Quoted Companies Alliance

6 Kinghorn Street
London EC1A 7HW

T +44 (0)20 7600 3745
F +44 (0)20 7600 8288
mail@theqca.com

www.theqca.com

Anne Masacorale
Primary Market Policy
Financial Conduct Authority
25 The North Colonnade
London E14 5HS

cp13-15@fca.org.uk

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Dear Ms Masacorale,

Consultation Paper CP 13/15: Feedback on CP 12/25: Enhancing the effectiveness of the Listing Regime and further consultation

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Legal, Corporate Finance Advisors and Corporate Governance Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Groups is at Appendix A.

Response

We welcome the opportunity to respond to this consultation.

With regard to the proposals on controlling shareholders and relationship agreements, we agree with the general approach proposed to identify controlling shareholders. However, we believe that there are areas that could benefit from further guidance and have highlighted this in our responses to the individual questions in Annex 3. We have also suggested amendments to some of the proposed changes.

With regard to the proposed changes to the Listing Principles, we note that the FCA has not provided further clarity as to why it is thought appropriate to extend two of the Listing Principles to Standard Listings. Therefore, we continue to query the necessity of this, seeing as the purpose of the Standard Listing segment is to be an EU-minimum directive listing option. We believe that it would be helpful for the FCA to provide further clarity on how the application of these additional Listing Principles to Standard Listings affects the positioning and purpose of the Standard Listing segment.

With regard to the proposals on the cancellation of listings, we believe that current arrangements are sufficient and, therefore, support Option 2. Please see our response to Question 21 for more detail.

Please find below our responses to Annex 3 Questions.

Reponses to Annex 3 Questions

Independent business

Definition of a controlling shareholder

Q1. Do you agree with our proposed definition of a 'controlling shareholder'?

In our response to CP 12/25 we noted that we agreed with the general approach to identifying controlling shareholders. We are pleased to note that the new definition is included within LR6 which deals with Premium Listed companies only and therefore removes any confusion that it could also apply to Standard Listing companies.

In that response we also suggested that guidance may be helpful as regards situations where a shareholder and their associates will be deemed to be "acting in concert". Whilst CP 13/15 mentions at page 23 (fifth paragraph) "guidance or determinations" issued by the FCA in relation to the meaning of 'acting in concert' there is no specific indication that any such guidance is forthcoming. Although the Takeover Code definition of 'acting in concert' may not be directly relevant in the context of the Listing Rules, the Takeover Code does set out automatic presumptions of groups of persons who are deemed to be acting in concert. We feel FCA guidance would be very useful for both issuers and shareholders.

On a specific point with the drafting of the proposed changes to the Listing Rules, it would be useful if the FCA could provide guidance as to what "reasonable certainty" should be taken to mean in LR 6.1.4CG. Issuers will want to know how far their investigations should go into whether a controlling shareholder is able to procure compliance of another controlling shareholder with the relationship agreement between the first controlling shareholder and the issuer. It would perhaps be simpler to require a relationship agreement to include an undertaking by the controlling shareholder to procure that the controlling shareholder's associates and concert parties adhere to its provisions. This would reduce any potential uncertainty for issuers.

The wording in 6.1.4BR(1) "intended to ensure" should be replaced by "must provide that".

Definition of an associate

Q2. Do you agree with our proposal to amend the definition of an 'associate' as described in CP 13/15?

The definition at (4)(d)(i) in relation to voting interests in partnerships should be amended to follow the wording of (4)(c)(i) and so it applies only where that voting interest relates to "on all, or substantially all matters". It is also unclear as what (4)(d)(ii) is meant to cover in the context of a partnership - if it is meant to be an equivalent provision to 4(c)(ii) it will need to be further defined.

As a general point, the Listing Rules apply to an issuer, rather than its shareholders. Therefore we query how much investigation an issuer company is required to undertake into relationships between 'associates' to ascertain whether it has properly complied with LR 9.2.2A, which it must do "at all times". It would be useful if guidance was issued on this point.

Enhanced oversight measures in LR11

Q3. Do you agree with our proposals relating to the circumstances for imposition of the enhanced oversight measures (LR 11.1AR) and the consequence of their imposition (LR 11.1.1CR)?

The consequence of the proposals is that for companies subject to the enhanced oversight measures, any transaction with a controlling shareholder will necessitate the holding of a general meeting which is an expense to the company (and its shareholders) and also builds an extra period of time into any transaction timetable which for ordinary course transactions may well be disproportionate. Whilst CP 13/15 notes that the FCA will retain the ability to exempt ordinary course transactions from such approvals, a pre-clearance authorisation will be required. This could in some situations be disadvantageous to the independent shareholders.

In addition, the enhanced oversight measures will apply in a situation where the controlling shareholder is in breach of an independence provision, rather than the company. Again this is potentially not in the best interests of the independent shareholders, despite the fact the rule changes are designed to protect the minority. It would be preferable for the Independent Directors to decide as to what course of action the issuer should take in relation to that breach.

If the FCA wants to proceed with this approach, we would prefer to see a grace period during which steps can be taken by the issuer to rectify the issue without any consequences. Additionally specific guidance would be helpful as to what the FCA's position will be if a controlling shareholder refuses to (or cannot) co-operate with an issuer.

The FCA should also clarify whether the entry by an issuer into relationship agreement with a controlling shareholder will be deemed a related party transaction.

Ordinary course transactions

Q4. Do you agree with the proposed guidance in LR 11.1DG?

Yes, but please see response to Q3.

Waiving the application of the enhanced oversight measures

Q5. Do you agree with the guidance in LR 11.1.BG?

Yes, we agree.

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 ER)?

Subject to the comments made in response to Q3, yes we agree.

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)?

Yes, we agree that a six month period is reasonable length of time. However, clarification should be issued to confirm that any transactions falling within that six month period, which otherwise would fall foul of the rules, are exempt from any requirement for rectification following the six month period.

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 obligations in draft LR 9.2.25?

Yes, we agree with the proposals.

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?

Yes, we agree with the proposals.

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?

Yes, but please see our response to Q12.

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 these proposals should only apply to premium listed issuers with a controlling shareholder. It would be onerous and of little value to apply the proposals to all premium listed companies.

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 general principle for additional specific disclosures for the election of independent directors for issuers with controlling shareholders.

However, clarification is needed as to whether this applies on the election for the first time or upon each re-election. As companies subject to the UK Corporate Governance Code should be putting all directors up for re-election each year, the value of providing such information on an annual basis (if that is the intention of LR13.817) is questionable unless something has changed in relation to that independent director. If

information is to be given on a re-election, it would be of more value to note what matters the independent director was required to consider in the year since election (or re-election).

In addition, guidance as to what is meant by "existing or previous relationship" should be given. For example, does this mean that a proposed independent director who has served on the board of another entity with a director of the issuer should be deemed to have a previous relationship? The disclosure requirements at 13.8.17R (2) could just lead to generic disclosures.

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 feel that there should be a period of time after the coming into force of the revised Listing Rules after which issuers must comply, for example, six months following that date, or no later than the earlier of the issuer's Annual General Meeting and six months following the coming into force of the changes, rather than compliance being dictated only by the date of an issuer's subsequent general meeting.

Without such a period, where an issuer is in the middle of transaction which will require a general meeting to be held shortly after the coming into force of the revised Listing Rules, time and expense would need expended on drafting constitutional amendments as well as a further resolution and explanatory statement which are unrelated to the intended original purpose of the general meeting.

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?

Yes, we agree with the proposal.

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?

Yes, we agree.

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?

Yes.

Transitional provisions relating to annual report disclosure

Q17. Do you agree with the transitional provisions as described in the Consultation Paper?

Yes.

Miscellaneous amendments to LR 9.8.4R

Q18. Do you agree with our proposal as explained in the Consultation Paper?

Yes.

Smaller related party transactions

Q19. Do you agree with our proposals for the treatment of smaller related party transactions as discussed in the Consultation Paper?

Yes, although see our response to Q3. If smaller related party transactions are now to be viewed as more "benign" by the FCA and so not need pre-clearance, this seems at odds with the requirement to have such transactions subject to a shareholder vote in certain circumstances.

The Listing Principles

Consequential changes to LR 7 and DEPP 6

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

In our response to CP12/25, we noted that the proposal to extend the Listing Principles to Standard Listed issuers further blurs the distinction between the two segments and could also be seen as "goldplating" the EU minimum requirements.

We note that no change has been made to the proposals in this regards and that no further clarity has been given as to why it is thought appropriate to extend two of the Listing Principles to Standard Listings (other than the FCA does not believe that they impose super-equivalent requirements).

Therefore we continue to believe that the changes to the Listing Principles and their application to companies with a Standard Listing are not helpful.

In relation to the changes proposed to the Listing Principles, it would be perhaps helpful to extend the list of non-exhaustive factors which the FCA will have to regard to when assessing whether voting rights attaching to different classes of premium listed classes are proportionate for the purpose of Listing Principle 3.

Cancellation of listing

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

We feel that the current arrangements are sufficient and so we agree with Option 2.

We understand that there are concerns about the technical procedures, carried out by registrars, with regard to the policing of votes of independent shareholders and the liability arising in connection with such votes that would arise if Option 1 was adopted. We note that the ICSA has highlighted these issues in their

response to this consultation and we believe that these highlight why Option 1 is not preferable to Option 2.

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

Yes.

If you would like to discuss any of our response in more detail, we would be happy to attend a meeting.

Yours sincerely,

Tim Ward
Chief Executive

APPENDIX A

Quoted Companies Alliance Legal Expert Group

Gary Thorpe (Chairman)	Clyde & Co LLP
Chris Barrett	Bird & Bird LLP
Richard Beavan	Boodle Hatfield LLP
Ian Binnie	Hamlins LLP
Ross Bryson	Mishcon De Reya
Simon Cox/ Jo Chattle/Julie Keefe	Norton Rose Fulbright LLP
David Davies	Bates Wells & Braithwaite LLP
Mebs Dossa	McguireWoods
Stephen Hamilton	Mills & Reeve LLP
Paul Arathoon/David Hicks/Tom Shaw/ Jaspal Sekhon	Speechly Bircham LLP
Susan Hollingdale/Hilary Owens	Practical Law Company Limited
Martin Kay	Blake Lapthorn
Philip Lamb	Lewis Silkin
Maegen Morrison/Danette Antao/ Bernard Wall	Hogan Lovells International LLP
June Paddock	Fasken Martineau LLP
Donald Stewart	Progility plc
Mark Taylor	Dorsey & Whitney
Anthony Turner	Farrer & Co

Quoted Companies Alliance Corporate Finance Advisors Expert Group

Samantha Harrison (Chairman)	RFC Ambrian Limited
Richard Evans (Deputy Chairman)	Strand Hanson Limited
Stuart Andrews	finnCap
Neil Baldwin/Mark Brady	SPARK Advisory Partners
Azhic Basirov	Smith & Williamson Limited
David Bennett/Simon Charles	Marriott Harrison
Tim Bird/Amerjit Kalirai	Field Fisher Waterhouse
Richard Crawley	Liberum Capital Ltd
Robert Darwin/Maegen Morrison	Hogan Lovells International LLP
Stuart Faulkner/Simon Raggett	Strand Hanson Limited
Martin Finnegan	Causeway Law
David Foreman/Mark Percy/Rick Thompson	Cantor Fitzgerald Europe
Sean Geraghty	Dechert
James Green	K & L Gates LLP
Lesley Gregory	Memery Crystal LLP
Chris Hardie	Arden Partners PLC
Daniel Harris	Peel Hunt plc
Dalia Joseph	Oriel Securities Limited
Jonathan King	Osborne Clarke
Richard Metcalfe	Mazars LLP
Jonathan Morris	Bates Wells & Braithwaite LLP
Nicholas Narraway	Moorhead James
Nick Naylor	Allenby Capital Ltd
Claire Noyce	Hybridan LLP
Laurence Sacker	UHY Hacker Young
Chris Searle	BDO LLP
Philip Secrett	Grant Thornton UK LLP

Charles Simpson	Saffery Champness
Leighton Thomas	PricewaterhouseCoopers LLP

Quoted Companies Alliance Corporate Governance Expert Group

Edward Craft (Chairman)	Wedlake Bell LLP
Colin Jones (Deputy Chairman)	UHY Hacker Young
Victoria Barron	Hermes Equity Ownership Services
Edward Beale	Western Selection Plc
Rob Burdett	FIT Remuneration Consultants
Anthony Carey	Mazars LLP
Jo Chattle/Julie Keefe	Norton Rose Fulbright LLP
Richie Clark	Fox Williams LLP
Louis Cooper	Crowe Clark Whitehill LLP
Madeleine Cordes	TMF Corporate Secretarial Services Ltd
Kate Elsdon	PricewaterhouseCoopers LLP
David Firth	Penna Consulting PLC
Peter Fitzwilliam	Mission Marketing Group (The) PLC
David Fuller	CLS Holdings PLC
Nick Gibbon	DAC Beachcroft LLP
Nick Graves	Burges Salmon
Andrew Hobbs	EY
Alexandra Hockenhull	Xchanging plc
David Isherwood	BDO LLP
Nick Janmohamed	Speechly Bircham LLP
Dalia Joseph	Oriel Securities Limited
Claire Noyce	Hybridan LLP
Gabriella Olson-Welsh	McguireWoods
Anita Skipper	Aviva Investors
Julie Stanbrook	Hogan Lovells International LLP
Nicholas Stretch	CMS Cameron McKenna LLP
Peter Swabey	ICSA
Eugenia Unanyants-Jackson	F&C Investments
Melanie Wadsworth	Faegre Baker Daniels LLP
Cliff Weight	MM & K Limited