

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



London, February 4th, 2014

Dear Mrs Masacorale;

Re: CP13/15 - Enhancing the effectiveness of the Listing Regime

I am writing to you to respond to your recent consultation **CP13/15** on behalf of **ECGS** (Expert Corporate Governance Service), the European partnership of proxy advisors whose managing partner is **Proxinvest**, the French leading proxy advisory firm. Proxinvest works for the interest of all shareholders and as managing partner of ECGS, a consortium of corporate governance and proxy research analysts in continental Europe as well as working with Manifest in the UK.

ECGS is a partnership of independent local market experts which have come together to provide specialist governance research and proxy voting advice, offering institutions access to unrivalled experience on corporate governance and responsible investment issues.

Other active ECGS Partners are DSW (Düsseldorf), Ethos Services (Geneva), Shareholder Support (Rotterdam), Frontis Governance (Italy) and GIR (Montreal).

ECGS acts solely in the interest of all shareholders and insists to act as freely of conflicts of interests as possible in its production and sale of its advisory services.

ECGS is very supportive of the FCA's innovative proposals for Premium Listed companies in the UK, as our enclosed detail comments will show.

We look forward to seeing the results of your consultation in due course.

Sincerely,

Pierre-Henri Leroy
President

CP13/15 - Enhancing the effectiveness of the Listing Regime

Submitted by: ECGS

Date: Tuesday, February 04, 2014

Definition of a controlling shareholder

Q1: Do you agree with our proposed definition of a 'controlling shareholder' as described?

ECGS supports the proposed percentage holding level of 30% of voting rights (not only of shares) as the definition of a controlling shareholder. We believe that this level should be used to assess whether two (or more) entities acting together to control the exercise of 30% or more of the votes, whether they are "acting in concert" or not.

However, we respectfully disagree with the idea to align the definition with the definition of a 'substantial shareholder' as used in the context of the related party transaction regime. We believe that the control of related party transaction should involve shareholders holding with a lower percentage of the voting rights (as low as 10% of the shares in France).

Definition of an associate

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

ECGS supports the proposed rule which requires the aggregation of all associates' shareholdings in calculating the total holding of the potential controlling shareholder and regards each party that contributed towards establishing that a controlling shareholder exists to be a controlling shareholder in its own right.

Controlling agreement:

- ECGS appreciates the continuing obligation, as set out in LR 9.2.2AR that, where a premium listed company has a controlling shareholder, it must have an agreement in place, including the independence provisions set out in LR 6.1.4DR.
- We support that a premium listed company must comply with the independence provisions in the agreement at all times, which is now in LR 9.2.2FR.
- We share the concern that the ultimate sanction for non-compliance with independence provisions might disproportionately penalize minority shareholders.

A premium listed company has to comply with LR 9.2 in order to enter into transactions and relationships with the controlling shareholder at arm's length and on normal commercial

terms as it is important to ensure that the premium listed company is operating an independent business.

We regret that the provisions relating to the independent business do not apply to closed-ended investment companies (LR 15) and open-ended investment companies (LR 16) as the UK law exempted these companies from having to comply with LR 9.2.2AR and LR 9.2.2FR

We believe that the requirement to operate an independent business should fully apply to LR 15 and LR 16 companies whenever they are members of a multi-business financial group.

Enhanced oversight measures in LR 11 (Related Party Transaction regime)

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?

Yes. We agree that applying these enhanced protections means that all transactions between a controlling shareholder or its associates and a premium listed company become subject to shareholders' approval under LR 11.1.7R, whereby a controlling shareholder and its associates cannot vote as they are also a related party. We appreciate that the enhanced oversight measures will provide minority shareholders with the means to effectively veto all transactions between the company and controlling shareholder. Besides, we consider it an appropriate means as the current interpretation of the audit big four on related party transactions appears lax in relation to the transactions conducted within group subsidiaries.

Ordinary course transactions

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

Yes. ECGS appreciates that the proposed enhanced oversight measures, ordinary course transactions would not be exempt from the control of RPT and would, therefore, be subject to independent shareholders' approval.

We support the idea that only a few derogation should be made when explicitly agreed to by the UK Listing Authority. This should not be a simple notification obligation.

Waiving the application of the enhanced oversight measures

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

No. ECGS is not in favour of waiving the application of the enhanced oversight measures in exceptional circumstances (draft LR 11.1.1BG).

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)?

Yes. ECGS supports that the protections should apply until the publication of an annual report that contains a clear statement of compliance by the board (without any disagreement from independent directors) (draft LR 11.1.1ER). This would ensure that the relationship between the premium listed company and any controlling shareholder has been in place for a full financial year at least. Therefore, the lifting of the sanction depends on actual behaviour rather than a public declaration that compliance issues have been resolved.

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. ECGS supports the FCA proposal that a transitional period of six months for existing premium listed companies that have a controlling shareholder be given and also when a controlling shareholder emerges at a premium listed company that is not currently controlled, but no grace period should be given for new applicants.

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?

Yes.

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.

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.

Q12: Do you agree that the proposed guidance (LR 6.1.4DG) contains the key factors indicating that the new applicant may not carry on an independent business?

Somewhat: The requirement made to the new applicant appears soft but appropriate.

ECGS supports the intent to give shareholders enhanced rights under LR 9.2.2DR to influence the outcome of an election of independent directors.

We support the disclosure requirements regarding documentation that is sent to those shareholders allowing testing the likely independence. The disclosures should show all previous or existing relationships or agreements between a proposed independent director and the company; its directors or the controlling shareholder, without limitations as to nature of the relationship or duration. These disclosures will then permit shareholders to decide for themselves whether the proposed director is independent or not. A description of why the company considers the proposed independent director will be an effective director is useful, as suggested, including a description of how the company has determined that the person is an independent director and the process followed for the selection of the independent director, for example the use of a head-hunter. We would expect to see full disclosure of the name of any head hunters used and fees, consistent with disclosures relating to the use of remuneration consultants. In addition, ECGS is supportive of the idea to extend this assessment of effectiveness provided by the company to every director, whether or not they are considered independent as it appears to us that every director on Board should be an “effective” director.

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)?

Yes.

Shares in public hands - specific criteria for modification of the free float requirement

We believe the overall package of measures including the proposal for enhanced oversight by minority shareholders added to a large free float significantly enhances minority shareholder rights.

As a representative of institutional investors and asset owners, ECGS supports the decision to increase the free-float requirement for the Premium Segment of the market as we believe the existing requirement of 25% is already low.

Should this free float requirement mean that London is excluded from some IPOs? We believe that this would have the benefit of increasing the prestige of this premium segment and of the London market as a whole as guardians of good governance.

Q26: Do you support our proposal to exclude shares subject to a lock-up period from the calculation of shares in public hands (LR 6.1.19(4)(f))?

Yes. We support this idea and would recommend considering excluding similarly, when they reach the statutory declaration threshold as identified by the issuer, all shares promised for resale and all banks pledged shares.

Q27: Do you support our proposal to amend LR 6.1.20G to set out criteria based on which the FSA may modify the requirement for a 25% free float as described above?

No.

Q28: Do you support our approach to companies wishing to list on the standard segment as described above?

Yes.

Q29: Do you agree with the proposed criteria for assessing potential liquidity outlined above?

Yes.

Q30: Do you agree with the proposed new guidance in the Listing Rules (LR 6.1.20AG) clarifying that holdings of individual fund managers in an organisation will be treated separately provided investment decisions with regard to the acquisition of shares are made independently?

No. The proposal does not address the issue of voting rights but only trading activity.

ECGS considers that not only trading decisions but also the voting decisions for these shares should be made independently.

We see no reason that the holdings of funds managed by one same organization be offered any exceptional treatment: they should count as one same interest for the purpose of the public hands threshold as well as to assess the 30% controlling threshold.

Q31: Do you agree with the proposed new guidance in the Listing Rules (LR 6.1.20BG) explaining that we consider that financial instruments that give a long exposure to shares, but do not control the buy/sell decision in respect of the shares, should not normally count as an interest for the purpose of the public hands threshold?

Yes.

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.

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 above?

Yes.

Miscellaneous amendments to LR 9.8.4R

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

Yes.

Smaller related party transactions:

Q19: Do you agree with our proposal as explained above?

Yes.

The Listing Principles

Q40: Do you agree with our proposal to amend LR 7.1.1R to make Listing Principles applicable to standard listed issuers?

Yes.

Q44: Do you support the requirement that each premium listed share in a class must have equal voting power (Premium Listing Principle 3)?

Yes.

ECGS strongly supports the “One share, one vote” principle. The Premium Listing Principle 3 should further prevent super voting shares being included in premium listed classes of shares via their constitution rather than to cut across legal and regulatory requirements that subdivide classes of shares for specific purposes.

Q45: Do you support the requirement that, where a company has more than one class of equity shares admitted to premium listing, the aggregate voting rights of the shares in each

class should be broadly proportionate to the relative interests of those classes in the equity of the company (Premium Listing Principle 4)?

Yes.

Consequential changes to LR 7 and DEPP 6

No comment.

Cancellation of listing

ECGS believes that it is important that any premium listed company wishing to delist, must first obtain the prior approval of holders of 75% of its shares in a general meeting, a UK 2005 innovation(LR 5.2.5R), while in many other countries no shareholder vote is required, a situation which exposes shareholders to frequent abuses from the controlling shareholder(s).

While a 75% threshold is not even enough not completely protect all investors, one should also avoid situations where a small minority of holders could frustrate the legitimate actions of the large majority, it is still appropriate to enhance shareholder protections where a controlling shareholder is present.

The FCA suggested either an Option 1 – to move to a requirement that a majority of the votes attaching to the shares of those independent shareholders voting must also sanction the cancellation where a controlling shareholder is present.

Under this option the proposed LR 5.2.5R (2) requires that, where a premium listed company has a controlling shareholder, it must obtain approval by a simple majority of the votes attaching to the shares of those independent shareholders voting on the resolution. This must be in addition to a majority of not less than 75% of the votes attaching to the shares of those voting on the resolution or an Option 2 – to retain the existing approach to cancellation as set out in the current LR 5.

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

ECGS supports Option 1 imposing a special independent shareholders vote in case of cancellation of the premium listing for any reason including the transfer to another segment.

CASE OF PUBLIC OFFER

FCA considers that level should be set at which the resultant free float ceases to be acceptable and cancellation may proceed and proposed that this level should be set at 80% of voting rights. Thus, where an offer has acquired or has agreed to acquire more than 80% of the listed class of shares, then no further approval/acceptances by independent shareholders should be required to cancel the premium listing.

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

Yes.