



The City of London Law Society



The Law Society

**Response to the FCA quarterly consultation
No. 6 in CP 14/18**

Law Society and City of London Law Society
joint response

5 November 2014



Introduction

1. The comments set out in this paper have been prepared jointly by the Listing Rules Joint Working Party of the Company Law Committees of the Law Society of England and Wales and the City of London Law Society.
2. The Law Society of England and Wales is the representative body of over 120,000 solicitors in England and Wales. The Society negotiates on behalf of the profession and makes representations to regulators and Government in both the domestic and European arena. This response has been prepared on behalf of the Law Society by members of the Company Law Committee.
3. The City of London Law Society ("**CLLS**") represents approximately 13,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees.
4. The Listing Rules Joint Working Party is made up of senior and specialist corporate lawyers from both the Law Society and the CLLS who have a particular focus on the Listing Rules and the UK Listing Regime.
5. We set out below our responses to the questions in Chapter 3 of the FCA quarterly consultation paper 14/18.¹

Chapter 3 – Minor amendments to the Listing, Prospectus and Disclosure and Transparency Rules

Q3.1 Do you agree with our proposal to amend LR 13.2.1R and LR 15.4.8R, insert new LR 15.4.8AR and delete LR 13.2.2R, LR13.2.2AG and LR13.2.3R, which will reduce the scope of the FCA's circular review and approval activities?

Yes, although, in the light of the proposed amendments, we suggest that LR 13.8.8R (2) is deleted. This provision provides that "*a circular or other document convening an annual general meeting at which only ordinary business is to be conducted and, if applicable, any other matter covered by this section is to be considered or proposed, need not be submitted to the FCA for approval*". As a result of the proposed changes to LR 13.2.1, circulars convening an annual general meeting would not require prior approval, irrespective of whether they relate to ordinary or special business, unless they include business of the type referred to in the revised LR 13.2.1 and, consequently, LR 13.8.8R(2) should be deleted in order to avoid any confusion.

Q3.2: Do you agree with our proposal to amend item 9 of LR 11 Annex 1R to allow the use of the insignificant subsidiary exemption only where such subsidiary has been consolidated within the premium listed company's group accounts for more than one full financial year?

Yes, although we suggest that it might be more accurate to provide in LR 11 Annex 1R, 9(4)(a), that the "relevant period" means "*if the subsidiary undertaking or each of the subsidiary undertakings (as the case may be) has been consolidated in the listed company's group for ~~more than~~ **at least** one full financial year but less than three full financial years, each of the full financial years before the date of the transaction or arrangement for which accounts have been published*".

¹ Available on the FCA's website, <http://www.fca.org.uk/your-fca/documents/consultation-papers/cp14-18>.

Q3.3: Do you agree with our proposal to amend LR 13.4.6R to also refer to 'rights to' mineral resources?

Yes.

Q3.4: Do you agree with our proposal to amend LR 13.5.4R(2) to allow a profit forecast or a profit estimate included in class 1 circulars to be prepared in accordance with LR 13.5.32R?

Yes.

Q3.5: Do you agree with our proposal to amend LR 6.1.3DR(1) to clarify the period that needs to be covered by the historical financial information where LR 6.1.3DR applies?

Yes.

Q3.6: Do you agree with the proposed amendment to the definition of investment trust in LR Appendix 1?

Yes.

Q3.7: Do you agree with the proposal to amend LR 9.8.10R(2), DTR 7.1.7G and DTR 7.2.8G?

Yes.

Q3.8: Do you agree with the proposal to amend the definition of the Code in LR Appendix 1 and the Glossary?

We agree that the definition of the Code in LR Appendix 1 and the Glossary, which currently refers to the Code published in May 2010 ("**May 2010 Code**"), should be updated.

Since the publication of CP 14/18, the Financial Reporting Council published a revised edition of the Code in September 2014 which will apply to accounting periods beginning on, or after 1 October 2014 ("**September 2014 Code**"). We note that the FCA has provided in CP 14/18 that it will consult on any changes to the LRs and DTRs that may be required as a result of the September 2014 Code. We assume that this will include an amendment to the proposed definition of the Code as set out in CP 14/18 so that it refers to the September 2014 Code. However, in order to avoid further amendments to the definition to reflect each updated Code, and to prevent any confusion during the period when a new Code is applicable but the definition of Code in the LRs and DTRs has not yet been updated, we suggest that the definition of the Code could be amended to read:

"the UK Corporate Governance Code published by the Financial Reporting Council that applies to the listed company in the relevant accounting period as specified by the Financial Reporting Council".

Q3.9: Do you agree with the proposal on transitional provisions set out in LR TR 13 and DTR TP 24 and 25?

In our response to Q3.8, we explain why our suggested definition of the Code would be more appropriate. If the suggested definition of the Code is adopted, the proposed transitional provisions are no longer required.

If, however, the FCA proceeds with its approach to set out the relevant applicable Code in the definition, we suggest that for the sake of clarity the transitional provisions should

refer to the listed company's accounting period *beginning on, or after*, the effective date (rather than *ending before* the effective date). This tracks the language that is used by the Financial Reporting Council when it provides when a new Code should apply to a listed company. Consequently, the transitional provisions should be amended so that a listed company or a closed-ended investment fund which has an accounting period beginning on, or after, 1 October 2012, should refer to the provisions in the Code published in September 2012. Furthermore, the transitional provisions should reflect the new September 2014 Code so that a listed company or a closed-ended investment fund which has an accounting period on, or after, 1 October 2014 should refer to the provisions in the September 2014 Code. This approach clarifies which Code should apply to the issuer and there is no reason why two Codes would be applicable to the same issuer.

As the May 2010 Code is no longer applicable to listed companies, references to it should be deleted from the new rules.

Q3.10: Do you agree with the proposed change to DTR 6.2.3G?

Yes.

Q3.11: Do you agree with the proposed amendments to PR 1.1.6G, PR 1.1.7G, PR 1.1.8G, PR 5.6.5G, LR 13.4.8R and the proposed defined terms?

Yes.

Q3.12: Do you have any comments on our proposed fee for approving a material change to a closed-ended investment fund's investment policy?

Yes.

Q3.13: Do you agree that our assessments of the costs are reasonable?

No comment.

Contact Details

If you have any queries or would like to discuss any aspect of this response, please contact Richard Ufland.

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