



The Governance  
Institute

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By email: cp17-04@fca.org.uk

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Dear Sirs

## **ICSA response to CP17/4 Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime**

We welcome the opportunity to comment on the consultation CP17/4 Review of the Effectiveness of Primary Markets: Enhancements to the Listing Regime.

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.

In preparing our response we have consulted, amongst others, with members of the ICSA Company Secretaries Forum, who are company secretaries from more than 30 large UK listed companies from the FTSE 100 and FTSE 250. 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.

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 broadly support the proposals set out in the consultation document. We think the majority of the proposed changes would aid clarity, reduce the potential for confusion and make the listing regime more attractive to certain companies or sections without any obvious risks.

We set out below our responses to the questions in the consultation. Where we have no specific comments to make, we have not referred to the question.

## 2. Specific questions set out in the consultation

### **2.1 Q2: Do you agree with our proposals to split the current independent business requirements into three distinct areas with associated guidance?**

Yes. We agree with this proposal. However, we would take this opportunity to highlight a related issue regarding closely held listed companies being included in investable indices, for example the FTSE 100. Investment funds that track a market index are obliged to invest in the shares of all companies included in that index, whether or not they are considered to have good governance arrangements in place, and they lack the option of disinvestment available to managed funds. We believe that this is an issue that the FCA should address.

### **2.2 Q7: Do you agree that it is reasonable for a premium listed issuer, having obtained the guidance of a sponsor under LR 8.2.2R, to disregard the result of the profits test, where the result is 25% or more and the other class test results are below 5%, and the profits test result is anomalous?**

Yes. We welcome this proposal to amend the approach to profits tests but would ask the FCA to consider further whether, in these circumstances, the transaction is treated as unclassified. Our reading of the proposal suggests that where the result of the anomalous profits test is, for example, 24.9%, and the other class test results are below 5%, this would still be classified as a class 2 transaction. It would seem more sensible to either disregard all anomalous profits tests or classify a transaction with an anomalous profits test of more than 25% as a class 2 transaction.

### **2.3 Q9: Do you agree that premium listed issuers, having obtained guidance on the class tests from a sponsor under LR 8.2.2R, should be allowed to make the proposed adjustments to the figures used to classify profits without being required to consult and agree the adjustments in advance with us?**

Yes, but we have a similar concern as above in question 7. It seems odd that if the result of the anomalous profits test is 25% or above the issuer will be able to disregard this test without prior consultation with the FCA but having consulted with their sponsor, whereas at, for example, 24.9%, the issuer must consult the FCA but not the sponsor. Given that the issuer will surely be best advised to consult their sponsor for any anomalous results, would it not be better if the requirements were more aligned?

**2.4 Q11: As an alternative to our proposals, are there any alternative profit measures that should be used either in conjunction with or in place of the current profits test?**

No. We are not in favour of the use of alternative profit (non-GAAP) profit measures. We believe that PBT is more appropriate as it allows “like-for-like” comparisons.

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

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

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