



9 January 2013

Our ref: ICAEW Rep 01/13

Your ref: CP12/25

Victoria Richardson
Primary Markets Policy
Financial Services Authority
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Dear Ms Richardson

Consultation paper 12/25 Enhancing the effectiveness of the Listing Regime

ICAEW welcomes the opportunity to comment on the consultation paper *12/25 Enhancing the effectiveness of the Listing Regime* published by the Financial Services Authority on 2 October 2012, a copy of which is available from this [link](#).

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

Our response reflects consultation with members of the Financial Reporting Faculty, the Corporate Finance Faculty and the Corporate Governance Committee of ICAEW (see Appendix). Our comments address three general themes of the proposals:

- those aimed at providing listed company shareholders with better quality information;
- governance arrangements where there is a dominant shareholder; and
- the operation of free-float provisions.

Providing shareholders with better quality information

We disagree with the proposal to amend LR 9.8.4R to specify that all items to be disclosed in the annual report / accounts under the Listing Rules must be presented in a single clearly identifiable section (Q36).

ICAEW has consistently argued for greater coherence between elements of financial statements as this will result in a consistent narrative running through the document. We believe that mandating the location of listing rule disclosures will make it more difficult to construct an annual report in an accessible and readable way. Accordingly it would be best to make the listing rule disclosures about related party transactions in the financial statements alongside those required by IAS 24 *Related Party Disclosures*. In addition it is unclear what is proposed for the disclosures about directors' remuneration, assuming these are not to be made in the directors' remuneration report alongside the statutory disclosures.

We are of the view that by changing the order of disclosures the FSA's proposal prioritises the ease of monitoring a company's compliance with the listing rules over providing investors and other users with information that allows them to make active and informed decisions.

Governance and voting arrangements where there is a controlling shareholder

We support implementing the concept of a controlling shareholder and agree with the definition (Q1). While this is consistent with the Takeover Code threshold we would observe that the 30% threshold captures a large number of companies, including ones with controlling shareholders that do not exhibit the type of failings the FSA is seeking to address.

We also support requiring that an agreement is put in place to regulate the relationship between a controlling shareholder and the company which will help avoid potential misunderstandings up front (Q2, Q3). We would note however that an agreement will not move the balance of power away from a controlling shareholder and we support this.

We agree with empowering independent shareholders to approve material changes to the relationship agreement (Q7), providing the basis for such voting is confirmed as being legal. We note that what is 'material' will vary according to the circumstances and furthermore it is not clear what sanctions the FSA envisages (other than delisting)?

Regarding the independence of directors, we agree with the proposed definitions of independent director and independent chairman (Q18). We are however uncomfortable with the proposal to depart from the 'comply or explain' principle in respect of the balance between the numbers of independent non-executive directors and others (Option 1, para 7.88). We suggest that the existing approach to the Corporate Governance Code should be retained and supplemented with the need to set out the required board balance in the relationship agreement.

We have considered the purpose of the proposed dual voting requirement for the election of independent directors (Q21). We are sympathetic to the aim of giving independent shareholders fair opportunity to influence the outcome of elections of independent directors. However we feel that the proposal for two rounds of voting is too complicated. The cooling off period will not necessarily ensure that the independent shareholders' voice holds sway over a controlling shareholder and so cannot be considered a counter balance to the logistical challenge of holding a second vote after the AGM. We also think that the two rounds of voting to confirm their appointment could be unattractive to director-candidates.

We are not convinced by the proposal to automatically exclude shares subject to a lock up period from the calculation of shares in public hands. Lock ups tend to attach to shares of those close to a company anyway; directors for example cannot sell their shares during a close period. We believe that the proposal needs further thought. One point to consider is that if lock ups operate for extended periods then they can be expected to have an impact on liquidity - a limit to the lock up, eg of one year, may reduce this impact.

Operation of free-float provisions

We are broadly supportive of the free-float proposals. We would note however that setting a %-based threshold for premium listings (Q27) is not consistent with the liquidity-based approach for standard listings.

Thank you for granting ICAEW an extension to the deadline. Please do not hesitate to contact me if you would like to discuss any of the comments above.

Yours sincerely

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APPENDIX

The ICAEW Financial Reporting Faculty is recognised internationally as a leading authority on financial reporting. The faculty's Financial Reporting Committee is responsible for formulating ICAEW policy on financial reporting issues, and makes submissions to standard setters and other external bodies. The faculty also provides an extensive range of services to its members, providing practical assistance in dealing with common financial reporting problems.

The ICAEW Corporate Finance Faculty is the voice of corporate finance within ICAEW. The faculty is responsible for submissions to regulators on behalf of ICAEW. It provides a range of services to its members including a monthly magazine Corporate Financier.

The ICAEW Corporate Governance Committee includes representatives from the business and investment communities. The Committee is responsible for ICAEW policy on corporate governance issues and related submissions to regulators and other external bodies.