

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

By email: cp19-7@fca.org.uk

27 March 2019

Dear Mr Stubbs

## **ICSA response to the Financial Conduct Authority (FCA) Consultation Paper CP19/7 on proposals to improve shareholder engagement**

We welcome the opportunity to comment on the FCA's proposals to improve shareholder engagement.

ICSA: The Governance Institute is the professional body for governance. We have members in all sectors and our Royal Charter purpose is to lead 'effective governance and efficient administration of commerce, industry and public affairs'. With more than 125 years' experience, we work with regulators and policy makers to champion high standards of governance and provide qualifications, training and guidance. ICSA is the professional body that qualifies Chartered Secretaries, which includes company secretaries. Company secretaries have a key role in companies' governance arrangements, including shareholder engagement. Our members are therefore well placed to understand the proposals in the FCA's consultation to improve shareholder engagement.

In preparing our response we have consulted, amongst others, with members of the ICSA Company Secretaries Forum, a group of company secretaries from more than 30 large UK listed companies from the FTSE 100 and FTSE 250. However, the views expressed in this response are not necessarily those of any individual members of any of this group, nor of the companies they represent.

We set out below our responses to the specific questions set out in the consultation paper.

### **Q1 Do you agree that the territorial scope of the rules framework should extend beyond that envisaged by the Directive?**

Yes. We agree that the territorial scope of the rules framework should go beyond that envisaged by the Directive. It would seem appropriate that stewardship should operate across EEA regulated markets and comparable markets outside the EEA, but without expecting asset managers to undertake the same level of stewardship across all markets, recognising the differences across various markets.



**Q2 Do you agree with our proposed amendments to the Handbook to implement the Directive requirements around engagement policies? If not, please explain what alternative approach you would like us to take.**

Yes. We support the proposals to promote effective stewardship and agree with your proposed amendments to the Handbook to implement the Directive requirements around engagement policies. However we note the timing of the transposition deadline so it is important that, until a revised Stewardship Code is published, it is accepted that disclosure of what a firm is doing to develop an engagement policy should be regarded as compliance with the rule. Following publication of the revised Stewardship Code, signatories to the Code should comply with the Code requirements.

However, we do have concerns over asset owners' and asset managers' use of proxy voting agencies, which we do not believe are sufficiently addressed in the proposed revisions to the Stewardship Code. We believe that asset owners and asset managers should be required to publicly disclose their use of the services of proxy voting agencies, and the way in which their services are used.

There is one further requirement that we believe should be added to your rules. Provision 1.4 of the Financial Reporting Council's UK Corporate Governance Code requires that:

"When 20 per cent or more of votes have been cast against the board recommendation for a resolution, the company should explain, when announcing voting results, what actions it intends to take to consult shareholders in order to understand the reasons behind the result..."

One of the challenges that we regularly hear from our corporate members is that although the registered shareholder responsible is clear, the prevalence of the nominee system means that it is not always easy to identify which investor is responsible for an 'against' vote or the reasons for this. We believe that you should introduce a rule that investors choosing to vote against the board recommendation for a resolution at a general meeting must advise the company, in advance and in writing, that they have decided to take this action and the reason(s) why they have done so. Such a rule will foster greater and more effective engagement and help companies meet their Code obligation more effectively.

**Q3 Do you agree with our proposed approach to implementing Article 3h of the Directive? If not, please explain what alternative approach you would like us to take?**

Yes. We agree with your proposed approach to implementing Article 3h of the Directive. It appears to be a balanced and pragmatic approach.

**Q4 Do you agree with our proposed amendments to implement the Directive requirements on asset managers reporting to asset owners? If not, please explain what alternative approach you would like us to take?**

Yes. We support the proposal that asset managers provide the information proposed on an annual basis to asset owners, and that the report be provided either directly to the asset owners or by making it publicly available. We also support the decision that it should not be a requirement that the information be included in the fund's annual report. However, we would suggest that the method of making it publicly available should be optional, ie for the fund manager to either publish the information in the annual report, or make it otherwise publicly available, such as on their website. Obviously funds could choose to do both if they wish.

We also support the decision not to require firms to disclose information to other investors on request as it would seem unduly onerous, and we think it is sensible not to require all the required information to be

published in one place or to a set format, provided there is adequate 'signposting' to information disclosed elsewhere.

**Q5 Are there any other points we should address in the Handbook in relation to the SRDII, for example by adding clarificatory rules or providing further guidance?**

No. We believe the proposed amendments are clear.

**Q6 Do you agree with how we are proposing to implement SRDII requirements on related party transactions in the DTRs (including replicating LR provisions and choosing a threshold of 25%)? If not, please explain what alternative approach you would like us to take.**

Yes. We agree with how the SRDII requirements on related party transactions are to be implemented. We support the proposals to replicate the premium listing requirements rather than create an alternative parallel regime, and the decision to choose a threshold of 25% for related party transactions. We also support the decisions focused on implementing the Directive in a way that minimises the impact on issuers and does not impose unnecessary additional costs. We also agree with the decision to provide further detail and clarity in areas where the Directive is unclear or would lead to uncertainty.

**Q7 Do you agree with our proposed amendments to the LRs?**

Yes. We agree that the proposed amendments to the LRs are appropriate. We support the proposal to extend the rules for related party transactions to all issuers and to those with a standard listing who have their registered office outside the UK and EU. We also agree that recognition should be given to compliance with equivalent standards in non-EU jurisdictions. We believe the proposals implement the requirements of the Directive with the minimum impact on issuers.

**Q8 Are there any other points we should address in our rules for related party transactions in relation to SRDII?**

No. We think the proposed amendments are sufficient to implement the requirements of the Directive. The proposals retain the current high standards of the UK listing rules on related party transactions and do not go beyond what is required under SRDII.

**Q9 Do you agree with the conclusion and analysis set out in our cost benefit analysis?**

Yes. It is accepted that costs will be incurred by some market participants, particularly in relation to improving transparency and stewardship, but we believe the proposals implement the requirements of SRDII in a proportionate way, creating the minimum additional burdens and retaining the integrity of the market.

We hope you find our comments helpful and would be happy to expand on any of these points should you wish to discuss them further.

Yours sincerely

**Peter Swabey**  
Policy & Research Director