

FSA's consultation on 'Listing Regime Review' (CP 09/24)

Submission from the Association of Investment Companies (AIC)

The AIC welcomes the opportunity to respond to the FSA's consultation on the listing regime (CP 09/24 'Policy statement for CP 08/21 and further minor consultation').

The AIC is the trade body representing some 350 closed-ended investment companies with £66 billion of assets under management. The vast majority of our Members are listed on the London Stock Exchange and apply chapter 15 of the Listing Rules.

Our comments on this consultation are set out below. The AIC will also be responding to CP 09/28 'Consultation on changes to the listing categories consequent to CP09/24' in due course.

Consultation questions

Q1: Do you have any comments on how the drafting of this rule which requires overseas Premium Listed companies to offer pre-emption rights to their shareholders may be improved?

Pre-emption rights are an important aspect of investor protection. The AIC **agrees** with the proposal to require overseas companies in the Premium segment to offer pre-emption rights to their shareholders. While this raises the standards that apply to overseas companies in this segment beyond a disclosure regime, it will create consistency in the pre-emption rules between UK and overseas companies with a Premium listing.

The AIC notes that most of its Members which are domiciled in Guernsey or Jersey already offer pre-emption rights, and that practice is well established in this area.

The consultation paper states that the new rules are to be effective from 6 April 2010. However, the draft provisions do not include any transitional arrangements. Companies not currently offering pre-emption rights will need to change their Articles at a general meeting. The AIC therefore **recommends** that transitional provisions are introduced to enable companies which currently do not offer pre-emption rights to make the necessary amendments to their Articles at or before the company's next AGM.

Providing transitional provisions for pre-emption rights would be consistent with the proposal to provide transitional arrangements for overseas Premium Listed companies to 'comply or explain' against the UK Combined Code. However, the AIC **recommends** that the transitional rules for overseas Premium Listed companies to 'comply or explain' against the UK Combined Code should be extended from 'financial years beginning on or after 31 December 2009' to 'financial years beginning on or after 31 December 2010'. As the draft rules currently stand, a company with a December year end

would only have until 1 January 2010 to make any necessary changes if it intends to comply with the Combined Code for the full financial year. By delaying the transitional period, companies wishing to follow the 'comply' route will have a more realistic timetable to consider and amend their corporate governance arrangements as required.

Q2: Do you agree with the new rule which clarifies that to be admitted to the Official List, equity securities must be admitted to trading on a Regulated Market in the UK?

The AIC **agrees** that it is useful for the FSA to clarify its position.

Q3: Do you agree with this cost-benefit analysis?

A number of the AIC's offshore Members already apply the AIC's Code of Corporate Governance. The AIC Code has been endorsed by the Financial Reporting Council as an alternative approach for investment companies to meet their obligations in relation to the Combined Code and LR 9.8.6. It is expected that the AIC's offshore Members not currently applying the AIC Code of Corporate Governance would adopt this route as an alternative to 'complying or explaining' against the Combined Code. The AIC Code of Corporate Governance is tailored to the specific circumstances of the sector and can therefore be applied more appropriately, and hence more cost-effectively, than the Combined Code.

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