



The City of London Law Society



The Law Society

**FCA: CP15/28: Quarterly Consultation
Paper No. 10**

Joint Law Society and City of London Law
Society response

November 2015



Introduction

The Law Society is the professional body for solicitors in England and Wales, representing over 160,000 registered legal practitioners ('the Society'). The Society represents the profession to parliament, government and regulatory bodies and has a public interest in the reform of the law.

The City of London Law Society ('CLLS') represents approximately 15,000 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 19 specialist committees.

The Listing Rules Joint Working Party is made up of senior and specialist corporate lawyers from both the Society and the CLLS who have a particular focus on the Listing Rules and the UK Listing Regime.

The Society and CLLS welcomes the opportunity to respond the FCA's consultation document entitled 'CP15/28: Quarterly Consultation Paper No. 10'¹, released on 4 September 2015.

Our comments relate solely to Chapter 8 of CP15/28.

As a general point, a number of the rules (for example DTR 7.1.3R(4) and (6)) refer to different articles of the Audit Regulation. It would be helpful if these could be reproduced in the rules for ease of reference.

Questions

8.1 Do you agree that deletion of LR 5.2.11DR, together with the consequential amendments to LR 5.2.11AR and LR 5.2.11CR, would be the most appropriate way to resolve the disparity in the approaches to cancellation and maintain investor protection?

We have no comments on this rule change. The consultation does not mention any transitional provisions for this change. In order not to disrupt any transactions that might be in progress we suggest that if Rule 5.2.11DR is deleted the amendment should not apply to transactions that have already been announced at the time the change takes effect.

8.2 Do you agree with or have any comments on our proposed approach to the implementation of the SAAD as set out above?

We have the following drafting points:

(1) in DTR 7.1.2G, change "accounting and/or auditing" to "accounting or auditing, or both" so as to match the revised wording in DTR 7.1.1AR(2); and

(2) in DTR 7.1.2AR(2) delete "administrative or" so as to mirror the text of the SAAD.

8.3 Do you agree with our decision not to include specific requirements on audit committee composition in DTR?

¹ Available at: <https://www.fca.org.uk/news/cp15-28-quarterly-consultation-paper-no-10>

We agree with this.

8.4 Do you agree that it is unnecessary to adopt the two Member State options contained in new article 39(2) set out in the SAAD because the wider exemption we have already adopted caters for the specific situations indicated?

We agree with this.

8.5 Do you agree that we should not require annual election of chairmen of audit committees by shareholders?

We agree with this.

8.6 Do you agree with our proposal to exempt AIFs and UCITS from the requirement to have an audit committee?

We agree with this.

8.7 Do you agree with our proposal not to exempt the chairman and members of the audit committee from the revised independence requirements set out in the Statutory Audit Amending Directive?

The current UK best practice, referred to in the consultation paper, is contained in the UK Corporate Governance Code so only applies on a comply or explain basis. Enshrining the requirement for a majority of the members and the chairman of the audit committee to be independent in the DTRs would make this compulsory and, as this is not required by the SAAD, would constitute gold-plating. The UK Corporate Governance Code, as acknowledged, makes this best practice but does provide flexibility for companies which are unable to comply, for example, because of some short term or unexpected issue. The UK Corporate Governance Code is widely followed and we are not aware of a specific need to gold plate in this area, even if the UKLA's proposed approach is consistent with that previously followed.

8.8 Do you agree with our proposed transitional provisions in DTR?

We think it would be clearer to draft the transitional provisions as follows (new text underlined):

App 1.1.1

“As set out in DTR TP [28], in respect of a financial year beginning before [17] June 2016 an issuer to which DTR 7.1 applied before [17] June 2016 must comply with the requirements set out in this appendix in relation to their audit committee.”

DTR TP [28]

Delete (1) as it disapplies DTR 7.1 for newly listed issuers without substituting App 1, which is presumably not intended.

“(1) In respect of a financial year beginning before [17] June 2016, an issuer to which DTR 7.1 applied before [17] June 2016 must comply with the requirements set out in DTR App 1 for that financial year and must comply with DTR 7.1 from the beginning of its next financial year.”

8.9 Do you have any comments you would like to make on other items in this section on audit committees?

We have no comments.

8.10 Do you agree with the proposal to amend DTR 1B.1.4G?

We agree with this.

8.11 Do you agree with the proposal to retain DTR 4.1.11R(1) despite this requirement being removed from the TD?

We agree with this, although we think it would be preferable to avoid the unnecessary duplication of information from issuers subject to both the Accounting Directive and Transparency Directive by stating in DTR 4.1.11R(1) that the information need only be included in the management report if it is not to be included in the notes to the accounts. It would also be more consistent to re-phrase the rule to mirror Article 17.1(q) of the Accounting Directive, rather than retain the original wording. We suggest the following drafting:

“DTR 4.1.11(R)(1) unless already included in the notes to the financial statements pursuant to the *Accounting Directive*, the nature and the financial effect of material events arising after the balance sheet date which are not reflected in the profit and loss account or balance sheet;”

8.12 Do you agree with the proposal to amend DTR 7.2.10R and agree with our analysis that the substance of the requirement under the rule will not change following the amendment?

We have no comments on this.

8.13 Do you agree with the proposal to retain DTR 7.2.11R and to amend it to refer also to DTR 7.2.9R(2)

We have no comments on this.

8.14 Do you agree with the minor changes we propose to DTR 7.2.2R, DTR 7.2.3R and DTR 7.2.9R?

DTR 7.2.3R should include the whole of the second paragraph of article 20(1)(a) and state that an issuer must also “indicate where the relevant texts [of the corporate governance code] are publicly available.”

8.15 Do you agree with our analysis that no transitional provisions are required as a result of the proposed changes to reflect the replacement of the FCLD and the SCLD by the AD?

We agree.

8.16 Do you agree with these proposed amendments to DTR 4.1.7R, DTR 4.1.11R, DTR 4.2.9R, DTR 4.2.10R, LR 9.3.12R, GENPRU 1.3.4R, GENPRU 2.2.103G and SUP 3.10.5BG?

We agree.

8.17 Do you agree with our proposals to make these miscellaneous changes to the Handbook?

We have no comments on these rule changes and so did not respond to this question before the 5 October deadline. However, we would like to mention two points regarding the FCA's related practice and guidance. With regard to PR 3.1.1R(5), due to the deletion of this rule, the copies of information incorporated by reference which need to be submitted to the FCA, will no longer need to be annotated to indicate which item of the schedules and building blocks they relate to (this requirement is not included in Article 2(d) of the Commission Delegated Legislation). Will the FCA still, in practice, require such copies of information to be annotated?

We note that certain of the UKLA's Technical and Procedural Notes will need to be amended to reflect the Omnibus II Directive. It would be very helpful to market participants if these amended notes could be released (for consultation, if not in final form) no later than the time when the changes to the rules come into force. The Technical and Procedural Notes that we view as being affected are:

- (i) UKLA/PN/901.2 - Eligibility process for new listing applicants
- (ii) UKLA/PN/902.1 - Securities that are the subject of final terms
- (iii) UKLA/PN/903.2 - Review and approval of documents
- (iv) UKLA/PN/904.1 - Public offer prospectus – drafting and approval
- (v) UKLA/PN/905.1 - Passporting – 'in' and 'out' processes adopted
- (vi) UKLA/PN/906.1 - Guidance on UKLA standard comments
- (vii) UKLA/PN/908.1 - UKLA decision making and review process
- (viii) UKLA/TN/205.1 - Circulation and publication of unapproved documents
- (ix) UKLA/TN/604.1 - PD advertisement regime
- (x) UKLA/TN/605.2 - Supplementary prospectus
- (xi) UKLA/TN/629.2 - Final terms