

Anne Masacorale  
Primary Market Policy  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

Submitted by email: [cp13-15@fca.org.uk](mailto:cp13-15@fca.org.uk)

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Dear Ms Masacorale

**ICSA response to FCA Consultation Paper CP13/15: Feedback on CP12/25  
Enhancing the effectiveness of the Listing Regime and further consultation.**

We welcome the opportunity to respond to your Consultation Paper CP13/15 - enhancing the effectiveness of the Listing Regime, and further consultation.

In preparing our response we have consulted, amongst others, with members of the ICSA Company Secretaries Forum, which includes company secretaries from more than 30 large UK listed companies from the FTSE100 and FTSE250. However, the views expressed in this response are not necessarily those of any individual members of the ICSA Company Secretaries Forum nor of the companies they represent.

**A. General Comments**

We set out below our responses to the specific questions set in consultation CP13/15. We are aware that other areas of the original consultation CP12/25 are no longer subject to further consideration; however, we would highlight that serious concerns remain around some of the practicalities of implementing the proposal for the election of independent directors by two rounds of voting, as set out in LR 6.1.4ER(3), LR 9.2.2ER and LR 9.2.2FR. The ICSA's Registrars Group is seeking to discuss some of these practical issues with the FCA, and we hope that a workable solution to these issues can be found.

## **B. Responses to specific questions**

### **Independent business**

#### **Q1: Proposed definition of a ‘controlling shareholder’**

Yes. We agree with the proposal to amend the definition of a ‘controlling shareholder’, to correspond largely with that used in LR 11.1.4AR. We also agree with the differences set out under paragraph 4.4 a – d of the consultation document: that the threshold should be 30%; the concept of ‘acting in concert’ should be added; that the scope be narrower and focus on premium listed shares; and a requirement to consider associates. However, we would add that we have concerns about the practicalities of identifying exactly where on the register of shareholders the controlling shareholders appear. We note that the ICSA Registrars Group has been engaging with the FCA and responded in some detail on these issues. We support the points that they have made, especially the need for the FCA to require that such shares be held in a discrete, identifiable account on the register (ie not in a pooled nominee account) and that details of this account be reported to the issuer.

#### **Q2: Do you agree with our proposal to amend the definition of an ‘associate’?**

Yes. We agree with the proposed amendment to the definition of an associate which will require identification of associates as part of deciding whether a controlling shareholder exists and widen the definition of associate.

#### **Q3: Do you agree with our amended proposals relating to the circumstances for imposition of the enhanced oversight measures and the consequences of their imposition?**

Yes. We agree with the amended proposals for more extensive oversight over related party transactions in certain circumstances, as set out in paragraphs 4.22 and 4.23 of the consultation document. We also agree that the consequences of these enhanced oversight measures are proportionate and appropriate.

#### **Q4: Do you agree with the proposed guidance on in LR 11.1.1DG?**

Yes. We support the proposed guidance set out in LR 11.1.1DG.

#### **Q5: Do you agree with the proposed guidance in LR 11.1.1BG?**

Yes. We welcome the inclusion of the proposed guidance set out in LR 11.1.1BG.

#### **Q6: Duration of enhanced oversight measures: LR 11.1.1ER?**

Yes. We agree that it is appropriate for the enhanced oversight by minority shareholders to continue to apply until a clean statement has been made in an annual report and the report does not contain a statement that an independent director disagrees with the board assessment.

**Q7: Transitional provisions: LR TR11 s1 and LR 9.2.2BR(1)?**

Yes. We agree with the proposals for a transitional period of six months for existing premium listed companies with a controlling shareholder. We also agree that a six-month transitional period should apply in circumstances where a controlling shareholder emerges at a premium listed company that is not currently controlled (LR 9.2.2BR(1)). We agree that no grace period should apply in relation to new applicants for premium listing.

**Q8: Do you agree with our proposals to impose an obligation to make a statement as reflected in draft LR 9.8.4R(14) and the associated notification obligation in draft LR 9.2.25R?**

Yes. We support the proposals that require boards to make a statement in the annual report on compliance with the independence provisions of an agreement with a controlling shareholder. We also support the notification obligation in the event of a breach.

**Q9: Do you agree with our proposals to require a statement in the annual report where an independent director has declined to support the statement of compliance by the board in LR 9.8.4AR and notification obligation in LR 9.2.26R?**

Yes. We support the further enhancement of LR 9.8.4AR requiring disclosure in the annual report where an independent director declines to support a board's statement of compliance. We also support the proposal to include an obligation under LR 9.2.26R that the company must notify the FCA of such a statement without delay.

**Independent directors**

**Q10: Do you agree with our proposal to require disclosure in circulars relating to the election of independent directors?**

Yes. We agree with the proposal to require disclosure in circulars relating to the election of independent directors.

**Q11: Do you agree with our proposals that this area should be limited to commercial companies with a controlling shareholder?**

Yes, but we see no harm in this proposal being applied to all premium listed companies, regardless of whether or not there is a controlling shareholder. As identified in paragraph 6.11 of the consultation document, all premium listed companies are subject to the Principles of the UK Corporate Governance Code and, therefore, should not find this requirement onerous.

**Q12: Do you agree with our proposal to include specific disclosure requirements under LR 13.8.17R(i) and (ii)? Are there other requirements we should consider?**

Yes. We agree with the proposal that there be an additional requirement for premium listed companies to disclose previous or existing relationships or agreements with a proposed independent director. We also support the requirement for specific

disclosures under LR 13.8.17R(ii) which also appear to be no more onerous than those set out in the Code provisions quoted in the consultation document.

We do not think there are any additional disclosures necessary.

**Q13: Transitional provisions: LR TR11 and LR 9.2.2BR(2)?**

Yes, with some reservations. We agree with the proposal that transitional provisions such that LR 6.1.4BR(2) will not apply until the next general meeting for which notice has not yet been prepared rather than given. We also agree with a similar grace period for the dual election process and where a controlling shareholder emerges at a premium listed company. Our point here is that there is a period prior to the date when notice of a meeting is given during which it would be unreasonable to expect a company to make the necessary amendments. We would suggest that there should be a period of at least six months before this provision becomes effective in order to cater for a company that has all its meeting papers ready to post, but the posting date is not until after the implementation date. This would bring the timescale in line with that for the requirement for a relationship agreement. An alternative form of wording might be “LR 6.1.4BR(2) will not apply until three months after the effective date, or until the next general meeting for which notice has not yet been given, whichever is the later.”

We believe that the FCA should also make it clear that this transitional provision does not run only from implementation, but also from any future time when the company becomes aware of a controlling shareholder. For example, it might be in five years time that a company is notified of a controlling shareholding, and although the articles may have been changed, that notification may come shortly before notice of the next meeting is given.

**Shares in public hands**

**Q14: Do you support the replacement of LR 6.1.20G with LR 6.1.20AG (free float requirement)?**

Yes. We agree that both the number and the nature of shareholders is important when considering the liquidity of shares and we support the three specific criteria to be taken into account, in addition to the percentage level of free float.

**Q15: Do you agree that the provisions being introduced for the premium segment should also be introduced for shares listed on the standard segment (LR 14) and GDRs (LR 18), including consequential amendments to ‘group’ definition?**

Yes. We agree that the reasons for introducing the provisions for the calculation of free float and shares in public hands are also valid for standard listed companies and Global Depositary Receipts, and we therefore support the similar provisions proposed for LR 14 and LR 18. We also support the clarification that the definition of a ‘group’ is as set out in s421 FSMA.

## **Continuing obligations**

### **Q16: Do you agree with our proposal to allow existing premium listed companies two years to comply with LR 9.2.22R?**

Yes. We agree a two-year transitional period is sufficient for premium listed companies that also have share classes that are not premium listed to comply with LR 9.2.22R.

### **Q17: Do you agree with the transitional provisions relating to annual report disclosure?**

Yes. We agree that it is appropriate to allow a transitional period for listed companies to comply with the requirements in LR 9.8.4CR. We agree that the requirements should be applicable to listed companies with accounting periods ending at least three months after the date of implementation of this listing rule.

### **Q18: Do you agree with our proposal regarding details of contracts of significance or for providing services between a listed company and a controlling shareholder?**

Yes. We agree with the proposal to amend LR 9.8.4R(10) and (11) to ensure all references to the controlling shareholder refer to the controlling shareholder as a defined term.

### **Q19: Do you agree with our proposals for the treatment of smaller related party transactions?**

Yes. We agree with the proposal to require immediate announcements of smaller related party transactions via an RIS (rather than in the next annual report), and we therefore support the deletion of LR 9.8.4R(3). We also agree with the addition of LR 11.1.10R(2)(c) requiring the RIS announcement to include identification of the related party; the value of consideration; a brief description of the transaction; and the fact that it fell within LR11.1.10R.

We support the proposal that LR11.1.10R(2)(a) be deleted and that LR 11.1.10R(2)(b) be amended to enable the FCA to cease pre-vetting documents in connection with such transactions and focus on providing guidance on the application of the rules in this area.

## **The Listing Principles**

### **Q20: Do you agree that the consequential changes to LR 7 and DEPP 6 are appropriate?**

Yes. We agree with the proposed consequential changes to LR 7.1.2G – LR 7.1.4G, setting out the purpose of the Listing Principles and expanding the scope of the guidance to introduce new Premium Listing Principles. We also support similar amendments to the Decision Procedure and Penalties Manual (DEPP 6.2.16G, 6.2.17G and 6.2.18G) to clarify the Listing Principles applicable to all companies and those that apply to premium listed companies only.

## **Cancellation of listing**

### **Q21: Do you agree with Option 1 (approval by independent shareholders) or Option 2 (retain existing requirements)?**

We agree that it is necessary to enhance shareholder protection in circumstances where a 75% majority is in favour of cancellation of listing, but there is a controlling shareholder present. However, we believe that the current arrangements give adequate flexibility and protection for independent shareholders and, given the additional complexity and cost of the new dual voting arrangements we do not believe that they will add value to the process for cancelling a Premium Listing. We therefore support Option 2.

### **Q22: Have we set the 80% threshold in LR 5.2.11DR at the appropriate level?**

Yes. We agree that a threshold of 80% is appropriate in the circumstances set out in LR 5.2.11DR.

We hope our comments are useful and if you would like to discuss any comment in more details, please contact me.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Swabey', written in a cursive style.

Peter Swabey  
Policy & Research Director