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Dear Sir ,

Consultation 04/08. Miscellaneous amendments to the Handbook (no 14)

The Association

The Association of Corporate Treasurers was formed in 1979 to encourage and promote the study and practice of corporate finance and treasury management and to educate those involved in the field. Today, it is an organisation of professionals in corporate finance, risk and cash management operating internationally. A professional body and not a trade association, it has over 3,000 Fellows, Members and Associate Members. With more than 1,200 students in more than 40 countries, its education and examination syllabuses are recognised as the global standard setters for treasury education. Members of the Association work in many fields. The majority of Fellows work in large UK public companies, responsible for the treasury and corporate finance functions.

The ACT usually comments from the corporate and not the financial services sector standpoint.

Given the background of our members we only intend to comment of Chapters 7 and 8 of your consultation.

Chapter 7. Proposed amendments to Listing Rules: Cancellation of listing

Q2 Do you agree with this approach? Please state your reasons.

The ACT was one of the many respondents to your previous consultation CP203 who were in favour of introducing a requirement for shareholder approval prior to a company delisting. We therefore very much welcome and support your approach and your desire to bring in the

changes without delay. A delisting makes a fundamental change to the nature of the investment that a shareholder owns, its tradability, its value and the cost of trading, and possibly to level of information being regularly provided. It is not dissimilar to the major change that occurs with a Class 1 transaction where shareholder consent is required, so logically shareholder consent should be required for a delisting.

Q3 Do you consider that 20 days notice of intended cancellation which includes the 14 days notice required for convening a general meeting is sufficient for investors to make a decision in respect of the securities they are holding?

This period should be adequate.

Q4 Do you agree? Should a majority of independent shareholders agree with the cancellation of listing?

We had previously suggested that the voting on a resolution to delist should replicate the requirements for a special resolution (75% of the total votes cast by its shareholders in general meeting). We agree with you in thinking that there is no need to introduce any additional criteria such as having a majority of the independent shareholders vote in favour of the cancellation. The need for a 75% vote should provide adequate protection for investors.

Q5 Do you agree with the proposal that issuers of these categories of securities should not be required to obtain approval of the relevant securities?

In the case of debt securities, securitised derivatives and other securities you are not proposing any requirement for approval prior to delisting. We agree with this stance. If investors in such securities believe that listing is crucial then they have the possibility of trying to negotiate at the outset for a condition within the terms and conditions of the instrument regarding the maintenance of a listing, and indeed this feature is commonly found in most Trust Deeds.

Q6 Do you agree with the proposal that issuers of debt securities should also notify holders of those securities or their representative such as a trustee?

The maintenance of a listing is still important to holders of these other securities so we support the proposal that there should be a requirement for notification of such security holders prior to any delisting, and in any case where there is a covenant to maintain a listing then consent from the Trustee would already be required. It is normal for the Trustee to be empowered to waive this covenant, but only if it takes the view that it would be in the interests of the bondholders to do so.

Q7 If you agree with Q6, do you consider that a circular prepared in accordance with chapter 14 of the Listing Rules should be specified as the required form of notification?

If notifying a security holder of a proposal to delist, then using a circular in accordance with Chapter 14 of the Listing Rules would be a sensible requirement. We believe that delisting should be regarded as being of a "routine nature" in terms of Listing Rules terminology, so that prior approval of the circular by the Listing Authority is not needed.

Q8 Should there be requirement to obtain shareholder approval for issuers wishing to cancel their listing in order to move to a quoted market which is not a listed market or regulated market?

If the shares of a company are being delisted in order to relist on another quoted market that is not a regulated or listed market under EU legislation the shareholder is potentially going to suffer much the same disadvantages as having a listing cancelled altogether, and, as you highlight a company may use this as a route to complete delisting. We therefore believe that the exemption from needing to seek shareholder approval should apply only if the issuer is moving to another regulated or listed market under EU legislation.

Chapter 8. Proposed amendments to Listing Rules re responsibility of the company's auditors under the Combined Code

Q9 Do you agree with our proposals? If not, please state your reasons.

The provisions of the Combined Code are not necessarily absolute binding requirements but are more in the nature of best practice guidelines such that non-compliance may, in the company's view, be appropriate. The "Comply or Explain" approach caters for this flexibility. Despite this flexibility users of the accounts have come to believe that the Combined Code is important and that compliance is generally expected. We therefore consider it appropriate that the auditors do review the processes taking place in relation to the Combined Code, but are not asked to make any judgements as to the reasonableness of any decisions by the Board not to comply.

Without wishing to create an excessively onerous burden and cost on companies it will require careful consideration to define what a 'prima facie' review of the processes by the auditors might be expected to cover. This overall review may turn out to be best defined by having the auditors consider whether the Comply or Explain statement has been made after due and careful enquiry, which is your Option 4.

The DTI is currently in the midst of a consultation on the Operating and Financial Review (OFR), and the concept of due and careful enquiry is being considered under that. "Due and careful enquiry" seems to be an extremely demanding concept and we have reservations about its use in the OFR context. We feel that it would be premature to make any firm changes to the Listing Rules approach to the audit of the Combined Code so that consideration may be given to following the approach eventually used in the OFR context.

Your desire to go for Option 2 whereby the Code provisions relating to Audit and Accountability have an audit review has the advantage of covering objectively verifiable requirements. On the basis that some change is required on account of the change from the 1998 version of the Code to the 2003 version your option 2 appears reasonable. We note that C.2.1 on the directors' review of material internal controls would come under the audit requirement, which is substantially the same as D.2.1 in the 1998 Code. In both cases we note that the auditor is not commenting on the effectiveness or quality of the controls, but merely on the existence of the board's annual review. We support the restricted nature of this review.

The ACT therefore supports your proposal to implement option 2, and agrees that no significant changes are made to the Listing Rules as regards the Combined Code, until such changes can be co-ordinated with the developments on the OFR. Any extension of the auditor's responsibilities here should also be considered in tandem with the DTI and Office of Fair Trading review of limitation of auditor liability.

Q10 Do you consider that it is necessary to have a transitional period as described in Chapter 8?

In Q 9 if you end up making the change to require the audit of the Audit and Accountability section of the Combined Code we feel it is important to allow a transition period given the likelihood that the change would otherwise be effective with virtually no lead time. The transition period should be such that any new rules only apply to accounting periods beginning on or after the approval of any new Listing Rules requirement.

These comments are on the record and may be freely quoted and made available for public inspection.

We hope these responses are helpful for your deliberations and if you need any further information or clarifications please contact any of the people listed below.

Yours faithfully,

Martin O'Donovan
Technical Officer

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The Association of Corporate Treasurers is a company limited by guarantee in England under No. 1445322 at the above address