most unusual for the costs of the indemnity to exceed the Class 1 thresholds. In these situations, a shareholder vote would be appropriate.

Q35: Do you agree with the proposed amendments to the Listing Rules (LR12.2, LR12.4 and LR13.7) in relation to the **purchase of own equity shares**?

While this proposal will remove the limit of buying back up to 15% of shares, any share buyback will still be subject to a shareholder vote. We have concerns that this could open the door for companies to consolidate control, and would welcome further evidence of the benefits.

Q36: Do you agree with the 0.5% threshold proposal (LR12.6.4R) requiring companies to announce any issue, sale or cancellation of treasury shares under an employee share scheme over 0.5% of a company's issued share capital (excluding treasury shares)?

We are supportive of the proposal to establish a 0.5% threshold for announcing issue/sale or cancellation of treasury shares. However we believe that an RIS announcement should be made where an aggregate 0.5% threshold has been reached through a series of issuances/ sales/ cancellations of treasury shares.

Q37: Do you support the proposal to amend the Listing Rules (LR13.1 and LR13.2) so that the **circular must be posted to shareholders** as soon as it has been approved and our proposals to require circulars to be sent to shareholders no later than seven days before the date of a meeting?

No. We believe a 7 day minimum is too short to ensure sufficient time for the documentation to be circulated down the investment chain to the beneficial owner who is making that decision. EGM

documentation is required to be sent out 14 days ahead of the meeting, and we propose that a 14 day minimum is also adopted here.

3.5 Financial Information

Q 41: Do you support the proposal to amend the Listing Rules (LR6.1.3R (1)(b)) to limit the date of admission of the securities to listing to a date not more than 3 months after the date of the prospectus?

We do not support this proposal since it could shorten the IPO process. We believe instead that the company should be required to issue a new set of accounts 12 months after the last audited financial statements.

We also believe there is merit in considering a staged entry of all IPOs into the premium market, whereby companies wishing to list in London are first admitted into the Standard Market for a period of not less than 12 months before seeking entry into the Premium Market.

Q48: Do you agree with the proposed new guidance in the Listing Rules (LR 6.1.20AG) clarifying that holdings of individual fund managers in an organisation will be treated separately, provided investment decisions with regard to the acquisition of shares are made independently?

We do not support the proposal to treat different portfolio managers within the same asset management firm separately for the purposes of calculating shares in public hands (i.e. free-float). Although the buy and sell decisions may be taken by different individuals, there may be a 'house' view on corporate actions, M&A and the voting policy applied to the aggregate holding. Furthermore, we believe this rules change could offer a loophole for those holding larger stakes to ensure their holdings are counted as free-float.

Q49: Do you agree with the proposed new guidance in the Listing Rules (LR6.1.20BG) explaining that we consider that financial instruments that give a long economic exposure to shares, but do not control the buy/sell decision in respect of the shares, should not normally count as an interest for the purpose of the public hands threshold?

Yes.

Q51: Do you agree with the proposed amendments (LR13.4.7G) to the requirements for class 1 acquisitions of mineral assets?

We are not in favour of this proposal, since we believe the 'independent competent persons' (ICP aka Mineral Expert) report provides an important check for asset valuation. This is in turn critical for justifying a proposed transaction to shareholders and, therefore, it is particularly important to fulfill directors' responsibilities. It is also unclear how the FSA will make the decision that information provided by the ICP will not be 'significant additional information'.

Q52: Do you agree with the proposed amendments to the Listing Rules (LR 13.5), which detail the

acceptable treatment for entities that have been or will be equity accounted or treated as an investment in the accounts of the listed issuer?

If the carve-out were allowed, we would like to see a clear statement of the differences between the issuer's accounting policies and those of an unconsolidated target.

Q53: Do you support the proposal to amend the Listing Rules (LR 13.5.3CR) so that, where financial information is required but cannot be provided in the appropriate form, a valuation report should be included in the class 1 circular?

Yes.

Q54: Do you find helpful the proposal to clarify in the Listing Rules (LR13.5.4R(2)) the exceptions to the rule that financial information in a class 1 circular must be prepared according to the accounting policies adopted in the issuer's latest annual consolidated accounts?

Where exceptions are permitted, we would like to see a clear statement of the differences between the issuer's accounting policies and those of an unconsolidated target.

Q55: Do you support the proposal to amend the Listing Rules (LR13.5.9AR) so that listed issuers are required to make specific disclosures in respect of synergy benefits?

Yes.

Q57: Do you support the proposed amendments to the Listing Rules (LR13.5.21R) to require financial information tables to detail the accounting policies used and that the accountant's opinion need only state that the table gives a true and fair view?

Yes.

Q66: Do you agree with our proposal to delete LR 13.5.35G so that the requirements for profit forecasts are extended to class 1 disposals?

Yes.

3.6 Externally managed companies

Q67: Do you support the proposals to amend the Prospectus rules (PR 5.5.3) and the Disclosure rules and Transparency rules (DTR 3.1) to ensure the principals of the advisory firm are responsible (in addition to the company and its directors) for any prospectus the company publishes in the UK and to clarify that they are subject to transparency rules in their share dealings?

Yes. We strongly support UKLA's moves to ensure proper oversight and disclosure at companies that have effectively outsourced the executive/strategic decision making to an offshore "advisory company".

Q68: Do you support the proposals to amend the Listing Rules (LR6.1) so that commercial companies

featuring this structure do not qualify for the premium listing accreditation?

Yes. We believe such a corporate structure undermines shareholder protection and should be prohibited for all companies in the Premium market.

While we believe this rule change should apply to existing members of the Premium market as well as new entrants, we have concerns that investors will be harmed by high break fees / charges associated with the ending of current contractual relationships between the listed entity and the management company (e.g. Resolution Ltd). An example of where shareholders have experienced such damage in the past is provided by London and Stamford Property (see Box below).

Box 2: The case of London & Stamford Property (LSP)

LSI Management (LSI) managed two contracts, LSP and LSPG (of which LSP held a 31.4% stake). LSP was formed in Oct 2007, listed in November 2007 on AIM, and raised additional equity in July 2009. It is Guernsey incorporated, with a board consisting only of non-executive directors. LSP had a fee arrangement with LSI with a base fee of 1.75% of NAV and a performance fee of 10% of the amount above a 10% IRR.

Cost of internalising management fee

In August 2010 LSP announced it was looking to internalise management by acquiring LSI for £55million. The acquisition was funded by a share issue of 45.795m, representing 9.2% of share capital. Provisions were added to align shareholders and management including a three year lock-up period and a clawback provision for £10m of the cost. We considered the cost of terminating the management agreement to be particularly high and highlighted the detrimental nature of such management contracts.