



The City of London Law Society



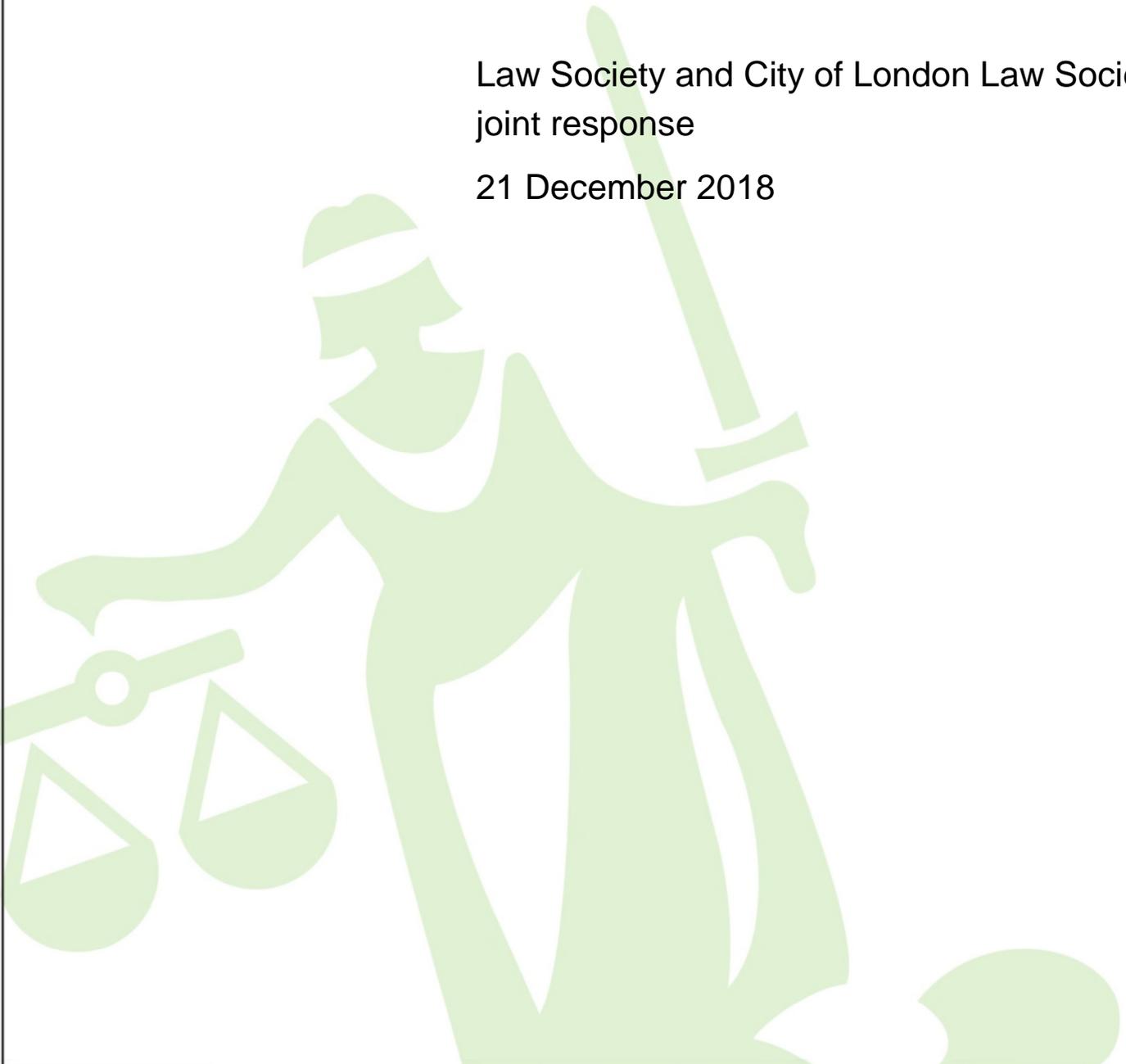
The Law Society

**FCA consultation paper 18/36**

**Brexit: proposed changes to the  
Handbook and Binding Technical  
Standards – second consultation**

Law Society and City of London Law Society  
joint response

21 December 2018



## 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 refer to the FCA's consultation paper 18/36 on 'Brexit: proposed changes to the Handbook and Binding Technical Standards – second consultation' (the "**Second Consultation Paper**").
6. Our Joint Working Party is responsible for considering any proposed changes to the regulation of the UK's equity capital markets. In relation to the Second Consultation Paper, our Joint Working Party has considered the FCA's proposed changes to the Listing Rules, Prospectus Rules, Disclosure Guidance and Transparency Rules, certain Binding Technical Standards falling within our remit, and the FCA's proposed guidance to interpreting the Handbook forms and the non-Handbook guidance relating to EU law or EU derived law.
7. We set out below our responses to the questions set out in Annex 1 of the Second Consultation Paper which relate to the parts of the Second Consultation Paper which we have reviewed.

## Questions

**Q2: Do you agree with our proposals to introduce general continuity provisions? If not, why?**

Yes.

**Q3: Do you agree that we have correctly identified all relevant amendments in our draft Handbook and BTS text related to the cross-cutting issues set out above? Do you have any other points you wish to raise about our approach to these cross-cutting issues?**

Subject to our comments set out in this response, we have no other points to raise in relation to the areas we have considered.

**Q10: Do you agree with the proposed amendment, which will lead to shareholders in all jurisdictions being eligible for inclusion in the free float calculation of shares in public hands?**

Yes, we agree that, following the UK's exit from the European Union, shareholders in all jurisdictions should be eligible for inclusion in the free float calculation of shares in public hands. We assume that this relaxation of the free float requirement covers shares held by the public in any jurisdiction, irrespective of whether or not the shares are listed in that jurisdiction.

We have some minor comments on the proposed drafting amendments to LR 6.14.1R, LR 14.2.2R and LR 14.2.3G to reflect the new position. The current drafting in 'Exiting the European Union: Listing, Prospectus and Disclosure Sourcebooks (Amendments) Instrument 201[x]' provides that shares counted towards the free float calculation are those which comprise a sufficient number "distributed to the public" but we suggest that the use of the term "public" on its own does not make it sufficiently clear that the relevant shareholders may be situated in any jurisdiction.

Consequently, we suggest that the relevant rules are amended as follows:

LR 6.14.1R: "*Where an applicant is applying for the admission of a class of equity shares to premium listing, a sufficient number of shares of that class must, no later than the time of admission, be distributed to the public in any jurisdiction (whether in the UK or any third country).*"

LR 14.2.2R: "*If an application is made for the admission of a class of shares, a sufficient number of shares of that class must, no later than the time of admission, be distributed to the public in any jurisdiction (whether in the UK or any third country).*"

LR 14.2.3G: The FCA may modify LR 14.2.2R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of their distribution to the public in any jurisdiction (whether in the UK or any third country)."

**Q11: Do you agree with our proposal to remove the reference to the EEA in the provisions setting out which issuers can benefit from an exemption from producing accounts?**

Yes.

**Q12: Do you agree with our proposals to amend the requirements in DTR 4.1.6R and DTR 4.1.7R in relation to audited financial statements?**

We agree with the proposal to change DTR 4.1.6R provided that HMT does indeed issue an equivalence decision in time for exit day which determines that EU-adopted IFRS can continue to be used by issuers in a no-deal scenario.

We assume that HMT is also seeking, or will seek, an equivalence decision on the UK's behalf to ensure that UK IFRS will be accepted by those third countries which accept EU-adopted IFRS for the purposes of preparing consolidated accounts.

**Q14: Do you agree with our proposal to require issuers to use a PIP for disseminating regulated information?**

Yes, although we suggest that sufficient time is provided by means of transitional relief for those issuers who do not currently disseminate regulated information via a PIP or at least the change should be flagged to issuers at an early stage so as to give them time to make the necessary arrangements.

**Q15: Do you agree with our proposal to change the exemption from DTR 7.1 in respect of subsidiary undertakings?**

Yes but this change is likely to create an administrative burden for issuers which currently are able to avail themselves of the exemption which is being removed and we suggest that, as with

our response to question 14, either transitional relief should be granted or at the very least the change should be flagged to issuers at an early stage.

**Q16: Are there any proposed changes reflected in the instruments in Appendix 1 that are not cross-cutting in nature (see Chapter 2) or discussed in this chapter where you think we should re-consider our approach? If so, why?**

We have no comments.

**Q30: Do you agree with our approach to amending forms? If not, why not?**

Yes, we do.

**Q31: Do you have any comments on the proposed guidance on our approach to non-Handbook guidance set out at Appendix 1 to this CP?**

No but please also refer to our response to Q32 below.

**Q32: Have you identified any non-Handbook guidance which should be specifically reviewed and amended because you think that the interpretive approach proposed will not be enough to ensure the regulatory framework remains fit for purpose? If so, please explain why you think this is the case.**

We have not identified any non-Handbook guidance which should be specifically reviewed and amended. However, we refer you to our recently submitted response to CP 18/28 in which we suggested that the FCA should consider implementing a mechanism for market participants with urgent queries to obtain guidance on the interpretation of the non-legislative material. We query whether the same mechanism could be set up in respect of the interpretation of non-Handbook guidance in the event that there are some areas of ambiguity which may not be possible to foresee during this consultation process or, indeed, it would be helpful if such a facility could be set up before the scheduled Brexit date as participants will want to be able to plan ahead.

As suggested in our response to CP 18/28, such a mechanism could take the form of a designated hotline or email address which would be available for a finite period of time until the regulatory position is sufficiently clear for markets to operate confidently under the new regime.

**FOR FURTHER INFORMATION PLEASE CONTACT:**

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