



The City of London Law Society



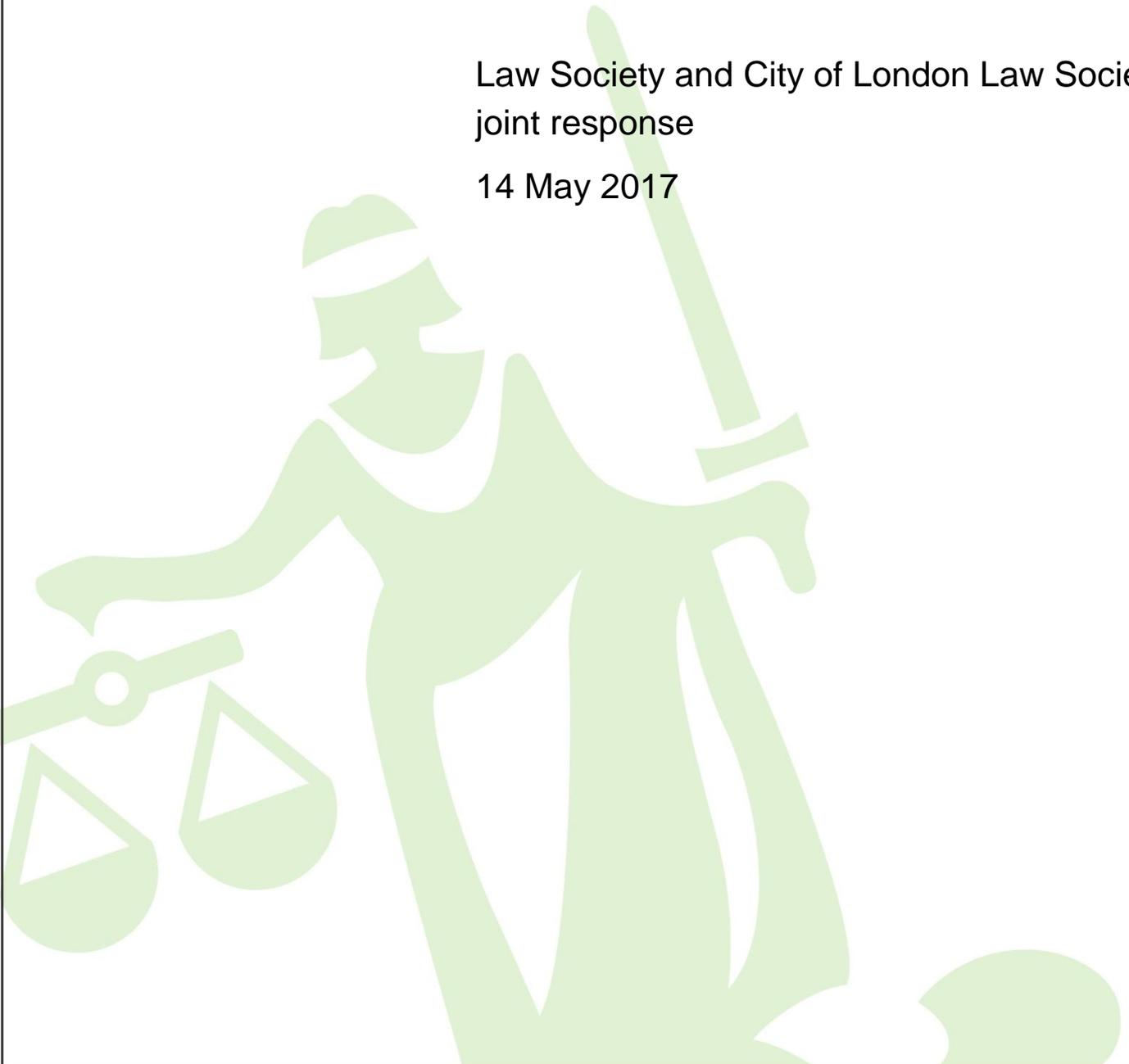
The Law Society

## **FCA Consultation CP 17/4**

### **Review of the effectiveness of Primary Markets: Enhancements to the Listing Regime**

Law Society and City of London Law Society  
joint response

14 May 2017



## Introduction

1. The views set out in this paper have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (**CLLS**) and the Law Society of England and Wales (the **Law Society**).
2. The CLLS represents approximately 17,000 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, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.
3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.
4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to capital markets.

## Response

5. We set out our responses to the list of questions in Annex 1 to the FCA consultation paper 17/4: 'Review of the effectiveness of Primary Markets: Enhancements to the Listing Regime'.

**Q1.1 Do you agree with the proposals to clarify the requirements discussed above regarding the historical financial track record and revenue earning track record requirements for premium listing eligibility?**

6. We have no comments.

**Q2: Do you agree with our proposals to split the current independent business requirements into three distinct areas with associated guidance?**

7. We have no comments.

**Q3: Do you agree with the other proposed minor clarifications to LR 6?**

8. We have no comments.

**Q4: Do you agree with replacing our existing Technical Note – Scientific research based companies (UKLA/TN/422.2) with our proposed Technical Note for SRBCs (UKLA/TN/422.3)?**

9. We have no comments.

**Q5: Do you agree with our proposals to introduce a new Technical Note for mineral companies (UKLA/TN/427.1)?**

10. We have no comments.

- Q6: Do you believe a specific concession for property companies in LR 6.12 is appropriate? If so, is the proposed concession correctly calibrated and do you agree with our proposed new Technical Note – Property company concession (UKLA/TN/426.1) in Appendix 1?**
11. We have no comments.
- Q7: Do you agree that it is reasonable for a premium listed issuer, having obtained the guidance of a sponsor under LR 8.2.2R, to disregard the result of the profits test, where the result is 25% or more and the other class test results are below 5%, and the profits test result is anomalous?**
12. We have no comments.
- Q8: Do you agree that an element of judgement should be applied when deciding whether to disregard the result of the profits test where the result is 25% or more and all other class tests results are below 5%?**
13. We have no comments.
- Q9: Do you agree that premium listed issuers, having obtained guidance on the class tests from a sponsor under LR 8.2.2R, should be allowed to make the proposed adjustments to the figures used to classify profits without being required to consult and agree the adjustments in advance with us?**
14. We have no comments.
- Q10: Are there any other possible enhancements to the calculation of the profits test that could be made?**
15. We note that, in paragraph 4.26 of CP 17/4, the FCA states that in all other situations where the issuer considers that the profits test produces an anomalous result, including in respect of related party transactions, the FCA proposes to keep the requirement that the issuer must consult with it if the issuer wants to modify the way in which it applies the profits test.
16. However, in our experience, the profits test can often produce an anomalous result when an issuer has to determine whether a related party transaction falls within the exemption relating to an 'insignificant subsidiary undertaking' as defined in LR 11, Annex 1. We note that it is common for issuers to have difficulty in satisfying the test that the subsidiary has contributed less than 10% of the issuer's profits in each of the three financial years prior to the relevant transaction. For example, there may be an exceptional item which produces an anomalous profits test result exceeding the 10% threshold for only one of the three financial years. In this case, the issuer would not be able to benefit from the exemption even if its subsidiary was able to meet the test for the other two financial years prior to the transaction.
17. We consider that the same logic behind the proposed changes to LR 10 Annex 1 should also apply to the profits test in LR 11, Annex 1 in respect of the calculation of the tests for the exemption relating to an insignificant subsidiary undertaking. Consequently, we query whether the FCA could introduce a similar relaxation to cater for these circumstances or at least show more flexibility when issuers or their sponsors seek guidance from the FCA in such circumstances.

- Q11: As an alternative to our proposals, are there any alternative profit measures that should be used either in conjunction with or in place of the current profits test?**
18. We have no comments.
- Q12: Do you agree with our proposal to amend LR 10 Annex 1 paragraph 8R(3)(a) and (b) to set out our existing approach to adjusting the figures used to classify assets and profits for transactions that have occurred during the last financial year that are class 2 or larger?**
19. We have no comments.
- Q13: Do you agree with the related changes to our Technical Note – Classification tests (UKLA/TN/302.1) which are set out in the revised note in Appendix 2 of this CP?**
20. We have no comments.
- Q14: Do you agree that we should amend the applicable provisions in LR 5.6 to remove the rebuttable presumption of an issuer’s listing being suspended upon announcement or leak of a reverse takeover (other than for shell companies)?**
21. We have no comments.
- Q15: Accordingly, do you agree that (other than for shell companies) an issuer or, where the issuer is premium listed, its sponsor should no longer be automatically required to contact us as early as possible to discuss whether a suspension is appropriate when a reverse takeover is agreed or is in contemplation, or to request a suspension where details of the reverse takeover have leaked?**
22. We have no comments.
- Q16: Do you agree with our proposal to delete the Technical Note – Reverse takeovers (UKLA/TN/306.3) and with our proposed changes to the Technical Note - Listing Principle 2 Dealing with the FCA in an open and cooperative manner (UKLA/TN/209.2) set out in Appendix 4?**
23. We have no comments.
- Q17: Do you agree with our proposed criteria for the types of issuers who will continue to be covered by the rebuttable presumption of suspension and related provisions?**
24. We have no comments.
- Q18: In particular, do you agree that we should retain the rebuttable presumption of suspension for shell companies upon announcement or leak of a reverse takeover?**
25. Yes. Whilst we note that shell companies will also be subject to announcement requirements under MAR, we agree with the FCA's proposal to retain the presumption for

shell companies in the light of the FCA's recent experience of witnessing high levels of volatility in the share price of such companies around the time of a proposed reverse transaction.

**Q19: Accordingly, do you agree that shell companies should continue to be required to contact us as soon as possible (i) before announcing a reverse takeover, to discuss whether a suspension of listing is appropriate, or (ii) where details of the reverse takeover have leaked, to request a suspension?**

26. We have no comments.

**Q20: Do you agree with our proposed amendments to the Technical Note - Special purpose acquisition companies (SPACs) (UKLA/TN/420.1)?**

27. We have no comments.

**FOR FURTHER INFORMATION PLEASE CONTACT:**

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