Victoria Richardson
Primary Markets Policy
Financial Services Authority
25 the North Colonnade
Canary Wharf
London E14 5HS

31st December 2012

Dear Victoria

CP12/25: Enhancing the effectiveness of the Listing Regime and feedback on CP12/2

Thank you for giving us the opportunity to take part in the above consultation. I have pleasure in enclosing The Investor Relations Society's response.

The Investor Relations Society's mission is to promote best practice in investor relations; to support the professional development of its members; to represent their views to regulatory bodies, the investment community and government; and to act as a forum for issuers and the investment community. The Investor Relations Society represents members working for public companies and consultancies to assist them in the development of effective two way communication with the markets and to create a level playing field for all investors. It has over 650 members drawn both from the UK and overseas, including the majority of the FTSE 100 and much of the FTSE 250.

In our response to this consultation we have not answered each question as set out in the document preferring instead to give our responses to areas we feel of most relevance to our members. We feel this will give you a better overall impression of how we expect the amendments to affect our members, as issuers of predominantly large market capitalisation and their specialist advisors.

We address a number of areas in our response but this is a summary of our key points:

- **We believe that the requirement each premium listed share in a class must have equal voting power should remain.**

- **We feel the proposal for a requirement for a listed company to notify any non-compliance with continuing obligations to be a high burden and harsh provision for issuers.**

- **We agree with the definition of a controlling shareholder set at 30% and note that this is already common with practitioners as a previous threshold.**

- **We are strongly supportive of the measure that holdings of individual fund managers in an organisation should be treated separately provided investment decisions with regard to the acquisition of shares are made independently.**

- **We support the principle of allowing for the election of independent directors through two rounds of voting but we have concerns over practicalities.**

- **The principle of 'comply or explain' is something we strongly endorse and this must be retained as a principle engendering business confidence.**

Yours sincerely

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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?

We agree that the definition of a controlling shareholder should be set at a threshold of 30%. This reinstates the former Listing Rules provision. The 30% threshold ties in with the threshold for triggering a bid in a takeover. We support regulation acting in concert as this assists issuers to comply with the regulatory burden. In practice, this is common to practitioners already as a previously established threshold. The issue of controlling shareholders typically tends to affect smaller listed companies than larger ones where founding shareholder/s are still involved with the company.

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?

We support this proposal as it provides a controlled process.

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?

Relationship agreements are in reality already established market practice although not mandatory. Relationship agreements should be transparent in order to reassure investors. This is a straight forward proposal and we have no objections.

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?

Yes - this is also best practice. This practice constitutes high quality investor relations**.**

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)?

We support this proposal.

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))?

Yes, we consider this to be interlinked. Companies will be required to state that they have complied with this requirement in the annual report which in our view is not unreasonable.

Q7: Do you support our proposal to subject material changes to the relationship agreement to an independent shareholder vote (LR 9.2.2CR)?

We think the principle behind this is sound although this is clearly more of a burden for companies to shoulder. In practical terms the question arises as to what constitutes "materiality". We feel that there needs to be clarity over timing: does the independent shareholder vote need to be taken prior to any change? We are concerned that there is the potential for companies to be put off making necessary business changes because of this. Furthermore there will be a business cost to bear with small-mid cap companies likely to be disproportionally affected by this proposal.

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)?

Again, what constitutes materiality will vary from company to company and sector to sector. 9.2.2DG states in considering what constitutes a material change to the relationship agreement the listed company should have regard to the cumulative effect of all the changes since its independent shareholders last had the opportunity to vote on the relationship agreement or, if they have never voted, since the admission to listing. While it is positive that companies will be able to determine this themselves, clearly this leaves a lot of room for interpretation which creates the potential for differences of opinion between company and regulator (and investor).

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))?

Yes, we support this proposal.

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

Yes.

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

We feel there is extra flexibility offered with Option 2. In addition, The Investor Relations Society is a strong supporter of the 'comply or explain' principle as it plays an important role in developing trust between shareholders and companies. Regarding the definition of an independent shareholder, some shareholders that might not seem independent in fact are. By retaining comply or explain, companies can still adhere to the familiar corporate governance structure.

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)?

We support the principle of allowing for the election of independent directors through two rounds of voting, and it is hard to see an alternative, but we have concerns over practicalities given that two separate rounds of voting will be expensive and cumbersome for companies and be likely to have a disruptive effect. Controlling shareholders often hold their shares through one or more intermediaries, with their shares consequently residing behind a number of accounts on the share register, potentially co-mingled with the securities of others. When it comes to managing the voting process, there are likely to be significant challenges in accurately identifying which votes relate to a controlling shareholder position, particularly where securities are co-mingled with the assets of other, independent investors. It would also give concerned parties pause for thought before raising particular issues, and companies would have to actively canvass for votes.

We would also question the premise that controlling shareholders are potentially damaging to the business interest – while there have been occurrences of this, generally speaking a controlling shareholder will, like all other shareholders, ensure the company is ran successfully in all shareholders' interests including their own. We feel that there is a currently a big push from the investor side to consistently strengthen protection for minority shareholders. While it is clearly important that minority shareholders are protected, it is important that this is not undertaken at the prejudice of the majority of shareholders, and that the often disproportionate level of influence wielded at times by activist investors is factored in to all considerations of shareholder rights.

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?

We question how the process of locking up shares will work and which shares this will apply to? Will the company be making the calculations? If so, the costs of this are likely to be significant.

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?

We support this proposal.

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?

This is positive and helpful for companies. Investment houses are often very large to the point where they operate as de facto separate entities and so holdings should be treated separately. We are strongly supportive of this measure.

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?

We have no issue with these suggestions.

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?

We consider this to be a high burden and harsh provision for issuers. If companies are obliged to report non-compliance, the monitoring of this will be a significant undertaking. In reality, they will probably rely on agents, particularly brokers, which will prove expensive.

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?**

Providing this proposal fits in with the proposed changes to narrative reporting from BIS then yes, due to the expectation of enhanced transparency. It is essential that there is no discrepancy between regulations for confidence from issuers to be sustained.

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

Yes, we agree with this proposal.

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.**

Yes, we agree with this proposal.

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.**

We support the requirement that each premium listed share in a class must have equal voting power. Our members are strongly in favour of this. While we note smaller companies offer shares of unequal voting power, for larger companies (i.e. premium listed) it is problematical to have unequal votes. Professor Kay mooted this idea in the research for his eponymous review and it met with opposition from IR officers who believed it would have serious practical implications and adversely affect the IR process. We will continue to support the principle of equal voted shares for premium listed companies.

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)?

In principle we are content with this, but know that there are some companies for whom this would be a significant issue.

Q47: Do you agree with our proposed approach to articulate in the Listing Rules our expectations of the board of a premium listed investment entity rather than use a more prescriptive solution?

We agree as we certainly wish to avoid prescription here. Flexibility in approach is key, as are sensible expectations.