To Primary Markets Policy Team 22 March 2024

By email

FCA Listing Authority Advisory Panel (LAAP) and Markets Practitioner Panel (MPP) formal response to 23-31 Primary Markets Effectiveness Review

Dear Primary Markets Policy Team,

We welcome the opportunity to respond to the consultation on Primary Markets Effectiveness Review, a key milestone in a reform agenda we have supported from its earliest stages of development.

LAAP is an independent statutory panel, set up to provide advice and challenge to the FCA on policy issues which affect issuers of securities, and on policy and regulation proposals from the FCA listing's function. Similarly, MPP is an independent statutory panel , set up to provide advice and challenge to the FCA on policy issues, regulatory proposals and other strategic matters that are likely to affect wholesale financial markets.

The FCA Board appoints Panel Members as individuals, not as representatives of any individual firm. They are expected to contribute to the respective panels from the perspective of the primary market sub-sector or the wholesale and securities markets in which they are working, drawing on their personal experience and industry sentiment more generally.

This joint response reflects views held by LAAP and MPP Members and does not necessarily imply unanimity on all proposals.

Our members strongly support the overall direction and the majority of the FCA's proposals to create a genuine single segment for equities. There remain a limited number of areas where members hold differing opinions on the approach proposed and these views are largely reflected in our response. We would be happy to discuss any aspect of our response once the FCA has had time to reflect on this and the wider feedback received from industry.

Questions in this paper

Q1: *Based on our overall proposals for commercial companies, and taking into account the broader UK regulatory, legal and corporate governance environment, do you believe that we have struck the right balance in designing a proposed regime that enables the conditions for a stronger, more effective and competitive listed market with appropriate measures in place to support market integrity and investor protection. If not, what changes should be made?*

We are generally in agreement on our strong support of the overall package of reforms and the direction taken by the FCA. The reforms proposed are an essential part of the ongoing reforms to the UK capital markets and will help the UK remain relevant as a global listing destination.

One area where we would encourage the FCA to continue to reform is in relation to the ability for retail investors to have greater access to UK capital markets,

especially given the emphasis placed on allowing retail shareholders greater access to secondary offers in the Secondary Capital Raising Review and the Pre-Emption Group Guidance.

Some views support the Listing Rules being amended to include existing retail shareholders in an offer of new securities and to consider retail offers on IPOs. Others do not consider the Listing Rules to be the appropriate place for such a mandatory requirement or threshold, as it is not necessarily practical or relevant for all equity offerings to include retail participation.

There are clearly areas of debate in the market that foreshadow further consultation on the prospectus rules, such as around working capital statements, financial information requirements and secondary capital raising.

Q2: *Do you agree with our proposed approach to structuring the UKLR Sourcebook chapters?*

Yes

Q3: *Do you agree with our proposed approach to eligibility requirements for commercial companies and the proposed draft provisions in UKLR 5 in Appendix 1?*

Yes, it is helpful to have the eligibility requirements set out. Clearly through the period of transition and implementation, there are likely to be some areas of discussion where the market may require additional support from the FCA in the application of the new rules.

We agree with the proposal not to retain the financial information requirements for companies that are currently premium listed, i.e., to remove the historical financial information requirements set out in LR 6.2, the revenue earning track record requirements set out in LR 6.3 and the requirement that an applicant has to satisfy the FCA that it has sufficient working capital as set out in LR 6.7.

We note that it is proposed that certain financial information requirements will be retained in the context of a prospectus, and whilst we appreciate that the FCA will consult further later this year on the new public offers and admissions to trading (POATR) regime, we would recommend that the FCA provides some advance guidance (or "draft" guidance) on the application of the prospectus complex financial history rules. How these rules will be interpreted and applied, in particular the nature and extent of the financial information required to be disclosed at admission, will be a relevant consideration for companies choosing a listing venue as they can necessitate material extra time and cost.

A failure to provide such clarity – and a streamlined regime (time and cost) - may influence the choice of listing venue for potential applicants to the detriment of the UK. It may be helpful to consider how similar rules are applied in other jurisdictions, in particular the US.

We would also suggest that the FCA reflects on the requirement for a binary (i.e., qualified or unqualified) working capital statement in a prospectus – in particular whether the benefit of a binary working capital statement justifies the

work required to support, and the potential downside consequences of having, a working capital statement. There was discussion at the time of the Covid-19 pandemic of greater alignment between going concern and working capital statements and of the potential usefulness to investors of disclosing the basis of and assumptions underlying working capital statements.

The FCA might wish to consider whether it is more beneficial to investors to permit such disclosures, as this approach worked well during the COVID period and was generally welcomed by investors, rather than retain the requirement for a binary statement. Further, a qualified working capital statement can have serious consequences for a company, potentially reinforcing perceptions that a company is in financial difficulty and unlikely to survive. Permitting a more detailed disclosure of the working capital position of a listed company could avoid any such potential cliff-edge situations and would more closely align with the disclosure-based regime which the FCA is taking more broadly in the consultation. As above, it may be helpful to consider the US equivalent disclosure requirements in this regard.

If the requirement for a working capital statement is to be retained in prospectuses and if a sponsor will still be required to give a specific declaration on the working capital position of a company, this will likely perpetuate the existing practice of reporting accountants producing a working capital commentary report and accompanying working capital comfort letter. Whilst working capital, cash flow and liquidity are no less important for listings in other countries, other competing jurisdictions do not have a similar practice of producing such a report and comfort letter.

The additional work undertaken in the UK in this context is a relevant consideration for companies when choosing a listing venue owing to the cost and time involved; and whilst the FCA rules do not expressly mandate such additional work, it is nevertheless a consequence of the interpretation of the rules on what sponsors must do in order to provide their declaration and market practice that has evolved over time.

Market practice needs to change to reflect the FCA's revised regime. As a result, whilst not immediately related to the UKLR changes, we encourage the FCA, as part of its planned consultation on detailed guidance, to clarify its supervisory approach and expectations of sponsors through revisions to Technical Notes. And also, potentially to engage with sponsors and the wider advisory community on an ongoing basis on the need to change market practice in relation to the preparation of extensive legal and accounting due diligence and that these are not an expectation of the FCA in support of its revised regime. The FCA may also consider publicly clarifying its expectations in regard to sponsors and the evidence that is needed by sponsors in fulfilling their role, together with explaining that the extent of legal and financial diligence that an issuers Board undertakes is a decision for the Board in line with its own risk appetite. We of course recognise that these reports – and other areas – are largely market practice and it is down to the market to amend them but any assistance that the FCA is able to give will be helpful. In substance, market practice has to reform to

match the reformed FCA regime if the work to ensure the removal of friction points in the current regime is to have maximum impact.

***Q4**: Do you agree with our proposed approach to independence and control of business for the commercial companies category eligibility and continuing obligations? If not, please explain why and any alternative approach.*

Yes.

We do however believe that an applicant should be required to give disclosure in the prospectus where it does not carry on an independent business or exercise operational control over its business so that investors are making an informed assessment.

***Q5:** Do you agree with our proposed approach to requirements relating to controlling shareholders for the commercial companies category eligibility and continuing obligations? If not, please explain why and provide any alternative approach.*

Some of our panel members are strongly opposed to the change of position on the controlling shareholder regime. They believe that this is potentially a major issue for the UK as a market and recommend the FCA returns to the disclosure-based approach proposed in CP23/10. They believe that the change from the CP 23/10 proposals goes against the philosophy of a disclosure-based regime and set out the following reasons why.

Maintaining the requirements of the current regime would negatively impact the perception of the UK as a listing venue for some potential issuers. The UK is an outlier as a jurisdiction in requiring a relationship agreement, with other jurisdictions not seen as having, or having in practice, deleterious governance practices or outcomes as a result of not having a similar regime and therefore there is an impact on the secondary objective of competitiveness.

In any event, it is not a particularly efficacious regime. Agreements are put in place when necessarily relations are harmonious and an IPO is imminent. But through lived experience they do not impact behaviour or outcomes if relations turn sour – they do not contain contractual provisions, via the mandatory independence undertakings, that are sued on or focused on for enforcement purposes. Having a vehicle for setting out director appointment rights and thresholds is sensible and will likely continue in any event as it is in the interests of both an issuer and a controlling shareholder to have certainty on the position and that position would be disclosed. In reality, even in that area, if a board has too many nominee directors from a major shareholder on it, it will impact its wider investability and the market will bring pressure to bear either via not investing or through dialogue.

Instead, companies should have the choice as to whether a relationship agreement is put in place (if requested by investors as part of the early look feedback on an IPO, for example) and fully disclose their situation and arrangements with controlling shareholders, so that investors can make an informed investment assessment – which will also be relevant on an ongoing basis through the disclosures made via the related party regime

The friction that would be maintained, for what in practice is not a particularly effective regime, not reverting to the position in CP23/10 would act as a deterrent and detract from the overall utility of the new framework.

Other members acknowledge that the requirement for a relationship agreement was put in place relatively recently following market concerns where a controlling shareholder was thought to be fundamentally abusing its position vis a vis the issuer's public shareholders, notwithstanding the existence of disclosure about the controlling shareholders existence. Given this position these members feel that it is appropriate to retain the controlling shareholder agreement as proposed.

The middle ground between the views set out by the panel could be using disclosure in an IPO prospectus or "move up document" (for companies moving from the standard list to the ESCC) as an alternative to a formal relationship agreement, which could provide independent shareholders with alternative comfort on the position. Alongside which there could be ongoing confirmatory disclosure in the annual report, that the board is comfortable that the company can operate independently based on historic behaviour for the past financial year, which would provide stakeholders with disclosure that the issuer was able to comply with the Listing Rules. This would be supportive of the move to a more disclosure-based regime and removal of super-equivalent requirements and bring the UK in line with other regimes.

Q6: *Do you agree with our proposals for allowing DCSS for companies listing shares in the commercial companies' category and our approach to matters on which enhanced voting rights can be used? If you disagree, please explain or suggest alternative approaches?*

Yes, a majority of our members support the proposals

However, whilst supporting the overall direction and majority of the wider proposals, not all members support the proposed changes on dual class shares given the impact they feel this will have on the ability of investors to act as stewards of their holdings. This small minority are concerned there is a lack of an adequate, evidence-based case that the proposed change will be beneficial for market participants, including investors. They consider this change to be too soon after the introduction of a new regime, which reflected some of the empirical evidence that is available on this topic.

Q7: *Do you agree with our proposed approach towards a significant transactions regime for the commercial companies category? Please provide any alternative views.*

Panel members have differing views on these proposals, some are strongly supportive and some have concerns as set out further below.

Members in favour of the FCA's proposed approach to significant transactions are, in particular, supportive of the removal of the requirement for a shareholder vote, the removal of the profits test and the removal of the requirement to appoint a sponsor, together with the proposed guidance relating to "ordinary course of business". These changes should serve to make it easier for companies

with shares admitted to the ESCC, allowing them to undertake M&A transactions and put them on an even footing with other participants in competitive auction processes, whilst also removing the significant costs associated with a Class 1 shareholder approval process.

These members are in favour of a disclosure regime which has reduced notification requirements for a significant transaction, being broadly the current class 2 requirements together with the overarching UK MAR obligation. In line with this, they believe that the more extensive disclosure regime proposed in CP 23/31 is excessively onerous for issuers, particularly in terms of the timing of provision of the significant list of information, without providing obvious benefits for investors. This risks disincentivising proposed applicants from seeking an ESCC listing as well as constraining ESCC issuers in undertaking transactions.

An alternative view, expressed by a small minority reflects concern with the proposed changes to related party and significant transactions. Their view is that an adequate, evidence-based case has not been sufficiently made to evidence that relaxing the existing rules in the way proposed, would be beneficial for market participants, including investors.

Q8: *Do you agree with our proposed enhanced disclosures regime for significant transactions? If you disagree, what changes do you consider we should make and why?*

This question has highlighted some divergent views amongst panel members. Please also see our comments above.

We note that the FCA has moved from the position set out in CP23/10 that significant transaction notifications should only include "class 2" information plus any additional information required by UK MAR. The proposals (set out at Ch 7 Annex 2) now comprise the following:

- Current "class 2" notification content plus a confirmation that the transaction is in the board's opinion in the best interests of security holders as a whole
- Financial information on the target (where 2 years of audited financial information is already available)
- Where audited financial information is not available, a statement from the board that the information is not available, an explanation of how the consideration has been arrived at and a statement that the board considers the consideration to be fair as far as the security holders are concerned
- Non-financial information that would previously have been included in a shareholder circular such as risk factors, significant change statement and statements on litigation and material contracts
- Any other relevant information necessary for shareholders to understand and assess the transaction
- Specific information if the company is in severe financial difficulty or the transaction is to address a working capital shortfall

While we agree with the FCA's policy position (i.e. that more information should be included in the notification for a significant transaction), the majority of members do not think that the proposed notification regime is proportionate or

set at the right level, given that the information needs to be disclosed "as soon as possible" and that the amount of information required to be disclosed could potentially jeopardise the timing of the signing of a transaction.

We think the amount of information required should be cut back in some areas - it is not clear why the circular type information such as the significant change statement, risk factors or other Annex I disclosure is useful or necessary at the point of announcement. It would then be possible to publish all the required information "as soon as possible". Given the overarching UK MAR requirement, we do not think that that this information is particularly helpful for investors – and by definition all material information will need to be in the announcement in any event as a result of UK MAR obligations.

In relation to the financial information required for a target, it is helpful that the FCA has not required particular accounting standards such as IFRS nor a reconciliation as this should enable target audited accounts prepared using other accounting standards such as US GAAP to be published. However, we believe that the FCA should clarify that there will be a need for some explanation of differences in accounting policies and their impact in these circumstances for that the shareholders can understand the transaction and its impact as set out above. It may be that such explanations do need to be reasonably lengthy and specific in order to meet this requirement which will take time to prepare and we are not clear how this would work in practice and any impact on timing of the notification -

In addition, there needs to be a balance between speed to announcement and providing the market with sufficient information to operate in an orderly manner. One solution that the FCA might consider is splitting the disclosure between that required for the purposes of announcing a transaction and that required for the orderly operation of the market, which could be issued shortly after completion, as it is in a number of other markets.

We are concerned about the extent of financial information that will be required to be disclosed in situations where audited financial information is not available – which in our experience is the situation in the majority of circumstances. The current proposals to disclose non-GAAP measures which are prepared on a different accounting basis risks misleading investors and is counter to the guidance issued by ESMA and the FRC regarding the performance measures that listed companies can disclose.

The panel is split with regard to disclosure of the price fairness statement by the Board.

Some members feel that this disclosure is consistent with the stated objectives of the changes to the listing rules and statements made by the FCA's Chief Executive in his 16 October 2023 speech that advocated "the laser focus on the rigour of disclosure" and which was repeated by the FCA's Director of Market Oversight in her speech on 6 February 2024, where she stated that "the CP's proposals we intended to ensure that investors receive full and accurate information". Consequently, these members are supportive of the requirement for this disclosure. Other members do not think that the board price fairness statement

set out at proposed paragraph 2.2R(4) of Part 2 to Ch 7 Annex 2 should be required. In their view, investors should rely on the board's judgement of the consideration payable in the same way as they have confidence in the board's judgement of other important matters. They believe that the proposed requirement is onerous from an issuer's perspective and in practice, think it is likely that boards will seek third party comfort in order to feel comfortable giving such a confirmation. It is possible that market practice could lead to such third-party comfort being an M&A fairness opinion from a financial adviser and think that this could cause the new regime to lead to increased costs for an issuer (particularly in the SME market) when the ethos behind the new regime for significant transactions is making UK plc more competitive in a global M&A market and reducing costs by removing requirements such as circulars.

If the FCA plans to retain this requirement the panel would encourage the FCA to provide further guidance for issuers on what is considered to be sufficient to satisfy the requirement. Boards will clearly have undertaken a detailed assessment of the price that is to be paid (or received) in concluding to undertake a transaction. If the intention behind this requirement is that the Board discloses the process that it has been through and hence has concluded that the price is fair, then greater clarity would assist in guiding market practice so that unintended additional processes and opinions do not become the new norm.

Since MAR is currently largely untested in the UK market, a number of members feel that it is important that Companies have clarity as to the standards that they are to be held to in relation to the disclosures that they are required to give. Rather than having to rely upon an interpretation of MAR, the market would be better served by the Listing Rules providing clarity over the minimum standard of information that is required.

Q9: *Do you agree with changes we are proposing to clarify the scope of significant transactions and simplify our requirements, including our proposed 'ordinary course of business' guidance and revised aggregation rules? If not, please explain the areas you disagree with.*

We agree that further guidance on ordinary course of business is helpful including the list at new LR 7.1.8R, however, there now seems to be an amalgamation of rules (LR7.1.8R and LR 7.1.9R) plus guidance (LR 7.1.10G) which is overlapping and not helpful. For example, LR7.1.8R(2) seems to overlap with the guidance in LR 7.1.10G(2)(b). It would be simpler to have either rules or guidance indicating what the FCA will take into account when considering "ordinary course". One approach might be just to have rules with a technical note setting out some practical examples of what might be 'ordinary course' or not as the case may be.

Q10: *Do you consider that the meaning of 'ordinary course of business' can be evidenced by the existing or proposed accounting treatment of the matters that are the subject of the transaction? Please provide your reasons, if applicable.*

No strong view, although we would note that accounting standards do not define "ordinary course of business" so guidance from the FCA as to what it considers to be ordinary course would be helpful to the market.

Q11: *Do you agree with our proposed approach to when companies should be required to appoint a sponsor on significant transactions (ie, limited to where issuers apply to the FCA to seek individual guidance, waivers or modifications)?*

We agree that an ESCC issuer should not have to appoint a sponsor when undertaking a transaction that is or could be a significant transaction and that, consequentially, a sponsor should not have to submit a sponsor declaration in relation to a significant transaction. We also agree that the FCA should continue to be able to require an issuer to appoint a sponsor where there is or may be a breach of the UKLR.

In situations, where a sponsor is appointed, in the absence of having been involved in the transaction, it may be difficult for the sponsor to provide a holistic view on the transaction outside of the matter for which they have been appointed and if matters are time critical, the sponsor might be providing a view with the information available in the time within which they have been asked the request versus the current requirements for a sponsor to be appointed when a transaction is contemplated. This will mean that the sponsor role might necessarily be undertaken in a different way to current practice, if the sponsor role is changed to remove some of the friction created by the rule.

Q12: *Do you agree with our approach to transactions undertaken by companies facing financial difficulty for the commercial companies category and the amendments proposed versus current premium listing requirements? If not, please explain and suggest any alternative approach, as relevant.*

We agree with the proposed approach of removing the requirement for the FCA to approve a reconstruction and refinancing circular, particularly as a circular is often required for other reasons in any event (for example, to disapply pre-emption rights) but we are less convinced about the removal of the requirement to appoint a sponsor (especially in light of the potential 75% ISC threshold for a further issuance prospectus which would be a trigger for sponsor involvement). Issuers in these distressed situations often face urgent and challenging MAR and other disclosure issues and if there is no sponsor involvement, it begs the question as to who will be providing the necessary advice and guidance – its brokers and lawyers potentially.

Q13: *Do you agree with our proposed approach to reverse takeovers in the commercial companies category, including requiring a sponsor and FCA approval of a circular? If not, please explain what you disagree with and why, if relevant.*

Yes.

Q14: *Do you agree with our proposed changes to the information to be included in the reverse takeover shareholder circular? Please explain your views and suggest an alternative approach if you disagree.*

Yes.

Q15: *Do you agree with our proposed approach towards a related party transactions regime for the commercial companies category and the specific*

disclosure proposals for notifications? Please provide any alternative views as relevant.

Yes.

Q16: *Do you agree with how we have framed the sponsor role for related party transactions in the commercial companies category?*

Yes, we agree that the sponsor role on RPTs in terms of seeking advice should be the same as for significant transactions i.e., an issuer should only need to appoint a sponsor if it wishes to seek individual guidance from the FCA or to seek a waiver or modification or substitution of the relevant Listing Rules. We also agree that sponsors should also provide a fair and reasonable opinion to an issuer for RPTs which meet 5 per cent or more on the class tests as set out above.

Q17: *Do you agree with the other clarifications, ancillary changes and consequential amendments we are proposing for the related party transaction requirements in the UKLR(compared with current premium listing)? If not, please explain any areas you disagree with.*

See our answer to question 9. We think that the approach to rules and guidance on ordinary course of business is rather confused and should be clarified so that what is ordinary course is easier to understand.

Q18: *What are your views on retaining our specific listing rule definition of a related party, versus a definition based on IFRS (or other) accounting standards?*

We would prefer the IFRS definition of a related party in order to give issuers certainty as to using only one definition for both listing rule and accounts purposes. We agree that a 10 per cent shareholding for a substantial shareholder is too low and that 20 per cent is an appropriate level.

Q19: *Do you agree with our proposed approach to matters relating to further share issuances for the commercial companies category? If not, please explain what you disagree with and why.*

Our view is that the current LR9.5.10R (discount to market price not to exceed more than 10 per cent without shareholder approval) is unnecessary as the question of whether to invest in a new issue of shares where the discount is more than 10 per cent is ultimately one for investors.

We would suggest some changes to the drafting of existing LR 9.5.10R/UKLR 9.4.13R as it is a cause of friction on undocumented placings in particular.

Specifically:

- The guidance in UKLR 9.4.14G lends itself to being modernised. When trying to price an accelerated bookbuilt placing, contacting the FCA to discuss the source of the intra-day price adds friction in a time-pressed situation. We would encourage the FCA to instead publish a list of approved sources for intra-day prices such as Bloomberg. Only deviation from those sources would then need to be discussed with the FCA.

- Current LR 9.5.10R/UKLR 9.4.13R does not lend itself to accelerated bookbuilt offerings where there is a backstop price guaranteed by the underwriters. In such an arrangement the underwriters will typically agree with the issuer on the night before launch a backstop price at which they will buy any unsold shares after the bookbuilding process.

- In recognition of LR 9.5.10R/UKLR 9.4.13R, the backstop price is typically drafted to be a price of X pence per share or (if higher) the price per share representing a 10% discount to the prevailing price at the time of pricing – in other words the drafting is designed to comply with LR 9.5.10R/UKLR 9.4.13R.

- What is not clear, however, from LR 9.5.10R/UKLR 9.4.13R is whether the backstop price itself which is agreed the night before launch needs to be tested against the Daily Official List price when the agreement is signed the night before launch. The key words are in LR 9.4.13 R(1): "at the time of agreeing the placing". A natural reading is that the placing is only agreed when the final placing price to be paid by investors is established i.e. after the bookbuild so current LR 9.5.10R/UKLR 9.4.13R only applies after the bookbuild and does not apply to the backstop price itself.

- We think it would be helpful if the FCA could confirm this point to avoid both the backstop price and the final placing price being tested against the 10% discount limit as we believe only the final placing price which is paid by investors is relevant to this investor protection mechanism.

Q20: *Do you agree that an issuer in the commercial companies category should be required to appoint a sponsor in connection with its further share issuance prospectus and related application for listing?*

Yes.

Q21: *Do you agree with our approach to share buy-backs for the commercial companies category and the amendments proposed versus current premium listing requirements? If not, please explain and suggest any alternative approach.*

The requirements currently set out in the Listing Rules go beyond what is set out in MAR and the delegated regulation on buy-backs and stabilisation and are therefore unnecessary. MAR and the delegated regulation seem to adequately deal with buybacks in European jurisdictions. In particular, the requirements set out in new LR 10.5.1R(2) seem rather arbitrary and should be deleted. It isn't clear why a circular relating to 25 per cent of more of issued share capital needs risk factors or trend information for example. In addition, these requirements go beyond the content requirements for the notification of a significant transaction which appears inconsistent.

Q22: *Do you have any comments on our proposals? Do you have any views on requiring shareholder approval to grant to a director or employee options, warrants or other similar rights to subscribe for shares in the commercial companies category?*

No.

Q23: *Do you have any comments on our proposals with regard to requirements for other circulars? If you disagree, please explain why, and include suggestions for alternative approaches.*

We agree with the proposals.

Q24: *Do you agree with our overall approach to annual disclosures and reporting requirements for the commercial companies category, broadly based* on current premium listing requirements, including on corporate governance (see Appendix 1, UKLR 6)? If not, please explain why.

We agree that "comply or explain" with the UK Corporate Governance Code (UKCGC) should be the appropriate benchmark for most issuers with the ability for overseas issuers to comply with an appropriate overseas corporate governance code – as long as it means that and not 'comply or else'

Given the overarching aim to make the UK a more attractive place to list whilst maintaining investor protections, we believe that the FCA is missing an opportunity to review the extensive and granular annual reporting requirements contained in LR 9.8.

We note that in response to the DBT's Call for evidence on narrative reporting, the Government withdrew draft reporting regulations that had been laid before Parliament in relation to additional requirements to be imposed upon companies, including an annual resilience statement, distributable profits figure, material fraud statement and triennial audit and assurance policy statement.

We query whether investors really require or value all of the line items currently included in an annual report to satisfy LR 9.8. We note that a number of the detailed requirements pre-date the Companies Act 2006 and Large and Medium-sized Companies and Groups (accounts and reports) Regulations 2008 (as amended since implementation) and have not been fully reviewed since those pieces of legislation came into effect. Further, as far as UK incorporated companies are concerned, the requirements overlap with equivalent or similar requirements in UK law in many places in any event.

However, we would not want to slow down the pace of change and we appreciate the challenging timetable towards which the FCA is working that might be impacted if a review of the annual reporting requirements were to be undertaken. We do believe, however, that it would be helpful to the market and broader stakeholders if such a review could be trailed in the policy statement accompanying the final UKLRs as the extent of current narrative reporting is a very material time and cost burden on UK listed companies – and a deterrent to potential issuers - and does not in reality always produce the outcomes of good governance that all stakeholders in the market want to see.

Q25: *Would formal guidance clarifying the use of 'explain' when reporting against the UK CGC be necessary?*

The FRC already provides guidance on this, in relation to its Code, and has recently become even more clear that it means 'comply or explain' and not 'comply or else'. The FCA should let the FRC continue to undertake that aspect of governance, not least as it is also already involved with other industry bodies in driving forward change in this area.

Q26: *Do you agree with our proposed approach to incorporating sovereign controlled companies into the commercial companies category, with certain alleviations on matters related to the sovereign controlling shareholder, while not taking forward a bespoke approach to depositary receipts on shares in such issuers? If you disagree, please explain why.*

Yes

Q27: *Do you agree to our proposed approach for the closed ended investment funds category as part of the new UKLR? If not, please explain why.*

Yes.

Q28: *Do you agree with our proposals for the transition category? If not, please explain why.*

Yes.

Q29: *Do you agree to our proposals for a secondary listing category and the related requirements, including basing rules on current LR 14 with certain additional elements, and the maintained application of DTR 7.2? If not, please explain which aspects you disagree with and why.*

The category for Secondary listings point was proposed so that a cohort of international companies (with a secondary listing in the UK) aren't forced to comply with a lot of additional requirements required for the (new) main market. These proposals were developed with the intention they would only be applied to a non-UK incorporated company.

There have been discussions as to whether this might drive firms to incorporate (in a tokenistic manner) overseas instead of in the UK, and then use the optionality of listing on the international segment. This could be used for the purposes of e.g., pre-emption rights avoidance. The eligibility requirements must be firmly adhered to and apply only to international companies with a primary listing overseas. Were UK incorporated companies able to list on this segment, it would undermine the new Main Market and result in a loss of companies from the UK's capital markets.

Q30: *Do the proposed eligibility requirements for the secondary listing category sufficiently identify commercial companies with a 'primary' listing in another jurisdiction and mitigate potential risk that it be used to avoid the commercial companies category? Please suggest improvements to provisions, or additions or alternatives, as relevant.*

Yes.

Q31: *Do you agree to our proposals for the non-equity shares and non-voting equity shares category? If not, please explain why.*

Yes.

Q32: *Do you agree to our approach for the shell companies category and the detailed drafting in UKLR, including the proposed approach to redemption rights? If not, please explain why and suggest any alternative approach or transitional provisions.*

Our view is that the proposed rules for shell companies are overly prescriptive and that the regime for shell companies should be entirely disclosure based, with investors taking the risk of investing in these types of company. Also, no sponsor should be required. The fact that investments in shell companies are different and potentially carry more risk than investments in ESCC companies is evidenced by their separate listing category. We think that the current rules, which the FCA states will be retained, are too restrictive and already at odds with market practice in other European markets that allow SPACs more flexibility around suspension and size of initial offering.

Q33: *Do you agree with the proposed approach that issuers in commercial companies category and the transition category should transfer to the shell companies category if they become eligible for the shell companies category? Do you foresee any problems with this proposed approach?*

Yes, we agree with this approach but consideration should be given to the implications of forcing a transfer (at least not without a grace period).

Q34: *Do you agree to our proposal for retaining the remaining standard listing categories and minor drafting amendments proposed? If not, please explain why.*

Yes.

Q35: *Do you agree that the current Premium Listing Principles 3 and 4 should be reframed as rules for the commercial companies category and the closed ended investment funds category? If not, explain why.*

We agree that current Premium Listing Principles 3 and 4 should be reframed as rules for the ESCC and closed ended investment funds categories as it would not be appropriate for these requirements relating to shareholder votes to be applied to other categories such as the new international secondary listing category.

Q36: *Do you agree with our proposed single set of Listing Principles and supporting guidance, which would be applicable to all listing categories? If not, please explain why.*

We agree with the new set of Listing Principles but would like to see the proposed guidance on Listing Principles 1 and 2 in relation to directors. Please also see answer to question 39 in relation to the proposed board confirmation.

More generally, we do not think that increased focus on the role of individual directors is helpful from the perspective of encouraging listings in London.

Q37: *In relation to the proposed Listing Principles 5 and 6,are there any practical implications for issuers of debt securities that need to be considered?*

No comment.

Q38: *Do you agree with our proposed guidance to support the Listing Principles, regarding the importance of the role of directors and on the arrangements for accessibility of information? If not, please explain what you disagree with and why.*

See answers to questions 36 and 39 in relation to the role of directors. We agree that the record keeping requirements are more suitable as guidance rather than a rule as originally proposed by the FCA and would like to see the proposed guidance in order to comment further. We do not think it is appropriate for the board confirmation to refer to record keeping requirements, see answer to question 39.

Q39: *Do you agree with our proposed board confirmation that the applicant has appropriate systems and controls in place to ensure it can comply with its ongoing listing obligations and Listing Principles once admitted? If not, please explain what you disagree with and why.*

We understand the rationale for this from the FCA's point of view but have some concerns as set out below. Firstly, other jurisdictions do not have comparable requirements. In addition, potential non-executive directors could be dissuaded from taking on such positions because of fears of potential liability, bearing in mind that at the time of an IPO, they may not be familiar with the company's systems and controls and are relying largely on the work carried out by the company's professional advisers (e.g., FPPP). Such a requirement could therefore lead to additional work streams and complexity on transactions as directors seek further comfort. This could well act as a deterrent to listing in London.

Q40: Do you agree with our proposal to issue guidance to support Listing Principle 1, to clarify that adequate procedures, systems and controls includes the applicant or issuer being able to explain where information is held and how it can be accessed (regardless of whether the information is held in the UK or elsewhere), and that information should be easily accessible from the UK? If not, please explain why?

See the answers to the questions above.

Q41: Do you agree with our detailed proposals for all applicants and issuers to notify the FCA, and keep up to date, the contact details of 2 executive directors? If not, please explain what you disagree with and why.

Yes

Q42: *Do you agree with our detailed proposals for all applicants and issuers to provide the FCA, and to keep up to date, a nominated contact and address for service of relevant documents? If not, please explain what you disagree with and why.*

Yes.

Q43: *Do you agree with the proposed approach for the permitted transfers between the new UKLR categories? If not, please explain why.*

Yes.

Q44: *Do you agree with our proposed approach for dealing with in-flight transfers between listing categories at the time the UKLR is implemented? If not, please explain why.*

We note the proposals and the rationale set out for them, however, please see below for our answer to question 49. At the moment firms are justifiably concerned that a proposed IPO could miss the deadline of 4pm on the date that the policy statement is issued. This situation is not ideal given that the FCA should be encouraging as many IPOs as possible and could sway some companies to seek an AIM quotation instead to avoid the problem. The problem would not be an issue if the FCA were able to publish the date that the policy statement will be published in good time in advance of rules publication as that would give certainty (see answer to question 49 below).

Q45: *Do you agree with our proposed modified transfer process for standard listed issuers automatically transferred into the transition category or secondary listing category that may wish to transfer to the commercial companies category (or the shell companies category or the secondary listing category) post implementation?*

Yes, and in particular, we welcome the confirmation that sponsors will not be required to undertake a full assessment of the issuer as the focus will only be on the additional obligations.

Q46: *Do you agree with our proposed transitional arrangements and specific transitional provisions for 'mapped' existing issuers and conversion of 'in-flight' applications at the time the UKLR is implemented? If not, please explain why.*

Yes, we agree with the mapping proposals and note that issuers will have a 4 week period to discuss with the FCA. Standard issuers would appreciate receiving details of their mapping as soon as possible in order to have certainty.

Q47: *Do you agree with our proposed transitional provisions to allow existing issuers and 'in-flight' applicants sufficient time to prepare for implementation of the proposed provisions that would impact all issuers?*

Yes, we agree that 6 months from implementation of the new listing regime should be sufficient time for issuers to prepare and put in place appropriate systems and controls to comply with the new Listing Rules although would like clarity on how this would work in practice. For instance, will it be acceptable for a transfer to take place to the ESCC when an issuer's policies and procedures are not yet in place (but there is a plan for them to be in place before the 6 month deadline)?

Q48: *Do you agree with these impacts at implementation day and our approach to transitional arrangements for post IPO mid-flight transactions (when commenced in premium listing) and related sponsor services?*

Yes.

Q49: *Is the proposed period of 2 weeks between publication of the final UKLR instrument and those UKLR coming into force reasonable, assuming we proceed broadly as proposed?*

We do not think this small time window is sufficient and hampers Boards in their planning for making a move to the ESCC (e.g., from AIM) or other transactions that would be impacted by the new rules. For example, an issuer could be working on a transaction which is a class 1 in the current regime and a significant transaction in the new regime. Given that the former requires a shareholder circular and the latter does not, issuers need visibility as soon as practicable during the summer so that they have transactional certainty and do not incur unnecessary costs. We believe a better approach would be to publish the final rules by the end of June with an implementation date of say 1 August (during the close of the IPO window over the summer) or, provided the market has sufficient understanding of what the new rules are going to look like, just set an implementation date.

Q50: *Are there wider practical issues or impacts for market participants from the proposed implementation timing that we should consider?*

Please see the answer to question 49 above.

Q51: Do you agree with our proposed approach and clarification around sponsors' role at the listings gateway for the relevant categories?

We note that the FCA is expecting sponsors to due diligence the new systems and controls that issuers will need to have in place and would expect this to be an extension of the role sponsors already undertake in relation to FPPP and other systems and processes such as disclosure of inside information. It would, however, be helpful to have formal guidance in the technical notes around FCA expectations on sponsor due diligence so that sponsors are clear on what is within their remit.

There is ongoing discussion amongst the sponsor community and more widely on the value of the regime, why it is needed and whether the regime leads to the conclusion that the regime is less competitive given this is unique to the UK and if removing other UK specific obligations in the Listing Rules changes, whether the sponsor regime or the manner in which it is or is perceived to be regulated would be of benefit for the UK regime. It is understood that the FCA value the regime and therefore it is a matter of ensuring that the regime is understood -

Q52: *Do you agree with our approach to the retained sponsor confirmations to the FCA on post-IPO transactions? If not, please explain your preferred alternative approach and the reasons for it.*

Yes, we agree with the proposed approach but would welcome sight of the revised sponsor declaration forms as soon as possible so that we can understand what the obligations of sponsors in the new regime.

***Q53**: Do you agree with our proposals to clarify the role of sponsors under the UKLR?*

We welcome the confirmation from the FCA of the value placed by the FCA on the sponsor role and the acknowledgment that sponsors have felt undue burdens in relation to record keeping. We note that the FCA is proposing revisions to the existing Technical Notes to clarify the FCA's supervisory approach and expectations of sponsors and to revise the Notes for changes required for the new listing regime. In relation to record keeping, we would welcome any further guidance that the FCA is able to provide, noting that the FCA does not want a disproportionate administrative burden for sponsors.

***Q54:** Do you agree with our proposed modifications to the principles for sponsors? If not, please explain why.*

Yes.

***Q55:** Do you agree with our proposed changes to sponsor competence requirements?*

We are broadly supportive of the changes proposed to the sponsor competence requirements. In our view, the proposals strike a reasonable balance between the FCA's stated aim of creating a vibrant sponsor market and at the same time ensuring continuing quality.

The interactive and receptive engagement by the FCA with the sponsor community and wider market participants has been welcomed and the amended requirements generally reflect concerns raised on this specific area. Our response to the full consultation considers broader points relating to the sponsor regime.

Q56: Do you agree with our assumptions and findings as set out in this CBA on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons.

No comment

***Q57:** Do you hold any information or data that would allow assessing the costs and benefits considered (or those not considered) here? If so, please provide them to us.*

No comment

Q58: Do you agree with our conclusion that the proposals don't significantly reduce the investment in UK listed companies compared to current levels, but might increase investment if larger number of companies list in the UK? We welcome comment, in particular, if supported with evidence on the likely impact on investment levels.

The proposals reflect the 'change to risk appetite based on disclosure and engagement', as set out by Nikhil Rathi in May 2023; simplify rules at the gateway and will significantly reduce the regulatory burden on companies post listing. This should result in an increase in the attractiveness of London as a listing venue which in turn, subject to macroeconomic factors beyond the control of the FCA, should produce an increase in both the number as well as the diversity of companies coming to market in the UK. On the latter point, we agree with the FCA that a wider population of companies being attracted to London should lead to an increase in investment, particularly investment in high growth technology businesses that may, absent the proposals, have selected an alternative listing venue.

Yours faithfully

The FCA's Listing Authority Advisory Panel
The FCA's Markets Practitioner Panel