WORLD FEDERATION OF EXCHANGES

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Response: European Commission Consultation on the Listings Act

February 2021

Background

The World Federation of Exchanges (WFE) is the global trade association for regulated exchanges and clearing houses. We represent over 250 market-infrastructures, spread across the Asia-Pacific region (~37%), EMEA (~43%) and the Americas (~20%). with everything from local entities in emerging markets to groups based in major financial centres. Collectively, member exchanges are home to nearly 53,000 listed companies, and the market capitalisation of these entities is over $95 trillion, while the 50 distinct CCP clearing services (both vertically integrated and stand-alone) collectively ensure that traders put up $1 trillion of resources to back their risk positions.

With extensive experience of developing and enforcing high standards of conduct, WFE members support an orderly, secure, fair and transparent environment for investors; for companies that raise capital; and for all who deal with financial risk. We seek outcomes that maximise financial stability, consumer confidence and economic growth. And we engage with policy makers and regulators in an open, collaborative way, reflecting the central, public role that exchanges and CCPs play in an internationally integrated financial system.

If you have any further questions, or wish to follow-up on our contribution, the WFE remains at your disposal. Please contact:

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The WFE welcome the opportunity to respond to the European Commission's consultation on the Listings Act, and have the following comments to make:

a) General Observations on the Listings Directive

Our membership believe that it is important to assess potential modifications to the Listings regime from both from a national and international perspective. This should take into account specific requirements at a national level whilst also ensuring that European markets remain attractive to non- European issuers.

Further amendments to the Listings Directive should be approached with caution. The Directive consolidates the measures concerning the conditions for admission of securities to official stock exchange listing, and the ongoing financial information that listed companies must make available to investors. On balance, our members believe that the Listing Directive achieves its objectives as it permits market operators to obtain additional benefits as appropriate for applications to its official list.

The concept of "listing" is an important aspect of public markets that needs to be maintained. For example, the regime governing admission to official listing under the Listing Directive is fundamentally different to other regimes. The national regime transposing the Listing Directive provides flexibility that the 'admission to trading' regime under MiFID II does not. Under the Listing Directive, it is important to highlight that, in particular, (i) the role as legal basis of the listing rules of exchanges, (ii) market acceptance of the Listing Directive's regime, (iii) the ease of dual-listing, and (iv) implications for investment mandates and taxation, still apply and are considered to be important for market participants.

Our members note that there is clarity in the market for investors regarding the separation of the Listings Regime and the Prospectus Regime, as well as other securities regulation,[1] which will help to safeguard market integrity.

b) In your view, would the following measures, aimed at improving flexibility for issuers, increase EU companies' propensity to access public markets?

1. Allowing issuers to use shares with multiple voting rights

The debate on dual-class share structures is one which has attracted attention from different market participants. They are increasingly being adopted across the WFE's membership and we recognize their attractiveness to found-led companies that are seeking to retain a sizable stake in their company post-listing. It is sometimes argued that the future success of these companies is contingent on these key persons staying on the board and executing their vision. Dual-class shares with differential voting rights would enable founders to retain a majority of the voting rights within the organisation. In some European countries, the concept of 'loyalty shares[1]' is also gaining momentum as a means to counter short-term investment. This enables investors to receive twice the voting rights after a pre-defined holding period and can help to incentivise long-term shareholder engagement.

Adopting this framework would bring the EU on par with its counterparts as well as reduce existing competitive disadvantages. However, we would urge the European Commission to ensure that investor confidence and integrity in the markets is not compromised. The Commission should therefore consider investor safeguards such as a time limited sunset clause, which would enable this structure to be wound down after a specific period, for example after 5 years. This serves as an important safeguard against controlling shareholders whose voting rights are entrenched

[1] For example, the Prospectus Regulation, the Transparency Directive and MiFID II.

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Freshfields, Loyalty Shares in Spain: the Fading of the 'One Share, One Vote' Principle, 2021

in a way that diminishes external accountability to shareholders and stakeholders. Specific weighted voting rights attached to any given dual-class structure should be determined by listings authorities and regulators within member states, and the Commission may wish to consider imposing limits on the circumstances in which these voting rights can be used. For example, in the event of deterring a takeover or preventing the removal of a director from the board.

2. *Clarifying conditions around dual listing*

We recognize that there are a number of benefits attached to a dual listing including: (i) more liquidity as it allows a greater number of participants to engage in the buying and selling of stock; (ii) an opportunity to trade shares more frequently where a company is listed on exchanges in different time zones; and (iii) greater access to capital owing to a larger investor base. However, concern[2] has been expressed around the cost and complexity of maintaining two separate legal entities, with different share prices, shareholder voting procedures, and corporate law provisions.

To counter fragmentation of liquidity pools, the Commission should look at altering specific rules for index providers. Some indices take orderbook turnover at the respective venue as an inclusion criterion for the relevant index. With a dual listing, liquidity will be split and inclusion within an index is harder to achieve. Removing this obstacle could stimulate the demand for dual listings as companies may be eligible for respective selection indices at both listing venues. Enabling entities to re-use relevant listing documentation where they are considering a re-submission at another exchange would also help ease administrative burdens.

3. *Lowering/ eliminating free float requirements*

Free float requirements are traditionally seen as a means of safeguarding liquidity and reducing volatility in public markets. Lowering the free float requirement may give more control to founders around the dilution of their shareholdings. We would not be in favor of eliminating free float requirements as a proportion of shares being in the hands of public shareholders is what makes a company 'public'. Consequently, shareholders have some 'skin in the game' and are better incentivised to hold management to account.

The Commission may, however, wish to consider a reduction in the free float requirement. Some jurisdictions[3] have proposed a reduction in the free float to 10%. Whilst we do not propose a specific figure, we believe that regulators within individual member states should be able to retain the discretion and flexibility to adjust this requirement based on the size of the issuance. For example, a lower free float may be accepted in the event of very large issuances.

[2] K Hawtrey, Does the Dual Listed Company Structure Have a Future, 2019
[3] UK Primary Markets Effectiveness Review, 2021