Structure of the Listing Regime

A response by

CFA Society of the UK

About CFA Society of the UK

The CFA Society of the UK (CFA UK), formerly the UK Society of Investment Professionals, represents the interests of more than 7,000 leading members of the investment industry. The society, which was founded in 1955, is one of the largest member societies of CFA Institute and is committed to leading the development of the investment industry through the promotion of the highest ethical standards and through the provision of education, professional development, advocacy, information and career support on behalf of its members. Most society members have been awarded either the Chartered Financial Analyst (CFA), or Associate of the Society of Investment Professionals (ASIP) designation.

CFA Institute Centre represents the views of investment professionals and investors on issues that affect the practice of financial analysis and investment management, education and licensing requirements for investment professionals, and the transparency and integrity of global financial markets.

CFA UK is the awarding body for the Investment Management Certificate (IMC), the benchmark entry-level qualification for those working in investment management in the UK.

About this response

We welcome the thorough analysis of the issues which is to be found in this Discussion Paper. We believe that a clearly defined and well-understood Listing Regime is essential for investment professionals who act for buyers and sellers of listed securities and for those who are involved in their issuance. Furthermore, members of the public, whether investing directly in securities or investing by means of pooled vehicles, are entitled to have a sense of the significance of Listing even if it is not reasonable to expect them to understand the detail. The FSA is correct to observe in paragraph 1.5 that "there is considerable scope for confusion about what the term "Listing" means in the UK". Evidence of this confusion abounds for example, when one hears or reads of a stock being "listed on AIM".

We agree with the FSA's aim mentioned in paragraph 2.5 to balance the not necessarily readily compatible objectives of investor protection and competitiveness. Investor protection is important but, applied excessively, it can be counterproductive, potentially driving companies to opt into a regime with a lower level of protection. However, we believe that the suggestion in paragraph 5.17 that exchanges would set higher standards than the directive

minimum standards for admission to trading on their markets to be misguided as commercial pressures would, in practice, discourage this. We are also in favour of the maintenance of the status quo for super-equivalence and a Listing Authority which is distinct from exchanges. We believe that this helps to promote the "brand" of a London listing, the avoidance of fragmentation of standards and the avoidance of conflict of interests.

The "comply or explain" regime of corporate governance regime which currently applies for UK listed companies has been very successful in the UK providing flexibility within a framework. However, it is important to note that this cannot work effectively in the absence of a Listing requirement which demands it, so that all participants either comply with the rules or explain why they have not. It is equally important that those to whom explanations are given have some power to take action if they do not accept the explanations of non-compliance for example through engagement with management or at AGMs or EGMs.

Response to questions

Q1 *Do you consider that the UK super-equivalent Listing standards should be retained?*

As mentioned above we believe that the UK super-equivalent listing standards help to maintain the "brand" of a London listing, discourage the fragmentation of standards and reduce the likelihood of conflict of interests. We, therefore, support their retention.

Q2 *Do you consider that the super-equivalent Listing standards should continue to be set by the FSA or should they be determined by the market (exchanges, trade associations or other independent body)?*

The super-equivalent Listing standards should continue to be set by the FSA and we take comfort of the fact that the FSA is obliged in setting the standards, as at present, to consult the market.

Q3 *Should we allow equity securities to be admitted to the Official List if they are only to be admitted to trading on a MTF operated by an RIE or an investment firm and not on a Regulated Market of an RIE? If so, on what basis?*

If equity securities are not traded on a Regulated Market of a Recognised Investment Exchange (RIE) but are traded on a Multilateral Trading Facility (MTF) operated by an RIE or an investment firm they should only be admitted to the Official List if they comply with rules which are no less robust than those of a listed market.

Q4 *Which of the options described above do you consider to be optimal? Please provide the reasons for your chosen option.*

We favour option 2 ie the retention of the status quo of the existing two-tier structure. This offers flexibility for companies which in turn will help to maintain London's competitive advantage for attracting London listings by foreign companies.

Q5 *What are your views about opening up Secondary Listing for UK incorporated companies?*

We are opposed to the above. At best it will create confusion amongst investors. At worst it is likely to encourage companies to lower standards to the lowest common denominator thereby reducing investor protection.

Q6 *What are your views on how the provisions we have described above under core requirements should apply to overseas Primary Listed companies?*

Overseas Primary listed companies should be required to observe the "comply or explain" regime of the Combined Code and have full pre-emption provisions. Pre-emption rights are a fundamental plank of investor protection but it should be noted that in the UK there is flexibility as this protection can be waived, but only with the express prior approval of shareholders. As these rights are derived from UK company legislation which does not apply to companies incorporated overseas, such companies would have to amend their Articles of Association (or equivalent) to include them. Mandatory compliance with the provisions of the Takeover Panel would appear to be impractical for the reasons clearly set out in paragraph 6.23. We do, however, take comfort that companies such as Gem Diamonds and Eurasian Natural Resources have voluntarily agreed to adhere to the Takeover Panel's rules.

Q7 *Should we require the appointment of a sponsor for a transaction involving the issuance of GDRs? If not, are there any other responses to the significant growth in GDRs that are necessary?*

We agree with the FSA's analysis in paragraph 6.28 that the requirement to appoint a sponsor would encourage regulatory arbitrage and that any additional standards would need to be applied on a pan-European basis. We, therefore, do not believe that there should be such a requirement nor there should be any other responses to the growth in GDRs.

Q8 *Do you have views on the labelling options?*

Any labelling should provide a clearer indication than at present of what level of protection an investor is buying into. Two possible suggestions are (i) "Full London Listing" and "Minimum Requirement London Listing" or (ii) "Tier 1 Listing" and "Tier 2 Listing".

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