

Via e-mail: cp17-21@fca.org.uk

October 12, 2017

Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London
E14 5HS

In re: [Proposal to create a new premium listing category for sovereign controlled companies](#)

Dear Sir or Madam:

I am writing on behalf of the Council of Institutional Investors (CII), a nonpartisan, nonprofit association of employee benefit plans, agencies charged with investing public fund assets, foundations and endowments, with combined assets exceeding \$3 trillion. Our member funds are long-term investors, including those with a duty to protect the retirement savings of millions of workers and their families, and with very long investment horizons. Our associate members include a range of asset managers with more than \$20 trillion in assets under management, many or most also with long-term investment horizons.¹ CII members share a commitment to healthy public capital markets and strong corporate governance.

We appreciate that in potentially creating a new listing category, FCA seeks to protect high standards of the existing premium listing regime for companies within existing listing premium categories. But we are not convinced that it works to put the “premium” label on a new category with reduced standards. Dilution of the “premium” label in the longer term could mislead investors, and/or damage the value of that label to companies in other premium listing categories.

Moreover, as a general principle, we would suggest that shareholders in a state-controlled public company stand to benefit even more than those in a privately-controlled public company from minority shareholder protections, given that governments have a broad scope of priorities that at times can conflict significantly with private investors’ more focused priorities. Listing standards ensuring that, for example, candidates for independent board seats obtain support from a “majority of the minority” likely help to balance these broader interests of the state with private investors’ narrower interests surrounding company efficiency and performance. Additionally, strong checks on related party transactions seem to be reasonable safeguards against self-dealing by state affiliates. Thus, it is not clear why shareholders would need less protection in the context of a state-controlled company than is the case for a privately controlled public company.

¹ For more information about the Council of Institutional Investors (Council or CII) and our members, please visit the Council’s website at http://www.cii.org/about_us.

The core of the FCA proposal is two-fold: (1) exempt the controlling sovereign entity and associates from related-party transaction rules, and (2) eliminate controlling shareholder rules. In our view, the FCA proposal does not present good specific reasons for either of these changes. The FCA mainly argues that investors and markets have sufficient sophistication to differentiate risks, so why not do this.² The argument seems to undermine the entire logic behind having “premium” categories. A logical conclusion of the argument is that there should be only one market segment with minimal protections with reference to control or related-party transactions, and investors perfectly capable of making judgments on where there may be greater or lesser risk.

A better approach would be for the FCA to preserve all the existing strong listing requirements required now for the “premium” label, and permit companies with “standard” listings to adopt some of the “premium” protections (as is the case now). FCA perhaps could provide guidance to companies with standard listings on how to highlight key steps they have taken to enhance governance beyond basic standards. If it seems possible but not certain that market sophistication renders these categories of no help, we would prefer erring on the side of investor protection and assurance that “premium” means “premium.” There is not a great deal of risk for investors if “standard” sometimes means “standard-plus.”

The only additional substantive argument that we can identify from FCA for holding sovereign-controlled entities to a lower standard references only related-party transaction rules. This argument is that “sovereign controlled companies seeking to expand their international investor base are likely to have extensive and complex relationships with the sovereign controlling shareholders.”³ We would want to see some evidence for this assertion, and explanation of why more extensive and complex relationships mean that shareholders should be less concerned on the potential for conflict of interest.

We acknowledge that LSE’s existing premium listing requirements for controlled companies are stronger in several respects, from an investor standpoint, than comparable standards for controlled companies listed on the major U.S. exchanges. The strong LSE standards of course contribute materially to the UK reputation as a leader in corporate governance and investor protection. NYSE- and Nasdaq-listed controlled companies, whether controlled by a sovereign or controlled privately, bear no obligation to obtain “majority of the minority” support for any board seats except as may be stipulated in corporate charters. Nor do NYSE and Nasdaq require their listed companies to subject related party transactions to a vote of minority shareholders. Moreover, NYSE and Nasdaq do not consider a company “controlled” until more than 50% of voting power is held one individual, group or company, in contrast with LSE’s 30% threshold.⁴

² E.g., the FCA asserts that “Capital markets, many of whose participants have extensive experience of investing in sovereign securities, understand this and are well-positioned to assess the relevant sovereign and jurisdictional risks” (CP 17/21, paragraph 3.35). And with regard to controlling shareholder rules, FCA says that “capital markets participants collectively are capable of assessing directly the influence of a sovereign shareholder on a company’s risks and prospects rather than needing to rely on legal or regulatory protections that otherwise provide valuable safeguards for private sector companies (CP 17/21, paragraph 3.41).

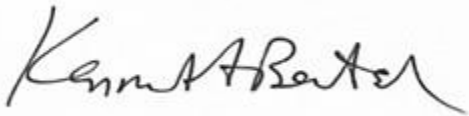
³ CP 17/21, paragraph 3.36.

⁴ A summary of major U.S. exchange listing standards is available at https://www.weil.com/~media/files/pdfs/2016/160916_pcag_public_company_chart_v4.pdf.

As such, we understand the proposal's motivation to reduce a possible LSE disadvantage in attracting sovereign-controlled public company listings.

Still, we remain concerned that exemptions for state-controlled companies from various obligations required of other companies with a premium LSE listing would introduce new risks to public investors, many of whom may presume that all companies carrying the premium designation share and abide by a consistent set of obligations. Therefore, if the decision is made to move ahead with providing new accommodations to sovereign-controlled companies, we would urge careful consideration of differentiating them in some concrete way from those that qualify under the existing premium listing requirements. Categorizing these prospective new listings as something other than "premium" seems to us the most prudent course.

Sincerely,

A handwritten signature in black ink that reads "Kenneth A. Bertsch". The signature is written in a cursive style with a large initial 'K' and 'B'.

Kenneth A. Bertsch
Executive Director