



The City of London Law Society

4 College Hill
London EC4R 2RB
Tel: 020 7329 2173
Fax: 020 7329 2190
www.citysolicitors.org.uk

Submission of the City of London Law Society's Company Law Sub-Committee in response to HM Treasury's consultation on the new approach to financial regulation

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. This response in respect of HM Treasury's consultation on the new approach to financial regulation and has been prepared by the CLLS Company Law Committee. The Committee's purpose is to represent the interests of those members of the CLLS involved in company law and related regulation.

Overview

By way of background, we think it is important to note that the wider Treasury review is a response to challenges and problems arising out of the financial crisis. However, in our view market regulation in the UK worked well during the financial crisis and on issues such as market abuse and short-selling, the ability of one regulator (the FSA) to consider and address the relevant points (a classic example of an integrated primary/secondary market issue) was very important and contributed to effective and very timely action, where the UK demonstrated that it was at the forefront of the global response. We are concerned that to separate the UKLA from the regulator with primary responsibility for the regulation of the capital markets risks a reduction in the efficiency of UK market regulation and the capacity of the system to respond to future crises.

Anything which makes capital raising in the UK markets for UK companies less effective and less attractive with no compensating regulatory benefit seems to us misguided.

We suggest that any decision on this aspect of the architecture of financial regulation in the UK should be tested against the following objectives:

- to ensure that the UKLA is able to maintain and enhance its reputation as an effective regulator of the primary capital markets in the UK, sensitive to

commercial and market realities, while at the same time ensuring that high standards of behaviour are achieved.

- to ensure that the UK has a strong voice in ESMA on matters of primary market regulation, able to influence future policy and rule making in a way that will allow the capital markets in the UK to retain their leading position.

Combining the UKLA and the FRC

A threat to regulatory effectiveness

We understand that this proposal is motivated by a desire to join more closely the governance and financial reporting and disclosure role of the FRC with the governance and wider disclosure role for listed companies of the UKLA. We acknowledge that there is some area of overlap but in our view that area of overlap is relatively small.

On the other hand we see major risks if the UKLA, as regulator of primary market activity, is separated from the regulator of secondary market activities (the CPMA).

In essence our concerns stem from the significant loss of synergy and effectiveness that we foresee from this separation. The inefficiencies we see will be exacerbated because there will be three market regulators, since the PRA will have responsibility for certain market regulation deemed to cover prudential/systemic risk issues. It is inevitable that moving primary market regulation away from the market expertise and real time information flow that will remain with the CPMA will lead to a serious risk of gaps falling between regulators and accordingly less effective regulation, potential areas of duplication and potential areas of inconsistency of approach. In stark contrast, it is clear that placing the UKLA with the secondary market regulator within the CPMA would facilitate cross-team communication and interaction, which would be likely to lead to better regulation which would be of benefit to both market users and companies. Overlaps between primary and secondary market regulation permeate almost all transactions and market activity. For example the application and enforcement of the market abuse regime in relation to secondary market activity interrelates integrally with the adequacy and timeliness of primary market/DTR/UKLA disclosure regimes.

In addition we do not see any fit between the FRC with the substantial bulk of work of the UKLA. The FRC's responsibility extends only to UK companies while the bulk of the UKLA's activities relate to securities issued by non-UK companies (currently only about 6 per cent of the securities admitted to listing by the UKLA are shares of UK companies). The UK's principal work involves:

- reviewing and approving documentation for capital markets issuances, frequently on an urgent basis, predominantly for debt and securitised derivative offerings, in numerous cases for non-UK issuers; and
- enforcement based on extensive market monitoring structures and market sophistication.

We see no synergy in this area with the work of the FRC. On the contrary, we see potential inefficiencies by combining organisations with such different roles.

The UKLA's voice in the ESMA

We have serious concerns about the effect of the proposal on the communication of the UK's views on primary market regulation issues to the ESMA, where the UK will have only one seat. Most of the roles of UKLA involve the application of EU directives and regulations and the EU is likely to be the primary mover of further regulatory changes in this area. If the UK primary markets are to remain successful it is essential that there is a strong voice able to influence regulatory developments in Europe. We have serious concerns that a sidelined UKLA will be unable to provide that voice.

The involvement of the UKLA and wider FSA expertise directly in discussions about proposed and existing EU legislation has been crucial in making sure that, so far as possible, the relevant legislation works in the UK market and, whilst protecting investors does not disproportionately impact on the UK's competitiveness. The continuing EU reform agenda around the Prospectus, Transparency and Market Abuse Directives together with the clear pressure for increased harmonisation of the application and enforcement of rules means that strong and coherent representation of the UK's interests on ESMA is critical.

Companies Regulator

We oppose the idea of creating a new companies regulator.

While it might be possible to present a combined FRC/UKLA as a regulator with responsibility for the whole range of reporting and disclosure obligations, from financial reporting to periodic narrative reporting (including governance) and ad hoc market disclosures, we see no advantages in such a construct and the significant risk that doing so would send a signal that these are matters that for UK companies demand tighter and more interventionist "regulation". We are concerned this would significantly reduce the attractiveness of the UK and its capital markets with consequent damage to the UK economy.

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