

Review of the structure of the Listing Regime Consultation on amendments to the Listing Rules

Submission from the Association of Investment Companies

The Association of Investment Companies (AIC) welcomes the opportunity to respond to this consultation. However, we note our disappointment that, following its last invitation for views, the FSA decided not to delist shares which fail meet the UK's super-equivalent listing provisions and require them to trade on a regulated market or un-regulated platforms instead. (This approach was termed 'option 1' in CP08/1.)

Option 1 offered the best means to support investor confidence and deliver market integrity. The route chosen instead by the FSA threatens investor confidence and may sustain confusion because it will mean that different UK listed shares will offer different regulatory standards. Some issuers of UK listed shares will be required to apply the FSA's listing principles while others will not.

The listing principles include obligations for companies to:

- take steps to ensure that directors understand their obligations;
- maintain adequate systems to allow them to comply with their obligations;
- act with integrity and honesty towards their shareholders; and,
- deal in an open and honest manner with the FSA.

These are important baseline requirements. Not applying them to all issuers of UK listed shares means that some companies will be able to obtain the cachet of a UK listing without upholding the high standards expected of others. We are unconvinced that investors will fully appreciate the differences between different tiers within the listed sector. This could lead to reputational damage to the 'UK listing' brand if problems arise with issuers of listed shares who do not apply the super-equivalent standards and the FSA finds itself unable to take regulatory action which it would otherwise be able to.

We note that supporters of option 1 were predominantly investors, who have a strong, long-term interest in operating in markets with a solid regulatory floor which backs up their own due-diligence. In contrast, those supporting lower standards and labelling predominantly represented the 'sell-side', whose perspective may be driven by shorter-term perspectives (such as next year's bonus). As the FSA's primary role as a listing authority is to provide regulatory protection for investors in listed securities, it is surprising that investor concerns were not sufficient to override purported competition arguments. The FSA's decision not to impose its listing principles across the UK's listed equity market is a missed opportunity to enhance the UK's reputation as high-quality listing destination, which would support its long term competitiveness as a global financial centre.

Notwithstanding this concern, the AIC remains keen to comment on the FSA's detailed proposals, and has set out its thoughts below.

Consultation questions

Q1: Do you agree with the segmentation and labelling of the Listing regime as described above?

No, the AIC's preference was for segmentation and labelling to follow option 1, as discussed in CP08/1. Our reasons for this view are set out above (see opening section). However, the AIC is keen to provide comments on the detail of the proposed regime to help it operate in the most effective way possible.

Q2: Do you agree with the labels 'Premium' and 'Standard' labels? If not, please provide suggestions for alternative labels.

No. The AIC supports the 'Premium' label but does not agree with the proposed 'Standard' label. Our recommendation is that the 'Standard' label be amended to be a 'Minimum standard' label.

The problem with using the word 'Standard' without a qualification is that it does not give an indication of quality. Using the prefix, 'minimum' creates a far stronger association with quality, and should be more effective in alerting investors that this tier only offers the most basic level of protection within the listed segment and that an alternative exists.

It has been suggested to us that the Commission would object to the use of a 'minimum' prefix. However, we are unconvinced that this concern should determine the FSA's decision. Using the term 'Premium' might have the same effect but this has not deterred the FSA from using this label. Also the FSA's own discussion in the consultation paper (see paragraph 3.4) acknowledges that the EU standards are the minimum standards that can be applied. There is no reason why this term, which is a matter of fact, should not be used in the FSA's segmentation labels.

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

No, see responses to Q1 and Q2.

Q4: Do you agree with the introduction of LR1.5.3R which will prohibit the misrepresentation of the type of listing a company has?

Yes, the AIC supports the introduction of a rule to prohibit misrepresenting the type of listing a company has. It agrees with the proposed LR1.5.3R

Q5: Do you agree with the deletion of old LR9.8.7R and the introduction of the new LR9.8.7R?

Yes, in principle the AIC supports the deletion of the old LR9.8.7R and the introduction of a new version. However there are some areas where the drafting of the new version of LR9.8.7R could be made clearer.

The lack of a definition of 'corporate governance' reduces the clarity of the rule. Our assumption is that this means governance recommendations which cover areas akin to those addressed by the Combined Code i.e. issues associated with the manner in which the board discharges its oversight of the activities of the company and its duties to shareholders. If this is the case it should be made clearer.

Also, LR9.8.7R refers to the governance regime to which it is "*subject*". This leaves some uncertainty over the position of voluntary governance codes as companies cannot be 'subject' to a voluntary regime. This is a minor issue, but it may be appropriate to tidy up this drafting. With this in mind, we note the approach used in DTR 7.2 which separately identifies compulsory and voluntary codes as well as other governance practices applied beyond the requirements of national law.

Q6: Do you agree with introduction of LR9.8.7BR?

We agree with the proposed LR9.8.7BR. We also note that the approach adopted for DTR 7.2 arguably addresses some of the drafting issues mentioned in our response to Q5.

Q7: Do you agree with the deletion of LR9.3.12(4)R and the introduction of LR9.3.13R and LR9.8.7AR which require Primary Listed overseas companies to disclose in their annual report whether or not they offer pre-emption rights to their shareholders?

The AIC supports pre-emption rights as an important aspect of UK investor protection. However, we note the FSA's view that other jurisdictions may have alternative arrangements in place which offer equally valid means of protection. It has not identified any market failures in this area and has therefore decided not to impose pre-emption rights but instead will require disclosure on whether or not issuers offer these rights to shareholders. We accept the approach as set out.

Q8: Do you agree with the amendment to make the directive minimum listing regime in LR 14 to UK companies?

Yes, we agree that UK trading companies should be able to take a directive-minimum listing on the same basis that overseas trading companies can. Notwithstanding our view on the quality of LR 14, the FSA must accept that if the rules are suitable for some issuers of shares of the same type i.e. trading companies, then they are appropriate for all within that category regardless of their domicile. Failure to do so would unfairly discriminate against UK issuers.

We are also convinced that single-market rules require that the FSA allow UK issuers to list their shares on the same basis that they allow issuers from other Member States to do so.

Q9: Do you agree that we should extend DTR7.2 to all Listed companies with the listing of equity securities and GDRs and the amendments to LR9 and LR14?

The AIC agrees that DTR7.2 should be applied to all listed companies as proposed. We also agree that where the offshore companies meet the requirements of LR9.8.6R they should be deemed to comply with the requirements of DTR7.2.

However, we note that this change does involve increasing obligations on companies listed under Chapter 14, over and above the minimum required under the CARD (as the FSA had the option of exempting them from Company Reporting Directive disclosures). This demonstrates that there are circumstances where the FSA is prepared to impose discretionary obligations on companies with a directive-minimum listing. We are disappointed that it has not decided to exercise a similar approach where its listing principles are concerned and make all issuers of listed shares abide by its listing principles.

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

The AIC agrees that companies should be able to change their listing segment as appropriate. Therefore we agree that commercial companies should be able to migrate to the closed or open-ended investment companies' rules if appropriate. Investment companies should also be able to move to the trading company segment if shareholders support such a change. Of course, a move out of Chapter 15 should only be possible where the issuer is no longer, as a matter of substance, a closed-ended investment company. Similarly, only issuers who are true investment companies should be able to move into Chapter 15.

We agree that shareholder approval should be required for any transfer in or out of the closed-ended investment company rules. This is because adopting or cancelling an investment policy on entering/leaving Chapter 15 is the same as making a material change to the company's investment policy.

Q11: Do you agree with the provisions of LR5.A and our approach for all companies migrating from one segment to another? Please state which part you do not agree with and suggest an alternative approach.

Yes.

Q12: Do you agree with the amendments to LR8 setting out the requirements or the appointment and obligations of a sponsor with respect to migration?

Yes.

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

Yes.

Q14: Do you consider that we should also require prior shareholder approval for a cancellation of securities and delete LR5.2.6R?

Yes.

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

Yes.

Education campaign

There are significant challenges in educating the market on the nature of the UK's listing regime and the broader market context. The FSA will need to dedicate significant resources to this area if it is to have an appreciable impact. The AIC supports the initiatives set out in the paper (from para 1.7) but also suggests the FSA should consider other activities, including:

- **General positioning:** The FSA should include a general introduction to the regulation of quoted securities on its website which describes from first principles how the structure of regulation works. This would include discussing in layman's terms the concept of a regulated and unregulated markets and the regulation of listed securities in contrast with non-listed securities.
- **Diagram of the structure of the UK listing regime:** The figure used to illustrate the proposed market structure is helpful, and should be used to support the FSA's ongoing education efforts. However, it could usefully include more information without creating confusion. For example, we **recommend** that the top level description of the Premium and standard categories be adjusted as shown below:

**Premium
(incorporating additional UK
standards)**

**Standard
(incorporating minimum European
standards)**

N.B. This suggested amendment does not reflect our recommendation that the 'standard' segment be re-labelled as 'minimum standard', but we remain convinced that such an approach would be superior.

- **Media engagement:** A priority should be educating the media about the changes. For example, one common confusion often seen in the press is describing companies as 'AIM-listed'. The FSA should consider the extent it could work with the editorial teams at key publications to offer training to journalists and ensure the correct terminology is used in their style guides.

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For more information on the issues raised in this note please contact:

Guy Rainbird, Public Affairs Director, The Association of Investment Companies. guy.rainbird@theaic.co.uk