

LAPFF Response to UK Listing Authority Consultation CP17/21 ‘ Proposal to create a new premium listing category for sovereign controlled companies’¹

cp17-21@fca.org.uk

The **Local Authority Pension Fund Forum** (LAPFF) was set up in 1991 and is a voluntary association of 72 public sector pension funds based in the UK with combined assets of approximately £200 billion. It exists to promote the investment interests of local authority pension funds, and to maximise their influence as shareholders to promote high standards of corporate governance and corporate responsibility amongst the companies in which they invest.

Many of our funds have exposure to passively managed equity portfolios. This means that we are acutely concerned by any diminution in the quality of shares that may be incorporated into any index.

SUMMARY OF POSITION

LAPFF welcomes the opportunity to respond to the Consultation. As an investor forum, LAPFF believes that addressing the rules pertinent to the listing regime is essential to safeguard the interests of pension fund beneficiaries

LAPFF’s overall conclusion is that the Premium Listing category should not be modified to accommodate sovereign controlled issuers. Indeed the issue was already of concern to LAPFF prior to the issue of this consultation when LAPFF wrote to Andrew Bailey on 9 June 2017. That letter stated:-

‘We do not believe that criterion meets the proper purpose of Listing Rules which is for the protection of investors. The fact that an instrument can trade in a listed market does not necessarily overlap with the objective of investor protection. This distinction is particularly relevant to long-term pension fund investors who are concerned with the quality of the asset, not merely the fact that it trades in a liquid market.’

That was also consistent with the LAPFF response to CP17/04 in May 2017 where the response said:-

‘There are also issues around admission to listing where there is not a limited free float and/or there is a controlling party. This creates conflicts and may place too much reliance on the company law and ‘comply or explain’ corporate governance regime to resolve. In some cases it has been clear that the comply or explain approach does not function when public shareholders are not able to control the composition of the board to hold it to account.’

¹ <https://www.fca.org.uk/publications/consultation-papers/cp17-21-proposal-create-new-premium-listing-category-sovereign>

There are bad examples (in terms of governance and investment outcomes) such as ENRC, BUMI and others where the relaxation of the regime that permitted these companies to list did not achieve the core investor protection purpose of the Listing Regime. This is a more rigorous test than market transparency (though the proposals in CP17/21 actually reduce market transparency, by relaxing related party disclosures).

We consider whether the word 'Premium' is too loaded, when compared to 'Standard'. Given that the actual difference relates to the source of Listing Rule requirements, with Premium being based on UK requirements and Standard being based on EU-minimum requirements, we wonder whether there can be a less status/prestige based description; eg 'UK Listed UK' and 'UK Listed EU'.

LAPFF is also very clear that there should be no relaxation of related party matters. Indeed, if anything, sovereign controlled entities should require more not less disclosure.

Our response to CP17/04 rejected the Listing Regime as a tool of government policy. We made the point then in the context of linking policy relating to science with dual class shares. Nor do we consider that the UK's relations with Saudi Arabia should be allowed to dilute investor protection.

Extract from LAPFF response to CP17/04

'Government policy and fiduciary duties

As an association of Local Authority pension funds, we are only too aware of the separation of investment objectives of the funds, for the beneficiaries from other competing objectives. This can be relevant in the context of issues around pressure for localised investment and in some cases pressure for divestment. We were therefore surprised in principle to see direct reference in para's 1.20-1.22, and then Chapter Four, to changes to the Listing Rules on the basis of the government green paper 'Building Our Industrial Strategy'. We are not in a position to comment one way or the other on that strategy, our concern is the linking of that strategy to changes to the Listing Regime that go against sensible, well founded principles of investor protection. That concern is heightened given that that policy objective is being specifically linked to allowing dual class share structures.²

We are asking for comments on CP17/21 by **13 October 2017**:

Please use this online form or alternatively, send comments in writing to: Primary Markets Policy Team, Financial Conduct Authority, 25 The North Colonnade, London E14 5HS]

² LAPFF Response to UK Listing Authority Consultation DP/CP17/04 'Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape'

Specific Questions

Q1: Do you agree with the overall proposal outlined in this paper of creating a premium listing category for sovereign controlled companies?

We do not agree in principle, and in fact we object in principle to use of Premium Listing for this for reasons set out above.

However, we then refer sequentially to the issues, which should be taken account of in the event that the decision were to go through.

Q2: Do you agree that the changes proposed are best effected through the addition of a new listing category?

No. Premium and Standard are different for good reason. We wonder whether the nomenclature is part of the problem. The reason for Standard is because that is the EU minimum standard required, whereas Premium allowed for additional UK requirements. As set out above we suggest one alternative approach to be considered amongst others in dealing with the question.

Q3: Do you agree that the threshold for control should be set at 30%?

We agree that control may be met at 30%, but that the test in practice may be more variable than that.

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?

We believe that there are situations where the national identity of the controlling shareholder and/or national identity of the country of incorporation is relevant. There is more to shareholder protection than Listing Rules, the basis of governance and company law is highly relevant and varies by state.

Q5: Do you agree that independent shareholder approval should be required for a transfer from an existing premium listing into the new category?

Were this to occur, yes. We believe that one reason why this is necessary is to prevent Royal Bank of Scotland Group plc falling into the new proposed category.

Q6: Do you agree that the sovereign controlling shareholder should not be considered a related party for the purposes of the listing rules?

We have a significant difficulty with this in principle. We believe that a sovereign controlling shareholder creates the need for more not less related party disclosure.

Q7: Do you agree that MAR-mandated disclosures are sufficient to secure the necessary at-the-time transparency?

No. Not in view of the issues in Q5 and Q7 above.

Q8: Do you agree that controlling shareholder provisions should not apply in respect of the sovereign controlling shareholder for companies listed in this category?

We do not agree, as we do not agree with the category.

Q9: Do you agree that DRs over equity shares should be eligible for this category?

This may be a limited factor directly - as holding DR's is a relatively rare form of investment for LAPFF members – however as DR's restrict the extent to which the free float votes may be useable, then DR's are relevant to what is regarded as 'free float'.

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. As explained in Q9 above. Full rights should be passed though, or otherwise the control of the larger shareholder reduces the functioning of the already small free float.

Q11: Do you agree with the proposed consequential changes to the Listing Rules and to the Fees manual set out in Appendix 1?

We do not comment further on proposed consequential changes as the details of some of these are connected to issues that we oppose in principle.

Is your response confidential?

No. The response should be made public.