



The City of London Law Society



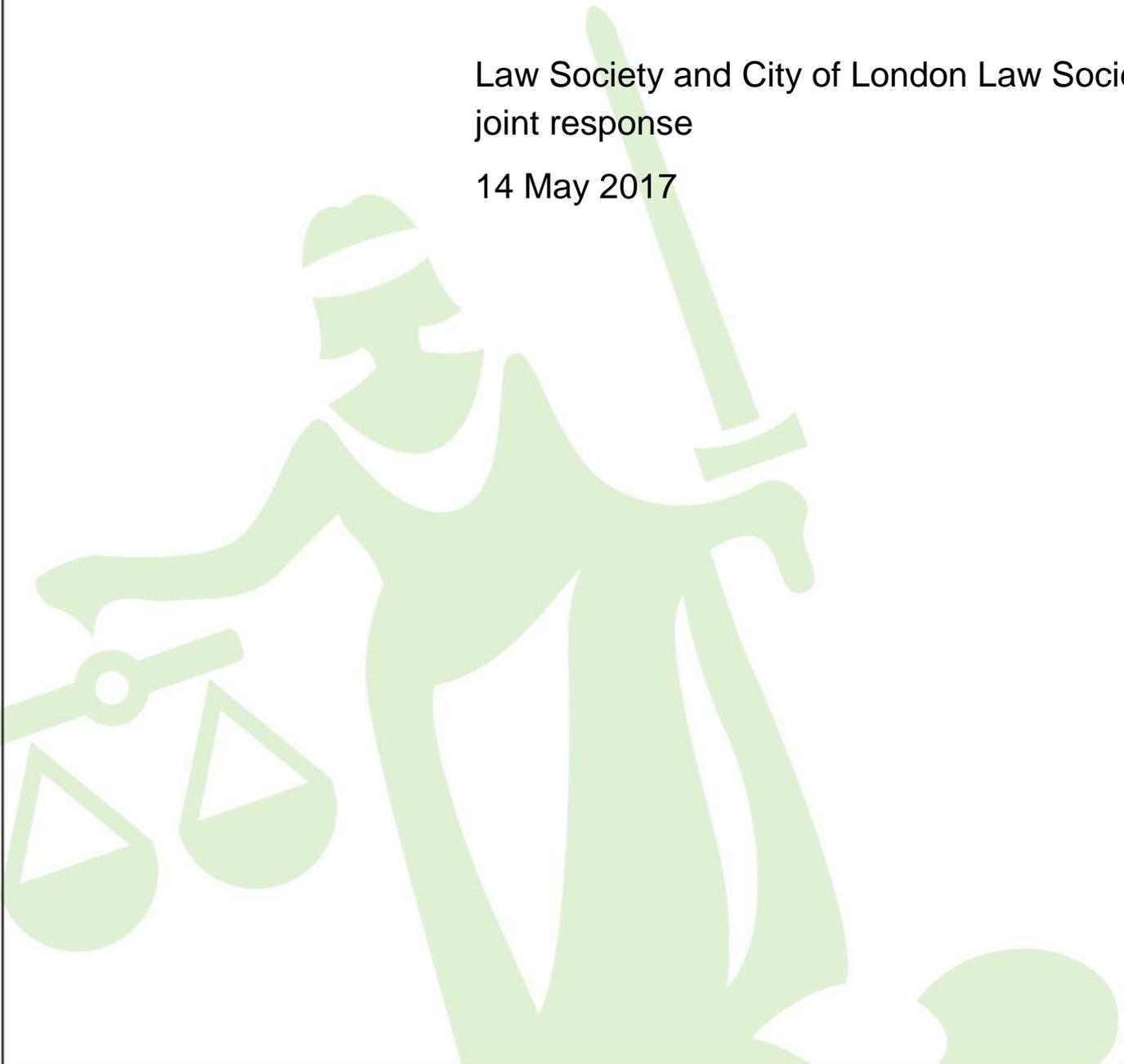
The Law Society

FCA Consultation DP 17/2

Review of the effectiveness of Primary Markets: The UK Primary Markets Landscape

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 160,000 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 discussion paper 17/2 'Review of the effectiveness of Primary Markets: The UK Primary Markets Landscape'.
6. In respect of questions 5.1 to 6.3 set out in Chapter 5 and 6 of the discussion paper which seeks views on the proposals relating to a new wholesale bond MTF and encouraging retail access to the debt markets, we are leaving the Financial Law Committee of the City of London Law Society to comment on those matters.

Q1.1 Are there any issues or aspects of the listing regime not covered in this paper that you think we should be discussing? If so, please provide more detail.

7. Yes.
8. We would welcome further discussion around the current requirement in the Listing Rules (the "LRs") that at least 25% of a company's listed shares must be in public hands (the "free float requirement").
9. We understand that the free float requirement is a significant factor for issuers when determining whether to list their shares in the UK or on a market in another jurisdiction. Indeed, we have seen several UK and overseas companies choose to list overseas because they are unable, or not willing, to comply with the current free float requirement. Such companies may be owned by a founding family, or government, which wishes to retain a controlling interest.
10. Consequently, we query whether there is scope for the current free float level to be modified in order to enhance the competitiveness of the premium market. We note that the FCA, having taking into account several factors (including the number and nature of shareholders and the shares which are held outside the EEA), is able to grant a modification to the free float requirement pursuant to LR 6.1.20AG and LR 14.2.3G. We suggest that if the FCA does not think it appropriate to change the 25%, it would be helpful if it could indicate a willingness to be more flexible in agreeing modifications, giving greater weight to such factors as part of the eligibility requirements.

11. The UK's impending departure from the European Union will provide an opportunity to revisit the free float requirement and, in particular, consider how the current requirement that 25% of the shares must be in the public's hands across 'EEA States' might be adjusted. For example, taking into account the distribution of shares held 'outside of the UK' may be helpful for applicants.

12. As we note in our response to Q3.3, rather than pursue the development of a further listing segment, we consider that there should be a focus on enhancing the current requirements of the premium listing regime so that it is an attractive and viable market for overseas issuers. Modifying the current free float requirements would play a fundamental part in enhancing the competitiveness of the market for both UK and overseas issuers.

Q3.1 Do you have any comments on the underlying rationale for standard listing? Are the key assumptions on which the regime was built, including equality of treatment between UK and non-UK companies, still valid?

13. We have no comments.

Q3.2 Do you think the name 'standard listing' is unattractive to prospective applicants? What alternative suggestions do you have?

14. We have no comments.

Q3.3 What are your views on development of a distinct international segment? If you think it would be beneficial, what investor protections should apply? What, if any, alternative proposals would you put forward to assist non-UK issuers wishing to raise equity capital in the UK?

15. We are concerned that the development of a further segment for overseas companies may overly complicate the range of markets (and corresponding levels of regulation) available for issuers and investors. There is also a risk that a further segment may undermine the advantages of seeking a listing on the premium listing segment.

16. If it is intended that the new international segment will impose less regulation upon overseas issuers than is currently imposed upon premium listed issuers (but will impose more regulation than the EU-minimum requirements imposed upon standard listed issuers), it may be perceived that such a segment would offer overseas issuers an 'easier route' to a more prestigious London listing – which would not be available for UK issuers. We do not see the logic in providing an additional option for overseas issuers – if the option was sufficiently attractive, UK issuers could decide to bring themselves within it by arranging for the parent company of their group to be incorporated elsewhere than in the UK.

17. There is a further concern that the creation of a new segment, particularly if overseas issuers would be eligible for FTSE index inclusion, may reduce the number of issuers wishing to list on the premium segment. As the FCA has recognised in its discussion paper, stakeholders clearly recognise the benefits of a premium listing. Introducing a further segment which is similar to the premium segment may inadvertently decrease the number of applicants for the latter and undermine the segment's prestigious reputation and success as a key global listing destination.

18. We consider that it would be preferable to focus on enhancing the current premium listing segment which is already recognised as an attractive and successful global market. In particular, we suggest that the current premium listing requirements are reviewed in order to assess which rules are considered too onerous for overseas issuers, whilst ensuring

that UK issuers are not unfairly disadvantaged. We would be very willing to assist the FCA with this review.

19. As mentioned in our response to Q1.1, we believe that modifying the current free float requirements should form part of the approach to attract both UK and overseas issuers to list in the UK.

Q3.4 Do you think that the premium listing obligations for open-ended investment companies should be removed, and the securities category repositioned in the standard listing segment? In arriving at your view, what factors have you taken into account?

20. Yes. The premium listing obligations for open-ended investment companies impose an unnecessary layer of regulation on top of the regulations outside the Listing Rules (such as the UCITS Directive) which apply to such entities and, consequently, do not serve any valuable purpose for investors.

Q3.5 Are there any individual elements of the premium listing regime that should be retained for open-ended investment companies? If so, what are they and why should they be retained?

21. No. We do not believe that any premium listing rules should apply to open-ended investment companies given that they are not specifically designed for such entities and do not in our view have any practical application. Most of the premium listed open-ended investment companies are Exchange Traded Funds which are perceived as different vehicles from the other companies which are subject to the listing regime and we do not consider that it is sensible for these entities to be subject to the same rules.
22. Additionally, if a new listing category for open-ended property funds were at any stage proposed, we would suggest that a specifically tailored rulebook should be created for them.

Q4.1 How effective are the UK's primary equity markets in providing capital for science and technology companies in the scale-up phase?

23. We have no comments.

Q4.2 What are the factors that adversely impact the effectiveness of the UK's public equity markets in providing scale-up capital?

We have no comments.

Q4.3 What potential enhancements to the primary market regulatory framework could contribute to improving the provision of scale-up capital?

24. We have no comments.

Q4.4 Should science and technology companies have reached a certain stage of business maturity before accessing public equity markets? If so, how should that stage of maturity be defined?

25. We have no comments.

Q4.5 What are the characteristics of the capital market structures that drive short-term behaviours?

26. We have no comments.

Q4.6 What are the drivers of these characteristics, and how important is regulation in this context? What changes could be made to help address these drivers?

27. We have no comments.

Q4.7 The current public equity capital market model provides different things. How important are each to the long-term investor? How important are each to early-stage issuers? Are there additional important features of public equity markets not mentioned below?

28. We have no comments.

Q4.8 What features would a long-term capital market need to have, and need to avoid, to be effective?

29. We have no comments.

FOR FURTHER INFORMATION PLEASE CONTACT:

Officer's Name:	Olu Oluwole
Officer's Title:	Policy Adviser
Officer's Email Address:	Olufola.Oluwole@LawSociety.org.uk