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Primary Markets Effectiveness Review : FCA Consultation Paper CP21/21

We welcome this consultation paper CP21/21.

ShareSoc is a not-for-profit organisation with over 8,000 members. We represent the interests of 5 million individual shareholders and 12 million individual investors in the UK. We are members of Better Finance who, together with our sister organisations in other countries represent individual investors throughout Europe. We are also members of the World Federation of Investors. ShareSoc Chair, Mark Northway, is also Chair of the World Federation of Investors.

Our members are most interested in:

1. Liquidity, spreads, costs, hidden costs, front running, pump and dump, pump and place, and failures to disclose promptly.
2. Misleading RNS, including trading statements and director independence and related party issues and activity.
3. Removal of the €8 million limit in placings.
4. Fair treatment of retail in placings and IPOs.
5. Burdensome documents for rights issue, which will result in the loss of pre-emption rights as companies private prefer placings.
6. Mates rates placings which are not open to all investors on fair and similar terms.
7. Low valuations of the companies in the UK market compare to the US markets.
8. Many members are now using the US markets as they are more liquid with lower splits, cheaper and are better regulated.
9. Fewer Carillion, Thomas Cook, Cake (Patisserie Valerie), Conviviality, etc.

We think these points are all part of the wider context and need to be also addressed as a priority.

We think the FCA should regulate AIM, rather than the LSE regulating that market. In our opinion, the LSE is conflicted in that it has a business interest in encouraging as many AIM listings as possible which conflicts with the requirement to vet the legitimacy of companies that list and the probity of their boards. We are also concerned about hot potatoes currently being passed between the FCA and LSE and things falling in between the cracks.

The proposed changes by your review and that of HM Treasury to the Prospectus Regime look sound. However, we have concerns about the context in which they (and

probably other changes) are taking place. Post Brexit we have a huge opportunity to develop a clear strategy for the UK finance industry. The Prospectus regime and Primary Markets Review are important parts of the bigger picture. We would like to see greater clarity on the bigger picture and a wider review and overhaul of the way that UK markets and the UK Financial Services industry works is needed. Clearly, that is going to be a long-term endeavour which will take years. But the starting point has to be some sort of plan and strategy.

Please treat our response as a public document. We will be publishing our response openly. Our response is not confidential. We are happy for you to list our organisation in your list of respondents and to publish our response. In our view, the more publicity our response gets, and the more it is read, the better.

We would be pleased to meet with you to explain further our responses.

Yours sincerely

Cliff Weight
Director

Questions in this Consultation Paper and our responses

In relation to questions 1 to 11, please note we prefer Model 4. A key point is that information should be available at the point of sale and purchase of shares of which Type of company and on which market the share is listed and which is its main market index. This information should also be clearly displayed in key documents such as annual reports, RNS, circulars, etc.
The FRC is proposing a Sox-lite version of disclosure of information which we support: we believe this is greatly needed. We wish the UK Premium Listing to remain very much as a Premium listing and are concerned about any reduction of standards. We would not like to see a race to the bottom as different stock markets seek to attract new companies to list on their exchanges.
We strongly disagree with the first negative bullet in the table on page 23, in respect of Model 4 "May be difficult for issuers to understand the purpose of different segments". Apart from being patronising, issuers where necessary have advisers to explain the markets and the alternatives and guide them. It is also the role of the FCA to propose segments that make sense and have clear purposes.
We question - might the symptoms be symptomatic of a wider problem relating to the complexity of the market segments, which might be something the FCA should research with a view to prescribing a cure, if the facts deem it necessary?

Q1: Would a single segment for equity shares in commercial companies meet the needs of both issuers and investors?

Q2: Which elements of the existing listing regime would you consider it most difficult or least desirable for issuers and/or investors to operate without? Are there any particular elements you would reinstate? ie the controlling shareholder regime, or the free float requirements

Q3: Would the role of the sponsor be a significant loss? Is their role under any specific element of existing requirements considered significantly beneficial to issuers or investors currently?

Q4: What would be the benefit of being admitted to the Official List rather than just admission to a trading venue?

Q5: Should we have a role in approving the admission criteria set by trading venues and/or indices? Could adequate investor protection be maintained if different trading venues compete on admission requirements?

Q6: What types of issuers would find it hard to comply with the standards within the existing premium listing segment and why?

Q7: Do unlisted markets provide a suitable alternative to listed markets? Would a gap emerge for any particular type of issuer? Do you consider there would be any particular benefits or drawbacks to this approach?

Q8: What types of companies or strategies should the 'alternative' segment be aimed at?

Q9: Do the existing provisions in the standard segment need to be changed to suit these companies, either through relaxation or to provide additional shareholder protections?

Q10: How important is our role in setting additional admission standards to listing in the 'alternative' segment? Are there any benefits to this role being performed by us rather than a trading venue, or market discipline?

Q11: Do you consider the alignment between admission to the index and admission to the 'senior' segment to be important? Should the indices consider setting more objective admission criteria?

We have no specific comments to any of the questions 1 to11 other than our generic comments above.

We have no comments on Q12-14.

Q12: How can the process for listing debt and debt-like securities be improved for issuers without jeopardising investor protection?

Q13: Should there be a separate listing segment for debt and debt-like securities?

Q14: Which particular elements of the listing regime could be tailored to improve their effectiveness for other types of securities? In what way?

Q15: Do issuers consider the process of admitting further issues to both the FCA and the trading venue to be burdensome?

No comment, as we are not issuers.

Q16: Would the existing procedures conducted by trading venues to ensure issuers comply with their disclosure obligations (production of a prospectus) need to be enhanced if we were to cease admitting further issues to the Official List? What costs would be associated with these, if any?

We would be very opposed to any relaxation of disclosure rules which might mean that ordinary shareholders might lose their shareholder rights. Our concerns are more than pre-emption rights, which are, of course, very important.

One should look at debt and equity as a stack, with the lowest risk (and lowest interest rate) debt at the bottom, then medium risk, then mezzanine (aka junk) and then equity at the top. The issue of new debt changes the value of all the other investments in the stack. New debt can enhance the attractiveness of some other debt but reduce the value and price of other debt. Replacing high interest debt with lower interest debt can boost the value of the equity. The problem is even more profound when high rate debt is issued, particularly when conversion terms and warrants apply.

When making investment decisions about shares, investors need to be fully aware of debt considerations. Any relaxation of disclosures is potentially harmful, especially as it seems likely

we are entering a new era when interest rates are will be more volatile and have an increased impact on corporate valuations and viability than in recent years.

Q17: Are there any legal, regulatory or tax requirements that are connected with further issues being admitted to the Official List, that could not be maintained by further issues being admitted to a trading venue?

See answer to Q16.

Q18: Do you agree with our rationale for introducing DCSS to the premium listing segment? Is there any additional evidence that we should consider?

We think the 5-year rule is a nasty compromise.

It takes longer than 5 years to create an Apple, Microsoft, Alphabet, Amazon, Facebook or similar.

We think the issue is better addressed via those who create the indices. There should be a separate indices available for investors to invest in, eg:

FTSE 100

FTSE 100 excluding DCSS

FTSE 100 DCSS only

If this was done we do not see any reason to have any sunset period. As noted above A key point is that information should be available at the point of sale and purchase of shares of which Type of company and on which market the share is listed and which is its main market index. This information should also be clearly displayed in key documents such as annual reports, RNS, circulars, etc.

Q19: Do you foresee any limitations to our proposal if the weighted voting shares are unlisted?

No.

Q20: Do you consider that a five year sunset period for DCSS in the premium listing segment is the correct length to protect companies from unwanted takeovers? Please provide evidence for your answer.

We think the 5-year rule is the wrong length. It is a nasty compromise. It will not be attractive to entrepreneurs (e.g. FANGS like companies), but those charlatans willing to compromise to make a quick buck, will find this 5-year period acceptable and will leap at it. Many of those who are willing to advise such charlatans will support this compromise.

It takes longer than 5 years to create an Apple, Microsoft, Alphabet, Amazon, Facebook or similar.

DMGT will have been a DCSS for over 100 years. It is currently going private. It was a member of the FTSE100 until the FTSE 100 rules were changed (about 15 - 20 years ago). DMGT survived and prospered without being a constituent of the Premium index.

Q21: Do you consider that the mechanism proposed will be effective in providing a deterrent to unwanted takeovers? Please give reasons for your answer and any possible alternatives.

We do not know.

Q22: Do you agree with the proposed controls around DCSS in the premium listing segment? Are there any additional controls that would make the regime more effective?

No comment.

Q23: Do you agree with our proposal to raise the minimum market capitalisation for companies seeking to list under standard and premium listing to £50m? If not, please state your reasons and indicate what alternative threshold may be more appropriate along with any supporting evidence. We also welcome views on whether we should consider setting out conditions under which we might modify the proposed rule on the new threshold, and if so what criteria stakeholders think we could usefully consider.

We strongly support this idea. The AIM and Aquis market are better alternatives for these smaller companies.

However, we think the limit should be higher. We do not have any supporting evidence, but our feel is that £100 million, or £250 million would be a better limit and possibly even £500 million.

Q24: Do you consider that the current level of market capitalisation for listed debt remains appropriate? Please give reasons for your answer.

No comment.

Q25: Do you agree with our proposal to reduce free float to 10% and to remove current guidance on modifications? Please give your reasons.

Yes.

The data in your Annex about other countries is very persuasive.

Would it not be simpler to remove the limit completely. People and institutions will not buy shares if they are not happy with the potential liquidity and bid/offer spreads. So the market will be self regulating. This would save the FCA one job and enhance the competitiveness of UK capital markets to issuers, at home and abroad, thereby giving our members and other investors more choice.

Information at the point of sale /purchase of the free float, plus liquidity, spread, volatility, Beta and better financial education will all be helpful. The FCA should work on these aspects as well.

Q26: Would you find information about issuers' free float level useful to inform investment decision-making?

Yes. See answer to Q25.

Q27: Do you agree with our proposal to leave track record requirements as they are now, based on our assessment that this would only affect a small number of stakeholders? If you disagree, please provide further evidence or examples of the wider impact this has on prospective listing applicants and proposed amendments.

Your consultation makes no mention of reverse takeovers. Is this not the way that many companies without a track record get access to the market?

You also do not mention SPACs.

Subject to the above, we agree your proposal to leave the requirements as they are now and we would be concerned if the inherent safeguards for investors were to be diluted. Indeed, we are concerned by the way that many companies come to market with, on the one hand, the requisite track record requirements but, on the other, boards of directors that appear to have been assembled in haste and have little or no track record in directing the companies concerned. This is an area the FCA should consider tightening up on in the relevant rules and guidance, so that the governance risks are minimised and/or made clear with due prominence to prospective investors.

Q28: What types of companies struggle to meet the existing requirement in the premium segment for a 3 year revenue track record covering 75% of the business? What alternatives could be considered for these companies?

See answer to Q27.

We would encourage the FCA to promote the benefits and appropriateness of issuers joining junior markets/segments with a view obtaining promotion to the premium segment when the time is right? And the FCA should encourage the development of a low-cost/hassle pathway to enable that to happen if it belives that it is not be there already

Q29: Do you foresee any unintended consequences of these changes intended to modernise the Listing Rules, Disclosure Guidance and Transparency Rules and the Prospectus Regulation Rules?

No, but as a matter of good practice and in the light, inter alia, of the increasingly rapid impact of technology and ESG investing on capital markets, we suggest that the FCA should formally commit to undertaking a further review of the effectiveness of primary markets in, say, 2024.