The Governance Institute

ICSA: The Governance Institute

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Dear Sirs

ICSA response to CP17/21 Proposal to create a new premium listing category for sovereign controlled companies

We welcome the opportunity to comment on the consultation CP17/21 Proposal to create a new premium listing category for sovereign controlled companies.

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and are required by our Royal Charter to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance. ICSA is the professional body that qualifies Chartered Secretaries, which includes company secretaries, many of whom work in listed companies. Company secretaries have a key role in advising companies and their Boards on their compliance with the Listing Rules and our members are therefore well placed to understand the proposed enhancements to the Listing Regime set out in your consultation.

We set out below some general comments followed by our views on the specific questions set out in the consultation document.

1. General comments

We support the Financial Conduct Authority's aspiration, stated on page 4 of the consultation document, "to ensure that the UK's investment markets work well and that the regulatory protections for investors at the core of the listing regime are well targeted. These protections should apply where they are required to uphold the integrity of UK capital markets and protect their users". Unfortunately, we are not persuaded that the proposal under consideration achieves this laudable aim. We understand the desire to make "UK markets more accessible to sovereign controlled companies "and more attractive to them, but we are concerned that the proposals do not maintain the appropriate level of protection for investors.

The UK has, rightly, a worldwide reputation for the quality and integrity of our financial markets, our regulation and our standards of corporate governance. The latter, in particular, are widely seen to be world-leading. These standards and the integrity of the UK market are both a competitive advantage and a powerful point of differentiation in favour of our growth and competitiveness. We dilute them at our peril.

One of the most important aspects of our market integrity is that of investor protection – notably around minority shareholder rights and the ability of minority investors to hold to the fire the feet of a majority investor seeking to take advantage of his, her or its position to advance their interests rather than those of investors as a whole. Key to these protections are the related party rules and the controlling shareholder rules and it is exactly those rules which it is proposed to disapply. It is our view that the circumstances of sovereign controlled companies are exactly those in which these rules are potentially most likely to be needed. We believe that sovereign controlled companies should be subject to the same rules as any other company.

One final point which we believe is important here, but which we believe should also apply to premium listings: those companies which have a controlling shareholder should be disbarred from inclusion in the major investable indices. This is because an investor will usually have a choice as to whether to force management change or disinvest. Where there is a controlling shareholder, the option of forcing management change is not open to investors – you have only to look at the recent press coverage of the situation at Sports Direct plc to see that. However, where that company is included in a major investable index, for example the FTSE 350, investors will, if they are passively managed, be unlikely to have the option to disinvest.

2. Specific questions set out in the consultation

Q1: Do you agree with the overall proposal outlined in this paper of creating a premium listing category for sovereign controlled companies?
No, we see no benefit from exempting these companies from the normal rules of premium listing.

Q2: Do you agree that the changes proposed are best effected through the addition of a new listing category?
No. We do not agree that the changes proposed should be effected in this way or at all. However, should the FCA insist on proceeding, then a separate listing category will, at least, reduce the degree to which other listing categories are dragged into disrepute.

Q3: Do you agree that the threshold for control should be set at 30%?
As above, if the FCA insists on proceeding with this proposal, 30% is, at least, a familiar threshold in UK regulation.

Q4: Do you agree that eligibility for the new category should not be restricted on grounds of national identity of the controlling shareholder? Do you agree that it should also not be restricted on grounds of country of incorporation of the company?
No. We believe that it should be possible for the FCA to set different, more stringent requirements depending on the country of incorporation of the company concerned.

Q5: Do you agree that independent shareholder approval should be required for a transfer from an existing premium listing into the new category?
Yes – with a 75% majority of independent shareholders.

Q6: Do you agree that the sovereign controlling shareholder should not be considered a related party for the purposes of the Listing Rules?
No – absolutely not. The rules surrounding related party transactions are a fundamental investor protection and should not be compromised, not least as the presence of a majority shareholder is exactly the circumstance in which they are most likely to be needed.

Q7: Do you agree that MAR-mandated disclosures are sufficient to secure the necessary at-the-time transparency?
No.

Q8: Do you agree that controlling shareholder provisions should not apply in respect of the sovereign controlling shareholder for companies listed in this category?
No – absolutely not. The controlling shareholder provisions are a fundamental investor protection and should not be compromised. Where the controlling shareholder is a sovereign state they are even more necessary as there is an increased likelihood that the interests of the sovereign state may differ from those of minority investors.

Q9: Do you agree that DRs over equity shares should be eligible for this category?
No – they should be obliged to take a premium or standard listing. Whilst we understand that you are proposing that all premium listing rules would apply to DRs in this new category, it would surely make more sense to allow them access to normal premium listing that to create confusion in this way by having a new category open to various companies to whom different rules apply.

Q10: Do you agree that full pass-through of voting and other rights on the basis described should be a requirement for eligibility of DRs for listing in the proposed category?
Yes – if the FCA insists on making DRs eligible for this proposed category, this should only be on the basis that there is a full pass-through of voting and other rights on the basis described

Q11: Do you agree with the proposed consequential changes to the Listing Rules and to the Fees manual set out in Appendix 1?
For the reasons set out above, we do not agree with these changes.

We hope you find our comments helpful and would be happy to expand on any of these points should you wish to discuss them further.

Yours faithfully

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