



ICGN

International Corporate Governance Network
Inspiring good governance & stewardship

Primary Markets Policy Team
Financial Conduct Authority
12 Endeavour Square London
E20 1JN

21 March 2024

Dear Sir or Madam,

Subject: Proposals for listing rules reforms (CP23/31)

The International Corporate Governance Network (ICGN) welcomes the opportunity to respond to the Financial Conduct Authority (FCA)'s consultation CP23/31, which sets out detailed proposals for listing rules reforms.

Led by investors responsible for assets under management of \$77 trillion, ICGN is an authority on global standards of corporate governance and investor stewardship. Headquartered in London, our membership is based in more than 40 countries - largely in Europe and North America, with growing representation in Asia. The ICGN Global Governance Principles and Global Stewardship Principles, written from an investor perspective, are widely used by our members in their company assessments and voting decisions, and by regulators when developing corporate governance rules.

In the consultation document CP23/31¹, the FCA highlights its ambition to introduce "the most far-reaching reforms of the UK's listing regime in three decades". The FCA notes that investors have expressed strong concerns over the proposed reforms. Despite investors' concerns, the FCA maintains its proposals, and goes further by removing a key investor protection mechanism: the mandatory time-based sunset clause for dual-class shares.

ICGN encourages the FCA to take investors' feedback into account. Investors recognise the challenges that the UK and other markets face with a reduced number of IPOs over recent years. However, they have expressed the view that, while it is unclear whether the changes proposed to the listing rule would help attract listing in the UK, the proposed reforms are likely to harm the UK's reputation as a market with robust investor protection, high corporate governance standards and a stable policy environment, thereby potentially reducing the attractiveness of UK listed companies.²

Factors such as liquidity, access to sophisticated investors with a deep understanding of the company's sector, valuation and research coverage, and the presence of comparable companies in the market are among the key factors that determine where a company chooses to list.³ The speed of the process leading to the IPO, access to talent, and tax matters can also be key considerations. The FCA does not address these factors. We

¹ [CP23/31: Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for listing rules reforms](#)

² ICGN [Statement on High Standards of Corporate Governance and Investor Protections as Pre-requisites for UK Capital Market Competitiveness and Growth](#), signed by more than 50 asset owners and asset managers, as well as investor associations globally, 9 February 2024

³ UK Finance and EY, [UK Capital Markets Building on Strong Foundations.pdf](#), May 2023

remain unconvinced that the changes proposed to the listing rules will help attract listings in the UK.

The proposals will increase costs for investors and expose them to further undue risk - with potentially significant negative implications for underlying beneficiaries including pensioners and retail investors' savings. In our view, the FCA does not explicitly reflect this in its cost-benefit analysis. Furthermore, at a time when the FCA is encouraging investors to play a greater, and more responsible, stewardship role in promoting the long-term success of companies through monitoring, voting and engagement, the imposition of weaker voting rights will have the opposite effect by inhibiting investor influence.

ICGN recommends that the FCA reconsiders its proposals. While we support the ambition to simplify the rules and reduce compliance burden for companies, we encourage the FCA to maintain key shareholder protection mechanisms. When companies choose dual-class shares structures, robust safeguards must be in place, such as a mandatory time-based sunset clause. We also strongly encourage the FCA to maintain a mandatory shareholder vote for related party transactions and significant transactions above a certain threshold. The existing rules were introduced to provide the necessary checks and balances to protect the interests of minority shareholders from potential abuse. We are concerned that investors will be unable to block transactions that erode shareholder value.

Please find below our detailed responses to the consultation questions.

Thank you for the opportunity to share our perspective and we remain at your disposal should you have any questions or comments. In this regard, please contact our Global Policy Director, Séverine Neervoort (severine.neervoort@icgn.org).

Yours faithfully,



Kerrie Waring
Chief Executive Officer, ICGN

Appendix - Responses to the consultation questions

Q1: Based on our overall proposals for commercial companies, and taking into account the broader UK regulatory, legal and corporate governance environment, do you believe that we have struck the right balance in designing a proposed regime that enables the conditions for a stronger, more effective and competitive listed market with appropriate measures in place to support market integrity and investor protection. If not, what changes should be made?

ICGN response: ICGN understands the FCA's objectives and recognises the challenges that the UK and other markets face with a reduced number of IPOs over recent years. However, we do not believe that the changes proposed by the FCA will help achieve radical improvement. In fact, we do not see any convincing evidence demonstrating that allowing dual-class shares structures or removing shareholder votes on transactions is an effective mechanism to attract listings. We believe the costs will outweigh the benefits of the proposed reform.

As highlighted by the FCA in its consultation paper, factors such as access to sophisticated investors, with deep understanding of the company's sector; valuation and research coverage; liquidity; and presence of comparable companies in the market are among the key factors that determine where a company chooses to list.⁴ The speed of the process leading to the IPO, access to talent, and tax considerations are also important considerations. With its proposals, the FCA does not address these factors.

While it is unclear whether the changes proposed to the listing rule would help attract listing in the UK, ICGN is concerned that the proposed reforms will harm the UK's reputation as a market with robust investor protection, high corporate governance standards and a stable policy environment, thereby reducing the attractiveness of UK listed companies.

The proposals will increase costs for investors (by hindering investors' stewardship efforts and therefore increasing stewardship costs, and by requiring increased monitoring and due diligence) and these costs are likely to be passed onto their beneficiaries – including pension scheme members and retail savers. More importantly, the proposals will expose investors to further undue risk - with potentially significant negative implications for underlying beneficiaries including pensioners and retail investors' savings. In our view, the FCA does not explicitly reflect this in its cost-benefit analysis.

ICGN recommends that the FCA reconsiders its proposals, by introducing investor protection safeguards when companies choose dual-class shares structures (with a mandatory time-based sunset clause, at a minimum). We also strongly encourage the FCA to maintain a mandatory shareholder vote for related party transactions and significant transactions above a certain threshold.

Q3: Do you agree with our proposed approach to eligibility requirements for commercial companies and the proposed draft provisions in UKLR 5 in Appendix 1?

ICGN response: ICGN is concerned that removing these eligibility criteria would increase the level of risks for investors, who would not have access to important information that enables them to identify potential fraudulent behaviour, for instance.

Q4: Do you agree with our proposed approach to independence and control of business for the commercial companies category eligibility and continuing obligations? If not, please explain why and any alternative approach.

ICGN response: This proposal, together with the removal of the mandatory vote on related party transactions (RTPs), is likely to increase risks for investors. As explained in the ICGN Viewpoint entitled "Duties of Boards in Company Groups"⁵, when complex or opaque corporate structures are in place, this reinforces the need for robust corporate governance policies, including an effective process for approving, reviewing and monitoring RTPs and any inherent conflicts of interest. Shareholders should have the right to approve significant RTPs above an appropriate materiality threshold, and this should be based on the approval of a majority of disinterested shareholders.⁶

Q5: Do you agree with our proposed approach to requirements relating to controlling shareholders for the commercial companies category eligibility and continuing obligations? If not, please explain why and provide any alternative approach.

ICGN response: ICGN supports this approach.

⁴ UK Finance and EY, [UK Capital Markets Building on Strong Foundations.pdf](#), May 2023

⁵ [ICGN Viewpoint Duties of Boards in Company Groups](#), 2020

⁶ ICGN Viewpoint, [Related Party Transactions](#), June 2018

Q6: Do you agree with our proposals for allowing DCSS for companies listing shares in the commercial companies category and our approach to matters on which enhanced voting rights can be used? If you disagree, please explain or suggest alternative approaches?

ICGN response: Unequal voting rights are problematic because they dilute the voice of minority shareholders. They may serve to entrench management and allow founders and controlling shareholders to monopolise the decision-making, potentially putting minority shareholder interests at risk. In extremis such structures create opportunities for expropriation, with controlling shareholder gaining private benefits of control at the expense of minority shareholders.⁷

Furthermore, at a time when the FCA is encouraging investors to play a greater, and more responsible, role in monitoring company governance and engaging with companies, the imposition of unequal voting rights has the effect of watering down investor influence. Voting enables investors to properly hold company boards to account and is an important escalation tool when engaging with investee companies, as part of their stewardship duty to preserve and create long-term corporate value on behalf of beneficiaries and clients.

ICGN does not support the FCA's proposal. Our preference would be that the FCA maintains the approach it introduced in 2021. If it decides to move forward with its proposed reform, we consider that:

- It is essential that **sunset clauses** should specify that any multiple class share mechanisms will automatically lapse after a certain period or events, supported by a vote of independent shareholders after 5 to 7 years, and followed by an annual rolling vote. Empirical research shows that any benefits of dual-class share structures seems to dissipate after five to ten years. The research indicates that over time, and on average, the valuation of these firms tends to decline. See for instance the paper from Harvard Law School researchers Lucian A. Bebchuk and Kobi Kastiel⁸, the studies from the European Corporate Governance Institute⁹, the CII Research and Education Fund (August 2023)¹⁰, former US SEC Commissioner Jackson¹¹ and Investor Coalition for Equal Votes (ICEV)'s research (2023)¹².
- A potential alternative that could be envisaged is to require a **review clause provision** in dual-class shares arrangements at the point of IPO – the review clause would mandate a continuation vote which could be triggered at a predetermined date after the IPO. This would allow shareholders to vote on converting superior voting rights shares into ordinary shares or retaining the dual-class shares structure for a certain amount of time.
- We do not support the FCA's proposal that enhanced voting rights could be exercised on almost all matters and at all times, not just to prevent a change of control or to protect a founder's position as a director, as is currently the case under the premium listing rules.

⁷ See [ICGN Viewpoint on differential share ownership](#), 2017

⁸ Lucian A. Bebchuk and Kobi Kastiel, "The Untenable Case for Perpetual Dual-Class Stock," 103 Va. L. Rev. 585- 631 (June 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2954630

⁹ Martijn Cremers, Beni Lauterbach and Anete Pajuste, "The Life Cycle of Dual-Class Firms," (November 2017) at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062895

¹⁰ James Crowe, "Dual-class structures and classified boards: Evidence from 2018-2023" (August 2023), CII Research and Education Fund,

¹¹ https://www.sec.gov/news/speech/perpetual-dual-class-stock-case-against-corporate-royalty#_ftnref21

¹² Investor Coalition for Equal Votes, [Undermining the shareholder voice](#), 2023

- We do not support the proposal to remove limits on the maximum enhanced voting ratio that can be attached to enhanced voting rights shares.
- We support the FCA's proposal to restrict the transfer of such shares, and that no further weighted voting rights shares should be able to be issued after listing.
- We encourage class-by-class vote disclosure, whereby companies with multiple classes of shares are required to separately disclose vote tallies for each class.

In the consultation document and cost-benefit analysis, we do not see convincing evidence that a more permissive regime for dual-class shares would significantly help attract listings. We also believe that there might be an overestimation of the amount of leverage that the investors have in negotiating with founders at the point of IPO.

Principle 9 of the ICGN Global Governance Principles emphasises the importance of equal voting rights for all shareholders, according to the 'one share, one vote' standard, a key aspect of shareholder democracy. We believe shareholders' influence on the company's decision-making should be proportionate to their economic exposure. In the event of the existence of multiple class shares, we insist that strong safeguards must be in place.

Q7: Do you agree with our proposed approach towards a significant transactions regime for the commercial companies category? Please provide any alternative views.

ICGN response: ICGN does not support the proposal to remove the mandatory vote for class 1 transactions, which could leave major transactions without shareholder scrutiny. The vote on significant party transactions is an important investor protection mechanism and vital for investors to carry out their stewardship duties. We are concerned that investors will be unable to block transactions that erode shareholder value. We encourage the FCA to consider academic research on this topic¹³. Instead of the proposed approach, the FCA could, for instance, increase the threshold for class 1 transactions.

Q8: Do you agree with our proposed enhanced disclosures regime for significant transactions? If you disagree, what changes do you consider we should make and why?

ICGN response: We recommend that the FCA maintains the mandatory shareholder vote. An enhanced disclosure regime would not protect shareholders from potentially value destroying transactions.

Q13: Do you agree with our proposed approach to reverse takeovers in the commercial companies category, including requiring a sponsor and FCA approval of a circular? If not, please explain what you disagree with and why, if relevant.

ICGN response: We support the proposed approach.

Q15: Do you agree with our proposed approach towards a related party transactions regime for the commercial companies category and the specific disclosure proposals for notifications? Please provide any alternative views as relevant.

ICGN response: ICGN strongly opposes this proposal.

We do not believe that the FCA has adequately made the case that relaxing the existing rules in this way would be beneficial for market participants. The existing rules were

¹³ Becht, Marco and Polo, Andrea and Rossi, Stefano, Does Mandatory Shareholder Voting Prevent Bad Acquisitions? (March 15, 2016), Review of Financial Studies, European Corporate Governance Institute (ECGI)

introduced to provide the necessary checks and balances to protect the interests of minority shareholders from potential abuse. A key concern about related party transactions is that they might not be undertaken at market prices, as there might be a conflict of interest for some person(s) in the company. Related party transactions can be used as a mechanism for extracting private benefits of control at the cost of other shareholders. This can range from mild to extreme degrees of expropriation. It is important for minority shareholders to be able to verify the integrity of such transactions, to help prevent fraud and misuses of company assets.

In this regard, we refer you to the ICGN Global Governance Principles, which state that: Shareholders should have the right to approve significant related party transactions above an appropriate materiality threshold, and this should be based on the approval of a majority of disinterested shareholders. According to the OECD Corporate Governance Factbook 2023, a majority of jurisdictions surveyed require shareholder approval for such transactions.

We recommend that the FCA maintains the mandatory shareholder vote. Should the FCA decide to pursue this reform, a more balanced approach could be to increase the existing threshold nominally, rather than removing the vote entirely.

Q19: Do you agree with our proposed approach to matters relating to further share issuances for the commercial companies category? If not, please explain what you disagree with and why.

ICGN response: We support the proposed approach.

Q22: Do you have any comments on our proposals? Do you have any views on requiring shareholder approval to grant to a director or employee options, warrants or other similar rights to subscribe for shares in the commercial companies category

ICGN response: We support this proposal.

Q24: Do you agree with our overall approach to annual disclosures and reporting requirements for the commercial companies, category broadly based on current premium listing requirements, including on corporate governance (see Appendix 1, UKLR 6)? If not, please explain why.

ICGN response: We support this proposal and encourage companies to ensure that their disclosures against the UK Corporate Governance Code are meaningful, and avoid boilerplate communication, to foster a constructive stewardship dialogue between investors and companies.

Q38: Do you agree with our proposed guidance to support the Listing Principles, regarding the importance of the role of directors and on the arrangements for accessibility of information? If not, please explain what you disagree with and why

ICGN response: We support this proposal.

Q39: Do you agree with our proposed board confirmation that the applicant has appropriate systems and controls in place to ensure it can comply with its ongoing listing obligations and Listing Principles once admitted? If not, please explain what you disagree with and why.

ICGN response: We support this proposal.

Q56: Do you agree with our assumptions and findings as set out in this Cost Benefit Analysis on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons.

ICGN response: As explained in our response to Q1, ICGN understands the FCA's objectives and recognises the challenges that the UK and other markets face with a reduced number of IPOs over recent years. However, we do not believe that the changes proposed by the FCA will help achieve radical improvement. We believe the costs will outweigh the benefits of the proposed reform.

Factors such as liquidity, access to sophisticated investors with a deep understanding of the company's sector, valuation and research coverage, and the presence of comparable companies in the market are among the key factors that determine where a company chooses to list.¹⁴ The speed of the process leading to the IPO, access to talent, and tax matters can also be key considerations. The FCA does not address these factors.

While it is unclear whether the changes proposed to the listing rule would help attract listing in the UK, ICGN is concerned that the proposed reforms will harm the UK's reputation as a market with robust investor protection, high corporate governance standards and a stable policy environment. This may reduce the attractiveness of UK listed companies for investors.

The proposals will increase costs for investors (by hindering investors' stewardship efforts, and by requiring increased monitoring and due diligence) and these costs are likely to be passed onto pension scheme members and retail savers. More importantly, the proposals will expose investors to further undue risk - with potentially significant negative implications for underlying beneficiaries including pensioners and retail investors' savings. In our view, the FCA does not explicitly reflect this in its cost-benefit analysis.

¹⁴ UK Finance and EY, [UK Capital Markets Building on Strong Foundations.pdf](#), May 2023