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14 April 2020

By email

Complaint to the Financial Conduct Authority

Your ref

Our ref

SJB/2625.4

For the urgent attention of: Chairman, Charles Randell -
charles.randell@fca.org.uk

Dear Sirs

easyJet PLC - Compliance with Listing Rules and Related Market Conduct

1. We act for Sir Stelios Haji-Ioannou (SHI), and easyGroup Holdings Limited (together "**our clients**"). SHI is the founder of easyJet PLC (the Company), and the chairman of easyGroup, which represents approximately 34% of the shares in the Company. The shares are held through various nominees including UBS Private Banking Nominees Limited and Vidacos Nominees Limited. easyGroup and members of SHI's family together are by some distance the largest single shareholder block in the Company.
2. Our clients consider that the Company has not and is not complying with its obligations under Article 17 of the Market Abuse Regulation or under the Listing Rules. The Company has a premium listing and is to be expected to comply with the highest standards of disclosure and transparency. It has not done so. The Company has not complied with its duty to present accurate and timely information to investors and has not complied with its duty to obtain shareholder approval in relation to its recent arrangement with Airbus to defer (but not cancel) delivery of new aircraft.
3. On 9th April 2020 the Company made a Regulatory News Service announcement indicating its intention to defer the purchase of certain aircraft from Airbus. The announcement is vague and incomplete and gives little meaningful indication of the obligations being deferred, the legal basis of the deferral, or the financial consequences. The Company is part of the FTSE 100 and has skilled and expert advisers. The omissions in the announcement are, it is clear, no accident. The announcement states:

"... easyJet has reached agreement with Airbus for the net deferral of 24 aircraft deliveries from Financial Years 2020, 2021, and 2022.

This will mean that versus our previously disclosed fleet plan the following aircraft deliveries will be deferred



- 10 aircraft deliveries in FY20;
- 12 aircraft deliveries in FY21; and
- 2 aircraft deliveries in FY22

As a result, in FY21 the airline will take no aircraft deliveries and retains the option to defer a further 5 deliveries in FY22. Exact dates of future deliveries of the deferred aircraft are to be agreed in response to the demand environment.”

4. In particular:
 - 4.1 There is no statement of how many aircraft deliveries will proceed in FY2020. Given the global COVID-19 pandemic, the grounding of the Company's entire fleet and loss of all its revenue, this is critical information, without which the actual deferral decision is impossible to understand. There is a vague reference to *“our previously disclosed fleet plan”* without any indication as to which plan is being referred to. We are not aware of any clear statement as to how many deliveries will now proceed.
 - 4.2 The financial effect of the deferral is entirely unexplained. In particular, there is no explanation of the financial consequences in FY2020 (i.e. the current financial year) which is likely to be the critical year in which there is little or no revenue generated from a large fleet for a substantial part of the year, if not longer. What payments will be made this year to acquire non-deferred aircraft? What will the consequences of such payments be on the Company's ability to meet its obligations as they fall due and its covenants? What will the effect be of the non-deferral of purchases in the current financial year on the Company's cash flow?
 - 4.3 The only explanation as to the consequence of the transaction is a comment from the CEO that there will be a *“significant boost to our cash flow and a vast reduction to our near-term capex programme”*. This is an entirely generic and inadequate statement to enable a shareholder to understand the financial effect of the deferral transaction.
 - 4.4 The legal basis of the deferral is entirely unexplained. Is the deferral pursuant to the terms of the existing contractual arrangements with Airbus, the result of a renegotiation with the agreement of Airbus or as a result of exercising legal rights as a result of the force majeure or frustration event of COVID-19?
5. It is important to put this exiguous announcement in the context of the Company's current trading position.
6. On 30 March 2020 the Company announced it has *“fully grounded its entire fleet of aircraft”* and therefore has no means of earning any revenues. The Company's fixed costs derive from its very large fleet of expensive aircraft. Those costs remain.
7. Our clients understand that the Company is committed to purchase 107 new aircraft from Airbus over the next 3 years at a cost which SHI believes to be approximately £4.5 billion once the costs of engines and other ancillary arrangements are included . The Company has refused to state the actual figure, so that shareholders can make a proper assessment of the cash flows and obligations of the Company. This number is calculated by adding the 4 bars in the bar chart found on page 14 of the 2019 results presentation titled *“Gross Capital Cashflows”*. Importantly, the outgoing cashflows in FY20 were projected to be higher than in any other year (£1.35 billion). Accordingly, the studied ambiguity of the RNS announcement as to what orders for FY20 have been deferred and what will still be delivered (and the associated costs and payments) is particularly troubling.
8. The Company also announced on 6th of April 2020 that it had agreed a loan of £600m from the UK Government which is repayable in March 2021. It is wholly unclear what the Company intends to do with this loan, especially in light of the purchase deferral which has been announced. Our clients are concerned that in fact a substantial portion of this loan will in practice be used to pay



Airbus for delivery of expensive aircraft in FY2020 which will be unprofitable for the Company, earn no revenues and hence the Company will not be able to repay the UK taxpayer.

9. Most European countries in which the Company operates have closed their borders to foreign nationals. There is no current understanding of when national borders will open again nor how airlines will be permitted to operate observing social distancing rules and pre-flight health checks. A return to flying is not the same as being profitable as the US experience after 9/11 has shown that even a 4 day grounding and the fear of flying it creates meant loss making operations for three years thereafter. SHI considers it inevitable that in light of the very serious financial crisis which the global economy will endure as a result of the Coronavirus pandemic, airline passenger revenues will be dramatically depressed for the foreseeable future.

Breach of Article 17 of the Market Abuse Regulation

10. Article 17 of the Market Abuse Regulation provides that “*an issuer shall inform the public as soon as possible of inside information which directly concerns that issuer*”. Public disclosure may be delayed (but never avoided altogether) where three conditions are all met. First, immediate disclosure must be likely to prejudice the legitimate interests of the issuer. Secondly, delay of disclosure must not be likely to mislead the public. Thirdly, the issuer must be able to ensure the confidentiality of the information (Article 17(4)). ESMA has issued guidance on delay under Article 17(11).
11. FCA DTR 2.2G provides guidance as to the concept of inside information. It is information which would be likely to have a significant effect on the price of financial instruments, such as the Company’s shares. The information identified in paragraph 4 above is plainly in that category. The above information is crucial for a reasonable investor to be able to understand the liabilities of the Company, its expected cash flow and performance, its financial condition and information previously disclosed to the market about its fleet planning. The deferral of the orders and the financial consequences of the deferral is also obviously a major new development in the business of the Company, at a time of unparalleled global crisis.
12. The information set out at paragraph 4 above is all available to the Company and constitutes insider information. It should be immediately and publicly disclosed. There is no reason for any delay now that the relevant deferral arrangement has been made public and is known to Airbus. Such information, especially about the plans for FY2020 and the costs of those plans are urgent and critical information for shareholders to be able to assess the financial condition of the company and its value and prospects and what, if any, action shareholders may need to take to ensure the survival of the Company.

Breach of the Listing Rules

13. The Company holds a premium listing on the London Stock Exchange, and is therefore required to comply with the provisions of LR10, which impose additional requirements for shareholder information and approval.
14. It appears to our clients that the deferral transaction announced on 9 April is a Class 1 transaction requiring the approval of the shareholders and, in any event is a Class 2 transaction requiring notification of detailed financial information to shareholders. Neither has been done.
15. It is plainly the case that the Company’s obligations to acquire new aircraft are, because of their scale, outside the ordinary course of business and are therefore within the scope of LR10. The decision to enter into a deferral transaction was taken in light of the extraordinary grounding of the entire easyJet fleet in response to the COVID-19 pandemic. This is not a routine or ordinary business matter, and was undertaken in order to defer capital expenditure and thus assist with the survival of the Company. Further, the original decision to purchase aircraft in 2013 was recognised by the Company to be a Class 1 transaction, was disclosed by way of a circular and was voted on by shareholders.



16. The legal basis of the deferral of the aircraft purchases is not known. It may be the exercise of an existing contractual deferral option (and is therefore within LR10.1.3(2)) or an amendment to the existing contractual arrangements (under LR10.1.3). In either case, LR 10 applies.
17. To determine the effect of LR10 it is necessary to classify the transaction by using the percentage ratios under the class tests in LR10 Annex 1 (LR10.2.1G). A transaction is a Class 1 transaction where any percentage ratio is 25% or more. A Class 2 transaction is one where any percentage ratio is 5% or more but each is less than 25%.
18. As at 30 September 2019 the Company's operating fleet was shown in the annual results presentation to be 331 aircraft and according to the fleet plan on page 13 it was scheduled to be 352 aircraft by 30 September 2020. The 9 April 2020 announcement involved a deferral in deliveries of 24 aircraft. As the CEO, Johan Lundgren, is quoted as saying that the deferral will provide "*a significant boost to the Company's cashflow and a vast reduction to the Company's near term capex programme*".
19. On 10 April 2020, The Times reported that "*EasyJet has deferred delivery of nearly a quarter of the 107 new planes it has on order with Airbus*", thus confirming our clients' understanding of the Company's current obligations to Airbus in terms of aircraft numbers.
20. Although not all of the financial information is available, it is clear that the Consideration Test (LR Annex 1) is met. The closing price of the ordinary shares in the Company on 8 April 2020 was 646p. 397.21m shares were outstanding on that date. The market capitalisation of the Company on the relevant date was therefore £2.565 billion. The consideration for the transaction for deferred purchase of the aircraft is not known (the Company and Airbus continue to keep secret the actual price paid for aircraft). But the list price of the aircraft was (in the 2013 circular to shareholders) US\$92.3 million. This is the maximum total consideration payable under the agreement (any discount is in the form of credits against future purchases) (Annex 1, paragraph 5R(2)(c)). The list price has since increased, but for simplicity the 2013 list price is adopted. This is £72.61 million at current exchange rates per aircraft. The value of the deferred consideration is therefore in excess of £1.742 billion at list price for 24 aircraft, or 67.9% of the Company's market capitalisation. We do not accept that any discount in the form of credits to the list price is relevant under the terms of Annex 1, but even if a discount of over 60% to list price was obtained by the Company (which is inconceivable), the Class 1 test is still met. On any view, the Class 2 test is plainly met.
21. We also consider it likely that the Gross Assets and Gross Profits test is met, but do not have sufficient information to perform the relevant calculations at present.
22. Accordingly, the Company is required to produce a circular and to seek shareholder approval for the deferral transaction and comply with the requirements of Class 2 in any event (LR 10.5.1(1)R). The Company has done neither. In particular, it has not complied with any of the Class 2 requirements, including proper disclosure of the consideration, the value of the gross assets deferred, and the profits attributable to the transaction (LR 10.4.1R).

Next steps

23. As you will appreciate, the matters raised in this letter are important and urgent. In light of which, we have also provided a copy to the Company and will make this letter public.
24. We invite the FCA to confirm that it will promptly take steps to require the Company to comply with its obligations under the Market Abuse Regulation and the Listing Rules. We invite the FCA to provide this confirmation before 16 April 2020.
25. The information that must now be made public, for the benefit of all investors, potential investors and bond holders, includes the value and therefore cashflow impact of the deferrals, together with a clear statement as to the intended purchases in the current financial year and the outstanding obligations to Airbus notwithstanding the deferrals disclosed. The alleged



confidentiality of pricing of aircraft purchases from Airbus is not a reason for non-disclosure. When dealing with a publicly listed company with market obligations, in particular under the listing rules, a counterparty must accept some limitations on their right to commercial confidentiality. In the light of Airbus' recent Deferred Prosecution Agreement with the Serious Fraud Office for bribery of multiple airline companies, the fullest transparency is required by any airline in their dealings with Airbus. All of our client's rights in this regard are fully reserved.

26. Finally, a full understanding of the financial impact of the Company's deferral agreement with Airbus is necessary in order for the FCA to apply the gross assets and gross profits test under Annex 1 of the Listing Rules and to police whether shareholder approval is required ahead of that deferral transaction.

Yours faithfully

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