Financial Services Consumer Panel
AN INDEPENDENT VOICE FOR CONSUMERS OF FINANCIAL SERVICES

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14 July 2023

By email: cp23-10@fca.org.uk

Dear Sir / Madam,

Financial Services Consumer Panel response to FCA CP 23/10 Primary Markets Effectiveness Review: Proposed Equity Listing Rule Reforms

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's consultation on Primary Markets Effectiveness Review: Proposed Equity Listing Rule Reforms. The Panel would also like to thank the FCA's team for engaging with the Panel on this topic.

As explained in the Panel's response[1] to the consultation on the FCA's approach to Future Regulatory Framework (FRF), the Panel often hear of a 'balance to be struck' between the international competitiveness and consumer protection objectives. The Panel wish to be clear that, when implementing reform, the FCA's consumer protection objective, as a primary objective, takes precedence over the international competitiveness objective and there must not be a 'trade off'.

Whilst we take the view that not all the questions are applicable to the Panel, we welcome the opportunity to respond to this consultation on proposed equity listing rule reforms. In summary the Panel is not supportive of the proposals due to the adverse impact on existing consumer protections and the uncertainty of the benefits cited, if, however, the FCA decide to progress with the proposals the Panel would urge the FCA to consider the following:

Consumer protection

The Panel would urge the FCA to ensure all policy changes, affecting upstream markets, or activities which nevertheless impact consumers, are

[1] https://www.fs-cp.org.uk/sites/default/files/final_fscp_response_-_fca_frf_approach_20221220.pdf

considered through the lens of consumer protection and the degree to which the policy changes either increase or reduce the possibility of harm. Whilst some policy changes within the FRF may focus on wholesale products and activities, these will invariably end up, in some way, impacting consumers.

Specific points are:

- **Lack of outcomes measures:** The Panel also note that there are no explicitly measurable outcomes associated with these reforms. It is therefore not clear how these reforms would be considered a failure nor if they could be reversed.

- **Recent governance failures:** The Panel is extremely concerned that well-established consumer protections and rights are at risk of being removed. These protections and rights have been hard-earned by investors of equities or via funds and pensions following a series of scandals and failures that have caused consumer harm as well as damaging the reputation of London's capital markets.

- **False equivalence:** It does not make sense to compare the UK's listings market with other markets, which operate in completely different eco-systems. It is therefore extremely risky to assume that the proposed changes will lead to the outcomes experienced in other markets.

- **Lack of evidence:** The proposed changes are borne from a desire to increase the international competitiveness of UK listings market, with wider listings and greater growth as outcomes. However, the causal link between these variables has not been demonstrated. The Panel has not sighted any specific evidence to suggest that the primary reason that some firms choose not to list in the UK, or that growth (in firms listed on the FTSE) is constrained, is due to the investor protection rights which the FCA proposes be removed. Similarly, a causal link between weaker governance and a strong listings market in other markets has not been demonstrated.

- **Safeguards:** the proposed changes are being advocated by the London Stock Exchange, a private monopoly, and firms who stand to benefit immediately and immeasurably. Should the proposed changes be implemented, the rights of consumers that directly buy or hold listed shares that are currently in the Premium Listing category would be reduced. Whilst these changes may appear technical, for some investors these rights are important, and these changes will have a negative impact if consumer rights are reduced. The voice of the consumer is heavily reliant on the FCA exercising its duty as the consumers' regulator with a primary objective to protect consumers. Only when consumer protection is ensured can the secondary objective of international competitiveness and growth be considered. We therefore urge the FCA to consider how any reduction in consumers' rights and protections will be mitigated.

Consumer behaviour/understanding and communication of policy changes

The Panel notes that the Consultation Paper details no analysis of current investor (consumer) behaviour regarding the areas of policy change or evaluation of the importance investors place on these rights. The Panel understand the FCA has been engaging with consumers however has been unable to obtain sufficient insights. The Panel would therefore encourage the FCA to err on the side of caution and not make any changes if sufficient consumer insights cannot be gained. The Panel would expect the FCA to research and understand consumer attitudes and behaviour before progressing to amend any policy.

Additionally, the Panel expects the FCA to fully understand, and take account of, the views (and any concerns) held by institutions that invest on behalf of consumers, such as pension funds.

The proposed changes do not consider several important points in relation to the communication to shareholders of changes and reduction in shareholder rights. The Panel request the FCA considers:

1. How would consumer shareholders learn of, and understand, the change to the eligibility rules used as a condition for listing? There will be a perception that initial listings will have to comply with certain rules and criteria – it is important that consumers considering investing in a new listing understand that the 'hurdle' for listing under this new policy is lower than previously. As a result, consumers may wish or need to increase the level of research and due diligence that they apply before making their investment decision, serving as a deterrent to investing.

2. How would existing shareholders (of shares currently in the premium listing category) be made aware of the changes in rules? For example, how would these consumers learn of the change in the Related Party Transaction Rules and/or Significant Transaction Rules? Whilst some consumers may not be explicitly interested or concerned about such transactions, others will be acutely interested. The proposed change in these rules would alter the value at which these consumers are informed and removes the engagement of shareholders through voting. Consumers who hold shares would need to be informed of and understand the proposed changes in the rules and their impact on their rights so they can make an informed, conscious decision regarding whether to continue to hold such equity shares going forward.

3. The Panel notes the FCA, (in paragraph 1.34) discusses the benefits of wider access to companies and the belief that more opportunities for investors may outweigh the benefits currently enjoyed by investors. Whilst benefits of wider access to companies is an improvement on the benefits currently enjoyed by investors, the Panel would encourage the FCA to carefully consider this conjecture, which is in essence a trade-off between those consumers making new investments who may benefit from wider choice, balanced against the loss of current benefits and rights by all consumers who hold investments in equities listed under the premium regime. The Panel does not understand how this trade-off of the benefit to new investments versus the detriment to all existing investors and investments provides a net positive impact in the short, medium and potentially even long term - especially as most of the equities listed elsewhere can be bought as international stocks on various platforms or through ETFs holding the international stock.

4. The FCA would need to take responsibility for the primary communication to consumers about the overall policy change. In addition, the Panel believes communication to shareholders would need to take place before any company transitions to such a policy regime, and that a threshold for consumer understanding would need to be met before companies were permitted to transition.

5. The Panel would expect to see the appropriate changes to pre-sale and at-sale communication and disclosure to ensure that investors are made aware of the new listing regime and the difference from the current premium regime. This additional disclosure should be maintained for a period of years until the FCA can prove, through consumer insight, that the changes are well understood and considered the norm.

6. Lastly, the Panel would expect the FCA to monitor events where the consumer rights have reduced (such as where a significant transaction would have been informed/voted on under the premium listing but was not under the new regime) to understand the extent of consumer detriment and harm. We would suggest that this monitoring should be in place for a period of years following transition, so that the consumer impact and any unintended consequences is evaluated and, if required, the FCA acts swiftly to amend the policy as required.

Yours sincerely,

Helen Charlton

Chair, Financial Services Consumer Panel