

Consultation response

FCA CP 17/21 – Proposal to Create a New Premium Listing Category for Sovereign Controlled Companies

October 2017

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on Consultation Paper 17/21 – Proposal to Create a New Premium Listing Category for Sovereign Controlled Companies.

AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. It advocates stable, competitive, sustainable European financial markets that support economic growth and benefit society. AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Please see below AFME's high-level response to the consultation paper.

CP17/21 consults on targeted proposals to make the listing regime work better for companies controlled by a shareholder that is a sovereign country. It sits within the context of the discussion started by DP17/2 in relation to the role of listed primary markets in the broader capital markets landscape and the structure of the UK listing regime in supporting that role.

This submission does not seek to answer the specific questions raised in the CP but rather to set out some thoughts and observations in response to it and to assess the proposals on their merits without reference to any wider context within which they may sit.

We note that one of the factors that has made London such an attractive place to list is the diverse primary market environment that it has developed, which has meant that a wide range of issuers and investors are catered for. The environment has evolved consistently over the years in order to maintain and advance London's international position and in order to keep it 'fit for purpose'.

We note that there are already three premium listing categories – namely for commercial companies, closed ended investment funds and open-ended investment companies – reflecting the different nature of issuers that are currently able to list on the premium listing segment. There are also several concessionary routes to a premium listing – namely for mineral companies and scientific research-based companies as well as potentially property companies – plus there are others that have existed in the past, for example in relation to innovative high growth companies. The various categories and concessionary routes reflect the different types of issuers that are able to list in London and the flexibility and thoughtful nature of the regime. At a high level, the proposals in CP17/21 can be seen as a continuation of the development process of the London markets, aimed at ensuring that they continue to provide a primary market environment that caters for as wide a range of issuers as possible, alongside appropriate regulatory safeguards.

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At present, in order to list in London, sovereign controlled companies would need to be considered as commercial companies at the point of listing. Given the nature of such companies and their links to and reasons for being owned by a sovereign country, it must be unlikely that they will be able to - or perhaps should be expected to - make that transition fully prior to any listing and also before they know for certain that the listing will proceed. It may be presumed that it would be equally unappealing for the sovereign country that is the pre-IPO shareholder for them to convert fully before the listing is unconditional.

If that premise is combined with the presumption that London, as a diverse, mature and leading listing venue, should be able to offer sovereign countries the ability to list and potentially gradually exit companies that they own, the proposal to create a separate premium listing category for such entities has sense to it as they are legitimately different entities to mainstream commercial companies. In this context, it should be noted that nearly all privatisations include a local listing to afford local citizens and investors a chance to participate. This need to respect local incorporation, listing, offering and settlement requirements is another condition that sovereign controlled companies face in their journey to becoming a fully commercial company.

Seen in that light, the proposals can be seen as London offering the relevant sovereign controlled company a route by which to transition to being a fully commercial company, while at the same time keeping a sensible regime in place that, despite the proposed rule relaxations, still offers more protection or 'gold plating' for investors than other European exchanges, which have directive minimum standards. Other listing destinations around the world already offer concessions in regulation (such as the US Foreign Private Issuer designation) or listing rules (such as the New York Stock Exchange controlled company rules). As such, the new category may actually increase the number of listed companies applying rules that exceed the directive minimum standards.

It is worth noting that the proposed new premium listing category will apply all of Chapter 6 of the Listing Rules except for the controlling shareholder and related party rules in relation to the sovereign state. Chapter 6 imposes many important requirements over and above the directive minimum standards including a three-year track record, the so-called 75% rule, the need for an independent business, the working capital statement and pre-emption (if not required by local law). The new category would also require the appointment of a sponsor pursuant to Chapter 8 of the Listing Rules as well as compliance with the continuing obligations set out in Chapter 9 of the Listing Rules – including periodic financial reporting and complying or explaining in relation to the UK Corporate Governance Code.

These provisions all offer protections to investors beyond the directive-minimum standards that apply on other European exchanges. For sovereign controlled companies considering a listing, the proposed listing category is likely in reality to be an alternative to a standard listing rather than a full premium listing – however it will be preferable for investors to a standard listing for the reasons noted above in terms of enhanced diligence and governance standards, both at the time of listing and on an ongoing basis.

In addition, investors are likely to have complete discretion, having read the prospectus and conducted their own due diligence as appropriate, to decide whether to invest or not given that FTSE Russell have stated that there will be no impact on the eligibility criteria for inclusion in the FTSE UK index series. As such, a 50% free float would be required for an international company looking to list in the new category, which is unusual even if the issuer in question is a mainstream commercial company. A sovereign controlled company is unlikely to reincorporate away from its country of origin or to see its sovereign country shareholder sell more than 49% in the medium term. Country classification and the development of trading volume in the home and international listing venue are additional factors that may inhibit indexation. Concern over indexation forcing investor participation in an IPO is in our view unfounded.

Furthermore, institutional investors are collectively experienced at understanding and pricing sovereign risk, across a range of asset classes. Sovereign risk assessments are well understood and widely reported,

with investors basing investment decisions on an analysis of all relevant risk factors. In that context, it is worth noting that sovereign states can of course carry out a range of actions that ordinary private shareholders that bring a company to listing are not able to, including raising or lowering taxes, granting or revoking licences and introducing or repealing legislation that affects business operating conditions.

Seen against that backdrop, the related party and controlling shareholder regimes are not wholly relevant in the context of such shareholders and, indeed, could potentially be seen as a misrepresentation to investors of the protections afforded by the Listing Rules. As such, investors in sovereign controlled companies may well actually be better served by full disclosure and transparency at IPO and on an ongoing basis that enables them to make an accurate sovereign risk assessment. For example, disclosure under International Accounting Standards and the Market Abuse Regulation would continue to apply, including in relation to related party transactions.

The proposals are also sensible in that they propose a separate and readily identifiable separate premium listing category rather than the FCA taking the alternative possible approach of applying waivers to the premium listing regime for sovereign controlled companies – as such, it will be clear to investors that when buying shares in an issuer in this listing category they are investing in a sovereign controlled company with the specific features this entails, not a typical mainstream commercial company.

We also concur with the FCA's view that, if the new category is introduced, depositary receipts over equity shares should be eligible for the new category of premium listing on the same basis as equity shares, provided that holders of the receipts enjoy the same rights attaching to the underlying shares, including the ability to vote.

In summary, we consider the proposals set out in CP17/21 to be a sensible and pragmatic evolution of London's diverse primary market environment that address a class of company and shareholder for whom the current rules are not particularly well-suited. The proposals combine sense and pragmatism with a parallel adherence to high regulatory standards and much of the 'gold plating' of the premium listing regime. Prospective issuers using the new listing category will need to submit to a rigorous set of listing rules overseen by a highly experienced and trusted regulator. Investors will be able to evaluate fully the investment opportunity – with full transparency as to the nature of the issuer - before deciding whether or not to invest.

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