

Sent by email to [cp13-15@fca.org.uk](mailto:cp13-15@fca.org.uk)

5 February 2014

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## **CP13-15: Enhancing the Effectiveness of the Listing Regime**

Dear Ms Masacorale

Please find attached AFME's response to the referenced consultation paper. We appreciate the opportunity to comment on the proposals contained in the paper.

Yours sincerely



William J Ferrari  
Managing Director, Corporate Finance

### **Association for Financial Markets in Europe**

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## Consultation response

### CP 13-15: Enhancing the Effectiveness of the Listing Regime

5 February 2014

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The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the FCA's Consultation Paper (CP13-15) *Enhancing the Effectiveness of the Listing Regime*. 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. We advocate 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 listed on the EU Register of Interest Representatives, registration number 65110063986-76.

We summarise below our high-level response to the consultation, which is followed by answers to the individual questions raised.

#### Questions & Answers

##### Independent business

###### *Definition of a controlling shareholder*

Q1: Do you agree with our proposed definition of a 'controlling shareholder' as described above? Draft R. 6.1.2A

**We agree.**

###### *Definition of an associate*

Q2: Do you agree with our proposal to amend the definition of an 'associate' as described above?

**We Agree. It would be helpful to provide guidance describing the types of conduct or behaviour which is indicative of an associate relationship. Examples of such conduct would be helpful.**

*Enhanced oversight measures in LR 11*

Q3: Do you agree with our proposals relating to the circumstances for imposition of the enhanced oversight measures (LR 11.1.1AR) and the consequences of their imposition (LR 11.1.1CR), as discussed above?

**We have reservations. A mere statement by an independent director who declines to support a board's statement of compliance with independence requirements should not be sufficient to invoke the enhanced oversight provisions. It should require at least a majority of independent directors to decline to support a board statement of compliance. To engage enhanced oversight, the statement of the independent director must be supported by evidence and argumentation and be accepted by the company or the controlling shareholder as well as other independent shareholders. If there is no acceptance, the company/independent shareholder must respond to the statement and arguments of the independent director. Other independent directors, if any, should also respond to their colleague's statement. If there is no response offered, the acceptance of the other parties may be assumed.**

**We also suggest that there should be a possibility for enhanced oversight to be ended before the next annual report, if the improper conduct is ended and there is an undertaking to respect the independence principles.**

*Ordinary course transactions*

Q4: Do you agree with the proposed guidance in LR 11.1.1DG?

**We agree. See response to Q.3. The Guidance could be expanded to indicate the process of waiver to be followed by the FCA. In particular it would be helpful to have guidance concerning the principles upon which waivers of enhanced oversight would be granted, especially concerning transactions in the ordinary course of business which may be unfair to the company and harmful to all shareholders.**

*Waiving the application of the enhanced oversight measures*

Q5: Do you agree with the guidance proposed in LR 11.1.1BG?

**We agree. See above.**

*Duration of enhanced oversight measures*

Q6: Do you agree that the enhanced oversight by minority shareholders should continue to apply until a clean statement has been made in an annual report and the report does not contain a statement that an independent director disagrees with the board assessment (LR 11.1.1ER)?

**See our responses to Q.1 and Q.2. In some cases it would be fairer and less detrimental to the company and all its shareholders if enhanced oversight could be ended earlier, if the conduct or transaction/instance in question has been corrected and the controlling shareholder undertakes to observe the independence criteria carefully.**

**We consider that there is a need for a public announcement by the FCA or by the issuer at the appropriate time that enhanced oversight measures are in force, and we suggest that this be addressed in the rule changes.**

**We note that the analysis of cost referred to in Annex 1, does not include the potential cost of additional Sponsor services to consider related party transaction while company is subject to enhanced oversight. We would suggest that UKLA considers such additional costs.**

#### *Transitional provisions*

Q7: Do you agree with our proposals for transitional provisions for existing premium listed companies with controlling shareholders, as well as for premium listed companies that in due course 'acquire' a controlling shareholder (proposed LR TR 11, section 1 and LR 9.2.2BR(1))?

**In our view, there should be the possibility to extend the time period for good reason by application to the UKLA. This should be on the basis of evidence that substantive efforts have been made and that an effective plan is in place.**

#### *Annual report disclosure*

Q8: Do you agree with our proposals to impose an obligation to make a statement as reflected in draft LR 9.8.4R(14) and the associated notification obligation in draft LR 9.2.25R?

**We agree.**

**Should there be a requirement for the regulator to make a ruling after receiving the notice of non-compliance and hearing from the parties e.g. the independent directors/shareholders may not wish to apply R11.1.1C. Perhaps the statement should also include any request to modify application of R 11.1.1C**

Q9: Do you agree with our proposals in draft LR 9.8.4AR requiring a statement to be included in an annual report where an independent director has declined to support the relevant statements of compliance made by the board and the associated notification obligation in draft LR 9.2.26R?

**See our response to Q1&2. We consider that there should be a more robust process in place in the event that the company or the controlling shareholder does not agree on stated grounds with the statement and/or arguments of an independent director.**

#### **Independent directors**

##### *Circulars in relation to election of independent directors*

Q10: Do you agree with our proposal to require disclosure to be included in circulars relating to election of independent directors?

**We agree with draft R13.8.17.**

Q11: Do you agree that our proposals in this area should be limited to commercial companies with a controlling shareholder or should they be applied to all premium listed commercial companies or all premium listed companies (regardless of whether there is a controlling shareholder or not)?

**We agree that the proposals should be limited to commercial companies with a controlling shareholder.**

*Individual disclosure requirements*

Q12: Do you agree with our proposal to include specific disclosure requirements as described above (LR 13.8.17R(i) and (ii))? Are there other requirements we should consider?

**We agree with the proposals. Also a brief biography of the candidate would also be useful.**

*Transitional provisions (election of independent directors)*

Q13: Do you agree with our proposal for transitional provisions as set in draft sections 2 and 3 of LR TR11 and LR 9.2.2BR(2)?

**We agree.**

**Shares in public hands**

*Specific criteria for modification of the free float requirement*

Q14: Do you support our proposal to delete LR 6.1.20G and replace it with LR 6.1.20AG as described above?

**We agree.**

*Application of certain provisions to the standard segment*

Q15: Do you agree that the provisions that are being introduced for the premium segment as discussed above should also be introduced for shares listed on the standard segment (LR 14) and GDRs (LR 18), including consequential amendments to 'group' definition?

**We agree.**

**With respect to LR 6.1.20BG, we would suggest that asset managers be allowed to disaggregate shares in funds managed by independent asset managers without the prior approval of the FCA. This would be more efficient for all parties and would avoid concerns in certain cases where a firm is unaware of the need for disclosure until the last stages of a transaction requiring a book-build when obtaining an FCA decision would cause a delay.**

**With respect to LR 6.1.20CG, clarification seems to be needed. The section would seem to apply only when the provider of the financial instrument has more than 5% of outstanding shares including his hedge against the derivative. If the holder of the financial instrument is a controlling shareholder, it would be more appropriate to reduce shares in public hands only by the amount of the hedge.**

## **Continuing obligations**

### *Transitional provisions for voting on matters relevant to premium listing*

Q16: Do you agree with our proposal to allow existing premium listed companies 2 years to bring themselves into compliance with LR 9.2.22R?

**We agree.**

### *Transitional provisions relating to annual report disclosure*

Q17: Do you agree with the transitional provisions as described above?

**We agree.**

### *Miscellaneous amendments to LR 9.8.4R*

Q18: Do you agree with our proposal as explained above?

**We agree.**

### *Smaller related party transactions*

Q19: Do you agree with our proposals for the treatment of smaller related party transactions as discussed above?

**We agree. However, there is a concern that the disclosure of smaller related party transactions as soon as possible would give them undue prominence causing misunderstanding on the part of some market participants who could react accordingly. Of course, material related party transactions will be disclosed promptly.**

## **The Listing Principles**

### *Consequential changes to LR 7 and DEPP 6*

Q20: Do you agree that the consequential changes described above are appropriate?

### *Cancellation of listing*

Q21: Do you agree with Option 1 or Option 2?

**We favour Option 2**

Q22: Have we set the 80% threshold in draft LR 5.2.11DR at the appropriate level?

**This would only apply under Option 1. We note that an 80% requirement does not assure the approval of more than 50% of the independent shareholders.**