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Dear Madam,

Consultation Paper response - CP 08/21 – A review of the structure of the Listing Regime

We are writing in response to your invitation to comment on the FSA Consultation Paper regarding the structure of the Listing Regime.

As stated in our response to DP08/01 we support the development of a two tier approach to the Listing Regime to increase transparency and improve understanding, of the differing levels of regulation and due diligence associated with different types of securities, amongst investors and other parties. However, as you have identified and set out within the Consultation Paper, the success of the proposed structure of the Listing Regime in meeting its stated objectives will depend upon market participants being educated on the regulatory differences between the different segments so the different risks of securities are understood. In addition, we would expect that the segment labels will need to be fully embedded within all the key securities systems of the markets to allow visibility to all market participants.

Our answers to the specific consultation questions are detailed in Appendix 1 attached. Whilst we generally agree with the proposals in the Consultation Paper, we believe there are three areas that merit specific comment.

Migration between segments

We believe that the process for migration between segments needs to be clear and transparent. In particular, issuers should be able to understand the eligibility requirements for moving from a Standard Listing to a Premium Listing and the rules must deter issuers from moving between segments as a means of avoiding obligations imposed by the Listing Rules of a particular segment.

We are concerned that the current drafting of the proposed rules would allow issuers to migrate between segments in order to avoid obligations applicable to issuers within a particular segment. For example, it appears that under the current proposals, an issuer with a Premium Listing that is undertaking a significant transaction may be able to move to a Standard Listing to avoid complying with the requirement of Chapter 10 of the Listing Rules (Significant transactions). Following completion of the transaction the issuer would then be able to return to a Premium Listing without the need to fulfil certain eligibility requirements (such as a working capital statement and financial reporting procedures declaration) on the basis that this had been assessed previously by the FSA, even though this may have been a number of years prior to the transaction.

We believe that the current drafting of certain rules is potentially confusing and could be made more succinct. One potential approach would be to provide an annex to LR5 containing a table which clearly sets out the Listing Rule eligibility requirements that will be applied to an issuer when transferring between segments. Guidance could then be provided to deal with certain matters, for example the application of the six month rule (Listing Rule 6.1.3R(1)(b)) could be waived, in our view, for issuers that have published at least one set of annual accounts whilst with a Standard Listing.

Shareholder approval

We believe that shareholder approval should be required for an issuer seeking to migrate down from a Premium Listing to a Standard Listing given the different levels of regulation associated with the two proposed segments and to provide investors with the opportunity to divest (for example, managers of FTSE index tracker funds) prior to the transfer being effected.

We note that currently the proposed rules only require transfers of equity securities into or out of the category of Premium Listed investment companies to be subject to shareholder approval. We believe that the requirement for shareholder approval should be extended to cover all Premium issuers (both commercial and investment companies) planning to migrate down to a Standard Listing given the lower level of regulation applicable to a Standard Listing and hence the relevance of such a migration to the issue of investor protection.

Corporate Governance

We support the FSA's approach towards increasing transparency across the Listing Regime and its objectives of creating a "level playing field" for all issuers in respect of corporate governance disclosure. We note that certain of these disclosures, specifically those relating to the internal control environment, are likely to be of particular interest and relevance to investors and most particularly in the current economic environment.

We note that in certain cases the increased corporate governance disclosures being proposed by the FSA will simply be a continuation of those disclosures invariably made by the company within its Prospectus at its initial listing. As such, the additional disclosure requirements may not prove to be too onerous for overseas companies. However, it is difficult to say with any certainty whether the implementation of the additional corporate governance disclosure requirements will have an adverse impact on the attractiveness of London as a listing destination for overseas companies. Therefore it would clearly be preferable if the proposed increased corporate governance disclosures were implemented on a pan-European basis to minimise the potential for regulatory arbitrage, and we would suggest that the FSA have discussions with other CESR members to ascertain how they are planning to implement the Corporate Reporting Directive (CDR) to both domestic and overseas issuers.

Should you have any queries in respect of the content of this letter please contact Kevin Desmond from our Capital Markets Group whose direct line is 0207 804 2792. If you feel it would be helpful to the drafting process, we would be more than happy to meet with you to provide further clarity in terms of our observations, comments and suggestions.

Yours faithfully

PricewaterhouseCoopers LLP

Appendix 1 - Consultation questions

Detailed comments on the questions raised in the Consultation Paper are set out below.

Q1. Do you agree with the segmentation and labelling of the Listing Regime as described above?

As stated in our response to the Discussion Paper (DP 08/01), we believe that the segmentation structure outlined has the advantage of being the most straightforward option and retains the status quo of the existing two tier structure.

Q2. Do you agree with the "Premium" and "Standard" labels?

We support the proposal of the "Premium" and "Standard" labels as this clearly differentiates the two segments and indicates that there are additional requirements for those companies within the "Premium" Listing segment.

Q3. Do you consider that the proposed segmentation of the Listing Regime provides sufficient clarity?

We agree with the point made in the Consultation Paper that in order for the proposed segmentation and labelling to be successful, it will require education of all market participants as to the regulatory differences between the segments to enable investors to make informed investment decisions. It would also seem to be important that the proposed segments and sub-segments are embedded within all key securities systems (e.g. clearly denoted on trading platforms) and are visible to investors on an ongoing basis, not only at the point of the initial listing, to minimise the risk that the segmentation and labelling loses its visibility following the initial listing of the securities.

Q4. Do you agree with the introduction of LR 1.5.3R which will prohibit the misrepresentation of the type of listing a company has?

We agree with the introduction of LR 1.5.3R in order to maintain transparency and clarity regarding an issuer's segment and to reduce the risk that the listings status of a company is misrepresented to the market.

Q5. Do you agree with the deletion of old LR 9.8.7R and the introduction of new LR 9.8.7R?

Whilst a key driver for overseas companies adopting the UK Combined Code has been for the purpose of inclusion in the FTSE UK series, we note that there are a number of overseas companies with existing primary listings that are not included in a UK Series and are not currently seeking inclusion in a FTSE index.

We therefore welcome the fact that the proposed approach does not impose the requirement for overseas issuers in the Premium Listed segment to comply or explain against the UK Combined Code, resulting in different approaches for those companies included in an index and those outside.

As noted in the Consultation Paper, the additional disclosures required under new LR 9.8.7R are likely to result in additional cost for overseas issuers that have not adopted the Combined Code, particularly in the first year of implementation. It may therefore be beneficial for the FSA to provide some additional guidance to overseas issuers with respect to the extent of the additional disclosures expected in annual reports.

Q6. Do you agree with the introduction of LR 9.8.7BR?

LR 9.8.7BR extends the requirement to comply with DTR 7.2 to all overseas companies with a Premium Listing where the issuer is not required to comply with regulations imposed by another EEA Member State that correspond to DTR 7.2. The introduction of this rule would assist investors, and the FSA, to identify weaknesses in issuers' internal controls and risk management processes. We also note that given the current market environment it is important to demonstrate to investors and other parties the importance the FSA attaches to corporate governance matters.

Q7. Do you agree with the deletion of LR 9.3.12(4)R and the introduction of LR 9.3.13R and LR 9.8.7AR which require Primary Listed overseas companies to disclose in their annual report whether or not they offer pre-emption rights to their shareholders?

We agree with the proposal made in the Consultation Paper given that this will provide greater clarity to investors in respect of these particular protections afforded to them without requiring potential onerous disclosure obligations.

Q8. Do you agree with the amendment to make the directive-minimum Listing Regime in LR14 available to UK companies?

As stated in our initial response to DP 08/01, we indicated that we saw no reason why UK companies should not be able to seek a "Secondary" Listing as this would provide a level playing field so that UK companies do not have any disadvantage compared with overseas counterparts.

However, we note that the extent to which this option would be attractive to UK companies may be limited as the company would (based on the current FTSE index criteria) not be eligible for inclusion in the FTSE UK index series and therefore not benefit from the added investor interest such inclusion brings.

Q9. Do you agree that we should extend DTR 7.2 to all listed companies with the listing of equity securities and GDRs and the amendments to LR9 and LR14?

We support the FSA's approach to improve clarity and transparency across the Listing Regime and its objectives of creating a "level playing field" for all issuers in respect of corporate governance disclosure, and note that in the current economic environment those disclosures relating to corporate governance and the internal control environment will be of particular importance to investors.

While we do not believe that the additional disclosure requirements are likely to prove too onerous for overseas companies, it is difficult to say with any certainty whether its implementation will have an adverse impact on the attractiveness of London as a listing destination for overseas companies. We therefore suggest that the FSA explores further, through discussions with other CESR members, the potential implementation of the increased corporate governance disclosure requirements on a pan-European basis in order to minimise the potential for regulatory arbitrage.

Q10. Do you agree that the types identified above should be able to migrate without a cancellation of their listing?

We support the proposal to allow companies to migrate without a cancellation of their listing.

Q11. Do you agree with the provisions of LR 5A and our approach for all companies migrating from one segment to another?

We do not currently agree with the current drafting of LR 5A as the proposed rules allow issuers to migrate between segments with the objective of avoiding those obligations relevant to issuers

within its segment. For example, it appears that under the current proposals an issuer with a Premium Listing that is undertaking a significant transaction may seek to move to a Standard Listing to avoid complying with Chapter 10 of the Listing Rules (Significant transactions); then following completion of the transaction the issuer would be able to return to a Premium Listing without the need to fulfil certain eligibility requirements (such as working capital statements and financial reporting procedures declaration) on the basis that this had been assessed previously by the FSA, even though this may have been a number of years prior to the transaction.

We believe that the process for migration between segments needs to be clear and transparent. In particular, issuers should be able to understand the eligibility requirements when moving from a Standard Listing to a Premium Listing and the rules must deter issuers from moving between segments as a means to avoid obligations imposed by the Listing Rules of a particular segment. Whilst we would anticipate that the FSA would seek clarification of circumstances where an issuer seeks to transfer between segments within a short time period, we believe the rules should be explicit in deterring issuers from seeking to take advantage of moving between segments to avoid complying with certain rules, as we have outlined below.

In particular, we do not agree with the current drafting of LR 5A and its proposal to only require transfers of equity securities into or out of the category of Premium Listed investment companies to be subject to shareholder approval. We believe that the requirement for shareholder approval should be extended to cover all Premium issuers (commercial and investment companies) planning to migrate down to a Standard Listing in order to reflect the lower level of regulation applicable to a Standard Listing and to maintain investor protection.

In relation to the migration of a company with a Standard Listing to a Premium Listing, guidance relating to the FSA's assessment of eligibility requirements is provided in LR5A.13. This states that the "*The FSA will not generally reassess compliance with eligibility requirements...*". This is inconsistent with the Consultation Paper (reference 3.22) which states that the FSA "…*will not assess the admission criteria for shares in public hands rules and working capital where they are the requirement of both the old and new categories and segment….*". If the latter is the approach the FSA will take with respect to eligibility, this guidance should be amended to a rule.

We believe that it is important that an issuer's working capital position and financial reporting procedures are considered at the point of transfer to a Premium Listing. A company's financial position and liquidity can change significantly, particularly in the current economic environment, so it would therefore appear sensible that an issuer be required to make a statement regarding its working capital position. We also believe that an assessment of the issuer's financial reporting procedures should also be made at the point of transferring from a Standard to Premium Listing given the additional continuing obligations associated with a Premium Listing and the need to maintain the "Premium Listing" brand.

With regard to the remaining eligibility requirements for a Premium Listing set out in LR6 (in addition to the relevant rules in LR2), we believe the FSA should consider if they are relevant to the particular circumstances of the company seeking the transfer from a Standard to Premium Listing. The current drafting of the rules within LR 5A, with respect to the applicable eligibility criteria, is potentially confusing and could be made more succinct. One potential approach would be to provide an annex to LR5 containing a table which clearly sets out the Listing Rule eligibility requirements that will be applied to an issuer when transferring between segments. Guidance could then be provided to deal with certain matters, for example the application of the six month rule (Listing Rule 6.1.3R(1)(b)) could be waived, in our view, for issuers that have published at least one set of annual accounts whilst with a Standard Listing.

Q12. Do you agree with the amendments to LR 8 setting out the requirements for the appointment and obligations of a sponsor with respect to migration?

Whilst in principle we agree with the amendments to LR 8, we note that there certain inconsistencies as detailed below.

LR 8.2.1A sets out that a sponsor must be appointed where an issuer is seeking to transfer its category of equity securities listing. However, this does not apply to all category transfers, for example the list set out in LR8.2.1A does not require a sponsor to be appointed for a migration from a Premium commercial to Standard Listing. LR 8.4.14R then sets out the obligations of the sponsor where there is a transfer between categories. However, LR 8.4.14R does not carve out any transfers, i.e. it seems to apply to migrations between categories. This is at odds with LR 8.2.1A.

LR 8.4.16R states that LR 8.4.15R (3), (4) and (5), regarding the financial reporting procedures and working capital position of an issuer, do not apply if that issuer was required to meet those requirements under its existing listing category. As noted in our response to Q11 we believe it is important that an issuer's working capital positions and financial reporting procedures are considered when an issuer is migrating from a Standard Listing to a Premium Listing.

Q13. Do you agree that we should also require shareholder approval for a commercial company that is wishing to migrate from a Premium to a Standard Listing?

We believe that shareholder approval should be required for a commercial company that is wishing to migrate from a Premium to a Standard Listing to reflect the distinction between the Premium and Standard segments and to maintain investor protection. As noted in the Consultation Paper, shareholders will have based their investment decision on the basis of the rights conferred upon them which are attributable to a Premium Listing and they should not be divested of these rights without prior approval.

We therefore would expect LR 5A.4R to apply to commercial companies with Premium listing as well as investment companies.

Q14. Do you consider that we should also require prior shareholder approval for cancellation of securities and delete LR 5.2.6R?

On the basis that shareholder approval will be sought for issuers wishing to migrate from a Premium to a Standard Listing, it appears reasonable to require prior shareholder approval for the cancellation of securities even where those securities are admitted to trading on a regulated market in an EEA State, and hence delete LR 5.2.6R.

Q15. Do you agree with our proposals for migration as we have set out in the above paragraphs?

Refer to comments in respect of questions Q10 to Q14 above.