

# Feedback on CP12/25: Enhancing the effectiveness of the Listing Regime and further consultation

November 2013





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We are asking for comments on this Consultation Paper by 5 February 2013.

You can send them to us using the form on our website at:  
[www.fca.org.uk/your-fca/documents/consultation-papers/cp13-15-response-form](http://www.fca.org.uk/your-fca/documents/consultation-papers/cp13-15-response-form).

**Or in writing to:**

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We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

You can download this Consultation Paper from our website: [www.fca.org.uk](http://www.fca.org.uk). Or contact our order line for paper copies: 0845 608 2372.

## Abbreviations used in this paper

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<b>CFD</b>	Contract for Difference
<b>the Code</b>	UK Corporate Governance Code
<b>DEPP</b>	The Decisions Procedure and Penalties Manual
<b>DTR</b>	Disclosure Rules and Transparency Rules
<b>EGM</b>	Extraordinary General Meeting
<b>EMC</b>	Externally Managed Companies
<b>FCA</b>	Financial Conduct Authority
<b>FRC</b>	Financial Reporting Council
<b>FTSE</b>	FTSE Group, provider of stock market indices, wholly owned by the London Stock Exchange Group plc
<b>FSMA</b>	Financial Services and Markets Act 2000
<b>GDR</b>	Global Depositary Receipt
<b>IPO</b>	Initial Public Offering
<b>LR</b>	Listing Rule
<b>PRA</b>	Prudential Regulation Authority
<b>RIS</b>	Regulatory Information Service
<b>UKLA</b>	UK Listing Authority

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# Introduction

## Structure of this publication

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In our consultation paper Enhancing the effectiveness of the Listing Regime (CP12/25), we set out proposals to enhance the effectiveness of the Listing Regime. We received 59 detailed responses, for which we are grateful.

### Our feedback to CP12/25

This publication covers the **feedback** to CP12/25 and includes a set of near-final rules based on the original proposals. These have not yet been approved by the FCA Board; they relate to the parts of CP12/25 where we have finalised our policy position. We are not inviting or accepting new comment on these rules.

### Our ongoing consultation

There are other parts of CP12/25 where, in view of the feedback received and our ongoing consultation with market participants, we have revised some aspects to ensure that our proposals are effective, proportionate and do not create unintended consequences. We now need to consult on these. Therefore, this publication is also a **consultation document** on the new proposals together with their associated draft rules. You can identify the new proposals by the questions at the end of each section detailing a new proposal. When we have finalised these proposals, it is intended that the FCA Board will approve the complete package of rules.

We have deliberately chosen to present the feedback and the consultation as one document to allow the market to see the overall package of changes together. It will also mean that any transitional arrangements can be applied consistently to the relevant parts of the whole package. As a result, Appendix 1, which contains the Handbook text, contains rules that are final as well as rules that are open to consultation. Both sets of rules are yet to be approved by the FCA Board.

### Who should read this paper?

This paper will be of interest to:

- UK and overseas issuers with UK-listed securities or considering a UK listing of their securities
- firms advising on the issuance of UK-listed securities, and
- firms or persons investing in or dealing in UK-listed securities

## CONSUMERS

This publication will interest consumers who deal and invest in UK-listed securities either directly or indirectly through institutions. The policy proposals raise issues about the protection of investors.

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# 1.

## Executive summary

**1.1** Following our October 2012 consultation, *Enhancing the effectiveness of the Listing Regime* (CP12/25), this paper presents a package of measures designed to strengthen minority shareholder rights and protections where they are at risk of being abused. It is particularly intended to deal with cases when a controlling shareholder does not maintain an appropriate relationship with a premium listed company. In designing this package, we have sought to be both effective and proportionate, while enabling all shareholders to play an active role in the governance of premium listed companies. Taken together, we view this package as an important and necessary step in promoting the integrity of the Listing Regime and ensuring an appropriate degree of investor protection.

**1.2** The focus of our package is the Premium Listing Regime because we and our stakeholders believe that it should represent a clear benchmark for high standards of governance. The regime is based on two fundamental concepts:

1. the right of shareholders to participate directly in the governance of the companies they own, and
2. the disclosure of relevant information by a company to its shareholders when they seek to exercise this right.

**1.3** It is key to the regime, and the FCA's strategic objective to make markets work well, that shareholders are actively engaged and able to take important decisions on a properly informed basis.

### **Background debate**

**1.4** The debate that led to CP12/25 was based on concerns from the investment community about the governance of premium listed companies with a controlling shareholder and protecting the interests of minority shareholders. Much of this debate had focused on the appropriate level of shares in public hands (the 'free float') for listed companies.

**1.5** Based on extensive consultation with stakeholders, we concluded that this debate reflected the concern that, where the interests of a controlling shareholder conflict with those of the minority, investors may find themselves unable to participate effectively in the governance of the company. Raising the free float above the present requirement of 25% was therefore seen by some as a way of increasing the collective voting power of the independent minority. However, other stakeholders warned us that new measures in this area could impose disproportionate burdens on all companies, when in their view the vast majority of companies (including premium listed companies with controlling shareholders) are governed well. We were also warned of the risk of turning minority protection into minority control.



### The package

- 1.6** Our package balances these concerns and present targeted measures to reinforce shareholder protections in situations where they need to be strengthened, rather than rules that would raise the general level of regulation. This package will not increase the regulatory burden on companies (and controlling shareholders) that comply with the expected standards of behaviour, but will have a very significant impact where this is not the case.
- 1.7** Our package introduces the following protections to minority shareholders:
- **Placing requirements on the interaction between a premium listed company and a controlling shareholder, where one exists, via a mandatory ‘agreement’.** This would impose a standard of behaviour that we consider to be fundamental to the independent operation of a listed company; it would give minority shareholders robust tools in situations where the actions of a controlling shareholder risk infringing their rights. These enhanced oversight measures give independent shareholders the means to veto all transactions between the company and controlling shareholder, and act as a powerful deterrent to inappropriate behaviour by the controlling shareholder.
  - **Providing additional voting power for minority shareholders when electing independent directors where a controlling shareholder is present** by requiring that they must be separately approved both by the shareholders as a whole and the independent shareholders as a separate class. Independent directors have a critical role to play in promoting effective corporate governance and our requirements give minority shareholders a greater voice in their election. It also promotes greater dialogue between shareholders and companies before the nomination of new directors.
  - **Enhancing voting power for the minority shareholders where a company with a controlling shareholder wishes to cancel its premium listing.** Cancellation of a listing removes from shareholders significant rights of participation in the governance of a company, and so it is essential that minority shareholders are given a proper say in this decision.
- 1.8** We believe that these measures will promote appropriate standards in companies with a controlling shareholder and provide a robust set of protections to minority shareholders. As a consequence, we have not changed the existing free float requirement although we wish to clarify those circumstances, where sufficient liquidity exists, in which we would consider allowing it to be modified.
- 1.9** We have also introduced new requirements aimed at ensuring that premium listed companies are structured in a way so that all shareholders benefit fully from the voting rights that the Premium Listing Regime gives them. Existing issuers will have a two-year transitional period to meet these new requirements.
- 1.10** Finally, we have enhanced the general transparency requirements for premium listed companies in a number of key areas to ensure that shareholders are able to exercise their voting rights and engage with listed companies in an effective manner.

- 1.11** We have had extensive discussions with our stakeholders, to whom we are grateful, about this package. We believe it will find broad support among both investors and listed companies. There was general agreement across stakeholders that an essential part of effective governance was active engagement by all shareholders in their role as responsible owners of listed companies. We believe we have provided shareholders with the tools necessary for this active engagement by:
- increasing transparency
  - strengthening the minority voice at key points in the dialogue between a company and its shareholders, and
  - providing enhanced protections when this dialogue is at risk of breaking down.
- 1.12** We believe our proposals will lead to increased confidence for investors, promoting greater access to capital for businesses and facilitating growth. They are therefore fully in line with our strategic objective of making markets work well.
- 1.13** This paper includes near-final rules where our policy position has been agreed as well as rules that are subject to consultation. Depending on the results of this consultation, we intend to implement the full and final package of measures in mid-2014.

## 2. Summary of the overall package

**2.1** This paper presents a package of measures designed to strengthen minority shareholder rights where they are at risk of being abused. It is particularly intended to deal with cases when a controlling shareholder of a premium listed company does not maintain an appropriate and arm's length relationship with the listed company, by proposing a package of measures that is both effective and proportionate. At the heart of the package is a view of effective governance which sees all shareholders as active and responsible owners. This package aims to ensure that shareholders have the appropriate tools and information when they engage with the companies they own.

### **Background to our proposals**

**2.2** The focus of our package is the Premium Listing Regime because we and our stakeholders believe that it should represent a clear benchmark for high standards of governance. It is based on two fundamental concepts:

- 1.** the right of shareholders to participate directly in the governance of the companies they own, and
- 2.** the disclosure of relevant information by a company to its shareholders when they seek to exercise this right

**2.3** For example, the Premium Listing Regime gives shareholders the right to vote on significant transactions, and transactions involving related parties such as directors or large shareholders. The regime also supports these decisions by describing the information that should be sent to shareholders in the circulars inviting them to exercise their vote.

**2.4** The debate that led to CP12/25 was based on concerns from the investment community regarding the governance of premium listed companies with a controlling shareholder and the protection of the interests of minority shareholders. Much of this debate had focused on the appropriate level of shares in public hands (the 'free float') for listed companies. We have concluded that this debate really reflected concerns about the first of the two fundamental concepts above, shareholder rights. In particular, the investment community was concerned that where the interests of a controlling shareholder conflict with those of the minority, shareholders are likely to be disenfranchised due to their inability to participate effectively in the governance of the company. With the ability to control less than 25% of the total votes of the company, minority shareholders as a group were unable to ensure that their views were properly reflected when important decisions were being taken. Raising the level of the minimum free float was therefore seen as a way of increasing the collective voting power of the independent minority. For this reason, some stakeholders we spoke to suggested raising the minimum free float level to as high as 50% or even 70%.

**2.5** Other stakeholders warned us of the potential for new measures in this area to impose disproportionate burdens on all companies when in their view the vast majority of companies (including ones with controlling shareholders) are governed well. In particular, some stakeholders were concerned that significantly raising the minimum free float level would have a disproportionate and adverse impact on the ability of the UK's capital market to perform its central role of providing capital to a wide range of companies. We were also warned that to significantly increase the general rights of minority shareholders risked turning minority protection into minority control.

#### **Enhanced shareholder protections**

**2.6** Our package of measures seeks to balance these concerns and to present targeted measures to reinforce shareholder protections in situations where they need to be strengthened, rather than rules that would raise the general level of regulation. In particular, we have identified with these measures three circumstances, as set out below, in which it is appropriate to increase minority shareholder protection, while still respecting the rights of the controlling shareholders of the company. These enhanced protections will therefore not significantly increase the regulatory burden on companies (and controlling shareholders) that comply with the expected standards of governance, but will have a very significant impact where this is not the case.

- 1.** Firstly, the proposed measures recognise the importance of ensuring the voice of minority shareholders is heard when the behaviour of a controlling shareholder is not appropriate.
- 2.** Secondly, we have provided additional voting power for independent shareholders when electing independent directors, recognising the critical role independent directors play in promoting effective governance.
- 3.** Finally, we have strengthened minority shareholder protection where a premium listed company with a controlling shareholder wishes to cancel its premium listing, and so remove the shareholder protections offered by the Premium Listing Regime.

**2.7** We have outlined the detail of the enhanced protections in these three circumstances below.

#### ***Relationship between a premium listed company and a controlling shareholder***

**2.8** We are significantly enhancing the Listing Regime by bringing the relationship between a premium listed company and a controlling shareholder within the regulatory perimeter and giving boards and, in particular, independent directors responsibility to comment on its appropriateness.

**2.9** Where there is a controlling shareholder, a documented 'agreement' must be entered into to regulate the relationship between the two parties to ensure that the company is able to operate independently of that shareholder. The regulatory scope of this agreement includes only 'independence provisions' – provisions that we consider fundamental to ensuring that the business remains independent of the controlling shareholder's influence. We believe that most companies with controlling shareholders already behave in line with these provisions so for them it will only be a matter of codifying existing practice. We consider it is justified to expect all premium listed companies and controlling shareholders to comply with these provisions on an ongoing basis.

**2.10** We are consulting on giving existing premium listed companies with a controlling shareholder six months to bring themselves into compliance with these requirements. A similar period will be given to premium listed companies that acquire a controlling shareholder after admission.

- 2.11** A key aspect of the package is a proposal for a robust response in situations where an inappropriate relationship between a premium listed company and a controlling shareholder risks damaging the interests of independent shareholders. In these circumstances, enhanced oversight measures would be activated and give minority shareholders the rights to vote on all transactions between a controlling shareholder and the company, and veto them if they wish.
- 2.12** This aspect of the proposals would come into effect only if:
- a premium listed company has failed to put a documented agreement in place with any controlling shareholder
  - an independence provision contained in any such agreement is not being complied with, or
  - an independent director does not agree with certain related statements made in the annual report
- 2.13** We consider it is an appropriate response that would have the additional effect of being a powerful sanction for non-compliance by a controlling shareholder.
- 2.14** The additional protections would then stay in effect until the next annual report in which the board gives a clean statement of compliance (regarding having entered into all relevant agreements and compliance with the independence provisions they contain) for the entire preceding financial year, with no dissent from the independent directors.
- Independent directors***
- 2.15** Independent directors act as an important source of challenge and control within the governance structure of a listed company and so it is essential that independent shareholders have a proper say in their election. We are introducing additional voting power for minority shareholders in the election of independent directors. This means we are requiring that premium listed companies with controlling shareholders must ensure that their constitutions provide for the election of independent directors by a dual voting structure. This structure requires that independent directors must be separately approved both by the shareholders as a whole and the independent shareholders as a separate class.
- 2.16** Should the result of the votes fail to achieve the necessary majorities, the company would be required to wait for at least a further 90 days before the vote could be passed – this time by a simple majority of all shareholders. While avoiding turning minority protection into minority control, this measure gives the minority a significantly stronger voice in electing independent directors. Equally importantly, it will promote greater dialogue between companies and their shareholders before the nomination of independent directors.
- 2.17** Companies would have until the next general meeting for which a notice has not yet been given to comply with these requirements.
- 2.18** Furthermore, we recognise that the quality of independent directors is of the utmost importance, so, we are proposing enhanced disclosures to be made when independent directors are nominated so that shareholders can be fully informed in making their voting decisions. In particular, we are proposing to require increased transparency of the nature of any relationship these directors may have had with a controlling shareholder.

### **Cancellation**

- 2.19** As the protections of premium listing fall away after a listing is cancelled, we are presenting proposals to give minority shareholders additional voting power where a company with a controlling shareholder wishes to proceed with a cancellation. In such circumstances, cancellation would require the approval of a majority of votes of the independent shareholders. However, we recognise that the current arrangements were supported when last consulted upon in 2003, so we are also presenting the retention of the existing arrangements as an alternative option.

### **Shares in public hands (or free float)**

- 2.20** We believe that the measures described above constitute a targeted set of enhancements to minority shareholder protections. In our view, these measures address concerns that in companies with a controlling shareholder, the minority voice can be ignored when a company is no longer sufficiently independent of its controlling shareholder.
- 2.21** We are, therefore, not increasing the current requirement for 25% of shares to be distributed to the public in European Economic Area (EEA) states. Whereas the UKLA already has the power to modify this requirement where it considers that there is sufficient liquidity for the market to operate properly, we are introducing guidance to be more explicit about the limited circumstances where we may use this power. We are also proceeding with our proposal to be willing to accept lower levels of free float in the standard segment where we are satisfied that there is sufficient liquidity for the market to be able to operate properly.
- 2.22** When calculating the free float, we will exclude shares subject to a lock-up period of 180 days, as such an agreement seems fundamentally inconsistent with what we consider to be the purpose of the free float. Furthermore, we are including guidance to clarify that we will disaggregate the holdings of fund managers where we are comfortable that the investment decision is made independently by that particular fund manager.
- 2.23** Finally, we also propose to clarify how we would approach the use of contracts for difference in relation to free float: essentially, we propose to look at who controls the buy/sell decision of the actual share, rather than consider who holds the long economic exposure.

### **Structural requirements to prevent avoidance**

- 2.24** To ensure that corporate structures cannot be used to evade the protections for shareholders provided by the Listing Regime, we are introducing a requirement that only holders of premium listed shares may vote on matters required by the Listing Rules because the company is premium listed. We are consulting on a two-year transitional period for existing premium listed companies with structures that are inconsistent with this. This will allow them time to engage with their shareholders regarding their compliance or otherwise with this requirement and hence their future within the premium segment.
- 2.25** We are also introducing a Listing Principle requiring that each share within a premium listed class should have equal voting power to prevent super-voting shares being included within premium listed classes of shares. Furthermore, we are adding a principle requiring that, where an issuer has multiple lines of premium listed shares, the voting rights of each class are broadly proportionate to the relative interests of those classes in the equity of the company. This aims to dis-incentivise the creation of artificial structures involving multiple classes with different voting powers designed to allow control to rest with a small group of shareholders.

**Enhanced transparency to support shareholder engagement**

- 2.26** Finally, we have enhanced other transparency requirements for premium listed companies to ensure that shareholders are able to exercise their voting rights and engage with listed companies in an effective manner.
- 2.27** To enable shareholders to engage with companies more effectively, we are proposing that companies announce smaller related party transactions (i.e. those that do not require specific shareholder approval) as soon as possible rather than waiting for the next annual report to disclose them. We will also require the content of such disclosures to be clearer. At the same time, we are reducing the administrative burden for companies in completing and announcing such transactions, recognising that our time spent in scrutinising standard confirmations added only delay.
- 2.28** We are also introducing a requirement that any disclosures required by the Listing Rules should either be in a single identifiable section in the annual report or that a cross-reference list to where the disclosures may be found is included where appropriate.

**Other enhancements to the regime**

- 2.29** Premium listed commercial companies are required to operate independent businesses and we are therefore including guidance around indicators of when the business is not independent (despite any agreement where a controlling shareholder is present). We are amending the rules so as to take into account the level of control an issuer has over its businesses as part of the assessment of whether an independent business is present. We will also apply the independence requirements to mineral and scientific research-based companies.
- 2.30** We are broadening the notification obligation of breaches of continuing obligations to cover all of the key eligibility requirements for premium listing. Consequently, we are expanding the guidance suggesting that companies that are unable to comply with the requirements should consider delisting or transferring to the standard segment.
- 2.31** Finally, we are broadening the scope of the Listing Principles requiring all listed companies to maintain appropriate systems and controls and also to deal with us in an open and co-operative manner to include standard listed companies.

**Conclusion**

- 2.32** We have had extensive discussions with our stakeholders, to whom we are very grateful, about this package and we believe it will be widely supported among both investors and companies. Stakeholders agreed, in general, that an essential part of effective governance was active engagement by all shareholders in their role as responsible owners of listed companies. By increasing transparency, strengthening the minority voice at key points in the dialogue between a company and its shareholders, and providing enhanced protections when this dialogue is at risk of breaking down, we believe we have provided shareholders with the tools necessary for this active engagement.
- 2.33** We believe our proposals will lead to increased confidence for investors, improving access to capital for businesses and facilitating growth, and therefore, promoting our strategic objective of making markets work well.

## 3.

# Overview of the feedback on CP12/25

### Introduction

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- 3.1** In October 2012 we published a consultation paper with proposals to substantively enhance the Listing Regime (CP12/25) by strengthening shareholder protections and governance arrangements in companies with a controlling shareholder.
- 3.2** The proposals we made in CP12/25 for changes to the Listing Regime reflected concerns from the investment community about governance of premium listed companies with a controlling shareholder and protecting the interests of minority shareholders. In particular, some investors argued that they were not able to exercise their shareholder rights effectively due to their inability to affect the outcome where controlling shareholder interests conflicted with those of minority shareholders. They questioned whether that was consistent with the concept of premium listing.
- 3.3** We took this debate as an opportunity to assess the Premium Listing Regime as a whole to establish whether the operation of the regime gave investors sufficient confidence to invest in the UK capital markets, and more specifically, in premium listed shares.
- 3.4** During the pre-consultation discussion with the buy-side, it became apparent that their underlying concerns centred on the following issues:
- potential abuse of the company where transactions between the company and the controlling shareholder were concerned (i.e. related party transactions) and the lack of transparency over such transactions
  - inability of shareholders to influence the composition of the board, especially the election and dismissal of independent directors
  - in cases where there was a relationship agreement in place, the perception, held by the buy-side, that these were shelved after the Initial Public Offering (IPO) and never looked at again
  - the concerns of passive index-trackers that they have been forced to buy into 'substandard' companies because they became part of the index by virtue of premium listing
- 3.5** It also became apparent that the buy-side viewed the free float as the solution to what they perceived to be poor governance arrangements in companies with a controlling shareholder. They argued that it should be turned into an acknowledged tool for ensuring effective corporate governance, rather than liquidity, and be set at closer to 50%, or even more, for the premium segment.



- 3.6** The buy-side also argued that, because inclusion in the FTSE indices is dependent on having a premium listing, passive investors have been effectively forced to buy into companies whose governance arrangements they have found undesirable. Separately, FTSE carried out its own consultation, as a result of which they have amended their criteria for inclusion in FTSE UK Index Series from 1 January 2012 to specifically address this concern. They now require a minimum free float of 25%, thereby recognising a separation of the criteria for index inclusion from the regulatory free float.
- 3.7** On the other hand, we were urged to be mindful of upsetting what is a delicate balance between the accessibility of the UK primary markets for companies wishing to raise capital and investor protection, and that a disproportionate response would risk turning minority protection into minority control. There was concern over the state of the IPO market at the time even with the current 25% free float requirements and we were pointed to other jurisdictions with a lower free float requirement. Respondents also argued that, by demanding a higher free float, passive index trackers are delegating the responsibility for making their investment decisions to us, the regulator.
- 3.8** As a result of these extensive discussions with a wide range of market participants, we concluded that the Listing Regime can be strengthened by giving minority shareholders additional tools and information to exercise their rights effectively and proportionately. But, there is not a systemic failure of the Listing Regime as the vast majority of companies, including ones with a controlling shareholder, continue to operate without generating significant concerns on the investor side.
- 3.9** The proposed package of measures in CP12/25 was designed to correct misaligned behaviour and give minority shareholders effective tools with which to exercise influence over companies' boards.
- 3.10** We also stressed that the Premium Listing Regime is based on two fundamental concepts: (1) the right of shareholders to participate directly in the governance of the companies they own, and (2) the disclosure of relevant information by a company to its shareholders when they seek to exercise this right. Consequently, it is key to the regime, and the FCA's strategic objective to make markets work well, that shareholders are actively engaged and able to exercise their rights on an informed basis.
- 3.11** Our proposals in CP12/25 centred around four key elements:
- Strengthening the entry criteria to the premium segment and clarifying the voting arrangements that we deem appropriate for a premium listing. We introduced the concept of a controlling shareholder and set out additional requirements that must be fulfilled by the company where one is present. Broadly, these comprised:
    - mandating entry into a relationship agreement with a controlling shareholder and setting out substantive requirements for such an agreement as well as requiring that all material changes to the agreement had to be passed by a majority of independent shareholders
    - proposing to mandate the requirement of the Corporate Governance Code for a majority of independent directors on the board
    - requiring that the constitution of the company provided for election of independent directors by a majority of independent shareholders as well as a majority of all shareholders, with a follow-up simple majority vote by all shareholders in not less than 90 days in case of a deadlock

- providing that where premium Listing Rules gave shareholders certain rights, these could be exercised only by premium listed shareholders
- Ensuring that obligations imposed at entry, such as concerning the relationship agreement and independent directors, continue to apply while the company remains listed on the premium segment. These were reinforced by a notification requirement to the FCA where the agreement was not complied with.
- Clarifying the operation of the free float provisions. Given our views that the free float is too blunt a tool to provide an effective remedy to the underlying concerns held by the buy-side, we proposed not to change the free float requirement, but to clarify circumstances where we would be prepared to modify it. We indicated that any modification beneath 20% would be unlikely other than in exceptional circumstances.
- Providing shareholders with better quality information. Here, we said that all annual report disclosure requirements driven by the Listing Rules should appear in a single identifiable section. We also required fuller and more comparable disclosure on related party transactions.

### Responses to consultation

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**3.12** The consultation period ended on 2 January 2013 and we received 59 responses from a wide constituency of respondents. To summarise, the buy-side supported our proposals but wanted us to go further, especially where free float is concerned.

**3.13** Other respondents said that, given there was not a large scale problem, our responses were disproportionate and in some cases risked ultimately penalising minority, rather than the controlling shareholders. They also raised a number of issues where our measures had the potential to produce unintended consequences.

**3.14** We received comments on the key areas related to these topics:

#### Relationship agreements

**3.15** The sell-side was willing to accept that relationship agreements can be a helpful tool, but there was concern that our approach was too prescriptive in mandating them and in specifying the content. Comments were also made that the exact form of our proposals could effectively bar a founder-shareholder from being a member of the executive management or otherwise influencing the direction of the business.

**3.16** Other concerns were raised about the proposal that premium listed companies should have a relationship agreement in place at all times, for example because a controlling shareholder may refuse to agree to one at all (especially where an existing premium listed company is concerned). Or, where one was in place, the controlling shareholder may fail to comply with it, in which case the ultimate penalty available to the UKLA of cancellation of listing would penalise minority shareholders.

**3.17** Finally, we received a number of comments suggesting that the proposals would involve regulation of other matters governed by relationship agreements that do not form part of the proposed mandatory items, such as the right of the shareholder to nominate a certain number of directors to the board.

### **Independence of directors**

**3.18** Sell-side stakeholders and companies were strongly in favour of retaining the existing comply/explain approach to board composition and balance. This was on grounds of:

- principle – boards should be unitary, and allow and require all directors to act in the interests of all shareholders, and anyway the composition of the board should be left to an issuer to decide),
- effectiveness – it is the quality not the number of independent directors that matters, and controversial governance failures have occurred within boards that complied with the UK Corporate Governance Code, (the Code) and
- cost – it would lead to more directors being required than was necessary

**3.19** Equally, the buy-side was strongly in favour of mandating the Code requirement for a majority of independent directors.

### **Election of independent directors**

**3.20** The two-stage model that we proposed for the election of independent directors (a vote requiring a majority both of all shareholders and the independent shareholders, and where there is a conflict in the result, a second vote 90 days later based on a simple majority) attracted a lot of comment.

**3.21** A number of sell-side stakeholders voiced the concern that it would be an onerous, costly and cumbersome process that could not guarantee a resolution in favour of independent shareholders and the proposals may only exacerbate poor relations between majority and minority shareholders.

**3.22** Buy-side stakeholders opposed the proposed two-stage model on the grounds that it would not prevent a majority shareholder from getting their way in the second vote where the first hurdle of a double majority of all and of independent shareholders had not been passed.

### **Shares in public hands**

**3.23** Our proposals to modify the free float requirement within the premium segment met with considerable comment. The buy-side strongly argued against any modification as they felt that 25% is already too low and some argued for increased free float requirements of 30%-40% if not 50%. In contrast some sell-side respondents argued that the FCA should not restrict itself to 20% as there may be circumstances where a free float below 20% has sufficient liquidity.

**3.24** Our proposal to allow companies to have a standard listing with a small free-float was met with widespread support. However, another concern was that allowing premium listed companies with a controlling shareholder to move to a standard listing is counter to effective consumer protection as these companies would then not be subject to the requirements of LR 10 and 11, precisely when those protections become more necessary.

### **Listing Principles**

**3.25** The proposal to make existing Listing Principles 2 and 6 applicable to standard listings was supported by most respondents, the buy-side in particular wanting to see other existing Listing Principles (1, 3 & 4) apply to standard listings.

- 3.26** Only a minority of respondents agreed with our proposal to introduce a continuing obligation for Premium Listing Principle 1 (requiring a company to take reasonable steps to enable its directors to understand their responsibilities). Those against felt that it would lead to boilerplate disclosure (by boilerplate we mean standardised text used by the industry that has not been adapted to specific circumstances) that would not add anything useful.
- 3.27** Concern was also expressed that the new Principle requiring each premium listed share in a class to have equal voting power (Premium Listing Principle 3), may conflict with company law or other regulation.

### Further discussions with stakeholders

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- 3.28** Since January we have continued our discussions with stakeholders, particularly on the buy-side but also including companies and their representatives, industry bodies, groups of market practitioners and the Financial Reporting Council, to understand better the feedback to some of the proposals that generated particularly strong responses, as well as to clarify our position on some of the fundamental principles that we have followed throughout this debate. These continuing discussions have been very helpful and we are extremely grateful to all stakeholders who have assisted us.
- 3.29** In particular, some buy-side stakeholders have continued to argue that we should do more to protect investors and that under the new FCA objectives there should be a clear acceptance that we should prioritise the interests of investors as they are the ultimate consumers. As this question is central to finding an appropriate outcome that meets the objectives set out for us by FSMA, we set out below the new legal context within which we operate and within which we have developed our thinking on the issues discussed in CP12/25.

### FSMA and the legal context

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- 3.30** Underneath the FCA's strategic objective of ensuring that the relevant markets work well, the FCA's three operational objectives are:
- to secure an appropriate degree of protection for consumers
  - to protect and enhance the integrity of the UK financial system, and
  - to promote effective competition in the interests of consumers
- 3.31** Separately, we have a duty to advance effective competition in the interests of consumers when pursuing the consumer protection and/or the integrity objectives. The three operational objectives rank equally.
- 3.32** Investors are certainly included within the definition of 'consumers'. But we would not read 'investors' to mean solely minority shareholders (or potential investors in premium listed companies where there is a controlling shareholder). In some situations, for example in relation to the sponsor regime, companies (whose securities are admitted by the UKLA to the UK Official List) would be regarded as consumers of regulated financial services as well.

- 3.33** Furthermore, when making rules and guidance, we are required to have regard to a number of statutory principles including proportionality when imposing burdens, the desirability of sustainable growth in the economy of the UK in the medium or long term, the general principle that consumers should take responsibility for their decisions, and also that regulators should exercise their functions as transparently as possible.
- 3.34** So while the FCA's objectives clearly embrace investors, the framework for considering what degree of protection we should seek to secure for them requires a more complex process than simply prioritising them as the ultimate consumer. The degree of protection that might be necessary for a retail investor is likely to be different from that necessary for institutional investors, who clearly have greater experience and expertise. In addition, if we were to prioritise simply the protection of investors as consumers, we might still need to consider the broader market impact on their interests. For example, if the Listing Regime becomes unnecessarily complex or if the obligations that we impose on companies, for example in relation to corporate governance or to free float, become too onerous, this might lead to reduced availability of, or access to, listed securities for investors, or classes of investors.

### **Our response and key changes to the original package**

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- 3.35** Following further analysis and extensive discussions with stakeholders on all sides of the debate, we remain convinced that it is important to take action to promote the integrity of the Listing Regime and ensure an appropriate degree of investor protection is maintained. In particular, we want to address the lack of influence for minority shareholders in situations where a controlling shareholder exists. However, we believe that these concerns can be addressed through specific targeted amendments to the Listing Rules, which will be more effective than making blanket changes to the free float requirements. Consequently, we have not changed the free float requirement, although we are seeking to clarify our willingness or otherwise to derogate in certain circumstances, principally where there is manifestly sufficient liquidity.
- 3.36** As a result, we are presenting in this paper a robust package of measures that addresses the concerns held by the investors by giving them additional voting rights and power of oversight in situations where they are at risk of being abused. In doing this, we believe that we have provided shareholders with the tools necessary for active engagement, which is an essential part of effective governance. At the same time, the package represents a proportionate and pragmatic response that does not turn minority protection into minority control. The substantial majority of measures apply only to premium listed companies with a controlling shareholder, and the overall effect of the proposals will not significantly increase the regulatory burden on companies (and controlling shareholders) that comply with the rules, but will (and are intended to) have significant impact where this is not the case.
- 3.37** Based on our discussions with stakeholders and feedback to the consultation, we believe that the revised package will command broad support amongst our stakeholders.

### Next steps

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- 3.38** The next part of this paper contains both the feedback and a further consultation. It retains the order in which we presented the questions in CP12/25. As a result, it contains rules that cover the areas of the CP12/25 where our policy position is fixed and where we are not inviting further comment. It also contains new proposals as a result of comments received and further discussions held with stakeholders. Where we have included new proposals, we have asked questions inviting comments on the new proposals. This construction is deliberate to allow the market to see the position reached so far and how the new proposals fit into the overall package.
- 3.39** The consultation period closes on **5 February 2014**. We intend to publish our feedback in the first half of 2014.

# Feedback on CP12/25 and further consultation

4. Independent business
5. Control of business
6. Independence of directors
7. Application to mineral and scientific research-based companies
8. Shares in public hands
9. Continuing obligations
10. Listing Principles
11. Cancellation of listing

## Annexes

1. Cost benefit analysis
2. Compatibility statement
3. List of questions
4. List of non-confidential respondents

## Appendix

1. Draft Handbook text

## 4. Independent business

### Introduction

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- 4.1** Overall, we received a positive response to our proposals in this area. The investment community strongly supported the proposals. The advisory side and the issuers raised a number of concerns around the interpretation of the individual proposals as well as their potential impact. We have taken these important points into account in refining the approach, as discussed below.

### Feedback: Independent business and controlling shareholders

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#### Definition of 'controlling shareholder'

**Q1:** *Do you agree with our definitions of a controlling shareholder and an associate of a controlling shareholder? Do you believe that there are other criteria where an entity or a person ought to be deemed controlling shareholder that have not been captured by the proposed definition and if so what are they?*

- 4.2** Most respondents agreed or partially agreed with our proposed definition. Comments from those that disagreed fell into three main areas. The first area concerned the level of percentage holding, where alternative suggestions ranged anywhere from 25% (because at this level shareholders can block special resolutions) to 50%.
- 4.3** The second area related to the lack of definition of, or guidance on, 'acting in concert'. The third concerned the scope of the definition, where a number of respondents queried whether our proposed definition was sufficiently wide.

#### Our response

We have decided to leave the percentage holding at the proposed level of 30%, as we do not believe any compelling arguments were made to consider another level and it worked quite satisfactorily previously under the Listing Rules that were in force before 2005.

Regarding 'acting in concert', we feel that this is an important anti-avoidance measure and would highlight that the same phrase is also used in LR6.1.19R(4) (e) (and equivalents in LRs 14 and 18) to define shares that are not held in public hands and we have not experienced any problems in practice with that concept.



As such, we are not proposing to provide a definition or detailed interpretative guidance at this stage. However, we will consider providing further guidance if necessary.

We are conscious that this concept exists in other parts of the overall regulatory framework for companies. Acting in concert is used in the Listing Rules in the assessment of shares in public hands as noted above, elsewhere in the FCA Handbook in our assessment of controllers in regulated entities (e.g., SUP 11 and the underlying FSMA provisions), and also by the Takeover Code (most importantly, in determining whether a group of persons has incurred an obligation to make a mandatory bid to the other shareholders in a company). Similarly, Article 10 of the Transparency Directive requires shareholders to make notifications when they have concluded a lasting common policy towards the management of a company via the concerted exercise of voting rights.

In assessing whether two entities are acting in concert when establishing whether a controlling shareholder exists (and its extent), an issuer's decision should be based on the proposed definition of a controlling shareholder in draft LR6.1.2AR, and whether two (or more) entities are acting together to control the exercise of 30% or more of the votes on all or substantially all matters at general meetings of the company.

In particular, we would like to point out that although the term is the same as the one used by the Takeover Code, as the Notes on the definition of 'acting in concert' in the Takeover Code and on Rule 9.1 make clear, the Panel's views on acting in concert '... only relate to the Takeover Code and should not be taken as guidance on any other statutory or regulatory provisions'. For example, the Takeover Code's definition of 'acting in concert' lists various categories of persons who are presumed to be persons acting in concert with each other, but these presumptions would not automatically apply in the context of the Listing Rules. Similarly, any guidance or determination by us as to the meaning of 'acting in concert' in the context of the Listing Rules should not be regarded as relevant to the meaning of 'acting in concert' in the Takeover Code.

We are conscious that the requirement to comply with the Listing Rules lies with the company rather than the shareholder. We intend that the rules should be applied reasonably, given the extra burden that the need to identify concert parties (and in some cases associates) may place on the company. In particular, we would highlight that we would not regard institutional shareholders coming together to consider a specific resolution to be acting in concert.

As regards the definition of 'controlling shareholder', aside from the percentage threshold and the concept of 'acting in concert', we are proposing to change the definition to substantially align it with the definition of a 'substantial shareholder' as used in the context of the related party transaction regime in LR11. As the definition of a controlling shareholder is a fundamental concept that underlies most of the requirements that form this package of proposals, we are consulting on a new definition of a controlling shareholder and an associate, as described below.

### Consultation: Definition of a 'controlling shareholder'

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- 4.4** As set out above, we propose to amend the definition of a 'controlling shareholder' as consulted on in CP12/25 so that it mirrors the definition of a 'substantial shareholder' currently used in LR 11.1.4AR in most respects. The definition is now set out in draft LR 6.1.2AR and will depart from the substantial shareholder definition in four ways:
- a.** setting a threshold of 30% (instead of 10%) of votes
  - b.** adding the concept of 'acting in concert'
  - c.** a narrower scope given that we are primarily concerned with voting control of the premium listed class of shares, and
  - d.** introducing the requirement to consider associates when assessing whether a controlling shareholder exists
- 4.5** The principal effect of this change is to substantially align the definition of controlling shareholder with another concept (substantial shareholder) that is already established, well understood and tested within the context of the related party transaction regime in LR11. This should ease the transition to the new regime. The amended definition will also alleviate concerns over the treatment of trustee-type arrangements fulfilling fiduciary duties.
- 4.6** We have proposed that associates are relevant to the assessment of whether a controlling shareholder exists as we are keen to ensure that the dispersal of voting rights around a group of companies should not be used to avoid the new provisions. We have discussed the definition of 'associates' further below. The proposed rule would require the aggregation of all associates' shareholdings in calculating the total holding of the potential controlling shareholder. This would be added to any shares held by those acting in concert (and their associates, given that those acting in concert will themselves be controlling shareholders) – we have discussed the acting in concert provision in our feedback to Q1.
- 4.7** Under the proposed definition, we would regard each party that contributed towards establishing that a controlling shareholder exists to be a controlling shareholder in its own right. We comment on the implications that this has for entering into an agreement with the company below in our feedback to Q4.

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

### Consultation: Definition of an 'associate'

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- 4.8** We propose to amend the definition of an associate as consulted on in CP12/25 and to set it out separately rather than referring to the controlling shareholder within the existing definition of an associate. In framing this definition, we have been aware of the need to ensure that it sets out objective criteria for determining whether a company or an individual is an associate, given the consequences that arise from it. We have left the more subjective judgements for determining whether parties are acting in concert.
- 4.9** As with the current definition, our proposed definition distinguishes between an associate of a controlling shareholder who is an individual and which is a company.

- 4.10** The use of the concept of an associate differs from its current use in LR11 where identifying associates becomes relevant only after the related party has been identified. Our proposed definition would be used to identify associates as part of deciding whether a controlling shareholder exists. For example, where person A holds 20% of a company's shares (which, on its own, would not trigger application of provisions relating to a controlling shareholder) and person B, who is identified as person A's associate, also holds 20%, their combined holding would mean that, under the proposed definition, a controlling shareholder exists. We would also use 'associate' in its current sense in that certain consequences flow from a person being identified as an associate. As a result, our proposed definition refers to 'when used in the context of a controlling shareholder' as opposed to 'when used in relation to a controlling shareholder'. This ensures that users of the rules refer to the correct definition of an associate. It also embeds an associate within the definition of a controlling shareholder.
- 4.11** We are not proposing any substantive changes to the definition of an associate of a controlling shareholder who is an individual, which remains the definition that was consulted on in CP12/25.
- 4.12** We are proposing changes to the definition of an associate of a controlling shareholder which is a company. The current definition only identified associates which are corporate entities. We have not proposed any changes to this part of the definition. However, we are proposing to widen the list of persons who may be identified as associates of a controlling shareholder which is a company by catching associates who are individuals, recognising that individuals' shares are often held via corporate entities. They would be counted as associates if:
1. they hold at least 30% of shares in the controlling shareholder or a company that is an associate of a controlling shareholder, or
  2. they are able to appoint or remove directors holding a majority of voting rights at board meetings on all matters of the controlling shareholder or a company that has been identified as an associate of a controlling shareholder

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

#### **Feedback: Relationship agreements and application on continuing basis**

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**Q2: Do you support our proposal in LR 6.1.4ER(1) to require new applicants where a controlling shareholder is present to enter into a relationship agreement?**

**Q3: Do you support our proposal in LR 6.1.4FR to require that a relationship agreement must cover certain provisions as described above? Do you think that there are any other provisions that should be considered and if so what are they?**

**Q4: Do you agree with our proposal in LR 9.2.2AR(1) that where a company has a controlling shareholder it must have in place a relationship agreement at all times?**

**Q5:** *Do you support our proposal to subject a listed company to a continuing obligation to comply with a relationship agreement at all times (LR 9.2.2GR)?*

**Q6:** *Do you support our proposal that a listed company must at all times comply with the content requirements for a relationship agreement as set out in LR 6.1.4FR, where applicable (LR 9.2.2AR(1))?*

**4.13** We have grouped these questions together as they all relate to our proposal to re-introduce the requirement for a relationship agreement, where a premium listed company has a controlling shareholder.

**4.14** Most respondents supported all of the proposals set out in these questions. Where concerns were expressed, these centred around:

- our approach being too prescriptive
- concerns that existing relationship agreements may cover other issues beyond independence and may impose other obligations on the issuer, therefore subjecting an issuer to a continuing obligation to comply with the whole relationship agreement which would be inappropriate given our intended focus on independence
- concerns that where the relationship agreement is not complied with due to action or inaction from the controlling shareholder, minority shareholders are penalised twice: first, as a result of non-compliance with the agreement, and second, as a result of the threat of cancellation of listing, which is a sanction that is available to the FCA where issuers are not complying with their continuing obligations

**4.15** In particular, we received much comment about the proposals made for LR 6.1.4FR(3), as most respondents interpreted those requirements as preventing a controlling shareholder from influencing the day-to-day running of the premium listed company at an operational level in its broad sense. This prompted concerns regarding the extent to which our proposals were intended to prevent founders and other dominant controllers from actions such as taking positions on the premium listed company's board.

**4.16** Regarding Questions 4 to 6 (requirement to have the relationship agreement in place and to comply with it and the content requirements at all times), respondents were concerned that the requirements would make the compliance of premium listed companies with their regulatory obligations vulnerable to the behaviour of a majority shareholder, which cannot be controlled by an issuer. Respondents commented that premium listed companies could not be compelled to have a relationship agreement in place at all times, for example because a shareholder controller may refuse to agree to one at all. Furthermore, a premium listed company should not be required to ensure compliance with the agreement at all times, as again this is effectively not an obligation that can be put on the premium listed company because the controlling shareholder could unilaterally refuse to comply with it. A number of respondents who raised these concerns commented that, were the proposal to be taken forward, it should be required only for new applicants for a premium listing.

**4.17** Responses to these questions and our interaction with stakeholders throughout the broader consultation process highlighted one or both of the following:

1. The main risk for shareholders in these circumstances is the extraction of value from the premium listed company by the controlling shareholder at the expense of the other shareholders and that the LR11 Related Party Transaction requirements were key in policing this with many stakeholders suggesting that they could be augmented.
2. A desire that we should implement rules to enable us to sanction controlling shareholders directly.

### Our response

We are sympathetic to the concerns raised with us that bringing the whole of the relationship agreement within the regulatory perimeter would be too prescriptive because it is likely to cover other aspects of the relationship that are not within the scope of the Listing Regime. Consequently, we are amending our original proposals in several respects.

We are proceeding with the requirement for an agreement to be entered into between the premium listed company and a controlling shareholder (or controlling shareholders).

In place of our original proposals for the content requirements as set out in LR 6.1.4FR, we have decided to focus only on the specific provisions required to deliver effective independence. These provisions are now reflected in LR 6.1.4DR. We have retained LR 6.1.4DR(1) and (2) as they appeared previously in CP12/25 in LR 6.1.4FR, but we have deleted the rest of the provisions in LR 6.1.4FR. However, we have added LR 6.1.4DR(3), which is intended to prevent a controlling shareholder from attempting to circumvent the proper application of the Listing Rules by proposing or procuring the proposal of a shareholder resolution that would bring about this effect.

Fundamentally, we believe that the 'independence provisions' in our proposed rules set out the appropriate standard for premium listed companies that reflect our existing practice. Instances where they are not viewed as such by controlling shareholders should be regarded with suspicion by the regulator and the shareholders alike.

We are neutral as to the name of the agreement, and, therefore, have amended the relevant provision in (now) LR 6.1.4BR(1) to refer to 'a written and legally binding agreement', instead of referring to a 'relationship agreement'. Other provisions and particularly items that may require a more commercial negotiation than are typically included in a relationship agreement, may be included in either this or a separate agreement. However, we would not see the need to negotiate such terms as a legitimate reason to delay compliance with LR 6.1.4BR (nor to require a longer transitional period – see para 4.37 below).

As regards mandatory content requirements, the proposed rule in LR 6.1.4FR(3) was designed to address situations where a controlling shareholder might try to *influence*, indirectly or covertly, the running of a company (e.g. through directing their associates working at an operational level in the company) in a manner that subverted its proper governance structures. It was not meant to debar shareholders from holding board positions. We have amended the drafting of this point to make it clearer and moved it to LR 6.1.4AG(6) as one of the potential indications that the new applicant does not carry on an independent business.

We have deleted LR 6.1.4FR(4), requiring the agreement to remain in effect as long as the company remains listed and it has a controlling shareholder, because it unnecessarily duplicates provisions that are contained in LR 9.2.2AR.

As noted in paras 4.6-4.7 above, the approach we are proposing to identify controlling shareholders creates a situation where an associate of a controlling shareholder, or a party acting in concert, would all be deemed as separate controlling shareholders in their own right. So we have added guidance in LR 6.1.4CG to clarify that where there is more than one controlling shareholder, there is no requirement for the company to enter into separate agreements with each one, if one shareholder can with reasonable certainty procure that its associate or those acting in concert will comply with the independence provisions contained in the agreement. This guidance also applies in the context of a continuing obligation in LR 9.2.2AR and LR 9.2.2BR where an additional controlling shareholder appears at a later date. As long as a controlling shareholder that has signed the agreement with the company can with reasonable certainty procure the compliance of the new controlling shareholder with the terms of the agreement, an additional agreement would not have to be entered into.

Our aim is not to create a multitude of agreements but to ensure that those in a position to exercise undue influence over a new applicant or a premium listed company abide by the independence provisions. So, we will allow companies to apply the guidance sensibly to minimise the number of agreements required – this may well typically be one.

We comment on LR 6.1.4FR(5) as proposed in CP12/25 below in our feedback to Q7.

With regard to Q5 (ongoing compliance with the relationship agreement), we have noted the concern that the ultimate sanction if there is non-compliance with these provisions (cancellation of premium listing) would merely further penalise minority shareholders.

While many stakeholders suggested that we should regulate controlling shareholder behaviour directly, this is not supported by the current statutory framework and would require an amendment to FSMA to allow us to write and enforce rules governing controlling shareholders. This issue may merit consideration, but it raises significantly broader and new issues and legislative change is a matter for the Government.

We have considered the consequences of non-compliance with the agreement in light of the feedback and, in particular, on the concerns raised over the impact on shareholders where the controlling shareholder is unwilling to enter into compliant arrangements.

As a result:

- We are adopting 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 and that the agreement must include the independence provisions set out in LR 6.1.4DR.
- We are adopting the continuing obligation 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.
- In response to the feedback that the ultimate sanction for non-compliance with independence provisions disproportionately penalises minority shareholders, we are consulting below on a proposal aimed at circumstances where any required agreement is not in place or an agreement's independence provisions have not been complied with.

Regarding LR 9.2.2FR (requiring ongoing compliance with the independence provisions in an agreement), we have considered the fact that the only obligation the premium listed company has to comply with is to enter into transactions and relationships with the controlling shareholder at arm's length and on normal commercial terms. Given that such transactions would be subject to a related party transaction regime in LR 11, this provision seems unnecessary. However, this provision should be considered with the requirement imposed on the board to attest to the company's compliance with this obligation in the annual report in draft LR 9.8.4R(14), and the duty to notify the FCA of the breach of this continuing obligation under LR 9.2.24R. Therefore, it is important that this obligation is set out separately, forming part of a system of checks and balances to ensure that the premium listed company is operating an independent business.

Finally, we are clarifying in LR 15.4.27R and LR 16.4.1R 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). Consequently, LR 15.4.27R and LR 16.4.1R exempt these companies from having to comply with LR 9.2.2AR and LR 9.2.2FR. This follows our general approach to funds that the requirement to operate an independent business does not apply to LR 15 (which have their own provisions to ensure independence) and LR 16 companies.

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## Consultation: Enhanced oversight measures in LR11

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### Overview

**4.18** Based on our discussions with stakeholders as well as the feedback on CP12/25, it is clear to us that respondents place a high value on the Related Party Transaction regime in LR11. Respondents expressed that the powers that shareholders have under those provisions could be augmented to ensure that they have oversight where there is a danger that a controlling shareholder can extract value from the company at the expense of minority shareholders. We have also considered how we can best 'enforce' the continuing obligation imposed on the premium listed company to comply with the requirements regarding the agreement without unduly penalising minority shareholders, especially given our lack of rule-making power in relation to controlling shareholders.

**4.19** Our proposals in this area build on those in CP12/25 regarding the compliance notification proposed to be made by the board in the annual report (LR 9.8.4R(14)), and that transactions between a company and the controlling shareholder fall within Related Party Transaction regime in LR 11. We are proposing enhanced oversight measures in all circumstances where:

- any controlling shareholder refuses to sign the agreement
- the independence provisions in the agreement are not adhered to, or
- any of the independent directors disagrees with the board's assessment of whether these obligations have been complied with

**4.20** These measures would mean that all transactions with the relevant controlling shareholder undergo prior independent shareholder approval, regardless of the size of the transaction, until the next annual report where the board is able to make a clean statement of compliance.

**4.21** This would provide independent shareholders with a framework to exercise effective oversight in situations where the premium listed company is vulnerable to abuse by a controlling party and provide them with the means to effectively veto all transactions between the company and controlling shareholder. We consider it is an appropriate response that would also act as a powerful sanction for non-compliance. Below we outline the details of the proposals.

### Circumstances for application of the enhanced oversight measures

**4.22** Our proposal is that the more extensive oversight over related party transactions is imposed in the following circumstances:

- a premium listed company does not have the required agreement or agreements in place with any controlling shareholders that contain the relevant independence provisions, or
- a premium listed company has not complied with the independence provisions contained in a relevant agreement, or
- a premium listed company becomes aware that a controlling shareholder is not complying with an independence provision in an agreement, or
- an independent director declines to support a statement made by the directors about compliance with the requirements regarding any such agreement



- 4.23** The final circumstance set out above arises from LR 9.8.4AR, on which we are commenting separately below. We would emphasise at this point that the trigger for applying this aspect of our proposals is the breach of the relevant obligations, not the notification of the breach to the FCA. The only exception to this is the third trigger – the company becoming aware that a controlling shareholder is not complying with an independence provision contained in an agreement.
- 4.24** Of the provisions in LR 6.1.4DR, only one is aimed directly at the company, with the other two being aimed at the controlling shareholder: (a) not to take any action that would prevent the company from complying with its obligations, and (b) not to propose a shareholder resolution with the intent of circumventing the proper application of the Listing Rules. The nature of the provisions is such that the company would (or should) become aware of a controlling shareholder breaching these provisions. The aim of this proposal is to ensure that the parties abide by the agreement. The independence provisions are fundamental to the independent operation of the company. Therefore, we think it is appropriate that the enhanced oversight measures should be imposed in cases where any of the provisions has not been complied with, including where it is the controlling shareholder that has failed to comply with the provisions. However, we accept that enhanced oversight measures should only be applied when the premium listed company becomes aware of the breach, not from the time of the breach itself. Clearly, the company's systems and controls should be adequate to ensure that such breaches are identified. An unreasonable delay before becoming aware would be inconsistent with Listing Principle 1, as amended.
- 4.25** The circumstances for triggering the enhanced oversight measures as described above are contained in proposed LR 11.1.1AR.
- 4.26** We are also proposing that enhanced oversight by minority shareholders is also triggered where an independent director disagrees with a statement made by the board in the annual report about compliance with the requirements regarding such agreements. This additional trigger gives minority shareholders an extra layer of protection by giving independent directors the ability to effectively voice their objections. It highlights the even greater importance of the independent directors in circumstances where a controlling shareholder is present. This additional protection is especially important given the outcome of the consultation in CP12/25 on mandating the Code's requirement for a majority of the board to comprise independent directors, on which we comment below in our feedback to Q17-Q20.
- 4.27** Similarly to the notification obligations imposed where a premium listed company does not comply with the requirement to have an agreement in place (LR 9.2.24R), and to comply with its provisions (draft LR 9.2.25R), we are proposing a notification obligation for the company to have to notify the FCA where its annual report contains a statement that the independent director has declined to support the compliance statement made by the directors (draft LR 9.2.26R).

### Consequences of triggering the enhanced oversight measures

- 4.28** The consequences of triggering the enhanced oversight measures for transactions between a controlling shareholder and the company are set out in proposed LR 11.1.1CR. Where they have been triggered by any one of the circumstances described in proposed LR 11.1.1AR, all transactions between the premium listed company and the relevant controlling shareholder or its associates become subject to pre-approval by independent shareholders. This means that the premium listed company cannot rely on any of the safe harbours currently available under LR11:
- LR 11.1.6R relating to all transactions as set out in LR 11 Annex 1R, including small transactions (equal to or less than 0.25% on percentage ratios), which are ordinarily exempt from the application of LR11
  - LR 11.1.10R relating to smaller related party transactions (between 0.25% and below 5% on percentage ratios) that are ordinarily subject to reduced requirements, and
  - LR 11.1.5R relating to ordinary course transactions, which are currently outside the definition of a 'related party transaction' (we comment on these separately below)
- 4.29** In practice, applying these enhanced protections means that all transactions between a controlling shareholder or its associates and a premium listed company become subject to shareholder approval under LR 11.1.7R, whereby a controlling shareholder and its associates cannot vote as they are also a related party. The approval must be sought before a company enters into an agreement or the agreement must be made conditional on obtaining such approval. Therefore, the enhanced oversight measures will provide minority shareholders the means to in effect veto all transactions between the company and controlling shareholder.
- 4.30** These additional provisions only become applicable where there has been a breach of the applicable continuing obligations, i.e.:
- the company has not put in place an agreement with mandatory provisions safeguarding its independence from the controlling shareholder, or
  - or the company becomes aware that the controlling shareholder has breached the independence provisions
  - an independent director has declined to support a statement made by the board regarding compliance with these obligations
- 4.31** The additional oversight is therefore an important protection for minority shareholders where there is a risk that the relationship between the premium listed company and any controlling shareholder may prejudice them in some way.
- 4.32** We believe that, given the onerous nature of the enhanced oversight measures, the threat of their imposition would serve as an effective deterrent that would ensure compliance with the requirements relating to such agreements. We also believe that the proposals are proportionate and appropriate – the independence provisions do not represent an unreasonable standard of behaviour and, where these cannot or will not be complied with, we believe that a robust response is needed. As such, the enhanced oversight measures also act as a powerful sanction for non-compliance by a controlling shareholder.

**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?**

**Ordinary course transactions**

- 4.33** Under LR 11.1.5R, ordinary course transactions are excluded from the operation of the related party transaction regime within the Listing Rules. Under the proposed enhanced oversight measures, ordinary course transactions would not be exempt and would, therefore, be subject to independent shareholder approval. We recognise that imposing the additional oversight on ordinary course transactions could risk moving from a safeguard to impeding the operation of the business. As such, we believe that we should retain the ability to exempt ordinary course transactions from the enhanced oversight measures in such cases. However, we are not prepared to grant blanket waivers for all ordinary course transactions, and therefore, the use of the derogation should only be made when explicitly agreed to by the UKLA. This is expressed as proposed guidance in draft LR 11.1.1DG.
- 4.34** By using our power to exclude ordinary course transactions, we would not unnecessarily impede the day-to-day operation of the listed entity. The obligation to pre-clear such transactions with the UKLA is part of the onerous nature of the enhanced oversight measures and is not a simple notification obligation.

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

**Waiving the application of the enhanced oversight measures**

- 4.35** We are proposing to include guidance to clarify that we would consider requests for waiving the rule that imposes the enhanced oversight by minority shareholders over transactions with a controlling shareholder in exceptional circumstances (draft LR 11.1.1BG). However, in considering whether to agree to a waiver, we would not intend to override the judgement of the directors or of an independent director and we would expect to enter into detailed discussions with the company about the relative severity of breaches.

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

**Duration of enhanced oversight measures**

- 4.36** As described above, the application of the enhanced oversight measures is triggered in several circumstances. Having considered the best option for the duration of this set of extra protections, we believe that it is appropriate that they apply until the publication of an annual report that contains a clean statement of compliance by the board (without any disagreement from independent directors) (draft LR 11.1.1ER). We and the company's shareholders will then have assurance that the relationship between the premium listed company and any controlling shareholder has been appropriate 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.

**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)?**

### Consultation: transitional provisions

- 4.37** Several respondents asked us about transitional periods or possibility of permanent 'grandfathering' for existing premium listed companies. We believe that our proposals on the regulation of premium listed companies' relationships with controlling shareholders do not represent an unreasonable expectation and indeed should codify an existing standard of behaviour. As noted above, we have deliberately drafted the proposals to avoid the independence provisions being drawn into a commercial negotiation of other terms that typically appear in a relationship agreement, and to be consistent with terms typically appearing in relationship agreements already. Further, we believe that regulator and investors alike should be concerned where there is a refusal to comply. Therefore, we are proposing a transitional period of six months for existing premium listed companies that have a controlling shareholder to ensure that either new agreements are put in place or any existing agreements cover the independence provisions set out in LR6.1.4DR.
- 4.38** The same transitional period will apply on an ongoing basis when a controlling shareholder emerges at a premium listed company that is not currently controlled (draft LR 9.2.2BR(1)). We are not proposing any such grace period for new applicants, given the lead time between the decision to pursue a premium listing and admission. This proposal appears in draft LR TR 11, section 1.

**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))?**

### Feedback: Amendments to the relationship agreement

- Q7: Do you support our proposal to subject material changes to the relationship agreement to an independent shareholder vote (LR 9.2.2CR)?**
- Q8: Do you support our guidance on the factors that the listed company should have regard to in determining whether a change to the relationship agreement is material (LR 9.2.2DG)?**

#### Our response

Our revised proposal now concentrates on the fundamental principles of independence (revised LR 6.1.4DR) rather than a set of prescriptive requirements as part of a wider relationship agreement. As a result, there can be no changes to the agreement in this area and the proposed rules LR 6.1.4FR(5), LR 9.2.2CR and associated guidance LR 9.2.2DG have become redundant.

**Q9:** *Do you support our proposal to require a listed company to disclose the current relationship agreement in the annual report (LR 9.8.4R(15))?*

#### Our response

Our original intention behind this requirement was to serve as a check and balance to the correct operation of the proposed requirement to subject any material changes to independent shareholder vote. As this vote is no longer required, the requirement to disclose the agreement in the proposed LR 9.8.4R(15) falls away.

### Feedback: Independent shareholders

**Q10:** *Do you agree with our definition of an 'independent shareholder'?*

**4.39** Most respondents agreed with our definition. However, some investors felt that the term 'associate' was too narrow for this definition. As a result, persons who could appoint representatives to the board or block resolutions were not excluded from the definition of an 'independent shareholder'.

#### Our response

We have redrafted the definition of an 'independent shareholder'. The definition we consulted on limited the vote to holders of premium listed shares only. This would have excluded holders of unlisted shares, preference shares, etc. from voting even where the vote is not mandated by other rules that are not related to the premium listing of the issuer's shares (e.g. rules in the Companies Act). We did not intend to exclude holders of such shares from being able to vote on matters that are not related to the issuer's shares having a premium listing.

The amended definition covers all those entitled to vote except the controlling shareholder. Given the proposed change to the definition of 'controlling shareholder' whereby an associate of a controlling shareholder would be considered to be a controlling shareholder in their own right, we have deleted the reference to associates.

We are proceeding with a definition that covers holders of all shares except the controlling shareholder.

## Feedback: Annual report disclosure

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**Q11: Do you agree with our proposals to amend LR 9.8.4R to include an obligation to make a statement on the compliance of the listed company with the relationship agreement (LR 9.8.4R(14)) as described above?**

- 4.40** This proposal received a high level of support. There was, however, some confusion as to whether LR 9.8.4R(14) was intended to be a 'comply or explain' provision and therefore whether non-compliance would be treated as a breach of the Listing Rules.

### Our response

The proposal that we consulted on required directors to make a statement regarding the compliance of the premium listed company with the relationship agreement.

Given the feedback suggesting that this had been interpreted by some as a 'comply or explain' provision, we have enhanced the draft rules in LR 9.8.4R(14) (c) and (d) to make clear that the directors have to either make a statement that the independence provisions in the agreement have been complied with, or state that they have notified the FCA of non-compliance and explain the impact of the failure to comply.

As a result of the proposed narrower scope of the requirement, we have made consequential amendments to draft LR 9.8.4R(14) to indicate that it is the independence provisions in the agreement that have to have been complied with, rather than all provisions that may be included in a broader relationship agreement.

We have also introduced guidance in LR 9.8.4BG to clarify that, where a required agreement has not been entered into or an independence provision in an agreement has not been complied with, despite a statement made in the annual report, this non-compliance is still a breach of the continuing obligations in LR 9.2.2AR and LR 9.2.2FR. We retain the ability to take action where we consider it necessary.

Finally, we are also adding guidance in LR 9.2.2GG clarifying that we may request the company to provide additional information to confirm or verify that an independence provision in a relevant agreement has been complied with. This is in line with our general information-gathering powers under LR 1.3.1R(3). This suite of enhancements reflects our belief that operating an independent business is a fundamental requirement that must be complied with at all times.

Our proposals on the enhanced oversight measures for transactions with a controlling shareholder (outlined above) have caused us to consider our proposal in draft LR 9.8.4R(14) again. As a result, we are consulting on enhancing this provision, as explained below.

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### Consultation: Annual report disclosure

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- 4.41** The original proposal that we consulted on in LR 9.8.4R(14) required the directors to make a statement regarding the compliance of the premium listed company with the relationship agreement. We are proposing to amend this rule given that our aim is to ensure the business is operated independently of a controlling shareholder and our proposals on the enhanced oversight by minority shareholders in situations where the relationship agreement with a controlling shareholder is no longer appropriate.
- 4.42** We propose to require that the board make a statement that the company has entered into the agreement (or agreements) required under LR9.2.2AR. This is reflected in draft LR 9.8.4R(14) (a). The statement will make the lack of an agreement as public as any non-compliance with the independence provisions contained in an agreement. Separately, we considered who was the correct body to give this confirmation and noted that our stakeholders felt very strongly in favour of the concept of a unitary board. Therefore, we believe that it is appropriate for the board to give the statement of compliance.
- 4.43** The consequences of the company not having entered into such an agreement or agreements are broadly the same as they were for non-compliance with the independence provisions contained in any agreement. The statement in the annual report should confirm that the FCA has been notified and include a brief description of the reasons for failing to enter into a relevant agreement that enables shareholders to evaluate the impact of non-compliance. This is reflected in draft LR 9.8.4R(14)(b).
- 4.44** We also propose to amend the draft provision in LR 9.8.4R(14)(c) to require the board to make a statement that the independence provisions included in all agreements have been complied with throughout the preceding financial year. This amendment reflects the fact that only one out of three independence provisions in LR 6.1.4DR is aimed at the company and so restricting the statement to catching only instances where the company has not complied with the agreement would severely limit the scope of the provision in draft LR 9.8.4R(14)(c).
- 4.45** As previously drafted, the proposed enhanced oversight measures could not apply where a controlling shareholder has breached an independence provision in the agreement. As a result, we propose to widen the provision in draft LR 9.8.4R(14)(c) so that the statement must be made regarding compliance by all parties with the independence provisions, therefore catching instances where a controlling shareholder has failed to comply with a relevant provision.
- 4.46** As discussed above, we believe that the nature of the independence provisions in LR 6.1.4DR means that if a controlling shareholder were to breach a provision, this breach ought to be visible to the company, enabling it to comply with the notification obligation (in draft LR 9.2.25R) and in due course for the board to comply with the obligation to make a relevant statement in the annual report (in draft LR 9.8.4R(14)(c) or (d)).
- 4.47** We have also noted above that, in such instances, the enhanced oversight measures would apply from the time when the company has become aware of non-compliance by the controlling shareholder, not from the time of the breach of a provision by a controlling shareholder.
- 4.48** Where the board is unable to make a positive statement regarding compliance with the independence provisions, the annual report must include a statement that the FCA has been notified and a brief description of the background and the reasons for failure to comply (as outlined in draft LR 9.8.4R(14)(d)).

**4.49** As a further enhancement of the requirement in draft LR 9.8.4R(14), we have proposed LR 9.8.4AR. This draft rule is intended to apply to situations where an independent director declines to support a statement of compliance made by the board, and requires this disagreement to be made public in a statement in the annual report. A statement of this kind would trigger the imposition of the enhanced oversight measures (draft LR11.1AR (3)). We have strengthened this proposal by including draft LR 9.2.26R, which provides that the company must notify the FCA of such a statement being included in the annual report without delay.

**4.50** We propose to make consequential amendments to LR 15 and LR 16 that closed-ended investment funds and open-ended investment companies do not need to comply with draft LR 9.8.4R(14), 9.2.25R and LR 9.2.26R. This follows our general approach that the requirement to operate an independent business as it is set out for commercial companies does not apply to LR 15 and LR 16 companies. Draft LR 15.4.28R(2), LR 15.4.29R and amended LR 16.4.1R reflect this proposal.

**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?**

**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?**

#### **Feedback: Independence in other circumstances**

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**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? Do you think that there are any other factors that should be considered and, if so, what are they?**

**4.51** Our proposed guidance met with strong support. A number of respondents requested more guidance as to what situations are intended to be caught by LR 6.1.4DG. It was also suggested that in LR6.1.4DG(1), we add the words '*directly or indirectly*' after the word '*conducted*'.



### Our response

Given the other changes made as a result of the feedback, this guidance is now in LR 6.1.4AG. We have amended LR6.1.4DG(1) as suggested and it is now included as LR 6.1.4AG(1). We have also supplemented this provision with additional guidance in LR 6.1.4AG(6), which captures instances where it may be less obvious that a controlling shareholder is exercising influence over the operations of the issuer. This wording has been moved from draft rule LR6.1.4FR (3) (which was consulted on in CP12/25) and amended as noted in LR 6.1.4AG(6) above to clarify that we understand the legitimate role that entrepreneurs can play on company boards.

We would also point out that this is not an exhaustive list of factors that would indicate that a business was not independent, but rather guidance to indicate certain risk areas where we would be more concerned about the ability of the company to run an independent business. The guidance primarily reflects real examples that we have encountered and helps explain a complex area that necessitates a subjective judgement on the parts of both sponsor and ourselves.

Given our experience on recent cases, we also want to note that the presence of an agreement containing the relevant independence provisions does not automatically indicate that an independent business is present, as we have stated in the introduction to this guidance.

As explained in our response to the comments received on control of business proposals (Q13 to Q16), we will expand the guidance to encompass provisions that were consulted on in CP12/25 as part of LR6.1.4.BG(1)(c) and (2). These now appear in LR 6.1.4AG(2)(iii) and (5).

We are also making consequential amendments to the definition of a 'group'. This is to accommodate for the use of the term in LR 6.1.4AG(4), which provides for where a new applicant has granted security over its business in connection with the funding of a controlling shareholder or a member of a controlling shareholder's group. The definition makes clear that in this case the group is as defined in section 421 of FSMA.

## 5. Control of business

- 5.1** In CP12/25 we proposed to move from a control of assets analysis for a new applicant to a requirement that focuses on the control of business, which should be exhibited before admission to premium listing. Our proposals here received broad support. However, several respondents highlighted that our proposals had unintended consequences, which we address in more detail below.

### Feedback: Eligibility requirement

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**Q13: Do you agree with the proposal to amend the requirement for control of assets to control of business (LR 6.1.4AR)?**

- 5.2** The proposal to amend the requirement from 'control of assets' to 'control of business' was received favourably in general. Some respondents expressed concern that our approach might constrain issuers in their freedom to structure themselves in line with their strategy. This especially applied to entering joint ventures or buying non-controlling stakes in subsidiaries that could eventually become the majority of the issuer's business.

#### Our response

While we believe that a structure that consists wholly of non-controlled stakes is inconsistent with premium listing, we are persuaded that the point at which this inconsistency first arises is not necessarily when the non-controlled parts of the group form the majority of that group. We have no intention of preventing applicants who have a genuine business, which is functioning independently, from being premium listed. We are therefore proposing an approach that sees control of business as one aspect of a broader principles-based assessment of whether an independent business is present. This will give applicants flexibility in the way they structure their business, while still ensuring they maintain a sufficient level of control.

We are not proceeding with a separate requirement that the new applicant must control the majority of its business as proposed in LR 6.1.4AR. LR 6.1.4R will still contain a requirement to demonstrate that the applicant will be carrying on an independent business, which we are building on with guidance in LR 6.1.4AG by moving across provisions relevant to control of business. This will ensure sufficient scope for the sponsor and ourselves to exercise what is necessarily a subjective judgement over whether the business is genuinely independent.

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It would also allow us to look at whether and how the applicant controls its business as part of that assessment. As such, the level of non-controlled stakes at which an applicant appears to lack independence will depend on the specific circumstances of the case and the other evidence regarding independence viewed as a whole, rather than a percentage figure that can be applied in all cases.

### Feedback: Purpose of control and situations where it may not exist

**Q14: Do you agree with the proposed guidance (LR 6.1.4BG) regarding control of business? Do you think that there are any other indicators that should be considered and if so what are they?**

- 5.3** The guidance proposed in LR6.1.4BG also met with a mostly positive response, but our attention was drawn to a number of existing premium listed companies that would not comply with the guidance (as they would be required to do on a continuing basis under LR9), but which were genuine well-functioning businesses. There was no suggestion that their structure was inconsistent with the policy intent for premium listing. Furthermore, respondents felt that the requirement to have an ‘unfettered ability to implement its business strategy’ was unrealistic.

#### Our response

As a consequence of our approach to view control of business as one aspect of a broader assessment of whether an independent business is present, we have amended and summarised the substantive content of the guidance from the originally proposed LR 6.1.4BG and included it as part of the new guidance (LR6.1.4AG) relating to independence. In doing so, we have not included the proposed drafting in LR 6.1.4BG(1)(a) and (b) (the ability to keep the market informed of price sensitive information and the ability of shareholders to exercise protections in LR 10 and LR 11) as we believe that their essence is captured effectively by the new formulation of LR 6.1.4AG and Premium Principle 2.

We have retained LR 6.1.4BG(1)(c) relating to the new applicant’s unfettered ability to implement its business strategy, but revised it to refer to the freedom to implement its business strategy. It is now set out in LR 6.1.4AG(2)(iii). This addresses the feedback that we received on this specific point of guidance as discussed above.

We have also retained guidance in LR 6.1.4BG(2) and it now appears in LR 6.1.4AG(5). This provision considers situations where a company may not be operating an independent business, if that business consists principally of holdings of shares in entities that it does not control. One of these is outlined in LR 6.1.4AG(5)(ii) and refers to situations where control is subject to arrangements that could result in a temporary or permanent loss of control. We would like to clarify that we do not intend to capture security that may be granted to third party finance providers.

We pointed out in LR 6.1.4BG(3) that an externally managed company may not control the majority of its business as required under LR6.1.4.AR despite fulfilling the requirements under LR 6.1.26R.

On reflection we consider it unnecessary to have separate guidance on the distinction and so are not taking this forward.

As a result of the change in our approach, whereby control of business is no longer a separate requirement, the guidance in LR 6.1.4BG(4), setting out metrics for showing that control exists, has become redundant.

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### Feedback: Application where changes of control occur

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**Q15: Do you agree with our proposal to supplement guidance in LR 6.1.3EG(7) as set out above?**

- 5.4** Most respondents agreed with the proposal to add new guidance in LR 6.1.3EG(7) that where non-controlled interests have represented the majority of the new applicant's business for a significant part of the financial record, it may not be eligible for a premium listing. However, the question was raised as to why an applicant that has acquired a substantial part of its business during the three-year track record period (no ownership and no control) is eligible, whereas an applicant which had owned but not controlled its businesses for the whole period, but where control was only obtained later in the track record (ownership but no control), was ineligible. Respondents also added that it is common for businesses to undergo reorganisation shortly before the admission or after de-merger.

#### Our response

We have considered the concerns raised on our proposed guidance in LR 6.1.3EG(7) and we are persuaded that we should allow a new applicant where non-controlled interests have represented a significant part of the new applicant's business to be eligible, providing it gains control before listing. Consequently, we have decided not to proceed with this guidance.

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### Feedback: Control of business as a continuing obligation

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**Q16: Do you agree that control of business should be demonstrated at admission and on a continuous basis rather than for the entire period covered by the historical financial information? If not, then please outline your thoughts on the way in which control of business should be demonstrated.**

- 5.5** The proposal in LR9.2.2AR to require the premium listed companies to continue to comply with a requirement to control its business on a continuing basis met with nearly unanimous approval.

#### **Our response**

As a result of our changed approach, whereby we no longer view control of business as a separate requirement but part of a broader consideration of whether an independent business is present, we will proceed with the proposed LR9.2.2AR without the reference to the deleted rule LR6.1.4AR.

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## 6. Independence of directors

### Feedback: The UK Corporate Governance Code and related proposals

**Q17:** *Do you agree with Option 1 or Option 2 above?*

**Q18:** *Do you agree with our proposed definitions of 'independent director' and 'independent chairman'?*

**Q19:** *Do you support our proposal to extend the requirement for board composition as set out in LR 6.1.4ER(2) as a continuing obligation (LR 9.2.2AR(1))?*

**Q20:** *Do you agree with our proposal in LR 9.2.2BR to allow for a period not exceeding six months from the time of notification to the FSA to rectify the non-compliance with the requirements in respect of composition of the board as set out in LR 6.1.4ER(2)?*

- 6.1** We have considered these questions together, since the outcome to Q17 determines the approach taken in our response to Q18 to Q20.
- 6.2** The responses to Q17, which asked whether we should hardwire the Code requirement to have a majority of independent directors on the board (option 1) or retain the status quo (option 2), were fairly evenly split: investors tended to prefer option 1 and companies and the advisory community generally preferring option 2.
- 6.3** Those opposing option 1 felt it was disproportionate and would significantly detract from the attractiveness of a premium listing. They also questioned whether mandating the Code requirement would have prevented the corporate governance concerns raised recently by investors, as problem companies have often been in compliance with the Code Principles on board composition.
- 6.4** Some investors stated that they would like to see shareholders playing a greater role in selecting boards.
- 6.5** A small number of respondents preferred not to use the Code's definition of 'independent director' and 'chairman', believing it should instead be more restrictive and defined in terms of their relationship with the controlling shareholder.

## Our response

We stated in the consultation that we place great importance on the independent members of the board where there is a controlling shareholder. We also recognise that there is a significant and widespread support for the 'comply or explain' approach and the flexibility that it affords and so any change would be controversial. For these reasons we presented two options for discussion. We also noted in the Cost Benefit Analysis that we are aware that option 1 would involve extra costs.

Having considered these issues further and in response to feedback, we are persuaded that option 1 would be disproportionate. We agree that it is the quality, not the number of independent directors that is important – that should rightly be left to the company and shareholders to decide. Therefore, we propose to retain the status quo that was proposed as option 2 in the consultation.

We have reached this conclusion in the context of other changes we are proposing to make to enhance the tools that are available to shareholders to enable them to exercise effective oversight. Among these changes is a proposal for additional disclosure to be included in the circulars regarding the election of independent directors, on which we expand below. Nevertheless, we recognise that this was a finely balanced result and therefore will revisit this topic if necessary in the future.

In light of this, Q19 and Q20 have become redundant.

We are not persuaded that the Code's definition of 'independent director' requires amendment for Listing Rules purposes where it will be used in the context of electing independent directors to the board (see Q21 below). We are, therefore, retaining the Code's definition of an independent director.

As a result of our decision not to set out mandatory requirements on the composition of the board (option 1), there is no need to introduce a definition of an independent chairman into the Listing Rules. We are, therefore, not taking that proposal forward.

We have seen some commentary that our proposals require some premium listed companies to take on independent directors for the first time. This is not the case and we would highlight the existing requirement of DTR 7.1.1 to have an independent director on the audit committee.

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## Consultation: Circulars in relation to the election of independent directors

### Requirement for disclosure

- 6.6** As stated above, we are persuaded that it is not the number of independent directors that is important, but rather the quality of those independent directors that are in place.

- 6.7** It is clearly not possible for the FCA to write rules that would ensure that high quality independent directors are in place. It is, however, appropriate that the Listing Rules include requirements that enhance information provided to shareholders and that ensure that shareholders are fully aware of the pertinent information when making voting (and investment) decisions. As such, we are proposing to enhance the Premium Listing Regime by adding a requirement to ensure that the independent shareholders are aware of any previous or existing relationship between the independent directors and controlling shareholders. We are proposing that this requirement should only apply to premium listed companies with controlling shareholders. Applying the requirement across the premium segment is not in line with our general approach to propose specific measures that target areas with a higher risk of misaligned behaviour and abuse of the position of power by a controlling shareholder.
- 6.8** A significant number of respondents impressed upon us the importance of information provided at the time of appointment of independent directors. The Listing Rules (LR 13) set out a list of requirements that all circulars sent by a premium listed company to its shareholders must comply with to enable shareholders to know:
- why they are being sent a circular
  - what they are expected to do, and
  - receive all information necessary for an informed decision
- 6.9** Therefore, in relation to a premium listed company with a controlling shareholder, we are proposing to enhance these requirements for circulars about the election of independent directors (draft LR 13.8.17R).
- 6.10** We would like to point out that the proposed rule changes have been placed in the chapter that deals with 'Other circulars' in LR 13.8, which, under LR 13.2.2R, do not ordinarily require a premium listed company to submit a circular for approval to the FCA before its circulation to shareholders.
- 6.11** The proposed disclosure requirements are broadly based on the relevant Principles of the Code relating to the independence of the proposed director and the nomination process that the company went through in choosing a particular candidate. These principles require that, as a minimum, the directors have gone through a process whereby they have considered various aspects of the director's independence and suitability for the role. In some cases, the principles require disclosure of the process to be included in the relevant documentation that is sent to shareholders (Principle B.7.2) or the annual report (the nomination process in Principle B.2.4). Our proposals ensure that companies with a controlling shareholder make available to shareholders all information that is relevant to the (re)election of independent directors, providing full transparency over independence and suitability of the candidate as well as the process employed in nominating the candidate for election. Companies that already comply with the Code Principles should not find complying with additional requirements imposed under proposed Listing Rules very onerous. Furthermore, given the enhanced voting rights that independent shareholders have in relation to electing independent directors under new LR 9.2.2DR, it is to the company's benefit to include disclosure that would give independent shareholders assurance that the company has followed a rigorous and transparent process when choosing a particular director. The disclosure requirements are discussed further below.



- 6.12** We propose not to apply these disclosure requirements to closed-ended investment companies (LR 15) and open-ended investment companies (LR 16). Accordingly, draft LR 15.4.31R and LR 16.4.7R disapply LR 13.8.17R. This follows our general approach to funds in that the requirement to operate an independent business applicable to commercial companies does not apply to LR 15 (which have their own provisions to ensure independence) and LR 16 companies. It is also consistent with our intent to apply additional measures to premium listed companies where there is a higher risk of misaligned behaviour. In addition, investors have not raised any concerns with us about these types of companies.

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

**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)?**

#### **Individual disclosure requirements**

- 6.13** We believe that it is important that, in addition to giving shareholders enhanced rights under LR 9.2.2DR to influence the outcome of an election of independent directors, we also enhance the disclosure requirements regarding documentation that is sent to those shareholders to make the exercise of these rights meaningful. Looking at the individual disclosure requirements in turn, the disclosure required by our proposed LR 13.8.17R(i) goes to the heart of the concerns held by investors around whether the directors that have been put forward for election are genuinely independent. It requires a premium listed company to disclose previous or existing relationships or agreements between a proposed independent director and the company, its directors or the controlling shareholder. If there are/have been none, a confirmation of this must be included in the circular. This requirement is wider than a determination made under the Code's Principle B.1.1 because there is no time limit on relationships that have to be considered and the nature of the relationships that have to be disclosed is broader.
- 6.14** We believe that this disclosure would provide assurance to shareholders that the proposed director is truly independent or, where there have been relationships, improve transparency and give shareholders the opportunity to decide for themselves whether the proposed director is independent or not.
- 6.15** Proposed LR 13.8.17R(ii)(a) requires a description of why the company considers the proposed independent director will be an effective director. This is based on the Code Provision B.7.2., which requires the board to set out in the papers that are sent out to shareholders about the election of a non-executive director why they believe the individual should be elected.
- 6.16** The requirement in proposed LR 13.8.17R(ii)(b) requires a description of how the company has determined that the person is an independent director. This requirement relies on the Code definition of the independent director set out in Code Provision B.1.1.
- 6.17** The requirement in proposed LR 13.8.17R(ii)(c) requires a description of the process followed for the selection of the independent director. This proposal is based on the Code Provision B.2.4., which requires the company to include a description of the work of the nomination committee in the annual report, including the process it has used for the appointment of directors.

**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?**

### Feedback: Election of independent directors

**Q21: Do you support our proposal for election of independent directors by two rounds of voting as described above (LR 6.1.4ER(3), LR 9.2.2ER and LR 9.2.2FR)?**

**6.18** A significant number agreed with the proposal, but a number of reservations were expressed. The main concerns were of a practical nature, arguing that it would:

- be onerous and costly (for example, it could mean even more resolutions having to be put to a meeting, when there are often already more than 20)
- create uncertainty during the 90-day cooling-off period
- be difficult in practice to determine which shareholders were independent

**6.19** It was also pointed out that most independent directors will in the first instance be appointed by the board so that our proposal only becomes relevant if and when the director is proposed for re-election. Respondents queried if it also applied to the removal of directors and what would happen to a director during the 90-day period when the issue went to the second vote.

#### Our response

We stated in the CP that where premium listed companies have a controlling shareholder, we believe it is important to provide independent shareholders with more say in the election of independent directors so that the directors can adequately represent the interests of independent shareholders. Independent directors act as an important source of challenge and control within the governance structure of a premium listed company and so it is essential that minority shareholders have a proper say in their election. We developed the dual voting proposal as a mechanism through which the independent shareholders could have a more effective voice without becoming dominant. This is consistent with us seeking to avoid minority protection becoming minority control. The dual vote and the cooling-off period of 90 days are intended to provide an opportunity for all shareholders to engage in a discussion to avoid or resolve disputes.

We have considered the criticism levelled at these proposals concerning the number of resolutions already being high. Our review of a number of AGM circulars showed that a large proportion of resolutions (in many cases, up to half of all resolutions) related to the (re)election of directors with one resolution being proposed for each director. However, we have noted that these are frequently grouped together by companies as one issue.

We believe that giving independent shareholders a stronger say in electing independent directors is an important enhancement to the overall package of measures. Given the support for our proposal and our views as discussed above, we intend to proceed with this requirement, which is now in LR 6.1.4BR(2) as an eligibility requirement and LR 9.2.2AR as a continuing obligation. Consequently, we are taking forward the proposal regarding approval by separate resolutions, which is now in LR 9.2.2DR and LR 9.2.2ER.

As a response to concerns around the fact that there is uncertainty about the status of the director during the 90-day cooling-off period where the requisite approvals are not obtained on the first vote under LR 9.2.2DR, we are introducing guidance in LR 9.2.2CG. This guidance clarifies that, during the intervening period (of up to 90 days), a director who has already been appointed can remain in office until the second vote that is undertaken under LR 9.2.2ER.

With regard to the potential problem of identifying independent shareholders, we understand that the main concern relates to determining the votes of controlling shareholders where their holdings are held in pooled custodian accounts.

There is a concern that the integrity of the vote might come into question, not that the outcome might be affected. However, we believe it is largely a hypothetical issue as no concerns have been expressed to us about the current requirement to identify related parties for votes required under LR11. We will keep this issue under review.

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### Consultation: Transitional provisions (election of independent directors)

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- 6.20** We appreciate that our proposal will normally only operate in practice when independent directors are re-elected at the AGM. We recognise that there is a need for transitional arrangements to allow companies time to amend their articles if necessary. We therefore propose to delay applying the requirement in LR 6.1.4BR(2) until the next general meeting for which notice has not already been given (draft LR TR 11, section 2). We are allowing a similar dovetailing grace period for the dual election process itself (draft LR TR 11, section 3), as well as for a situation where a previously uncontrolled premium listed company 'acquires' a controlling shareholder (draft LR 9.2.2BR(2)).

**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)?**

## 7. Application to mineral and scientific research-based companies

- 7.1** On the whole, our proposals for mineral and scientific research-based companies were well supported.

### Feedback: Mineral companies

**Q22:** *Do you support our proposal to amend LR 6.1.9R to subject mineral companies to the requirement to demonstrate the ability to carry on an independent business together with additional requirements where a controlling shareholder is present? If you do not support this proposal, please outline your reasons for doing so.*

**Q23:** *Do you support our proposal to subject a mineral company to a continuing obligation to comply with LR 6.1.4CR, and if applicable, LR 6.1.4ER and LR 6.1.4FR at all times (LR 9.2.2AR(2))?*

- 7.2** Respondents were largely in favour of our proposals. One respondent pointed out that mineral companies often had a number of non-controlled interests in joint ventures so that the proposed guidance in LR 6.1.4DG(2) requiring the new applicant to have: ‘...strategic control over commercialisation of its products..’ was inappropriate.

#### Our response

We accept that the guidance regarding strategic control over commercialisation of the products (which is now in LR 6.1.4AG(2)(i)) may be problematic for some mineral companies whose normal business model consists of holding non-controlling interests in joint ventures. We would like to emphasise that LR 6.1.4AG is guidance and that the new applicant does not necessarily have to fulfil all three limbs in LR 6.1.4AG(2) to be eligible for listing, because of the way the guidance is drafted (i.e. the *new applicant* does not have strategic control over commercialisation of its product, and/or its ability to earn revenue, and/or is not free to implement its business strategy). We do not mean that the new applicant only needs to fulfil one of these limbs to be eligible. The new applicant mineral company would have to satisfy us that on the whole it carries on an independent business in order to be eligible for premium listing. The arrangements it has in place in this area will form part of the subjective judgement that is involved in that assessment.

We have exempted mineral companies from LR 6.1.4AG(5), which sets out guidance carried over from control of business provisions given that, under LR 6.1.10R(2), mineral companies are eligible where they possess a reasonable spread of direct non-controlled interests.

We are, therefore, proceeding with the proposals regarding applying independence provisions to mineral companies at entry and as a continuing obligation.

We have made no change to LR 6.1.9R, other than to preface it with the words: 'Where LR 6.1.8R applies...' to clarify that the exemption from meeting the normal requirements relating to historical financial information (LR 6.1.3BR(1)) only applies when the company has been operating for less than the normal three-year period. Otherwise, the new applicant would be expected to fully comply with LR 6.1.3BR(1).

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### Feedback: Scientific research-based companies

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**Q24:** *Do you support our proposal to amend LR 6.1.12R to subject scientific research based companies to the control of business requirement, the requirement to demonstrate the ability to carry on an independent business together with additional requirements where a controlling shareholder is present as discussed above?*

**Q25:** *Do you support our proposal to extent the continuing obligation in LR 9.2.2AR(1) to scientific research based companies in the same way as it currently applies to commercial companies? If you do not support these two proposals, please outline your reasons for doing so.*

- 7.3** Most respondents were in favour of our proposals for scientific research-based companies, as with the feedback received in response to proposals on mineral companies.

#### Our response

We are proceeding with our proposals in this area. We have made similar changes to LR 6.1.12R as we have to the corresponding rule on mineral companies (LR 6.1.9R) by prefacing it with the words: 'Where LR 6.1.11R applies...' to clarify that the exemption from meeting the normal requirements relating to historical financial information (LR 6.1.3BR) only applies when the company has been operating for less than the normal three-year period. Otherwise, the new applicant would be expected to fully comply with LR 6.1.3BR.

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## 8. Shares in public hands (or ‘free float’)

- 8.1** Overall, we received a good level of support for our proposals in this area. In particular, our proposals regarding our ability to modify the free float requirement in the standard segment were very well received. However, responses to proposals regarding our ability to modify the free float requirement in the premium segment varied depending broadly on whether the respondents were on the buy or the sell-side. Buy-side respondents generally believed that the existing requirement of 25% is already too low, and the sell-side respondents did not wish the FCA to restrict its ability to modify the requirement by a specific number, arguing that there could be cases where there was adequate liquidity below 20% free float.

### Feedback: Shares subject to a lock-up period

**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))? Do you think that 30 calendar days is the right time period to dictate exclusion? Do you think that there are any other instances where shares should be excluded from a free float calculation and if so what are they?*

- 8.2** Most respondents agreed or partially agreed with the broad proposal to exclude shares subject to a lock-up period from the free float calculation. Those against excluding the locked-up shares from calculating the free float focused on the fact that lock ups are commonplace and can ensure long-term investor confidence. Other comments related to the fact that shares subject to lock-ups were typically excluded from the free float calculation anyway (such as management and significant shareholders). Some respondents also questioned whether ‘lock up’ meant an absolute prohibition on dealing or something less.
- 8.3** On the question of the time period, a significant number of respondents indicated that 30 calendar days was the appropriate time period, whereas the balance was then reasonably evenly split between six and 12 months.

#### Our response

We are proceeding with the proposal to exclude shares subject to a lock-up from the free float calculation.

Based on the feedback, we have decided to amend the time period so that shares subject to a lock-up of greater than 180 calendar days at the point that the free float is calculated are excluded. We recognise the value of having a lock-up period and feel this time period strikes the appropriate balance between ensuring long-term investor confidence and facilitating the desired liquidity.

The proposal is intended to capture lock-up agreements in the broad sense. Consistent with our general approach, any restriction on the ability to sell the security renders it unable to contribute towards liquidity and, from that perspective, it is locked up. Our approach would simply recognise those lock-up agreements that were disclosed in the prospectus (or would have been if there had been a prospectus) and this has not, to date, been an area where there have been difficulties with interpretation. As such, we feel there is no need for the rule to be any more specific.

We are also consulting later in this paper on a similar approach to new applicants in the standard segment.

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#### **Feedback: Ability to modify the free float requirements**

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**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?*

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

**Q29:** *Do you agree with the proposed criteria for assessing potential liquidity outlined above? Are there any other criteria to which we should have regard in considering the potential liquidity of shares within the standard segment?*

- 8.4** We have grouped these questions together as they all relate to modifying the free float requirements. The ability to modify free float requirements in the premium segment received low levels of support with some respondents concerned that the guidance would set an effective new floor of 20% and that 25% is already modest. Most respondents favoured either a higher or lower figure.
- 8.5** In contrast, the proposals for the standard segment were well received.
- 8.6** A number of respondents commented on the difficulty in assessing liquidity pre-admission and questioned what the position would be should the expected liquidity fail to materialise. Other respondents suggested a minimum number of shareholders should be set as an appropriate criterion.

- 8.7** An additional suggestion was that there should be no modification to the free float level for the standard segment on the basis that there are no other governance requirements for such issuers to mitigate the risk to investors. In contrast, the respondent suggested that, given the standards of governance either mandated for or expected of premium listed companies (including the proposed changes as part of this wider review of the Listing Regime), the free float level presents less of a concern.

### Our response

We recognise that many of the responses about to the premium segment originate from broader concerns about minority shareholder protection and the effectiveness of their participation in the governance of the company. However, we commented in CP12/25 that modifying the free float requirements to address these issues would be a less effective and a disproportionate response, and we remain of that view. Our approach to the question of free float has always been about ensuring liquidity in the secondary market when considering whether to grant a modification of the requirement for 25% of the class to be in public hands in EEA States. We also commented that concerns surrounding shareholder protection ought not to be addressed by adjusting free float levels, but by considering the entire premium Listing Regime within which issuers operate and how that impacts directly on shareholder rights and the relationship with a controlling shareholder. We believe the overall package of measures (including our proposal for enhanced oversight by minority shareholders) significantly enhances minority shareholder rights and, therefore, provides an effective remedy to the concerns raised by the investment community.

Furthermore, FTSE aimed to substantially address concerns held by passive index trackers by introducing changes to the eligibility criteria for inclusion in the UK Index Series, which raised the free float requirement for UK issuers to 25%.

LR 6.1.20G already provides the FCA with the ability to modify the 25% free float. The proposed amendments to LR 6.1.20G were intended to clarify the existing practice for modifying the requirement for 25% of shares to be distributed to the public in the EEA States and to make our decision-making more transparent and understandable. Therefore, in CP12/25 we consulted on the specific criteria (distribution to at least 100 persons and value of the free float in excess of £250 million). After consideration, we have decided to consult again on the specific criteria, in part because the responses focused on the percentage level of the free float requirement, which prompted us to question the level of engagement on this particular issue. This consultation is included below. Other than clarifying the criteria to be used to determine whether a modification is appropriate, our policy position has been finalised.



We have considered responses that suggested that the reference to 20% effectively sets a new floor for the free float requirement. The current requirement is set at 25% in public hands in EEA States. Legally, we can consider a modification only where we were satisfied that the market would operate properly in view of the number and dispersal of the free float shares. The draft amendments to the guidance proposed in CP12/25 aimed to provide market participants with transparency around the parameters that we would look at in making this determination. We did not intend to set a new floor at 20% and so we have removed this part of the guidance and this change is not intended to signal any loosening of the approach. We would highlight that the more that the free float falls below 25%, the weightier the evidence we expect to have to be comfortable in granting a derogation and the 20% figure partly reflected that. It remains our policy position that we are very reluctant to allow very small free floats in percentage terms in the premium segment and we do wish to manage expectations over our willingness to agree to derogations of the free float requirement in such cases.

That said, some stakeholders have raised the potential for London to exclude itself from the largest IPOs on the basis of the free float requirement. We would note that in the circumstances where a 25% free float would exceed the capacity of the London market, as some have suggested, then the evidence presented by the market capitalisation and public shareholder numbers may be compelling enough for a larger derogation to be granted, but clearly this would be an exceptional circumstance.

Regarding the standard segment, our policy intention remains that it should be effectively 'directive minimum' (i.e. it reflects minimum standards required by EU directives) and, therefore, able to provide a greater level of flexibility to cater for a wider range of issuers and securities. The responses to the consultation confirmed that focusing solely on liquidity in judging the appropriate free float level rather than (as has been suggested) a minimum number of shareholders, will be welcomed by shareholders and issuers alike.

It would appear that few, if any, investors in the standard segment are index trackers and that the level of free float is one of the many considerations involved in investing in securities in this segment.

We have also noted that the London Stock Exchange has set the free float requirements for its High Growth Segment as a minimum percentage of 10% with a value of at least £30 million. We have considered whether setting minimum requirements in a similar fashion would be beneficial, but, while a free float at that level may appear to be consistent with the policy intent, we decided that prescribed benchmarks are inconsistent with our approach to liquidity in the standard segment.

We acknowledge that the purpose of the proposal would be defeated should the expected liquidity fail to materialise. Consequently, we are introducing guidance in LR 14.3.2AG that in circumstances where we have modified LR 14.2.2R to agree a lower free float level for a new applicant, we will consider withdrawing that modification if there is evidence that shares have become illiquid or liquidity is not evident over this time, and we expect the issuer to comply fully with the free float requirements.

The responses to these questions highlighted the need to consider also the approach to new applicants to the premium segment. There is no compelling reason why we should not also monitor free float levels for new applicants to the premium segment where we have agreed a modification. Consequently, we will not distinguish between securities in the premium or standard segments in assessing whether the expected liquidity materialises in classes of securities with free floats of less than 25% and the steps we would take in the event it does not. We are, therefore, introducing similar guidance in LR 9.2.15AG.

We note that we have always had the power to withdraw a modification to the free float but, in light of the above, we are now including specific guidance to highlight its direct application to securities admitted to both the premium and standard segments, thereby ensuring equity shares and other securities (such as Global Depositary Receipts) are treated uniformly.

An issuer of GDRs must comply with continuing obligations in LR 9 because of the provision in LR 18.4.2R. Therefore, the guidance on potential withdrawal of the free float modification where liquidity has not materialised is also applicable to GDR issuers.

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### Consultation: Specific criteria for modifying the free float requirement

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- 8.8** In CP12/25 we proposed to clarify the operation of the free float requirement by explicitly setting out the criteria that we apply for determining when the requirement for 25% of the shares to be in public hands in EEA states may be modified. We consulted on the criteria that included companies where (1) the number of public shareholders exceeds 100 holders, and (2) the expected market value of the shares in public hands at admission is in excess of £250 million.
- 8.9** We received very few responses to this question; comments were predominantly focused on the percentage level of the requirement itself. Furthermore, CP12/25 was published when, given the market conditions at the time, very few IPOs were taking place. We have since considered the criteria we consulted on in CP12/25, partly in light of the more recent IPOs. This, and the lack of stakeholder responses on this part of the question, has prompted us to consider and then consult again on the appropriate criteria for modifying the free float requirement.
- 8.10** We emphasise that our policy position on the percentage level of free float has been finalised. Therefore, when drafting the guidance in proposed LR 6.1.20AG we want to clarify which criteria we will take into account when determining whether the market will operate properly where less than 25% of the shares are in public hands in EEA states. So, we have redrafted the existing guidance to take account of the following factors:
- shares held in non-EEA States, even where they are not listed (this is currently part of guidance in LR 6.1.20G)
  - the number and the nature of the public shareholders, and
  - the expected market value of shares in public hands at admission is in excess of £100 million
- 8.11** *In CP12/25, we originally proposed that the shares should be distributed to at least 100 public shareholders. We have considered this criterion further by looking at examples of where*

there has been no modification of the free float requirement as well as examples where a modification has been granted. It has become clear to us that the nature of the shareholder is as important as (if not more so) than the number of shareholders. Companies with free floats made up predominantly of large numbers of retail investors have in many cases less liquidity than companies with fewer than 100 institutional shareholders. This has led us to conclude that fixing a number would not be appropriate as, depending on the nature of shareholders, 100 may in some cases be too few and, in some cases, more than enough. It would also lend false hope to new applicants that have 100 public shareholders, but where we may refuse to modify the requirement should the nature of those shareholders suggest to us that the required liquidity would not materialise. Therefore, we propose to look at the number and nature of shareholders as one of the factors in determining whether a modification is appropriate while noting that, as now, we would be closely scrutinising cases where a derogation is sought and there are fewer than 100 public shareholders.

- 8.12** Regarding the expected market value of the free float having to exceed £250 million that we consulted on in CP12/25, we are concerned that, having compared it to the recent examples of IPOs, we set it too high. As each of the factors must be taken into account when considering a derogation from the requirement to have 25% of the shares in public hands in EEA States, and noting the international nature of the London market, there is a risk of closing off capital markets for issuers with expected market capitalisation of less than £1 billion. Our goal was to clarify rather than harden the existing approach.
- 8.13** These proposals simply represent a more accurate representation of the current position rather than hardening or loosening the grounds upon which we would be prepared to grant a derogation. We will (and do) scrutinise each of the three elements closely on judging cases and, depending on the other two criteria, may well look for a free float value significantly in excess of £100 million.
- 8.14** As a result of these amendments, we propose to delete LR 6.1.20G and include a clarification of the criteria in draft LR 6.1.20AG.

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

#### **Feedback: Holdings of individual fund managers**

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**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?*

- 8.15** This proposal was well received both on this occasion and when it was initially mooted in CP 12/2 and responses received here were similar. A number of respondents sought further guidance about what was meant by 'investment decisions' and there was again the suggestion that there may be a house view on corporate actions of issuers within the fund managers' organisation.

### Our response

We are proceeding with this proposal, which is now in LR 6.1.20BG, for the same reasons as we explained in CP12/25. Furthermore, we are consulting on a similar approach to new applicants in the standard segment.

Regarding the term 'investment decisions', given our focus in this area is providing liquidity, we are concerned primarily with decision-making regarding acquisition or disposal rather than situations where only decisions about voting are dispersed.

We are also making consequential amendments to the definition of a 'group' to clarify that where it is used in the context of LR 6.1.20G, the group is defined in section 421 of FSMA.

### Feedback: Financial instruments with a long economic exposure to shares

**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?*

- 8.16** Most respondents either fully or partially supported this proposal, which we initially consulted on in CP12/2. Although we again received a high level of support, we note reservations expressed regarding the risk of a controlling shareholder effectively sheltering shares in a Contract For Difference (CFD) which, by doing so, increases the free float by the value of the shares held as a hedge to that CFD. There was doubt as to whether a controlling shareholder would ever genuinely need to have economic exposure in addition to substantial real interests – the implication being that the shares held to hedge that position would not, in fact, contribute to the liquidity expected in the free float.
- 8.17** It was also noted that LR 6.1.20BG should refer to 'long economic exposure' rather than 'long-term economic exposure'.

### Our response

We are proceeding with this guidance as proposed (which is now in LR 6.1.20CG) subject to the minor typographical amendment to refer to 'long' economic exposure rather than 'long-term' economic exposure. We are also consulting on a similar approach to new applicants in the standard segment.

We have considered the impact of CFDs held by controlling shareholders but, on balance, feel no amendment is necessary. The proposal is targeting the liquidity of the shares rather than the holder of the CFD and, to date, we are not aware of any evidence to suggest that shares held to hedge a CFD do not contribute to liquidity. We do, however, appreciate the concerns expressed about this and will monitor developments in this area. If it becomes evident that such instruments are being used in a manner that artificially inflates the free float (i.e. the underlying shares are clearly not capable of providing any liquidity), we will consider this again.

### Consultation: Application of certain provisions to the standard segment

- 8.18** As discussed above, we are proceeding with our proposals to exclude shares subject to a lock up of longer than 180 days from the calculation of the free float (LR 6.1.19R(4)(f)). We will also clarify the treatment of holdings of investment managers and financial instruments with a long economic exposure when calculating shares in public hands (LR 6.1.20BG and LR 6.1.20CG). We consulted on applying these provisions in the premium segment. Having considered these issues further, we believe that the reasons for introducing these provisions in the premium segment are also valid for standard listed companies (LR 14) as well as for Global Depositary Receipts (LR 18).
- 8.19** Regarding the standard segment of the Official List, our policy intention remains that it should be 'directive minimum'. We do not believe that these measures alter this approach; instead, they clarify how to go about determining which shares can be counted towards the company's free float.
- 8.20** Consequently, we propose to introduce similar provisions in:
- draft LR 14.2.2R(4)(f) and LR 18.2.8R(4)(f) for locked-up shares
  - draft LR 14.2.3AG and LR 18.2.9AG for disaggregation of holdings of investment managers, and
  - draft LR 14.2.3BG and LR 18.2.9BG for financial instruments with a long economic exposure to shares
- 8.21** Finally, we propose to make consequential amendments to the definition of a 'group' to clarify that where it is used in the context of LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R and LR 18.2.9AG, the group is defined in section 421 of FSMA.

**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?**

## 9. Continuing obligations

### Feedback: Voting by premium listed shares

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**Q32:** *Do you support our proposal in LR 6.1.25R and LR 9.2.22R to require that where a shareholder vote must be taken under the provisions of LR 5.2, LR5.4A, LR 9.2.2CR, LR 9.4, LR 9.5, LR 10, LR 11, LR 12 or LR 15, such votes must be decided by a resolution of the holders of premium listed shares as discussed above?*

- 9.1** This proposal was well supported with only a small number of respondents disagreeing. One respondent questioned the appropriateness of its application to existing issuers.

#### Our response

We are proceeding with this proposal, which is now set out in LR 6.1.28R and LR 9.2.22R. We have amended the drafting in LR 9.2.22R to remove the reference to LR 9.2.2CR (material changes to the relationship agreement) as a result of us not proceeding with this rule.

We are making consequential amendments to LR 15 to clarify that closed-ended investment companies must also comply with the requirement in LR 6.1.28R. This is because LR 15 sets out additional protections for shareholders that only holders of premium listed shares can benefit from. This is reflected in LR 15.2.1R(2)(c). Therefore, they are also required to comply with the continuing obligation in LR 9.2.22R regarding the provision in LR 15.4.1R that subjects closed-ended investment companies to the continuing obligations set out in LR 9.

We are also amending LR 16 to clarify that open-ended investment companies are not required to comply with LR 9.2.22R given that many of the areas within the Premium segment giving rise to shareholder votes do not apply to this listing category. This is reflected in LR 16.4.1R(1).

We note the potential impact on existing premium listed companies that would not comply with this rule. Consequently, we are consulting on a transitional period to allow additional time for these companies to comply with the new requirement.

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### Consultation: Transitional provisions for voting on matters relevant to premium listing

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- 9.2** We have been considering the impact of the requirement in LR 9.2.22R on premium listed companies that have share classes that are not premium listed, but have voting rights over matters arising specifically as a result of the Listing Rules applicable to premium listed companies. As we identified in the cost benefit analysis in CP 12/25, there are only a small number (about ten) that would appear not to meet the requirement set out in LR 9.2.22R.
- 9.3** We have considered 'grandfathering' these companies as one option, but have rejected it on the basis that retaining such companies on the premium segment would undermine the high standard that we and the market attach to premium listing. Therefore, we are proposing a two-year transitional period for such companies to comply with LR 9.2.22R. This is expressed in section 4 of LR TR 11.
- 9.4** We consider that two years is sufficient time for those companies to make arrangements to comply with the rules that are applicable to the premium segment or to apply to transfer to the standard segment. We would like to remind companies that the FCA has the power to suspend listing where the company has failed to meet a continuing obligation (LR 5.1.2G), with the ultimate sanction being cancellation of listing. Furthermore, LR 5.4A.16G envisages that in some situations the FCA may cancel a listing if a transfer of listing category is not applied for.

**Q16: Do you agree with our proposal to allow existing premium listed companies two years to comply with LR 9.2.22R?**

### Feedback: Guidance on LR 9.2.22R

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**Q33: Do you support the FSA having the power to modify the requirement imposed in LR 9.2.22R in exceptional circumstances (LR 9.2.23G)? Are there any other exceptions that should be specifically catered for within this guidance?**

- 9.5** We have not received any adverse responses to this proposal. A few respondents suggested it would be helpful to have more clarity about how this would be applied to dual listed company (DLC) voting arrangements.

#### Our response

Given the responses, we will proceed with the guidance as proposed. We feel it unnecessary to be any more specific about how we would modify the rule or the time period we would allow for issuers to remedy non-compliance in any specific cases, as it will always depend on the particular circumstances at the time. We would note, however, that we have no wish to hamper the way that the existing DLCs operate currently.

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### Feedback: Duty to notify the FSA of non-compliance

**Q34: Do you support our proposal to delete LR 9.2.16R and replace it with a requirement in LR 9.2.24R for a listed company to notify any non-compliance with continuing obligations as set out in LR 9.2 to the FSA without delay?**

- 9.6** A substantial majority of respondents agreed with this proposal in broad terms. However, many respondents pointed out that, as drafted, it significantly broadens the scope of the notification obligations from the current requirement, which relates solely to breaches of the free float. Respondents raised concerns that it imposed a significant reporting burden on the premium listed companies because the rule in its draft form would catch a much wider set of breaches, however minor. It was also suggested that some of the continuing obligations were not as objective as the free float requirement and it would not be easy for premium listed companies to identify non-compliance.

#### Our response

Our concern is with premium listed companies that are not complying with their continuing obligations and the impact this can have on premium listing as a whole. We have reflected on the responses received and have, consequently, modified LR 9.2.24R to only bring within scope of the notification obligations eligibility requirements that have continuing effect. We have amended LR 9.2.24R to specifically refer to those rules where we would expect to be notified of breaches without delay.

This now refers to:

- the requirements to operate an independent business and have an agreement in place where there is a controlling shareholder (LR 9.2.2AR)
- the dual election mechanism in LR 9.2.2DR together with the final vote as set out in LR 9.2.2ER
- the free float requirement in LR 9.2.15R and requirement that only premium listed shares may vote on matters arising out of the premium listing of shares (LR 9.2.22R)

The notification of the lack of compliance with the independence provisions in the agreement with a controlling shareholder (LR 9.2.2FR) is now set out separately in draft LR 9.2.25R and is discussed further in para 4.46.

We are making consequential amendments to LR 15 to clarify that closed-ended investment companies are not required to comply with LR 9.2.24R as it relates to a notification of compliance with: LR 9.2.2AR (the requirement to operate an independent business and to have in place an agreement with a controlling shareholder); LR 9.2.2DR (the requirement to elect independent directors by a dual vote of all shareholders and separately - of independent shareholders); and LR 9.2.2ER (the requirement to hold an additional vote if the previous dual vote was inconclusive), because these provisions do not apply to such companies.



Closed-ended investment companies still need to comply with LR 9.2.24R as it relates to LR 9.2.15R (the free float requirement) and LR 9.2.22R (voting on matters relevant to premium listing). This is reflected in LR 15.4.28R(1).

Open-ended investment companies are outside the scope of LR 9.2.24R. This is reflected in LR 16.4.1R(1).

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### Feedback: Cancellation or transfer of listing category

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**Q35: Do you support our proposal to delete LR 9.2.17G and replace it with guidance in LR 9.2.25G to consider LR 5.2.2G(2) and LR 5.4A.16G in relation to its compliance with the continuing obligations as set out in LR 9.2?**

- 9.7** Over half of all respondents agreed with this proposal. However, respondents were concerned that where breaches were caused by a controlling shareholder, it was inappropriate to effectively punish the issuer or minority shareholders as either action set out in the guidance would strip protections. One respondent questioned what would be the position if a controlling shareholder blocked a resolution to move to the standard segment but the issuer could not comply with the requirements of the premium segment. It was also suggested that the guidance should cover the time period to rectify matters within the premium listed company's control.

#### Our response

We are proceeding with this proposal, which is now set out in LR 9.2.27G. We reiterate that this is guidance and, as with the current practice regarding breaches of the free float, we would expect premium listed companies or their advisers to discuss the appropriate course of action with us at the earliest opportunity. We would note that this may include, if necessary, unilateral action by the FCA to cancel the listing but may alternatively entail a period of time to rectify a problem and/or enforcement action regarding the breach. As always, our response will depend on the circumstances of individual cases and so we do not consider it appropriate to set hard time limits in this context.

We note the concern raised about the risk of controlling shareholders blocking a move to standard listing. However, it remains the case that, if a premium listed company is not complying with continuing obligations, we have the power to cancel the issuer's listing and will seek to use that power should compliance not become evident after an appropriate period of time. We would expect premium listed companies to have appropriate discussions with their major shareholders if such a proposal was being considered and so we would not anticipate needing to use this power frequently.

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### Feedback: Disclosure in the annual report

**Q36:** *Do you support our proposal to amend LR 9.8.4R to require a listed company to disclose all matters that need to be disclosed under LR 9.8.4R in the annual report and accounts in a single identifiable section?*

- 9.8** Broadly, respondents were not against the idea of making all disclosures required by the Listing Rules easily identifiable. However, there was a concern that specifying the inclusion of a single (in effect, an additional) section was inconsistent with the current move to simplify annual reports. A number of respondents suggested that a similar outcome could be achieved by allowing cross-references to the relevant disclosures.

#### Our response

We acknowledge the desire not to add to the weight of disclosures already required in an annual report. However, we feel that it is important for investors to be able to easily identify disclosures required by the Listing Rules. We are proceeding with the proposal but with the modification that this can be achieved either within a single identifiable section or by including a cross-reference table to relevant disclosures within the annual report. Instead of amending LR 9.8.4R, we are proceeding with a separate rule in LR 9.8.4CR that sets out the requirement as described above.

### Consultation: Transitional provisions relating to annual report disclosure

- 9.9** We recognise that, given the lead time involved in producing an annual report, premium listed companies will need extra time to comply with the requirement in LR 9.8.4CR to include all information required to be disclosed in the annual report and accounts in a single identifiable section (or to include an cross-reference table). We propose to allow a transitional period so that this requirement is only imposed on premium listed companies with accounting periods that end at least three months after this rule has been implemented. These provisions are found in section 5 of LR TR 11.

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

### Consultation: Miscellaneous amendments to LR 9.8.4R

- 9.10** Following our proposal to introduce a definition of a 'controlling shareholder', we are proposing to amend LR 9.8.4R(10) and (11). These provisions require disclosure of details of contracts of significance or contracts for providing services between a listed company and a controlling shareholder. We are proposing to replace references to the controlling shareholder with references to the controlling shareholder as a defined term.

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

### Feedback: Disclosure of smaller related party transactions in annual report

**Q37:** *Do you support our proposal to amend LR 9.8.4R(3) to extend the period of time over which disclosure of smaller related party transactions as required by LR 11.1.10R(2)(c) should be included in the annual report and accounts to include comparative information for the previous two financial years?*

**Q38:** *Do you support our proposal to amend LR 11.1.10R(2)(c) to set out minimum disclosure requirements that need to be set out in the listed company's next published annual accounts as described above? Do you think that there are other factors relating to the smaller related party transaction that should be subject to disclosure requirements in the company's next published annual accounts and if so what are they?*

- 9.11** Our proposals in this area were not well supported. Respondents expressed reservations that the information is already available in historical financial reports and it seems unnecessary to repeat it. Regarding the proposal for enhanced disclosure, respondents were concerned about disclosing the percentage ratios resulting from the relevant class tests, as they felt it was a matter only for the sponsor and the FCA.

#### Our response

In light of the feedback, we have decided not to proceed with these proposals and, instead, to consult on an amended set of proposals as discussed below.

### Consultation: Smaller related party transactions

- 9.12** It was clear from much of the feedback we received to Q5 (ongoing compliance with the relationship agreement) that investors pay very close attention to related party transactions.
- 9.13** We are persuaded that the existence of transactions that are classified as smaller related party transaction due to their size (more than 0.25% but less than 5% on the class tests), should be disclosed on a more timely basis, than the current requirement to include details of such transactions in the annual report pursuant to LR 9.8.4R(3).
- 9.14** As a result, we propose to amend related party transaction rules in LR 11 to require transactions that fall within the 0.25% to 5% range to be announced via an RIS at the time they take place rather than report them in the premium listed company's next published annual report and accounts. As a consequence, we propose to delete LR 9.8.4R(3) requiring disclosure of such transactions in the premium listed company's next annual report and accounts.

- 9.15** At the same time, we are aware that the current requirement in LR 11.1.10R(2) for us to scrutinise various confirmations required in these circumstances can provide unnecessary delay for premium listed companies. However, we believe that we are best deployed in assisting premium listed companies and their sponsors in correctly classifying transactions rather than pre-approving standard confirmations. We propose to stop pre-vetting documentation in connection with such transactions and limit our role to providing individual guidance to premium listed companies on applying the rules in this area. We may, however, scrutinise the announced transactions and investigate further where we have concerns. We propose to delete LR 11.1.10R(2)(a) and amend LR 11.1.10R(2)(b) to reflect these changes.
- 9.16** If these proposals were adopted, we would make a consequential amendment to LR 8.2.1R(6) to reflect the fact that fair and reasonable confirmation would be provided by the sponsor to the listed company, rather than the FCA.
- 9.17** We believe that there is room for enhancing the disclosure currently required under LR 11.1.10R(2)(c). Having considered the feedback in this area, we are proposing to add two new limbs to this rule. Therefore, under the proposed LR 11.1.10R(2)(c), in addition to the identity of the related party and the value of consideration, the announcement will also have to include a brief description of the transaction and the fact that it fell within LR 11.1.10R.
- 9.18** We believe that these proposals serve the needs of both investors and premium listed companies in this area – providing timely and more comprehensive information to investors and lessening regulatory burdens on premium listed companies.

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

**Feedback: Warrants or options to subscribe**

**Q39: Do you believe that we should introduce a continuing obligation that a listed company must comply with LR 6.1.22R at all times (LR 9.2.21R) or alternatively that we should delete the existing eligibility requirement?**

- 9.19** The responses received to this proposal were evenly split. On the one side, respondents argued that, although the markets were able to price these instruments, ownership data on warrants and options is not so easily obtained;. On the other side, respondents commented that the market is able to adequately value such securities.

**Our response**

It is clear that such instruments may provide a key mechanism to facilitate the continued existence of an issuer in certain circumstances and we do not consider it appropriate for the Listing Rules to prevent this option being available. On the other hand, it is noted that the existence of large numbers of warrants or options to subscribe at initial listing may impact the ability of the market to properly value that issuer. Faced with roughly evenly split responses with equally persuasive arguments, we feel that any move from the status quo would have undesirable consequences. Consequently, we are retaining the current rule and not imposing it as a continuing obligation.

# 10.

## The Listing Principles

- 10.1** Our proposals to review the scope and the substance of the Listing Principles were generally well supported, with the single exception of our proposal on clarifying the continuing obligation in draft Premium Listing Principle 1 (regarding directors' responsibilities and obligations). We provide the feedback and our responses below.

### Feedback: Application to standard listed issuers

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

- 10.2** Our approach received broad support. Those respondents not in favour felt that it would blur the distinction between standard and premium listings.
- 10.3** One respondent requested confirmation that the Listing Principles (for standard issuers) would also apply to debt issuers.

#### Our response

We are proceeding with this proposal.

We confirm that the Listing Principles proposed for standard issuers will apply equally to debt and GDR issuers.

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### Feedback: Listing Principles 2 & 6

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**Q41:** *Do you support our proposal to amend LR 7.2.1R as described above? If not please provide an explanation for objection to each principle.*

- 10.4** Most respondents agreed with our proposal to make two of the existing Listing Principles requiring that the company has adequate systems and controls and that it deals with the FCA in an open and cooperative manner applicable to all listed companies.

- 10.5** Some respondents (in particular on the buy-side) wanted more of the existing Listing Principles (1, 3 and 4) to apply to standard listed companies, as they felt they represented basic norms of behaviour for any company wishing to raise capital in a public market and did not impose any super-equivalent requirements.

#### Our response

We proposed applying Listing Principles 2 and 6 to standard listed companies because they originate from the existing statutory framework and so we do not believe that they impose super-equivalent requirements in respect of the standard segment.

Broadly, our policy intention for distinguishing between premium and standard segments has always been that the rules applying to the standard segment should be based on the requirements from applicable European legislation. Consequently, we are going to proceed with the proposal to apply only these two Listing Principles to issuers of standard listed securities.

For clarity, we have renumbered the Listing Principles in LR 7.2.1R. As a result, the Listing Principle requiring adequate systems and controls is now Listing Principle 1, and the Listing Principle requiring a company to deal with the FCA in an open and cooperative manner is now Listing Principle 2.

#### Feedback: Guidance on Listing Principle 2

**Q42:** *Do you support our proposal to amend the guidance in LR 7.2.2G and LR 7.2.3G to enable the application of the guidance to the relevant Principles?*

- 10.6** Our proposal to make consequential amendments to the current guidance on the Principles to reflect the fact that these principles would apply equally to premium and standard listed companies was well supported.

#### Our response

We are proceeding as proposed. Because of the renumbering of Listing Principles, consequential amendments have been made to LR 7.2.2G and LR 7.2.3G.

#### Feedback: Continuing obligation arising from Premium Listing Principle 1

**Q43:** *Do you support our proposal to amend LR 9.8.6R(5) by including a specific disclosure obligation on the application of Principle B4 of the Code along with the accompanying guidance in LR9.8.6BG?*

- 10.7** This proposal was supported only by a minority of respondents. Generally, the respondents believed it would not change behaviour and only lead to increased 'boilerplate' disclosure.
- 10.8** Respondents were concerned that it should also apply to companies incorporated outside the UK and that it would be impractical for a chairman to ensure the directors understood their responsibilities and that directors' duties may not be 'fiduciary' in all countries.

### Our response

Given the lack of support for this proposal, we have decided not to proceed, but we may revisit this proposal in the future. In the meantime, we would remind premium listed issuers that when they make the statement in their annual financial report required by LR 9.8.6R(5), they should bear in mind that they are required under Premium Listing Principle 1 to take reasonable steps to enable their directors to understand their responsibilities and obligations as directors.

### Feedback: Premium Listing Principle 3 – voting power of a premium listed share

**Q44:** *Do you support the requirement that each premium listed share in a class must have equal voting power (Premium Listing Principle 3)? If you do not support this principle, please outline your view on how the Listing Regime can operate effectively if shares within the same class have various voting power.*

- 10.9** This proposal was reasonably well supported, although some respondents believed the proposal would have a harmful effect on London as a listing destination.
- 10.10** There was also some concern that it might conflict with company law or other regulations, such as where:
- premium listed shares are divided into different classes when voting to approve a scheme of arrangement
  - class rights votes are required under the UK Companies Act or other equivalent local rules that cause shares effectively to carry different numbers of votes, and
  - the Listing Rules require the holders of certain shares to refrain from voting, such as under the related party rules and the proposed new mechanism for electing independent directors
- 10.11** Therefore respondents suggested a carve-out for instances where the Listing Rules and company law or other regulation were in conflict.

### Our response

We are proceeding with the proposed Premium Listing Principle 3.

We accept the general point that there could be circumstances where there might be a possible conflict with law or other regulation. However, we do not believe that a specific carve-out for such instances is necessary. Our intention in introducing Premium Listing Principles 3 and 4 was to prevent attempts to circumvent the various protections in the Listing Rules, applicable to the premium segment via structural changes. Thus, Premium Listing Principle 3 is aimed at preventing 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.

### Feedback: Premium Listing Principle 4 – aggregate voting rights of the shares in each class

**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)?*

- 10.12** Our proposal was broadly supported, although some investors felt that premium listed companies (with the exception of investment companies) should be restricted to one class of listed shares. If they had more, they should be listed on the standard segment.
- 10.13** Other respondents believed that the principle of ‘one share, one vote’ was adequately protected by investors choosing not to invest in companies that do not adhere to it.

### Our response

While we accept that investors have the ultimate choice as to whether to invest and we do not intend to prevent multiple classes of shares where a legitimate commercial rationale exists, we do wish to prevent artificial structures involving multiple classes with different voting powers, which are designed to allow control to rest with a small group of shareholders. The proposal was deliberately aimed at making a clear statement about the sorts of arrangements that are not appropriate. We reiterate that our policy intention is to prevent flagrant examples rather than focusing on borderline cases. Therefore, we are proceeding with this proposal.



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**Feedback: Guidance on Premium Listing Principle 4**

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**Q46:** *Do you support our proposal for guidance on Premium Listing Principle 4 (LR 7.2.4G) as to the factors the FSA will have regard to in assessing whether the voting rights are proportionate? Are there any other factors that the FSA should have regard to in applying this principle and if so what are they?*

- 10.14** Most respondents agreed with this proposal and none suggested other factors that we should have regard to in applying this principle.

**Our response**

We are proceeding with this proposal.

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**Consultation: Consequential changes to LR 7 and DEPP 6**

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- 10.15** While we are not changing the substance of our policy proposals in this area, we have noted that we need to make further consequential changes to LR 7.1.2G to LR 7.1.4G setting out the purpose of the Listing Principles. The proposed changes as reflected in draft LR 7.1.2G to LR 7.1.4G expand the scope of the guidance to include Premium Listing Principles, which we are introducing after adopting the proposals set out in CP12/25 and discussed in detail above.
- 10.16** Similar amendments are required to the Decision Procedure and Penalties Manual (DEPP), specifically draft DEPP 6.2.16G, 6.2.17G and 6.2.18G. The proposed amendments also clarify that the Listing Principles apply to all companies and that Premium Listing Principles only apply to premium listed companies.

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

# 11.

## Cancellation of listing

### Introduction

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- 11.1** The current rules on cancellation broadly require 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. This requirement was first consulted on in 2003 as part of the Listing Review (CP203 and subsequent CPs) following concerns that the regime at the time (no shareholder vote was required) did not adequately protect shareholders.
- 11.2** We refined the proposals over the course of the Listing Review and concluded that we should impose a 75% threshold; we acknowledged that it could not completely protect all investors. We therefore undertook to keep the operation of the rule under close scrutiny and indicated that we may choose to revisit it in the future. The requirement for a vote (LR 5.2.5R) was finally introduced in July 2005 alongside the other major changes resulting from the Listing Review and implementation of the Prospective Directive.
- 11.3** When the requirement to seek shareholder approval was introduced, we were clear that we wished to avoid situations where a small minority of holders could frustrate the legitimate actions of the large majority and said that we believed that our proposal for approval by 75% of shareholders represented an appropriate balance between protecting investors and restricting the activities of the company. The 75% threshold was chosen deliberately to align with the approval threshold for a special resolution.
- 11.4** While we still believe that this is the case for the vast majority of companies, we are aware that stakeholders may feel that, in line with our other proposals, it is necessary to enhance shareholder protections where a controlling shareholder is present. The topic of cancellation was not covered in CP12/25, but we have carefully considered concerns raised by market participants and noted that there are potentially other protections within the legal framework. Consequently, we believe that it is appropriate to revisit the cancellation provisions at this time.

### Alternatives to the current provisions

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- 11.5** In drafting the options presented below, we have considered several alternatives to the current regime that we ultimately rejected:
- to increase the threshold for all cancellations of premium listing (for example to 90% – broadly aligning to the level where the Companies Act 2006 squeeze-out provisions come into effect)
  - to increase the approval threshold only when a free float of less than 25% is present
  - to introduce a moving threshold, which is dependent upon the size of the free float

- 11.6** We are not attracted to the option of an increased fixed threshold across the entire premium segment as it would allow a small minority to stand in the way of a cancellation and go beyond the point at which minority protection becomes minority control.
- 11.7** We have also not opted for amending the voting threshold only when a free float of lower than 25% is present given that this would result in a situation where free float shareholders have less control over delisting where no derogation of the free float has been allowed. We were also aware that the non-free float percentage does not correlate with the holding of a controlling shareholder but reflects merely those shares that are not considered to be in public hands.
- 11.8** We have also decided against proposing a moving threshold depending on the level of free float as it was overly complex and, as noted above, was based on the false premise that the entirety of the non-free float shares equated to a single holding of a controlling entity or cartel.
- 11.9** Consequently, we are presenting two options for consultation:
- Option 1** – to move to a requirement that a majority of the votes attaching to shares of those independent shareholders voting must also sanction the cancellation where a controlling shareholder is present.
- Option 2** – to retain the existing approach to cancellation as set out in the current LR 5 (as amended to clarify the voting arrangements that should be followed when seeking approval from shareholders).

#### **Option 1 – approval by independent shareholders**

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- 11.10** This option is summarised as an additional approval threshold in circumstances where a controlling shareholder exists. In formulating this alternative to the current approach, we are aware that there are a number of routes by which cancellation of premium listing may occur; we are keen to ensure that the proposals would have an appropriate impact on each route and would not incentivise the use of a particular route.
- 11.11** Therefore, we have considered the following scenarios for cancellation of premium listing:
- via a shareholder vote
  - following a takeover offer
  - as a result of a scheme of arrangement
  - where there is financial difficulty or liquidation
  - transfer to the standard segment
- Shareholder vote**
- 11.12** 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. We would not propose to stipulate whether this may be achieved via one or two votes, leaving it to the issuer's discretion.

**11.13** This proposal is not new, and was suggested to us in feedback to our original proposals for approval by 75% of shareholders in CP203. At the time, we responded that we thought the additional approval requirement would be going too far and could result in a small minority of shareholders wielding disproportionate power over the running of the company. Respondents may remain of this view, but equally it is a reasonable expectation that the protections (and potentially value) stemming from premium listing should not be subject to the whim of a single shareholder.

#### **Takeover offer**

**11.14** Under this option, where a premium listed company is subject to a takeover offer (note that we have considered schemes of arrangement separately below), we have considered the extent to which the offeror will be required to acquire a majority of the votes attaching to shares held by independent shareholders in order for the offeror to be able to cancel the company's listing. This consideration has led us into dividing takeover offers into two scenarios.

**11.15** The first is where the offeror, or a controlling shareholder which is an offeror is interested in 50% or less of the voting rights before announcing its firm intention to make the takeover offer. We have proposed keeping the current regime in these circumstances (i.e. acquisition of issued share capital carrying 75% of the voting rights of the issuer) because, where the offeror starts from a position of 50% or less of shares, by definition it would have to obtain approval from a majority of the votes of independent shareholders to reach the 75% threshold. The draft proposal is set out in proposed LR 5.2.10R.

**11.16** The second scenario is where the offeror, or a controlling shareholder which is an offeror, (together with its associates and concert parties) is interested in more than 50% of voting rights before announcing its firm intention to make a takeover offer and is presented as draft LR5.2.11AR. In this situation, we propose that the enhanced provisions should apply. That is, the offeror would need to obtain acceptances or acquire shares from independent shareholders that represented a majority of the votes held by independent shareholders in addition to reaching the 75% acceptances threshold.

**11.17** While it is not inconceivable that offer conditions may align with the amended threshold, it is clear that the proposal in the second scenario implies that we would be prepared to tolerate the resultant free float where an offer was successful but failed to meet the independent shareholder acceptance threshold (i.e. in addition to reaching the 75% acceptance threshold). While we have experience of working with premium listed companies to give them time to increase their shares in public hands where they are in breach of their continuing obligation, it is logical that an offeror would not wish to dilute their holding to increase the free float figure.

**11.18** As such, we believe that we should not tolerate all those free floats and propose that, were this option to be pursued, a level should be set at which the resultant free float ceases to be acceptable and cancellation may proceed. We have proposed that this level should be set at 80% of voting rights. Thus, where an offeror has acquired or has agreed to acquire more than 80% of the listed class of shares then we propose that no further approval/acceptances by independent shareholders should be required to cancel the premium listing. This is reflected in draft LR 5.2.11DR. We are asking respondents for specific feedback on this issue below.

**11.19** Finally, draft LR 5.2.11BR and LR 5.2.11CR deal with the effective date of the notice period of cancellation and notification to the shareholders that the relevant thresholds have been obtained, which just replicate existing requirements in LR 5.2.10AR and LR 5.2.11R.

#### **Scheme of arrangement**

**11.20** LR5.2.12R(1) allows cancellation to occur following a takeover or restructuring of an issuer effected by a scheme of arrangement under Part 26 of the Companies Act 2006. We are not proposing any change to this rule as we believe that the statutory framework provides adequate protection to shareholders.

**Financial difficulty/liquidation.**

**11.21** Similarly, we are not proposing to amend LR5.2.7R, which allows the shareholder vote to be avoided where the cancellation is required as part of a package to prevent an issuer from going into formal insolvency proceedings, nor to amend any of the requirements of LR5.2.12R(2) – (7), allowing cancellation to occur in the event of insolvency/ liquidation/ winding up.

**Transfer to another segment**

**11.22** We recognise the potential for circumventing cancellation provisions by transferring to the standard segment, (which has no requirements to obtain prior approval from shareholders to cancel the listing). So, we have proposed amending LR 5.4A4R to ensure that the voting thresholds for transfers out of the premium segment are aligned to the cancellation provisions. Therefore, where a premium listed company is seeking a transfer into the standard segment and a controlling shareholder is present, under this option we have proposed that it must obtain prior approval from the majority of the votes of independent shareholders voting in addition to 75% of shareholders (draft LR 5.4A.4R(3)).

**Option 2 – retain existing requirements**

**11.23** We recognise that the issues in relation to cancellation of listing are complex and that the current 75% threshold has a sound basis. We have proposed enhanced provisions requiring additional approval from a majority of the votes of independent shareholders voting before and it did not receive support from market participants. It may be that this remains the case.

**11.24** We are aware that some stakeholders believe that the risk of cancellation where a large shareholding is present is simply something that should be taken into account when making an investment decision. In our experience, the most common difficulty encountered with the cancellation provisions is where a premium listed company has insufficient free float to meet its continuing obligations but cannot procure sufficient votes to allow it to cancel its listing. We are also aware that certain shareholders may seek to obstruct cancellation for financial gain and that this may be magnified under option 1.

**11.25** As such, we are also proposing to stakeholders the option of retaining the current approach (subject to making some amendments to clarify the voting arrangements that should be followed when seeking approval from shareholders for cancellation).

**11.26** When considering the existing provision in LR 5.2.5R(2), it became clear that since this rules came into effect there have been developments in the Companies Act 2006 regarding the conduct of shareholder votes. Rather than importing the statutory framework wholesale into the Listing Rules, we propose to clarify that a resolution intended to procure cancellation of premium listing must be approved by a majority of not less than 75% of the votes attaching to the shares of those voting on the resolution. This is in line with current market practice and should not impose any additional requirements on premium listed companies.

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

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

# Annex 1

## Cost benefit analysis

1. Section 155 of FSMA requires us to publish a cost benefit analysis of the implications of the proposed amendments. The requirement, under section 155 of FSMA, does not apply if there will be no increase in costs or if any increase in costs will be of minimal significance.
2. In CP12/25 we set out our view of the cost benefit analysis for our original proposals. We explained that the regulatory failure that we wanted to address was that, where there is a controlling shareholder, the current premium rules may not ensure high quality corporate governance. This means that investors, who rely on the premium regime to ensure that they can invest with confidence, may not have effective tools and/or sufficient information to influence company behaviour. As a consequence, they may demand greater return to mitigate the possible risk that their interests will not be observed.
3. Premium listed companies whose behaviour is perceived not to meet the high standards expected of premium listed issuers, can undermine the standard of the regime as a whole. This risks reducing the attractiveness of the market for investors and thus raising the cost of capital for all firms. These proposals attempt to ensure all premium listed firms have a high standard of corporate governance, mitigating the regulatory failure mentioned above.

### Feedback and changes from CP12/25

4. We identified two sets of proposals that would be likely to lead to significant costs:
  - The requirement to have a majority of independent directors where there is a controlling shareholder
  - Voting arrangements for premium issuers
5. Some respondents commented that our CBA did not adequately take into account the impact of the new rules, particularly on existing issuers, and that we had not dealt with the broader costs faced by controlled companies, whether incurred in complying with the new rules or as a result of their inability to do so. A concern was also expressed about the absence of 'grandfathering' or other transitional provisions.
6. These respondents argued that this was a particular issue given that boards are not in a position to compel compliance by controlling shareholders with some of the proposed requirements. This might result in companies moving from the premium segment to standard with a consequent loss of value for shareholders.
7. As a result of these responses, and for the reasons set out in our feedback, we have made two amendments to the proposals in CP 12/25:
  - We are not taking forward the option of requiring a majority of independent directors on boards where an issuer has a controlling shareholder. So the direct costs, insofar as they arose, which we identified that issuers would incur in making new board-level appointments will not occur.

- In relation to our proposals that only holders of premium listed shares should be able to vote on matters arising out of premium Listing Rules set out in LR 9.2.22R, we are proposing to allow a transitional period of two years, which will allow those issuers who are affected to comply with the requirement or to move to the standard segment. These transitional provisions should reduce the impact on any firms affected. We have estimated the costs of this in the wider costs section below.

8. Also in response to comments, we include in this CBA estimates of the wider costs and benefits of this package of proposals. These estimates are necessarily broad, as research into the impact of changing corporate governance standards or Listing Rules finds widely varying estimates of the impact. This is probably because it is very difficult to isolate the effects of changes in regulation from the general noise and variation in share prices and returns.

#### **Consequences of non-compliance with relationship agreement provisions**

9. Respondents expressed concern that companies with a controlling shareholder may not be able to ensure compliance with the requirements for relationship agreements. In this situation a company would move from premium segment to standard, with a consequent loss of value to shareholders.
10. To mitigate the impact on minority shareholders, we are proposing that, where a company does not have an agreement with a controlling shareholder, or where the provisions of the agreement are not complied with, then transactions with the controlling shareholder become subject to prior independent shareholder approval until the next annual report where the directors are able to make a clean statement of compliance. This will avoid the consequence of a company moving from premium to standard solely because of the lack of compliance on the part of a controlling shareholder with the agreement, while retaining an appropriate level of protection for minority shareholders where a controlling shareholder's is not complying with our requirements. The FCA has the ability to modify the proposed requirement to subject all transactions to independent shareholder approval for ordinary course transactions (where this would unnecessarily impede day-to-day operation of the business) on a case-by-case basis.

#### **Other new proposals**

11. As we set out above, we are now consulting further on proposals that are either based on those originally set out in CP12/25 or are altogether new.
12. These are in relation to the following issues (minor changes omitted):
  - definition of a 'controlling shareholder' (LR 6.1.2AR)
  - definition of an 'associate'
  - contents of circulars for electing independent directors (LR 13.8.17R)
  - cancellation provisions (LR 5)
  - requirements for the board to confirm compliance with provisions relating to independent operation of the business (LR 9)
  - consequences of non-compliance with provisions ensuring independent operation of the business (LR 11, discussed above)
  - clarification of the UKLA's ability to modify the free float requirement (LR 6.1.20G)



- treatment of smaller related party transactions (LR 11.1.10R)

### Costs

13. While we are not expecting any current issuers to have any significant difficulty in meeting these new requirements and so expect the vast majority, if not all, to do so, it is possible that some may choose to move from premium to standard listing in response. This section estimates the potential wider costs that an issuer may incur as a result of this. It provides an upper bound of the costs of the package of proposals because issuers that implement the new requirements are showing that the net costs of moving to a standard listing are higher than those of implementing the proposals and hence they prefer to remain premium listed.
14. Given our understanding of the industry, moving to a standard listing is an extreme option that is unlikely to be undertaken by many, if any, premium listed issuers. Therefore we expect the costs to be significantly lower than this upper bound.
15. There are some 50 premium listed issuers that have a controlling shareholder or have structured themselves in a way that would not comply with the voting arrangements required of premium listed issuers under LR 9.2.22R. As these are found within the FTSE350 as a whole, we have first estimated the average market capitalisation of a company within the FTSE350 to be £6.05 billion. On the basis of instances where issuers have moved from premium segment to standard segment as a result of changes in the premium listing requirements, we estimate that, should these firms choose to move to the standard segment, the immediate impact on their market capitalisation would be in the range of 0.15% to 2.5%. This is based on recent instances where issuers have been transferred from a premium to a standard segment as a result of expiry of transitional provisions for issuers with shares that do not confer full voting rights in LR TR 7. However, it is very difficult to isolate the effects of a change in listing status from other immediate or longer-term factors, especially because moving from a premium to a standard listing is often related to previous changes in business strategy or market capitalisation. Nevertheless, it is the best estimate of the cost of moving from a premium to a standard listing.
16. As we state above, we do not expect that any issuer should have significant additional administrative costs to comply with the enhanced requirements for premium listing. Hence we expect there to be at most a very small number who choose to move to a standard listing, and quite likely none of them will. However we cannot rule out the possibility that the small additional compliance costs could outweigh the benefits of remaining premium listed for some firms, leading them to switch to the standard segment. As an upper bound, if we assumed that 10% of the approximately 50 companies mentioned above move from premium segment to standard segment, then we would expect the impact on shareholder value would be in the range of £50 million to £760 million, using the figures from the previous paragraph. We do not expect 10% of such firms to move, so expect the actual costs to be much lower than this. Moreover any firms that do switch are likely to be smaller firms, as large firms gain more in absolute terms from being premium listed, further reducing these costs. Other firms that choose to comply with the enhanced requirements, would incur some compliance costs, though we do not believe these have changed from those estimated in FSA CP12/25.
17. There may also be some transaction costs for shareholders of firms who switch to a standard listing if they decide to sell their shares as a result. However we expect these to be very small, and hence we do not think this will materially change the range mentioned in paragraph 16, because:
  - transaction costs for share dealing are not large,
  - we do not expect many shareholders to sell,



- we do not expect many, if any, firms to switch to the standard segment, and
- any that do are likely to be smaller firms.

**18.** While our concerns have been with companies with controlling shareholders, and our proposed rule changes are predominantly targeted at these (and therefore this is the basis of the costs estimated above), there are a number of rule changes that apply to all premium issuers. These include provisions clarifying our ability to modify the free float requirement and our treatment of smaller related party transactions that are not subject to the requirement of shareholder approval. None of these would be likely to lead to any significant compliance issues for premium listed issuers in general (i.e. without controlling shareholders) as they represent either a clarification of existing provisions or in fact a reduction in existing requirements. We do not believe that there is likely to be any significant cost in relation to such companies.

#### **Benefits**

**19.** Under FSMA we are required to estimate the benefits that will arise from our proposals. The aim of these proposals is to improve protection for minority shareholders in firms with a controlling shareholder. This should reduce the risk premium and hence increase the value of these shares – the direct benefits.

**20.** We would also expect these proposals, and the Listing Regime in general, to have wider and more general benefits, such as improvements in market integrity, an increased ability of firms to raise capital, and an improvement in the attractiveness of the UK premium listed market as a whole. This is because the greater confidence investors feel as a result of their increased protection reduces the risk premium they demand for investing in premium listed shares; the reduced risk this represents leads to more stable markets. These effects should also become apparent through a reduction in the wider market risk premium.

**21.** We do not expect any of the market-wide effects to be large in magnitude, however very small improvements in these wider measures could still equate to very large benefits.

#### **Direct benefits**

**22.** Academic literature consistently finds a positive correlation between investor protection or corporate governance and company performance. The size of this correlation varies considerably between studies, however, which suggests results are context-specific. In FSA Discussion Paper 08/1 (DP08/1) and FSA Occasional Paper 28 (OP28) we surveyed this literature, and this section draws significantly on these.

**23.** One of the strongest impacts was found in Deutsche Bank (2005: 8-9). It indicated consistently that shares of companies with better corporate governance outperformed those with lower standards. Since one of the main proposals relates to voting rights of premium listed shares, their results on the impact of unequal voting rights on share performance appears to be the most appropriate. This showed that, in the period December 2000 to December 2003, companies with equal voting rights rose in value by nearly 5%, while those without fell by almost 50%, a difference of nearly 55% of firm value.

**24.** The same paper includes a study of all FTSE350 firms in the period 2000 to 2005, which used a more general measure of corporate governance. This found that issuers in the top-fifth for corporate governance were worth 34% more than those in the bottom fifth (Deutsche Bank, 2005: 13).

25. The changes proposed in this paper are much smaller than the general requirement for equal voting rights or the difference between the top and bottom fifth of firms regarding corporate governance. Therefore we do not believe the proposals in this paper are likely to increase the value of affected firms by 34% to 55%, which would amount to many tens of billions of pounds. However, the context of these figures is appropriate, being relatively recent, based on UK FTSE 350 companies, and relating to changes in corporate governance generally and voting rights for shareholders specifically. Moreover we would expect those firms caught by these proposals – those with unusual voting structures or controlling shareholders – to be nearer the lower level of corporate governance as measured by the Deutsche Bank paper. As such this study leads us to expect some increase in firm value due to the greater protections and voting rights for minority shareholders, and provides an extreme upper bound of the direct benefits of these proposals.
26. By contrast, the Financial Services Authority's (FSA) own study of the impact of moving from the main market to AIM and vice versa, published in OP28 (Leitterstorf, Nicoletti and Winkler, 2008: 7), found that neither change had a large impact on firm valuation unless the firm issued equity at the same point. At first glance this suggests the difference in corporate governance requirements between the two segments does not significantly affect firm valuation. However OP28 also suggested that the decision to move between these markets is usually the result of changes in firm valuation caused by other factors – firms that moved from AIM to the main market outperformed the market before the change, and vice versa. Any effect the change in regime has on firm valuation is a continuation of the change in firm valuation that has already occurred, and hence would not show up as a statistically significant effect given the bootstrapping methodology used. These factors do not apply where the changes in corporate governance requirements are imposed, as in this case. Moreover, the amount of volatility in share prices generally makes it very hard to detect all but the largest of effects, as smaller effects are swamped by the noise of share price movements. As such this finding does not indicate that there are no benefits of higher regulatory standards on firm valuation, but it does provide a lower bound of the direct benefits of near 0%.
27. Given the huge variability of results in published studies on the impact of corporate governance and regulation, we cannot provide more concrete estimates of the direct benefits. However, because the wide body of evidence cited in DP08/1 and OP28 shows consistent positive impacts of improved corporate governance, we expect the direct benefits to be higher than zero.

#### **Wider benefits**

28. As mentioned, in addition to the direct benefits, we expect that improving the Premium Listing Regime is likely to yield indirect benefits for all premium listed firms. Bushee & Leuz (2005: 254) found that firms that were already compliant with new disclosure requirements introduced by the SEC in 1999, and thus did not need to change their practices, enjoyed positive abnormal returns after the announcement of these requirements. This suggests one positive externality from those disclosure requirements was that they improved the reputation of that market as a whole and made it more attractive to investors, even for firms that did not change their behaviour. The increased requirements provided a credible signal as to the safety of that market segment as whole.

29. A similar externality could exist here: that by improving the protection for investors in those premium listed companies that have controlling shareholders (and others that may change to having such in the future), it enhances the reputation of the premium listed market as a whole, reducing risk premiums and increasing firm value for all premium listed firms. We do not expect this effect to be very large in magnitude, given the limited scope of these proposals in the context of the Premium Listing Regime as a whole, as the majority of the proposals would only apply to premium listed companies that have a controlling shareholder or an unusual voting structure. Nor would we expect this effect to stand out from the volatility and noise inherent in share prices, and thus would not be able to quantify this effect. However, Bushee & Leuz's study does point to wider benefits from enhanced listing requirements. Any increase in value to all premium listed firms, even if by a tiny percentage, could equate to a very large amount in absolute terms. If this occurs, we would expect it to dwarf the direct benefits estimated above. These wider benefits are the primary reason for these proposals.
30. Given the small incremental cost of complying with these new requirements, and the likelihood of the direct benefits mentioned in the previous section and the wider benefits for premium listing as a whole discussed here, we expect these proposals to have net benefits for firms that choose to comply with them and the wider premium listed market. There may be some net costs for firms who switch to the standard segment as a result of these proposals, but as we do not expect many, if any, firms to do this, and if any do we would expect them to be very small firms, we do not expect this to outweigh these net benefits.

### **Bibliography**

Bushee, B.J. and Leuz, C., 2005. Economic consequences of SEC disclosure regulation: Evidence from the OT bulletin board. *Journal of Accounting and Economics*, 39, p.233–264.

Deutsche Bank, 2005. *Beyond the numbers: Materiality of corporate governance*. London: Deutsche Bank.

Leitterstorf, S., Nicoletti, P. and Winkler, C., 2008. The UK listing rules and firm valuation. FSA Occasional Paper, 28.

## Annex 2

# Compatibility statement

### **Compatibility with the FCA's General Duties**

1. This Annex follows the requirements set out in section 138I of the Financial Services and Markets Act 2000 (FSMA) as amended by the Financial Services Act 2012.
2. When consulting on new rules, the FCA is required by section 138I FSMA to include an explanation of why it believes making the proposed rules is compatible with its strategic objective, advances one or more of its operational objectives, and has regard to the regulatory principles in section 3B FSMA. The FCA is also required by section 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.
3. This Annex also sets out our view of how the proposed rules are compatible with our duty to discharge our general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (section 1B(4)). This duty applies insofar as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.
4. This Annex also includes our assessment of the equality and diversity implications of these proposals.

### **The FCA's objectives and regulatory principles**

5. The proposals set out in this consultation are compatible with the FCA's strategic objective of ensuring that the relevant markets function well, as they ensure that the Listing Regime remains effective. The proposals are primarily intended to advance our operational objectives of:
  - Enhancing market integrity – protecting and enhancing the integrity of the UK financial system by ensuring that the Listing Regime maintains investor confidence and continues to promote access to capital for businesses and to facilitate growth.
  - Delivering consumer protection – maintaining and securing an appropriate degree of protection for consumers, by enhancing shareholder protections, particularly in cases where a controlling shareholder of a premium listed company does not maintain an arm's length relationship with it, and ensuring that appropriate information is made available to investors in listed securities. The proposals in this consultation paper aim to ensure that shareholders have the appropriate tools and information when they engage with the companies they own.
6. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in section 3B FSMA.

### ***The need to use our resources in the most efficient and economic way***

7. We believe that the proposals in this consultation paper will have minimal impact on our resources.

***The principle that a burden or restriction should be proportionate to the benefits***

8. We believe the proposals in this consultation paper are proportionate to the benefits. In particular, our proposals seek to balance concerns expressed to us by the investment community with those of the sell-side, and to present targeted measures to reinforce shareholder protections in situations where they need to be strengthened, rather than rules which would raise the general level of regulation.
9. In particular we have identified specific circumstances where it is appropriate to increase minority shareholder protection, while still respecting the rights of the controlling shareholders of a company. These enhanced protections will therefore not significantly increase the regulatory burden on premium listed companies (and controlling shareholders) that comply with the expected standards of behaviour, but will have a very significant impact where this is not the case. However, we do not expect that any company should be unable to comply with the new requirements. As a result, we believe that the package of measures set out in this consultation presents a proportionate response that effectively targets investor concerns.

***The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term***

10. We believe our proposals will lead to increased confidence for investors, promoting greater access to capital for businesses and facilitating growth.

***The general principle that consumers should take responsibility for their decisions***

11. There was broad agreement across stakeholders that an essential part of effective governance was active engagement by all shareholders in their role as responsible owners of listed companies. Our proposals are aimed at:
- increasing transparency
  - strengthening the minority voice at key points in the dialogue between a listed company and its shareholders, and
  - providing enhanced protections when this dialogue is at risk of breaking down
12. We believe that our proposals would provide shareholders with the tools necessary for this active engagement.

***The responsibilities of senior management***

13. Our proposals are designed to set out clearly the behaviour expected of listed companies and especially those with a premium listing. It is the responsibility of the senior management of listed companies to behave towards their shareholders in a way that meets these requirements. All premium and standard listed companies will be subject to the proposed rule changes applicable to their listing category and must comply accordingly. Therefore, the boards of directors of listed companies should consider the revised Listing Rule requirements.

***The desirability of exercising our functions in a way that recognises differences in the nature and objectives of businesses carried on by different persons***

14. We believe that our proposals comply with this principle. Most of our proposed rule changes are specifically targeted to only affect premium listed companies with a controlling shareholder. Therefore, where possible, we have ensured that only companies that have raised concerns in the governance space are affected by the proposed rule changes. The remainder of the proposals that apply to all companies represent a codification of existing practice or do not place an unreasonable burden of regulatory compliance. Furthermore, we are consulting on transitional provisions for a number of provisions, thereby giving all listed companies an appropriate timeframe within which to comply with the new requirements.

***The desirability of publishing information relating to persons***

15. We believe that our proposals do not undermine this principle.

***The principle that we should exercise our functions as transparently as possible***

16. We consider our proposed rule amendments will continue to set out the Listing Rule requirements on issuers of premium and standard listed securities in a transparent manner. In addition, a significant number of our proposals are aimed at enhancing transparency of the existing requirements by setting out existing practice.

***Compatibility with the duty to promote effective competition in the interests of consumers***

17. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers under section 1B(4) FSMA.

***Expected effect on mutual societies***

18. Section 138K of the Financial Services and Markets Act 2000 requires us to state whether in our opinion our proposed rules have a significantly different impact on authorised persons that are mutual societies, in comparison with other authorised persons. The relevant Listing Rules that we propose to include or amend apply equally to listed companies regardless of whether they are an authorised person that is a mutual society or another authorised person.

19. We therefore believe that the impact of our proposals would not significantly differ depending on whether a listed company is:

- an authorised person that is a mutual society, or
- another authorised person

***Equality and diversity***

20. We are required under the Equality Act 2010 to 'have due regard' to the need to eliminate discrimination and to promote equality of opportunity in carrying out our policies, services and functions. As part of this, we conduct an equality impact assessment to ensure that the equality and diversity implications of any new policy proposals are considered.

21. Our equality impact assessment suggests that our proposals do not result in direct discrimination for any of the groups with protected characteristics i.e. age, disability, gender, pregnancy and maternity, race, religion and belief, sexual orientation and transgender, nor do we believe that our proposals should give rise to indirect discrimination against any of these groups. We welcome any comments respondents may have on any equality issues they believe may arise.

# Annex 3

## List of questions

### Independent business

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#### Definition of a controlling shareholder

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

#### Definition of an associate

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

#### 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?

#### Ordinary course transactions

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

#### Waiving the application of the enhanced oversight measures

**Q5:** Do you agree with the guidance proposed in 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)?

#### 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))?

**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?
- 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?

**Independent directors**

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**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?
- 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)?

**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?

**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)?

**Shares in public hands**

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**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?



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**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?

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**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?

**Transitional provisions relating to annual report disclosure**

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

**Miscellaneous amendments to LR 9.8.4R**

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

**Smaller related party transactions**

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

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**The Listing Principles****Consequential changes to LR 7 and DEPP 6**

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

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**Cancellation of listing**

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

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

## Annex 4

# List of non-confidential respondents

C. Allen-Jones

Ashmore Group plc

Association of British Insurers (ABI)

Association for Financial Markets in Europe (AFME)

Association of Investment Companies

Baillie Gifford & Co

Caledonia Investments

Confederation of British Industry (CBI)

CLS Holdings plc

J. S. Coduri

M. Downes

F & C Management Limited

FTSE Limited

J.M.Grundy

GC 100 Group

Hermes Equity Ownership Services

Hikma Pharmaceuticals plc

Institute of Chartered Accountants in England and Wales (ICAEW)

ICSA - Registrar's Group

Investec plc

Investment Management Association (IMA)

Investor Relations Society

JPMorgan Cazenove

JPMorgan Cazenove & UBS

K. Olisa

Law Society of England and Wales and City of London Law Society

Legal & General Investment Management

Local Authority Pension Fund Forum

London Stock Exchange

Morgan Stanley

National Association of Pension Funds Limited (NAPF)

Numis Securities Limited

S. Phillips

PricewaterhouseCoopers

The Quoted Companies Alliance (QCA)

Rights and Accountability in Development

Rothschild

Simmons and Simmons

UBS

USS Management Limited (includes the views of Environment Agency Pension Fund, National Employment Savings Trust, RPMI Railpen and Royal London Asset Management)

Wittington Investments Limited

# Appendix 1

## Handbook text

**(rules that are yet to be approved by the FCA Board and rules that are subject to the consultation)**

**LISTING RULES SOURCEBOOK (LISTING REGIME ENHANCEMENTS)  
INSTRUMENT 2014**

**Powers exercised**

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 Rules);
  - (2) section 77 (Discontinuance and suspension of listing);
  - (3) section 93 (Statement of policy);
  - (4) section 96 (Obligations of issuers of listed securities);
  - (5) section 137A (General rule-making power);
  - (6) section 137T (General supplementary powers); and
  - (7) section 139A (Guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

**Commencement**

- C. This instrument comes into force on [date] 2014.

**Amendments to the Handbook**

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex B to this instrument.
- F. The Listing Rules sourcebook (LR) is amended in accordance with Annex C to this instrument.

**Notes**

- G. In Annex C to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

**Citation**

- H. This instrument may be cited as the Listing Rules Sourcebook (Listing Regime Enhancements) Instrument 2014.

By order of the Board of the Financial Conduct Authority  
[date]

## Annex A

## Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

*controlling shareholder* as defined in LR 6.1.2AR.

*independent director* a director whom a new applicant or listed company has determined to be independent under the UK Corporate Governance Code.

*independent shareholder* any person entitled to vote on the election of directors of a listed company that is not a controlling shareholder of the listed company.

Amend the following as shown.

*associate* (A) in the *FCA Handbook*:

...

(4) (in LR) (when used in the context of a controlling shareholder who is an individual):

(a) that individual's spouse, civil partner or child (together "the individual's family");

(b) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an occupational pension scheme or an employees' share scheme which does not, in either case, have the effect of conferring benefits on persons all or most of whom are controlling shareholders);

(c) any company in whose equity securities the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:

(i) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or

substantially all, matters; or

(ii) to appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters;

(d) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:

(i) a voting interest greater than 30% in the partnership; or

(ii) at least 30% of the partnership.

For the purpose of paragraph (c), if more than one *controlling shareholder* of the *listed company*, its *parent undertaking* or any of its *subsidiary undertakings* is interested in the *equity securities* of another *company*, then the interests of those *controlling shareholders* and their *associates* will be aggregated when determining whether that *company* is an associate of the *controlling shareholder*.

(5) (in *LR*) (when used in the context of a *controlling shareholder* which is a *company*):

(a) any other *company* which is its *subsidiary undertaking* or *parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;

(b) any *company* whose *directors* are accustomed to act in accordance with the *controlling shareholder's* directions or instructions;

(c) any *company* in the capital of which the *controlling shareholder* and any other *company* under paragraph (a) or (b) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (4)(c)(i) or (ii) of this definition;

(d) any individual, any individual and their *associates*, or *associates* of any such individual who is/are or may be able to:

(i) exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters of the *controlling shareholder* or a *company* under paragraph (a),(b) or (c) of this

definition; or

- (ii) appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters of the *controlling shareholder* or a *company* under paragraph (a),(b) or (c) of this definition.

*group*

(A) In the *PRA Handbook*:

(1) ...

...

(B) In the *FCA Handbook*:

....

(4) (in *LR*):

(a) (except in *LR* 6.1.4AG, *LR* 6.1.19R, *LR* 6.1.20BG and, *LR* 8.7.8R(10), *LR* 14.2.2R, *LR* 14.2.3AG, *LR* 18.2.8R and *LR* 18.2.9AG) an *issuer* and its *subsidiary undertakings* (if any); and

(b) (in *LR* 6.1.4AG, *LR* 6.1.19R, *LR* 6.1.20BG and *LR* 8.7.8R(10), *LR* 14.2.2R, *LR* 14.2.3AG, *LR* 18.2.8R and *LR* 18.2.9AG); as defined in section 421 of the *Act*.

...

*mineral expert's report*

(in *LR*) a competent person's report prepared in accordance with paragraph 133 of the *ESMA recommendations*.

*offeror*

(1) (in *MAR* 1 (The Code of Market Conduct) and *LR* 5.2.10R to *LR* 5.2.11D) an offeror as defined in the *Takeover Code*.

(2) (in *MAR* 2 (Buy-backs and Stabilisation)) (as defined in Article 2 of the *Buy-back and Stabilisation Regulation*) the prior holders of, or the entity issuing, the *relevant securities*).

(3) (in *LR* (except *LR* 5.2.10R to *LR* 5.2.11D), *PR* and *FEES* provisions in relation to *PR*) a *person* who makes an *offer of transferable securities to the public*.



## Annex B

## Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Discipline for breaches of the Listing Principles and Premium Listing Principles

- 6.2.16 G The Listing Principles and Premium Listing Principles are set out in ~~LR~~ LR 7. The Listing Principles set out in LR 7.2.1R are a general statement of the fundamental obligations of all listed companies. In addition to the Listing Principles, the Premium Listing Principles set out in LR 7.2.1AR are a general statement of the fundamental obligations of all listed companies with a premium listing of equity shares. The Listing Principles and Premium Listing Principles derive their authority from the *FCA's* rule making powers set out in section 73A(1) (Part 6 Rules) of the *Act*. A breach of a Listing Principle or, if applicable, a Premium Listing Principle, will make a *listed company* liable to disciplinary action by the *FCA*.
- 6.2.17 G In determining whether a Listing Principle or Premium Listing Principle has been broken, it is necessary to look to the standard of conduct required by the Listing Principle or Premium Listing Principle in question. Under each of the Listing Principles and Premium Listing Principles, the onus will be on the *FCA* to show that a *listed company* has been at fault in some way. This requirement will differ depending upon the relevant Listing Principle or Premium Listing Principle.
- 6.2.18 G In certain cases, it may be appropriate to discipline a *listed company* on the basis of ~~the Listing Principles~~ a Listing Principle or, if applicable, a Premium Listing Principle, alone. Examples include the following:
- (1) where there is no detailed ~~listing rule~~ listing rule which prohibits the *behaviour* in question, but the *behaviour* clearly contravenes a Listing Principle or, if applicable, a Premium Listing Principle;
  - (2) where a *listed company* has committed a number of breaches of detailed ~~rules~~ rules which individually may not merit disciplinary action, but the cumulative effect of which indicates the breach of a Listing Principle or, if applicable, a Premium Listing Principle.

## Annex C

## Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

## 5.2 Cancellating listing

...

Cancellation at issuer's request

- 5.2.4 R An *issuer* must satisfy the requirements applicable to it in LR 5.2.5R to ~~LR 5.2.11R~~ 5.2.11FR before the *FCA* will cancel the *listing* of its *securities* at its request.

...

Cancellation of listing of equity shares

- 5.2.5 R Subject to LR 5.2.7R, LR 5.2.10R, ~~LR 5.2.11AR~~ and LR 5.2.12R, an *issuer* with a *premium listing* that wishes the *FCA* to cancel the *listing* of any of its *equity shares* with a *premium listing* must:
- (1) send a *circular* to the holders of the ~~*securities*~~ *shares*. The *circular* must:
    - (a) comply with the requirements of LR 13.3.1R and LR 13.3.2R (contents of all circulars);
    - (b) be submitted to the *FCA* for approval prior to publication; and
    - (c) include the anticipated date of cancellation (which must be not less than 20 *business days* following the passing of the resolution referred to in paragraph (2));
  - (2) obtain, at a general meeting, the prior approval of a resolution for the cancellation from: ~~a majority of not less than 75% of the holders of the *securities* as (being entitled to do so) vote in person or, where proxies are allowed, by proxy;~~
    - (a) a majority of not less than 75% of the votes attaching to the *shares* of those voting on the resolution; and
    - (b) where an *issuer* has a *controlling shareholder*, a simple majority of the votes attaching to the *shares* of those *independent shareholders* voting on the resolution;

- (3) notify a *RIS*, at the same time as the *circular* is despatched to the relevant ~~*security*~~ holders of the *shares*, of the intended cancellation and of the notice period and meeting; and
- (4) ~~also~~ notify a *RIS* of the passing of the resolution in accordance with *LR 9.6.18R*.

...

Cancellation in relation to takeover offers: offeror interested in 50% or less of voting rights

- 5.2.10 R *LR 5.2.5R* does not apply to the cancellation of *equity shares* with a *premium listing* ~~when~~ in the case of a takeover offer if:
- (1) the offeror and any controlling shareholder who is an offeror is interested in 50% or less of the voting rights of an issuer before announcing its firm intention to make its takeover offer;
  - (12) the offeror has by virtue of its shareholdings and acceptances of the takeover offer, acquired or agreed to acquire issued *share* capital carrying 75% of the voting rights of the *issuer*; and
  - (23) the offeror has stated in the offer ~~document~~ document or any subsequent *circular* sent to the ~~*security*~~ holders of the *shares* that a notice period of not less than 20 *business days* prior to cancellation will commence either on the offeror ~~attaining~~ obtaining the required 75% as described in *LR 5.2.10R(12)* or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006 (Right of offeror to buy out minority shareholder).
- 5.2.10A G R For the purposes of *LR 5.2.10R(23)*, the offer ~~document~~ document or *circular* must make clear that the notice period begins only when the offeror has announced that it has acquired or agreed to acquire *shares* representing 75% of the voting rights.
- 5.2.11 R ~~In the circumstances of *LR 5.2.10 R*, the company~~ The issuer must notify shareholders that the required 75% has been ~~attained~~ obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice must state that the notice period has commenced and the anticipated date of cancellation.

Cancellation in relation to takeover offers: offeror interested in more than 50% of voting rights

- 5.2.11A R *LR 5.2.5R* does not apply to the cancellation of *equity shares* with a *premium listing* in the case of a takeover offer if:
- (1) the offeror or any controlling shareholder who is an offeror is

interested in more than 50% of the voting rights of an issuer before announcing its firm intention to make its takeover offer;

- (2) the offeror has by virtue of its shareholdings and acceptances of its takeover offer, acquired or agreed to acquire issued share capital carrying 75% of the voting rights of the issuer;
- (3) unless LR 5.2.11DR applies, the offeror has obtained acceptances of its takeover offer or acquired or agreed to acquire shares from independent shareholders holding a majority of the voting rights held by the independent shareholders on the date its firm intention to make its takeover offer was announced; and
- (4) the offeror has stated in the offer document or any subsequent circular sent to the holders of the shares that a notice period of not less than 20 business days prior to cancellation will commence either on the offeror obtaining the relevant shareholding and acceptances as described in LR 5.2.11AR(2) to (3) or on the first date of issue of compulsory acquisition notices under section 979 of the Companies Act 2006.

- 5.2.11B     R     For the purposes of LR 5.2.11AR(4), the offer document or circular must make clear that the notice period begins only when the offeror has announced that it has acquired or agreed to acquire shares representing 75% of the voting rights and, if relevant has acquired acceptances of its takeover offer from independent shareholders holding a majority of the voting rights held by the independent shareholders.
- 5.2.11C     R     The issuer must notify shareholders that the relevant thresholds described in LR 5.2.11AR(2) to (3) have been obtained and that the notice period has commenced and of the anticipated date of cancellation, or the explanatory letter or other material accompanying the section 979 notice must state that the notice period has commenced and the anticipated date of cancellation.
- 5.2.11D     R     LR 5.2.11AR(3) does not apply where the offeror has by virtue of its shareholdings and acceptances of its takeover offer acquired or agreed to acquire issued share capital carrying more than 80% of the voting rights of the issuer.

...

#### **5.4A     Transfer between listing categories: Equity shares**

...

Shareholder approval required in certain cases

- 5.4A.4     R     (1) This rule applies to a transfer of the *listing of equity shares* with a *premium listing* into or out of the category of *premium listing (investment company)* or a transfer of the *listing of equity shares* out of the category of *premium listing (commercial company)*.

- (2) The *issuer* must:
- (a) send a *circular* to the holders of the *equity shares*;
  - (b) notify a *RIS*, at the same time as the circular is despatched to the relevant holders of the *equity shares*, of the intended transfer and of the notice period and meeting date; and
  - (c) ~~obtain at a general meeting, the prior approval of a resolution for the transfer from not less than 75% of the holders of the *equity shares* as (being entitled to do so) vote in person or, where proxies are allowed, by proxy; and [deleted]~~
  - (d) notify a *RIS* of the passing of the resolution required under (3) below.
- (3) (a) In the case of a transfer of the *listing of equity shares* with a *premium listing* into or out of the category of *premium listing (investment company)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from a majority of not less than 75% of the votes attaching to the *shares* of those voting on the resolution; or
- (b) in the case of a transfer of the *listing of equity shares* with a *premium listing (commercial company)* into the category of *standard listing (shares)*, the *issuer* must obtain at a general meeting the prior approval of a resolution for the transfer from:
- (i) a majority of not less than 75% of the votes attaching to the *shares* of those voting on the resolution; and
  - (ii) where an *issuer* has a *controlling shareholder*, a simple majority of the votes attaching to the *shares* of those *independent shareholders* voting on the resolution.

...

## 6 Additional requirements for premium listing (commercial company)

### 6.1 Application

...

#### Definition of controlling shareholder

6.1.2A R A "*controlling shareholder*" means any *person* who exercises or controls:

- (1) on their own;
- (2) together with any of their *associates*; and

(3) together with any person with whom they are acting in concert;

30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company. For the purposes of calculating voting rights, the following voting rights are to be disregarded:

- (a) any voting rights which such a person exercises (or controls the exercise of) independently in its capacity as bare trustee, investment manager, collective investment undertaking or a long-term insurer in respect of its linked long-term business if no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long-term insurer); or
- (b) any voting rights which a person may hold (or control the exercise of) solely in relation to the direct performance, by way of business, of:
  - (i) underwriting the issue or sale of securities; or
  - (ii) placing securities, where the person provides a firm commitment to acquire any securities which it does not place; or
  - (iii) acquiring securities from existing shareholders or the issuer pursuant to an agreement to procure third-party purchases of securities;

and where the conditions below are satisfied:

- (c) the activities set out in (b)(i) to (iii) are performed in the ordinary course of business;
- (d) the securities to which the voting rights attach are held for a consecutive period of 5 trading days or less, beginning with the first trading day on which the securities are held;
- (e) the voting rights are not exercised within the period the securities are held; and
- (f) no attempt is made directly or indirectly by the person to intervene in (or attempt to intervene in) or exert (or attempt to exert) influence on the management of the issuer within the period the securities are held.

...

~~Control of assets and independence~~ Independent business

- 6.1.4 R ~~A new applicant for the admission of equity shares to a premium listing must demonstrate that: it will be carrying on an independent business as its main activity.~~
- (1) ~~{deleted}~~
- (2) ~~it controls the majority of its assets and has done so for at least the period referred to in LR 6.1.3R(1)(a); and~~
- (3) ~~it will be carrying on an independent business as its main activity.~~
- 6.1.4A G LR 6.1.4R is intended to ensure that the protections afforded to holders of equity shares by the premium listing requirements are meaningful. Notwithstanding any agreement entered into under LR 6.1.4BR(1), factors that may indicate that a new applicant does not satisfy LR 6.1.4R include situations where:
- (1) a majority of the revenue generated by the new applicant's business is attributable to business conducted directly or indirectly with a controlling shareholder (or any associate thereof) of the new applicant; or
- (2) a new applicant does not have:
- (a) strategic control over the commercialisation of its products; and/or
- (b) strategic control over its ability to earn revenue; and/or
- (c) freedom to implement its business strategy; or
- (3) a new applicant cannot demonstrate that it has access to financing other than from a controlling shareholder (or any associate thereof); or
- (4) a new applicant has granted or may be required to grant security over its business in connection with the funding of a controlling shareholder or a member of a controlling shareholder's group; or
- (5) except in relation to a mineral company, a new applicant's business consists principally of holdings of shares in entities that it does not control, including entities where:
- (a) the new applicant is only able to exercise negative control; and/or
- (b) the new applicant's control is subject to contractual arrangements which could be altered without its agreement

or could result in a temporary or permanent loss of control;  
or

(6) a controlling shareholder (or any associate thereof) appears to be able to influence the operations of the new applicant outside its normal governance structures or via material shareholdings in one or more significant subsidiary undertakings.

6.1.4B R Where a new applicant for the admission of equity shares to a premium listing will have a controlling shareholder upon admission, it must have in place:

(1) a written and legally binding agreement which is intended to ensure that the controlling shareholder complies with the independence provisions set out in LR 6.1.4DR; and

(2) a constitution that allows the election of independent directors to be conducted in accordance with the election provisions set out in LR 9.2.2DR and LR 9.2.2ER.

6.1.4C G In order to comply with LR 6.1.4BR(1), where a new applicant will have more than one controlling shareholder, the new applicant will not be required to enter into a separate agreement with each controlling shareholder if a controlling shareholder can with reasonable certainty procure the compliance of another controlling shareholder with the terms of the relevant agreement.

6.1.4D R The independence provisions referred to in LR 6.1.4BR (1) are undertakings that:

(1) transactions and relationships with the controlling shareholder (and/or any of its associates) will be conducted at arm's length and on normal commercial terms;

(2) no controlling shareholder or any of its associates will take any action that would have the effect of preventing the new applicant or listed company from complying with its obligations under the listing rules; and

(3) no controlling shareholder or any of its associates will propose or procure the proposal of a shareholder resolution which is intended or appears to be intended to circumvent the proper application of the listing rules.

...

Mineral companies

...

6.1.9 R Where LR 6.1.8R applies, LR 6.1.3BR(1) and ~~LR 6.1.4R~~ does not apply to a mineral company that applies for the admission of its equity



*shares.*

...

Scientific research based companies

...

- 6.1.12 R Where LR 6.1.11R applies, An an applicant for the *admission* of *equity shares* to a *premium listing* of a *scientific research based company* does not need to satisfy *LR 6.1.3BR* ~~or *LR 6.1.4R*~~ but must:

...

...

Shares in public hands

- 6.1.19 R (1) If an application is made for the *admission* of a *class* of *shares*, a sufficient number of *shares* of that *class* must, no later than the time of *admission*, be distributed to the public in one or more *EEA States*.
- (2) For the purposes of paragraph (1), account may also be taken of holders in one or more states that are not *EEA States*, if the *shares* are listed in the state or states.
- (3) For the purposes of paragraph (1), a sufficient number of *shares* will be taken to have been distributed to the public when 25% of the *shares* for which application for *admission* has been made are in public hands.
- (4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are held, directly or indirectly by:
- ...
- (e) any person or persons in the same group or persons acting in concert who have an interest in 5% or more of the shares of the relevant class; or
- (f) a person that is subject to a lock-up period of longer than 180 calendar days.

...

- 6.1.20 G ~~The FCA may modify LR 6.1.19R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of their distribution to the public. For that purpose, the FCA may take into account shares of the same class that are held (even though they are not listed) in states that are not EEA States.~~

~~[Note: article 48 CARD]~~ [deleted]

6.1.20A     G    (1)    The FCA may modify LR 6.1.19R to accept a percentage lower than 25% if it considers that the market will operate properly with a lower percentage in view of the large number of shares of the same class and the extent of their distribution to the public.

[Note: article 48 CARD]

(2)    In considering whether to grant a modification, the FCA may take into account the following specific factors:

(a)    shares of the same class that are held (even though they are not listed) in states that are not EEA States;

(b)    the number and nature of the public shareholders; and

(c)    in relation to premium listing (commercial companies), whether the expected market value of the shares in public hands at admission exceeds £100 million.

6.1.20B     G    When calculating the number of shares held in public hands for the purposes of LR 6.1.19R(4)(e), the FCA may disregard the holdings of investment managers in the same group where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the organisation to which the investment manager belongs.

6.1.20C     G    A financial instrument that provides a long economic exposure to shares, but does not provide for control over decisions in respect of those shares, should not be treated as an interest for the purposes of LR 6.1.19R(4)(e) except where the provider of a contract for difference acquires a long position in shares underlying the contract for difference which results in the provider having an interest of 5% or more of the relevant class of shares when aggregated with its other interests.

...

Voting on matters relevant to premium listing

6.1.28     R    A new applicant must satisfy the FCA that its constitution will allow it to comply with LR 9.2.22R.

...

## **7.1 Application and purpose**

Application

7.1.1     R    (1)    The Listing Principles in LR 7.2.1R apply to every listed company with

~~a premium listing of equity shares~~ in respect of all its obligations arising from the ~~listing rules, and the disclosure rules, and transparency rules and corporate governance rules.~~

- (2) In addition to the Listing Principles referred to in (1), the Premium Listing Principles in LR 7.2.1AR apply to every listed company with a premium listing of equity shares in respect of all its obligations arising from the listing rules, disclosure rules, transparency rules and corporate governance rules.

#### Purpose

- 7.1.2 G The purpose of the Listing Principles and the Premium Listing Principles is to ensure that *listed companies* pay due regard to the fundamental role they play in maintaining market confidence and ensuring fair and orderly markets.
- 7.1.3 G The Listing Principles and, if applicable, the Premium Listing Principles are designed to assist *listed companies* in identifying their obligations and responsibilities under the ~~listing rules, and the disclosure rules, and transparency rules~~ and corporate governance rules. The Listing Principles and Premium Listing Principles should be interpreted together with relevant *rules* and *guidance* which underpin the Listing Principles and the Premium Listing Principles.
- 7.1.4 G *DEPP 6* (Penalties) and *EG 7* set out *guidance* on the consequences of breaching ~~the Listing Principles~~ a Listing Principle or, if applicable, a Premium Listing Principle.

## 7.2 The Listing and Premium Listing Principles

- 7.2.1 R The Listing Principles are as follows:

<u>Listing Principle 1</u>	<del>A listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors.</del> <u>A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.</u>
<u>Listing Principle 2</u>	<del>A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.</del> <u>A listed company must deal with the FCA in an open and co-operative manner.</u>
Principle 3	<del>A listed company must act with integrity towards the holders and potential holders of its listed equity shares.</del> [deleted]

Principle 4	<del>A listed company must communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation of a false market in such listed equity shares. [deleted]</del>
Principle 5	<del>A listed company must ensure that it treats all holders of the same class of its listed equity shares that are in the same position equally in respect of the rights attaching to such listed equity shares. [deleted]</del>
Principle 6	<del>A listed company must deal with the FCA in an open and co-operative manner. [deleted]</del>

7.2.1A R The Premium Listing Principles are as follows:

<u>Premium Listing Principle 1</u>	<u>A listed company must take reasonable steps to enable its directors to understand their responsibilities and obligations as directors.</u>
<u>Premium Listing Principle 2</u>	<u>A listed company must act with integrity towards the holders and potential holders of its premium listed shares.</u>
<u>Premium Listing Principle 3</u>	<u>All equity shares in a class that has been admitted to premium listing must carry an equal number of votes on any shareholder vote.</u>
<u>Premium Listing Principle 4</u>	<u>Where a listed 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 listed company.</u>
<u>Premium Listing Principle 5</u>	<u>A listed company must ensure that it treats all holders of the same class of its listed equity shares that are in the same position equally in respect of the rights attaching to those listed equity shares.</u>
<u>Premium Listing Principle 6</u>	<u>A listed company must communicate information to holders and potential holders of its listed equity shares in such a way as to avoid the creation of a false market in those listed equity shares.</u>

#### Guidance on ~~Principle 2~~ the Listing and Premium Listing Principles

7.2.2 G Listing Principle 2 1 is intended to ensure that *listed companies* have adequate procedures, systems and controls to enable them to comply with their obligations under the *listing rules*, ~~and the disclosure rules~~, ~~and transparency rules~~ and *corporate governance rules*. In particular, the FCA considers that *listed companies* should place particular emphasis on

ensuring that they have adequate procedures, systems and controls in relation to, where applicable:

- (1) identifying whether any obligations arise under *LR 10* (Significant transactions) and *LR 11* (Related party transactions); and
- (2) the timely and accurate disclosure of information to the market.

7.2.3 G Timely and accurate disclosure of information to the market is a key obligation of *listed companies*. For the purposes of Listing Principle 2 1, a *listed company with a premium listing* should have adequate systems and controls to be able to:

- (1) ensure that it can properly identify information which requires disclosure under the *listing rules*, ~~or the *disclosure rules*, and~~ *transparency rules* or corporate governance rules in a timely manner; and
- (2) ensure that any information identified under (1) is properly considered by the *directors* and that such a consideration encompasses whether the information should be disclosed.

7.2.4 G In assessing whether the voting rights attaching to different classes of *premium listed shares* are proportionate for the purposes of Premium Listing Principle 4, the *FCA* will have regard to the following non-exhaustive list of factors:

- (1) the extent to which the rights of the classes differ other than their voting rights, for example with regard to dividend rights or entitlement to any surplus capital on winding up;
- (2) the extent of dispersion and relative liquidity of the classes; and/or
- (3) the commercial rationale for the difference in the rights.

...

## 8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

8.2.1 R A *company* with, or applying for, a *premium listing* of its *equity shares* must appoint a *sponsor* on each occasion that it:

...

- (6) is required by *LR 11.1.10R(2)(b)* to provide ~~the *FCA*~~ a *listed company* with a confirmation that the terms of the proposed *related party transaction* are fair and reasonable; or

...

...

## 9.2 Requirements with continuing application

...

~~Control of assets and independent~~ Independent business

- 9.2.2A R ~~A listed company that has equity shares listed~~ must comply with *LR 6.1.4R(2) and (3)* 6.1.4R, and, if applicable, *LR 6.1.4BR*, at all times. This rule does not apply to a ~~mineral company~~, a ~~scientific research based company~~, a ~~closed-ended investment fund~~ or an ~~open-ended investment company~~.
- 9.2.2B R Where as a result of changes in ownership or control of a listed company, a person becomes a controlling shareholder of a listed company, the listed company will be allowed:
- (1) a period of not more than 6 months from the event that resulted in that person becoming a controlling shareholder to rectify any breach of *LR 6.1.4BR(1)* (as applied by *LR 9.2.2AR*); and
  - (2) until the date of the next general of meeting of the listed company, other than any meeting for which notice has already been given, to rectify any breach of *LR 6.1.4BR(2)* (as applied by *LR 9.2.2AR*).
- 9.2.2C G In complying with *LR 6.1.4BR(2)* (as applied by *LR 9.2.2AR*), a listed company may provide for an existing independent director who is being proposed for re-election (including any such director who was appointed by the board of the listed company until the next annual general meeting) to remain in office until any resolution required by *LR 9.2.2ER* has been voted on.
- 9.2.2D R Where a listed company has a controlling shareholder, the election or re-election of any independent director must be approved by separate resolutions of:
- (1) the shareholders of the listed company; and
  - (2) the independent shareholders of the listed company.
- 9.2.2E R If either of the resolutions required under *LR 9.2.2DR* is defeated, the listed company may propose a further resolution to elect or re-elect the proposed independent director. Any such further resolution:
- (1) must not be voted on within a period of 90 days from the date of the original vote;
  - (2) may be passed by a vote of the shareholders of the listed company voting as a single class.

- 9.2.2F R A listed company must comply with the independence provisions contained in any agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR at all times.
- 9.2.2G G In addition to the annual confirmation required to be included in a listed company's annual financial report under LR 9.8.4R(14), the FCA may request information from a listed company under LR 1.3.1R(3) to confirm or verify that an independence provision contained in any agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR is being or has been complied with.

...

#### Shares in public hands

- 9.2.15 R A listed company must comply with LR 6.1.19R at all times.
- 9.2.15A G Where the FCA has modified LR 6.1.19R to accept a percentage lower than 25% on the basis that the market will operate properly with a lower percentage, but the FCA considers that in practice the market for the shares is not operating properly, the FCA may revoke the modification in accordance with LR 1.2.1R(4).
- 9.2.16 R ~~A listed company that no longer complies with LR 6.1.19R must notify the FCA as soon as possible of its non-compliance. [deleted]~~
- 9.2.17 G ~~A listed company should consider LR 5.2.2G(2) in relation to its compliance with LR 6.1.19R. [deleted]~~

...

#### Voting on matters relevant to premium listing

- 9.2.22 R Where the provisions of LR 5.2, LR 5.4A, LR 9.4, LR 9.5, LR 10, LR 11, LR 12 or LR 15 require a shareholder vote to be taken, that vote must be decided by a resolution of the holders of the listed company's shares that have been admitted to premium listing.
- 9.2.23 G The FCA may modify the operation of LR 9.2.22R in exceptional circumstances, for example to accommodate the operation of:
- (1) special share arrangements designed to protect the national interest;
  - (2) dual listed company voting arrangements; and
  - (3) voting rights attaching to preference shares or similar securities that are in arrears.

#### Notifications to the FCA: notifications regarding continuing obligations

- 9.2.24 R A listed company must notify the FCA without delay if it no longer complies with any continuing obligation set out in LR 9.2.2AR, LR 9.2.2DR, LR 9.2.2ER, LR 9.2.15R or LR 9.2.22R.

Notifications to the FCA: notifications regarding compliance with independence provisions

- 9.2.25 R A listed company must notify the FCA without delay if an independence provision contained in an agreement entered into under LR 6.1.4(1)BR or LR 9.2.2AR has not been complied with.

Notifications to the FCA: notifications regarding LR 9.8.4AR

- 9.2.26 R A listed company must notify the FCA without delay if its annual financial report contains a statement of the kind specified under LR 9.8.4AR.

Inability to comply with continuing obligations

- 9.2.27 G Where a listed company is unable to comply with a continuing obligation set out in LR 9.2, it should consider seeking a cancellation of listing or applying for a transfer of its listing category. In particular, the listed company should note LR 5.2.2G(2) and LR 5.4A.16G.

...

## **9.8 Annual financial report**

...

Information to be included in annual report and accounts

- 9.8.4 R In addition to the requirements set out in DTR 4.1 a listed company must include in its annual financial report, where applicable, the following:

...

- (3) ~~details of any small related party transaction as required by LR 11.1.10R(2)(e); [deleted]~~

...

- (10) details of any *contract of significance* subsisting during the period under review:

- (a) to which the *listed company*, or one of its *subsidiary undertakings*, is a party and in which a *director* of the *listed company* is or was materially interested; and
- (b) between the *listed company*, or one of its *subsidiary undertakings*, and a ~~controlling shareholder~~ controlling shareholder;



- (11) details of any contract for the provision of services to the *listed company* or any of its *subsidiary undertakings* by a ~~controlling shareholder~~ *controlling shareholder*, subsisting during the period under review, unless:
- (a) it is a contract for the provision of services which it is the principal business of the shareholder to provide; and
  - (b) it is not a *contract of significance*;
- (12) details of any arrangement under which a shareholder has waived or agreed to waive any dividends; ~~and~~
- (13) where a shareholder has agreed to waive future dividends, details of such waiver together with those relating to dividends which are payable during the period under review; and
- (14) a statement made by the board:
- (a) that the *listed company* has entered into all agreements required under LR 9.2.2AR; or
  - (b) where the *listed company* has not entered into an agreement required under LR 9.2.2AR:
    - (i) a statement that the *FCA* has been notified of that non-compliance in accordance with LR 9.2.24R; and
    - (ii) a brief description of the reasons for failing to enter into the agreement that enables shareholders to evaluate the impact of non-compliance on the *listed company*; and
  - (c) that the independence provisions included in all agreements entered into under LR 6.1.4BR(1) or LR 9.2.2AR have been complied with throughout the accounting period covered by the annual financial report; or
  - (d) where an independence provision included in an agreement entered into under LR 6.1.4BR(1) or LR 9.2.2AR has not been complied with throughout the accounting period covered by the annual financial report:
    - (i) a statement that the *FCA* has been notified in accordance with LR 9.2.25R; and
    - (ii) a brief description of the background to and reasons for failing to comply with the relevant independence provision that enables shareholders to evaluate the impact of non-compliance on the *listed company*.

- 9.8.4A R Where an *independent director* declines to support a statement made under LR 9.8.4R(14)(a) or (c), the statement must record this fact.
- 9.8.4B G Where a *listed company*'s annual financial report contains a statement of the type referred to in LR 9.8.4R(14)(b) or (d), the *FCA* may still take any action it considers necessary in relation to the underlying breach by the *listed company* of LR 9.2.2AR or LR 9.2.2FR.
- 9.8.4C R The *listed company*'s annual financial report must include the information required under LR 9.8.4R in a single identifiable section, unless the annual financial report includes a cross reference table indicating where that information is set out.

...

## 11.1 Related party transactions

### Application

- 11.1.1 R This chapter applies to a *company* that has a *premium listing*.
- 11.1.1A R Where a *company* has a *premium listing* and:
- (1) it is not in compliance with:
    - (a) the provisions in LR 9.2.2AR, in so far as they relate to LR 6.1.4BR(1); or
    - (b) LR 9.2.2FR; or
  - (2) it becomes aware that a *controlling shareholder* is not in compliance with an independence provision contained in an agreement entered into under LR 6.1.4(1)BR or LR 9.2.2AR; or
  - (3) an *independent director* declines to support a statement made under LR 9.8.4R(14)(a) or (c);
- LR 11.1.1CR applies.
- 11.1.1B G In exceptional circumstances, the *FCA* may consider modifying the application of LR 11.1.1AR, in accordance with LR 1.2.1R.
- 11.1.1C R The *company* cannot rely on any of the following provisions in relation to a transaction or arrangement with the relevant *controlling shareholder* or any *associate* of that *controlling shareholder*:
- (1) the concessions specified in LR 11.1.5R(1), (2) and (3) in relation to transactions or arrangements in the ordinary course of business;
  - (2) LR 11.1.6R; and
  - (3) LR 11.1.10R.

11.1.1D G If the FCA considers that it would be appropriate to do so, the FCA may modify the application of LR 11.1.1CR(1), in accordance with LR 1.2.1R.

11.1.1E R Where a company that has a premium listing has been subject to the provisions of LR 11.1.1AR, LR 11.1.1CR will continue to apply to the company until the publication of an annual financial report which:

- (1) contains the statements required under LR 9.8.4R(14) (a) and (c); and
- (2) does not contain a statement made under LR 9.8.4AR.

...

#### Modified requirements for smaller related party transactions

- 11.1.10 R (1) This rule applies to a *related party transaction* if each of the *percentage ratios* is less than 5%, but one or more of the *percentage ratios* exceeds 0.25%.
- (2) Where this rule applies, LR 11.1.7R does not apply but instead the *listed company* must ~~before entering into the transaction or arrangement (as the case may be):~~
- (a) ~~inform the FCA in writing of the details of the proposed transaction or arrangement; [deleted]~~
  - (b) ~~provide the FCA with~~ before entering into the transaction or arrangement, obtain written confirmation from a *sponsor* that the terms of the proposed transaction or arrangement with the *related party* are fair and reasonable as far as the shareholders of the *listed company* are concerned; and
  - (c) ~~undertake in writing to the FCA to include details of the transaction or arrangement in the listed company's next published annual accounts, including, if relevant, the identity of the related party, the value of the consideration for the transaction or arrangement and all other relevant circumstances. as soon as possible upon entering into the transaction or arrangement, make an RIS announcement which sets out:~~
    - (i) the identity of the related party;
    - (ii) the value of the consideration for the transaction or arrangement;
    - (iii) a brief description of the transaction or arrangement;
    - (iv) the fact that the transaction or arrangement fell within LR 11.1.10R; and

(v) any other relevant circumstances.

...

## 13.8 Other circulars

...

### Election of independent directors

13.8.17 R Where a *listed company* has a *controlling shareholder*, a circular to shareholders relating to the election of an *independent director* must include:

- (1) details of any existing or previous relationship or agreement the proposed *independent director* has or had with the *listed company*, its *directors* or its *controlling shareholder*, or a confirmation that there have been no such relationships or agreements; and
- (2) a description of:
  - (a) why the *listed company* considers the proposed *independent director* will be an effective *director*;
  - (b) how the *listed company* has determined that the proposed *director* is an *independent director*; and
  - (c) the process followed by the *listed company* for the selection of the proposed *independent director*.

## 14.2 Requirements for listing

...

### Shares in public hands

14.2.2 R ...

- (4) For the purposes of paragraphs (1), (2) and (3), *shares* are not held in public hands if they are held, directly or indirectly by:
  - (a) ...; or
  - (b) ...; or
  - (c) ...; or
  - (d) any *person* who under any agreement has a right to nominate a *person* to the board of *directors* of the *applicant*;  
or

- (e) any *person* or *persons* in the same *group* or *persons* acting in concert who have an interest of 5% or more of the *shares* of the relevant class; or
- (f) a *person* who is subject to a lock-up period of longer than 180 days.

...

14.2.3A G When calculating the number of *shares* held in public hands for the purposes of LR 14.2.2R(4)(e), the FCA may disregard the holdings of *investment managers* in the same *group* where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the organisation to which the *investment manager* belongs.

14.2.3B G A *financial instrument* that provides a long economic exposure to *shares*, but does not provide for control over decisions in respect of those *shares*, should not be treated as an interest for the purposes of LR 14.2.2R(4)(e) except where the provider of a *contract for difference* acquires a long position in *shares* underlying the *contract for difference* which results in the provider having an interest of 5% or more of the relevant class of *shares* when aggregated with its other interests.

#### Shares in public hands

- 14.3.2 R (1) A *company* must comply with LR 14.2.2R at all times.
- (2) A *company* that no longer complies with LR 14.2.2R must notify the FCA as soon as possible of its non-compliance.

14.3.2A G Where the FCA has modified LR 14.2.2R to accept a percentage lower than 25% on the basis that the market will operate properly with a lower percentage, but the FCA considers that in practice the market for the *shares* is not operating properly, the FCA may revoke the modification in accordance with LR 1.2.1R(4).

14.3.3 G A *company* should consider LR 5.2.2G(2) in relation to its compliance with LR 6.1.19R.

...

## 15.2 Requirements for listing

15.2.1 R To be *listed*, an *applicant* must comply with:

...

- (2) the following provisions of LR 6 (Additional requirements for

premium listing (commercial company);

...

(c) LR 6.1.16R to 6.1.25R and LR 6.1.28R; and

...

...

#### 15.4 Continuing obligations

...

##### Independent business

15.4.27 R A closed-ended investment fund is not required to comply with LR 9.2.2AR to LR 9.2.2FR.

##### Notifications to the FCA

15.4.28 R (1) A closed-ended investment fund is not required to comply with LR 9.2.24R in so far as it relates to LR 9.2.2AR, LR 9.2.2DR and LR 9.2.2ER.

(2) A closed-ended investment fund is not required to comply with LR 9.2.25R to LR 9.2.26R.

##### Annual financial statement

15.4.29 R A closed-ended investment fund is not required to comply with LR 9.8.4R(14).

##### Election of independent directors

15.4.30 R A closed-ended investment fund is not required to comply with LR 13.8.17R.

...

#### 16.4 Requirements with continuing application

16.4.1 R An *open-ended investment company* must comply with:

(1) LR 9 (Continuing obligations) except LR 9.2.2AR to LR 9.2.2FR, LR 9.2.6BR, LR 9.2.15R, LR 9.2.20R, LR 9.2.22R, LR 9.2.24R, LR 9.2.25R, LR 9.2.26R, and LR 9.3.11R and LR 9.8.4R(14);

...

16.4.6 [deleted]

##### Election of independent directors

16.4.7 R A open-ended investment company is not required to comply with LR 13.8.17R.

...

## 18 Certificates representing certain securities: Standard listing

### 18.2 Requirements for listing

...

18.2.8 R ...

(4) For the purposes of paragraphs (1), (2) and (3), certificates are not held in public hands if they are held, directly or indirectly by:

...

(e) any person or persons in the same group or persons acting in concert who have an interest in 5% or more of the certificates of the relevant class; or

(f) a person that is subject to a lock-up period of longer than 180 calendar days.

...

18.2.9A G When calculating the number of certificates held in public hands for the purposes of LR 18.2.8R(4)(e), the FCA may disregard the holdings of investment managers in the same group where investment decisions are made independently by the individual in control of the relevant fund and those decisions are unfettered by the organisation to which the investment manager belongs.

18.2.9B G A financial instrument that provides a long economic exposure to certificates, but does not provide for control over decisions in respect of those certificates should not be treated as an interest for the purposes of LR 18.2.8R(4)(e) except where the provider of a contract for difference acquires a long position in certificates underlying the contract for difference which results in the provider having an interest of 5% or more in the certificates when aggregated with its other interests.

## Appendix 1 Relevant definitions

*associate*

- (A) in relation to a *director, substantial shareholder, or person exercising significant influence*, who is an individual:  
...
- (B) in relation to a *substantial shareholder or person exercising significant influence*, which is a *company*:  
...
- (C) when used in the context of a *controlling shareholder* who is an individual:
- (1) that individual's spouse, civil partner or child (together "the individual's family");
- (2) the trustees (acting as such) of any trust of which the individual or any of the individual's family is a beneficiary or discretionary object (other than a trust which is either an occupational pension scheme or an employees' share scheme which does not, in either case, have the effect of conferring benefits on persons all or most of whom are *controlling shareholders*);
- (3) any *company* in whose *equity securities* the individual or any member or members (taken together) of the individual's family or the individual and any such member or members (taken together) are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they are (or would on the fulfilment of the condition or the occurrence of the contingency be) able:
- (a) to exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters; or
- (b) to appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters;
- (4) any partnership whether a limited partnership or *limited liability partnership* in which the individual or any member or members (taken together) of the individual's family are directly or indirectly interested (or have a conditional or contingent entitlement to become interested) so that they hold or control or would on the fulfilment of the condition or the occurrence of the contingency be able to hold or control:
- (a) a voting interest greater than 30% in the partnership; or



(b) at least 30% of the partnership.

For the purpose of paragraph (3), if more than one *controlling shareholder* of the *listed company*, its *parent undertaking* or any of its *subsidiary undertakings* is interested in the *equity securities* of another *company*, then the interests of those *controlling shareholders* and their *associates* will be aggregated when determining whether that *company* is an associate of the *controlling shareholder*.

(D) when used in the context of a *controlling shareholder* which is a company:

(1) any other *company* which is its *subsidiary undertaking* or *parent undertaking* or fellow *subsidiary undertaking* of the *parent undertaking*;

(2) any *company* whose *directors* are accustomed to act in accordance with the *controlling shareholder's* directions or instructions;

(3) any *company* in the capital of which the *controlling shareholder* and any other *company* under paragraph (1) or (2) taken together, is (or would on the fulfilment of a condition or the occurrence of a contingency be) able to exercise power of the type described in paragraph (3)(a) or (b) of this definition.

(4) any individual who is or may be able to:

(a) exercise or control the exercise of 30% or more of the votes able to be cast at general meetings on all, or substantially all, matters of the *controlling shareholder* or a *company* under paragraph (1),(2) or (3) of this definition; or

(b) appoint or remove *directors* holding a majority of voting rights at board meetings on all, or substantially all, matters of the *controlling shareholder* or a *company* under paragraph (1),(2) or (3) of this definition.

*controlling shareholder*

as defined in LR 6.1.2AR.

*group*

(1) (except in LR 6.1.4AG, LR 6.1.19R, LR 6.1.20AG and LR 8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R, LR 18.2.9AG, an issuer and its subsidiary undertakings (if any); and

(2) in LR 6.1.4AG, LR 6.1.19 R, LR 6.1.20AG and LR 8.7.8R(10), LR 14.2.2R, LR 14.2.3AG, LR 18.2.8R, LR 18.2.9AG, as defined in section 421 of the Act.

<u>independent director</u>	<u>a director whom a new applicant or listed company has determined to be independent under the UK Corporate Governance Code.</u>
<u>independent shareholder</u>	<u>any person entitled to vote on the election of directors of a listed company that is not a controlling shareholder of the listed company.</u>
<u>mineral expert's report</u>	<u>a competent person's report prepared in accordance with paragraph 133 of the ESMA recommendations.</u>
<u>offeror</u>	(a) in LR 5.2.10R to LR 5.2.11D, an offeror as defined in the <i>Takeover Code</i> ; and  (b) elsewhere in LR, a <del>person</del> <u>person</u> who makes an offer of transferable securities to the public.

**LR TR 11 Transitional Provisions in relation to continuing obligations regarding premium listing**

<b><u>(1)</u></b>	<b><u>(2) Material to which the transitional provision applies</u></b>	<b><u>(3)</u></b>	<b><u>(4) Transitional provision</u></b>	<b><u>(5) Transitional provision: dates in force</u></b>	<b><u>(6) Handbook provision: coming into force</u></b>
1.	<u>LR 9.2.2AR</u>	<u>R</u>	<u>The requirement of LR 9.2.2AR to, if applicable, comply with LR 6.1.4BR(1) at all times, does not apply.</u>	<u>From [x 2014] up to and including [x 2014 plus 6 months]</u>	<u>[x 2014]</u>
2.	<u>LR 9.2.2AR</u>	<u>R</u>	<u>The requirement of LR 9.2.2AR to, if applicable, comply with LR 6.1.4BR(2) at all times, does not apply.</u>	<u>From [x 2014] up to and including the date of the next general meeting of the listed company other than any meetings for which notice has already been given</u>	<u>[x 2014]</u>
3.	<u>LR 9.2.2DR</u>	<u>R</u>	<u>LR 9.2.2DR does not apply.</u>	<u>From [x 2014] up to and including the date of the</u>	<u>[x 2014]</u>

				<u>next general of meeting of the listed company other than any meetings for which notice has already been given</u>	
<u>4.</u>	<u>LR 9.2.22R</u>	<u>R</u>	<u>Where a listed company is admitted to the premium listing category of the official list on or before [x 2014], LR 9.2.22R does not apply.</u>	<u>From [x 2014] up to and including [x 2014 plus 2 years]</u>	<u>[x 2014]</u>
<u>5.</u>	<u>LR 9.8.4CR</u>	<u>R</u>	<u>LR 9.8.4CR does not apply to a listed company with a financial year ending on or before [x plus 3 months 2014].</u>	<u>From [x] 2014</u>	<u>[x 2014]</u>

Financial Conduct Authority



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