Norges Bank Investment Management

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Financial Conduct Authority
12 Endeavour Square
London E20 1JN

Date: 28.06.2023

UK Primary Markets Effectiveness Review

We refer to the Financial Conduct Authority's consultation on the Primary Markets Effectiveness Review: Feedback to DP22/2 and proposed equity listing rule reforms (CP23/10). We appreciate the opportunity to contribute our perspective.

Norges Bank Investment Management is the investment management division of the Norwegian Central Bank (Norges Bank) and is responsible for investing the Norwegian Government Pension Fund Global. NBIM is a globally diversified investment manager with 12,429 billion Norwegian kroner at year end 2022, 51,7 billion of which invested in the shares of UK companies. We are a long-term investor, working to safeguard and build financial wealth for future generations.

NBIM is a long-term investor supporting well-functioning and transparent markets. NBIM primarily invests in equities listed on regulated markets, therefore we have an interest in these listed markets reflecting the value creation of the economy, including new and growing businesses. NBIM understands the objective of maintaining the attractiveness of the UK as a global capital market, and recognises the challenges linked to the reduced number of IPOs over recent years. However, we are concerned that the suggested reforms to the listing rules would result in weaker investor protection and could harm the UK's reputation as a market with high corporate governance standards.

We do see some scope for simplifying the requirements in the listing rules or the corporate governance code, but this should not come at the expense of weakening investor protection. We appreciate the FCA's openness about the consequences of the proposed reforms in terms of higher risk being shifted onto minority investors, and the resulting need for market-based due diligence by the largely institutional investor base in UK equities. However, the required monitoring is likely to result in increased costs and reduced efficiencies.

We are concerned about the FCA's proposal to broaden the availability of dual class shares and to remove shareholder votes on both related party transactions and significant transactions. We believe that the "one share, one vote" principle is the best regime to secure the fair treatment of all shareholders. Voting rights should be aligned with cash flow rights to

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ensure that shareholders have the appropriate incentives when exercising their voting rights on fundamental decisions concerning the company. Any deviation from this principle, to incentivize founders and owners to seek listing or otherwise, should be strictly contained in both magnitude and duration. At the very least, the FCA should maintain a sunset clause aligned with the current limited dual class share regime, i.e. at 5 years, rather than extending it to 10 years. The reforms could also have consequences for the FCA's work on stewardship. As the FCA is encouraging investors to play a greater role in their engagement with companies, broadening the use of unequal voting rights could decrease their influence. Voting is an important tool that allows shareholders to hold boards into account and can be used as an escalation tool as part of stewardship strategies.

Furthermore, we believe that the shareholder approval for related party transactions (RPTs) and significant transactions has effectively reduced the incidence of value diluting corporate events and has been an efficient tool protecting the interests of minority shareholders. We are not convinced by the argument that the insignificant number of RPT votes held in 2017-22 points to the limited added value of this rule; on the contrary, be believe that it proves how the requirement has acted as a powerful dissuasive mechanism. We also note that a majority of jurisdictions surveyed by the OECD in its Corporate Governance Factbook require shareholder approval under certain conditions.

In respect to the FCA's proposal to replace the existing premium and standard listing categories with a single category, we believe that it would diminish the flexibility of the current system, under which companies seeking to list can either elect the premium listing category and associated stricter requirements, or decide to list on the standard segment and benefit from the simpler regime. If the FCA wished to test its assumption that the suggested reforms could incentivise companies to list in the UK, an alternative could be to create a third listing category where all the proposals could be tested without weakening the investor protection standards of the premium segment.

We thank you for considering our perspective and remain at your disposal should you wish to discuss these matters further.

Yours sincerely

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Questions

Q1: Do you agree with the proposal to remove specific financial information eligibility requirements for a single ESCC category? If not, please explain why and any alternative preferred approach.

We have some concerns with the proposal to remove financial information eligibility requirements, such as the requirements on historical financial information, revenue earning track record and requirement to satisfy the FCA that the applicant has sufficient working capital. While we appreciate the concern that companies in growing sectors such as technology, fintech and biotech might not be able to meet these eligibility requirements and hence be disincentivised from listing in the UK, we believe that removing this rule could increase the level of risk for investors.

Q2: do you agree with a proposal to explore a modified approach to the independence of business and control of business provisions for a single ECSS category, with a view to enhancing flexibility, alongside ensuring clear categories for funds and other investment vehicles?

N/A

Q3: do you have views on what rule or guidance changes may be helpful, and whether certain disclosure could also be enhanced to support investors and market integrity, or any alternative approaches we should consider?

N/A

Q4: do you agree with our proposed approach to dual class share structures for the single ESCC category and the proposed parameters? If you disagree, please explain why and provide any alternative proposals

We disagree with the proposed approach to broadly allow dual class share structures, as we believe that “one share, one vote” is the best regime to secure the fair treatment of all shareholders. Voting rights should reflect cash flow rights. This ensures that shareholders have the appropriate incentives when exercising their right to vote on fundamental decisions concerning the company. This alignment incentivises all shareholders to hold the board to account and make informed voting decisions. In contrast, the divergence of voting from cash flow rights may entrench management and damage minority shareholders, as shareholders with superior voting rights can influence corporate decisions in a way that maximises private benefits rather than company value. Any deviation from the “one share, one vote” principle, in order to incentivize founders and owner to seek listing or otherwise, should be strictly contained in both in magnitude and duration. If dual class share structures are allowed, they should be accompanied by strong minority shareholder protection tools such as sunset

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clauses, which can restrict the transfer of such shares or limit such structure to a defined period. We believe in this respect that the proposed 10-year transfer-based sunset clause should be shortened to 5 years, in line with the current regime. Reasonable time-based sunset provisions are essential to mitigate long-term risks to investors that are inherent in multiple voting right share structures.

Q5: do you agree with our proposed approach to the controlling shareholder regime for a single ESCC category? Do you have any views on the suitability of alternative approaches to the one proposed?

N/A

Q6: do you agree that our proposals as regards controlling shareholders align with our need to act, as far as is reasonably possible, in a way which is compatible with our strategic objective of ensuring markets work well and advances our market integrity and consumer protection objectives? If you don't agree, how do you believe these should be balanced differently?

N/A

Q7: do you agree with the proposed approach to significant transactions for a single ESCC category?

We believe that shareholder approval for significant transactions is an important value-enhancing mechanism. Research has shown a significant difference in the performance between deals subject to a vote in the UK and deals with no mandatory vote[1]. More broadly, evidence also indicates that shareholder-approved equity issuances are associated with positive and higher returns compared with issuances only approved by management[2]. We believe that the proposal to only require notification to the market of a significant transaction above 25% of the company's value, a threshold above which transactions are currently subject to mandatory shareholder vote, would be detrimental to investor protection and market integrity. Transactions above 5%, which are currently announced to the market, would be no longer disclosed, thus leaving shareholders unable to exert scrutiny over such non-ordinary transactions. Shareholder approval for transactions over 25% (current Class 1 transactions) should be maintained, as these can be significant to a company's value and therefore appropriately subject to shareholder vote. However, the administrative burden of this requirement could potentially be limited by removing the requirement for the shareholder circular to be pre-approved by the FCA.

[1] See bechtpolorossifinal.pdf (ecgi.global) and Does Mandatory Shareholder Voting Prevent Bad Acquisitions? | The Review of Financial Studies | Oxford Academic (oup.com)
[2] The Effect of Shareholder Approval of Equity Issuances Around the World - Holderness - 2019 - Journal of Applied Corporate Finance - Wiley Online Library

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Q8: do you consider that additional disclosure could be considered to further support transparency to shareholders on significant transactions and, if so, what (e.g. considering current circulars)?

We believe that the shareholder vote currently required for Class 1 transactions should be maintained and that disclosure-based alternatives do not represent an equally efficient mechanism to protect shareholders from potentially value-destroying transactions.

Q9: should we consider further mechanisms prior to a significant transaction being formally completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed commercial company equity issuers in place of shareholder approval? What should those mechanisms be and why?

We do not believe that alternative mechanisms to shareholder approval would be equally effective in ensuring shareholders can hold company management to account on significant transactions, and more broadly scrutinise the company's capital allocation choices. We are not convinced that a mandatory period of delay between the exchange and completion of a significant transaction could represent a meaningful protection.

Q10: should the sponsor's advisory role in assessing whether a potential significant transaction meets the proposed disclosure threshold be mandatory or optional, and what are your reasons? Do you agree with our proposals that sponsors have more discretion to modify the class tests, including substituting the tests with alternative measures, without seeking formal FCA agreement to the modifications?

N/A

Q11: should we consider expanding the sponsor's role further on any aspects of significant transactions?

N/A

Q12: do you agree with the proposed approach to RPTs for a single ESCC category, which is based on a mandatory announcement at and above the 5% threshold, supported by the "fair and reasonable" assurance model which includes the sponsor's confirmation as described above?

We believe that the removal of the mandatory shareholder vote is detrimental to investor protection, as related party transactions can be potentially damaging to company value. We are not convinced by the argument that the insignificant number of RPT votes points to the limited added value of this rule; on the contrary, be believe that it proves how the requirement has acted as a powerful dissuasive mechanism. We also note that 30 jurisdictions

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representing three fifths of those surveyed by the OECD in its latest Corporate Governance Factbook require shareholder approval for significant transactions[3].

Q13: Do you consider that additional disclosure requirements could be considered to further support transparency to shareholders on RPTs, and should we consider requiring certain mechanisms prior to a deal being completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed companies to replace the requirement for independent shareholder approval?

Similar to our answer to Q9, we do not believe that alternatives to the mandatory shareholder approval such as a mandatory period of delay could represent an equally effective mechanism to allow investors to scrutinise the company's capital allocation strategy. We also note that related party transactions can be particularly damaging to investors due to the inherent risk of conflict of interest associated with them, and therefore highlight the importance of maintaining the shareholder approval requirement.

Q14: Should it be mandatory for a listed company in the single ESCC category to obtain guidance from a sponsor on the application of the LR, DTR and MAR whenever it is proposing to enter into a related party transaction (irrespective of the size of the transaction), or should it be at the company's discretion?

N/A

Q15: Should it be mandatory for the sponsor to consult with the FCA and agree any modifications to the class tests and classification of a proposed RPT, or should the sponsor have more discretion? Please explain your reasons.

N/A

Q16: Are there any broader, alternative mechanisms that existing shareholders or prospective investors would want to see in place of, or made use of, in order to strengthen shareholder protection in relation to RPTs in the event that these changes are made to our LR? If so, would these be matters for inclusion in our LR or are they found, for example, in legislation or market practice?

See our answer to question 13.

Q17: do you agree with the proposed approach to cancellation of listing for the single ESCC category, and do you have any views on other possible changes to the existing cancellation process?

[3] OECD Corporate Governance Factbook - 2021 - OECD

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N/A

Q18: do you think that the notice period proposed for the single ESCC category for de-listing should be extended (taking the approach of other jurisdictions) and if so to what? What would the benefits be?

N/A

Q19: do you consider the policy for cancellation of listing by the FCA after a long suspension should be revisited?

N/A

Q20: do you agree with retaining shareholder approval provisions on discounted share issuance and on share buy-backs, as currently required by the premium LR, as part of a single ESCC category, or would these be problematic for certain issuers?

We agree with retaining shareholder approval provisions on discounted share issuances and share buy backs.

Q21: do you agree with our proposed approach to reporting against the UK corporate governance code for companies listed in the single ESCC category, and are there any other mechanisms the FCA could consider to promote corporate governance standards?

We agree with the proposed approach of reporting against the UK Corporate Governance code for companies in the suggested ESCC category. Disclosure of key corporate governance matters, such as board oversight over significant transactions and related third party transactions, would be particularly important to enable shareholder scrutiny.

Q22: do you have any views on the proposed application of reporting requirements under LR 9.8 (i.e. premium LR requirements) as the basis for the single ESCC category?

We agree with the proposal to apply the current reporting requirements under LR 9.8 as the basis for the single ESCC category. TCFD-aligned climate-related disclosures and diversity disclosures are important for investors to assess companies' exposure and management of climate-related risk, and diversity-related policies and targets. Removing such requirements for the ESCC category would represent a step back in terms of quality of the disclosure regime and investor protection.

Q23: do you agree with our proposed changes to the LR principles? If not, please explain why and provide details of any alternative suggested approach

N/A

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Q24: we are considering applying the principles as eligibility criteria, to clarify expected standards and reflect the fact that in practice these requirements need to be complied with at the point of listing. Please provide details if you foresee any issues with this approach

N/A

Q25: do you agree with our proposed changes to strengthen cooperation and information gathering provisions as outlined in this section? If not, please explain why and any alternative suggested approach to addressing the issue identified.

We agree with the suggested changes to strengthen cooperation and information gathering provisions.

Q26: in relation to our proposal to ask issuers to provide contact details of their key persons, do you think this should include details of the CEO, CFO and COO? Do you have any other suggestions as to other key roles that we should consider? Also, are there circumstances where it would be appropriate for an issuer to nominate a third party (such as an FCA authorised advisor), as a key person and, if so, why?

N/A

Q27: Are there specific considerations we need to take into account for different issuer or security types, in relation to our proposals in this section, that we should take into account as we develop our proposals further?

N/A

Q28: do respondents have any concerns about the availability of sponsor services as a result of the proposed changes to the listing regime and the sponsor role?

N/A

Q29: we welcome views from sponsors on whether they would be able to adapt or willing to provide services to a potentially wider and more diverse range of issuers? We particularly welcome any information or data on the implementation and ongoing costs sponsors may incur as a result of our proposals.

N/A

Q30: do sponsors have any concerns about performing the sponsor role and providing sponsor assurances within the model proposed?

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N/A

Q31: do you have any concerns that sponsors will be able to demonstrate continued competence under our proposed approach? What matters should the FCA take into account when assessing sponsor competence?

N/A

Q32: we welcome views on proposed restructure of the listing regime set out above. In particular, do you agree with our preliminary proposals for dealing with issuers that are not issuers of equity shares in commercial companies?

N/A

Q33: have we identified the impacts on different issuer types and sufficiently delineated between them?

N/A

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