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Our ref:CP06/21

Dear Richard

CP06/21: Investment Entities Listing Review - Further consultation and feedback on Part 2 of CP06/4

We have reviewed CP 06/21 and set out our response below. We have focussed on Questions 15 and 16 in the CP. In our view these raise some crucially important issues for investor protection and we are very concerned indeed about the FSA's current line of thinking.

As you will be aware, in our response to CP06/4 we supported the proposal put forward by the FSA that a secondary listing should not be available to investment entities and that non-UK domiciled investment entities would therefore need to submit to the super-equivalent regime of Chapter 15 in order to list in London. Our concern at the time was that without such a continuing safeguard investor protection would be weakened, with a consequent loss of trust in this sector of the market. We agreed then, and still do, with the statements expressed by the FSA in paragraph 2.45 that

“investment entities carry particular risks to our objectives, particularly given that they often have a significant retail investor base. The proposals contained in this document represent, in our opinion, the minimum standards that any listed investment entity should be subject to regardless of domicile or regulatory status.”

It would appear that all other respondents to CP 06/4 also supported this position. Despite this widespread support for the opposite case, the FSA announced in October 2006 that off-shore investment entities would be allowed to list in London under Chapter 14 and followed this up in CP 06/21 with a proposal the effect of which would be to create a two – tier market based on domicile alone.

We are deeply dismayed that the FSA has reversed its position in what would appear to be a measure purely intended to enhance the attractiveness of the London Stock Exchange to private equity vehicles and others wishing to follow alternative investment strategies. While we have no objection to this, per se, we are opposed to this being done at the expense of investor/consumer protection. Consumer protection is of course a statutory

objective of the FSA under FSMA (whilst increasing the numbers of companies with a London listing is not), and we believe allowing minimum standard listing of non-UK investment entities would significantly undermine it.

Our concern is heightened by the prospect that, over time, the minimum level of protection will extend to all investment companies. The Panel believes that different listing regimes for UK and non - UK companies would not be sustainable in the longer term as it would be deemed to be unfair to UK companies to require them to comply with a significantly more demanding set of listing rules which might harm their competitive position and would possibly be open to legal challenge. Also the effect of a two-tier system based purely on domicile might well be to apply a lighter touch regime to those companies which present the greatest risk to investors, an outcome which we would consider to be totally unacceptable.

If the FSA genuinely believes that the European minimum directive provides an appropriate level of regulation for investment companies (a view which the Panel considers completely untenable), it would be more consistent to extend it to all investment companies, as a matter of policy. The risks to investor protection from this course of action would, however, be very severe indeed.

The extent of the investor protection measures which would be lost if companies listed under Chapter 14 is not set out in CP 06/21 but a comparison of Chapters 14 and 15 shows that, inter alia, important investor protection rules would be imperilled, including those concerning

- spread of investment risk
- publication of investment policy
- prohibitions on substantial cross-shareholdings
- the requirement for a majority of board members to be independent of the investment manager
- annual board vote of confidence in the investment manager
- measures re dealing in treasury shares
- appointment of a sponsor
- general corporate provisions such as complying with the Model Code.

Many of these measures were introduced in 2004 after the splits “crisis” and have gone quite some way in restoring investor confidence to the investment trust sector. We would also point out that when the Treasury consulted on the need for further regulation post splits “crisis”, the consensus (which included our response) was that further regulation was not necessary, as the listing rules had already been tightened up. It would appear that it is precisely these tightened requirements that investment entities would no longer have to comply with if they list under Chapter 14. We had understood also that the Treasury at that time was persuaded that the listing rules provided the appropriate regulatory framework for investment companies and indeed they were advised that another review was about to be undertaken which is the process in which we are currently engaged. We question whether they had anticipated this producing a recommendation to remove large swathes of

rules designed to protect investors particularly at the higher risk end of the market.

In the view of the Panel the proposal to allow Chapter 14 listing to offshore companies is being put forward purely to benefit issuers and will weaken investor protection. It does not increase consumer choice as investors can access these companies already wherever they are listed although it is probably only the most sophisticated who would do so. The vast majority of investment in this market is still in mainstream/orthodox investment trusts which are seen as on a par with OEICS and unit trusts and subject to regulation which - although different in legal form - is similar in effect. Many of these companies have substantial majorities of retail investors with investments, in aggregate, of billions of pounds. The availability of the European minimum directive would set a much lower standard than the equivalent EU rules governing OEICs and unit trusts (possibly because this directive was never intended to apply to investment companies) and therefore would be prejudicial to a level playing field for what, from a consumer's point of view, are broadly similar categories of investment.

The Panel also takes strong exception to the FSA's "caveat investor" statements in paragraph 5.12. It acknowledges that the availability of the minimum directive listing would place greater onus on investors to satisfy themselves about the rights of the securities and the responsibilities of the issuer and to understand investors' rights and protections under law and regulation. We believe that the average investor and/or his adviser probably has a general view on what London listed companies are required to do and is comfortable with that but would not understand that a two-tier system was in place and would therefore assume that all companies with a London listing were subject to the same rules. It is asking too much to expect investors and probably IFAs to check whether a particular listing is a primary or secondary listing, even if they know how to do so, and the differences between them. In particular they will not appreciate that the European standard is the bare minimum. We also question how a potential investor in the secondary market can possibly access sufficient information to make an informed investment decision when the issuer of the securities is not obliged to update the market, among other things, on investment policy or the rights of the securities which may have changed since the prospectus was published on initial listing.

We further believe that it is disingenuous of the FSA to say that although they have a choice, non-UK investment entities might still go for a listing under Chapter 15 when they are being presented with a much easier and cheaper option under Chapter 14 to achieve the same result, access to the prestige of a full London listing. .

In summary, the Panel believes that the FSA proposal contained in CP06/4 that all investment entities should be required to list under the super-equivalent regime of Chapter 15 should be reinstated. We think that, with its current proposal, the FSA is at risk of making a serious mistake that will be damaging for investors and damaging for confidence in the investment company sector.

We do however agree that some elements of Chapter 15 might be relaxed in order to increase the attractiveness of listing in London to a broader range of investment companies provided investor protection is not significantly weakened in the process. We would be happy to consider proposals to this end.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J. Howard', written in a cursive style.

John Howard
Chairman