

Financial Conduct Authority
Diversity and inclusion consultation response

Via Email: cp21-24@fca.org.uk

Management and Investment Resources

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Diversity and inclusion consultation response (CP21/24)

Dear Sirs,

I am submitting these comments as an active investor in the shares of public companies both listed on the main UK stock exchange and on the AIM market.

I give the answers to your detail questions below (answers in red). My general comments are as follows:

This proposal seems to yet another one that will impose costs on publicly listed companies with no clear benefit while diverting management time. As I pointed out in my response to the Primary Markets Effectiveness Review, the imposition of more corporate governance regulations is one reason why public listings are falling as company management decide that it's easier to remain private. That is the negative outcome of over-regulation.

Although there is wide acceptance that more diversity on some boards may be preferable. By avoiding the all-white, male and elderly boards that were so common in the past, one can ensure more understanding of the modern world. And it is certainly the case that there may be some social justice in avoiding unfair discrimination against some characteristics. But is there any evidence that more diverse boards actually improve company performance?

The FCA report covers this issue in Section 3.27 onwards where they review the evidence. The evidence is not clear so they say: "Our own literature review of academic and other research published alongside our DP concludes that, overall, the empirical evidence for the impact of diverse workforces and boards on financial performance is inconclusive". In essence the imposition of more regulation in this area may have no benefit while the disadvantages of loading management with extra responsibilities is ignored.

What concerns me most is that instead of picking the best candidates for board or senior management positions, they may be selected based on sex or ethnicity, i.e. there will be discrimination against others, which is of course illegal.

There is also a rather peculiar focus on factors that have no obvious relevance to fitness for a role. One of the oddities of public companies is that anyone with no qualifications or experience can be appointed. There is no requirement to have a business or accounting qualification. No requirement to know the basics of company law or to have had any training for the role of being a company director. Is this not most perverse?

For example I have attended several General Meetings of companies in the past where it was clear that the directors did not understand the basics of company law.

You also get peculiar results at present where the keenness to appoint more females results in some directors with little obvious qualifications for anything. They tend to end up chairing remuneration committees for example where they are dominated by executive management. Would it not be preferable to regulate to ensure directors had basic competence in law and finance rather than happening to have the right skin colour? That is likely to be much more effective in improving company performance.

One of the most laughable aspects of the proposed new regime is that to meet the new rules on gender diversity all that needs to be done is for a current male member to “self-identify” as female. Will management be required to inquire into the details of sexual orientation when recruiting?

If we are going to start regulating management composition based on their characteristics, should we also not be ensuring a balance of ages, heights, physical fitness (no fatties allowed) or other relevant characteristics?

There are better alternatives to improving the diversity of boards other than using quotas. Education and structured experience programmes are more likely to produce a better outcome. These proposals will deter companies from listing.

List of questions

Q1: Do you agree with the proposed comply or explain disclosure requirement on board diversity targets relating to gender and ethnicity?

Answer: No. A completely unjustified proposal. See reasons above, plus there is no proper cost/benefit justification. Costs of almost £1 million but no financial benefits.

Q2: Do you agree with the proposed disclosure obligation to set out numerical data on the gender and ethnic diversity on a company’s board and its most senior level of executive management?

Answer: No. See above.

Q3: Do you agree with the proposed scope of who would be required to report under the new Listing Rules proposals, and those we have excluded (eg issuers of listed debt)? If you disagree, please explain why.

Answer: No comment.

Q4: Do you agree with our proposal to include overseas and smaller issuers in the new Listing Rules proposals?

If not, please explain whether you would propose further flexibility within the rules, or would exclude such companies from scope?

Answer: No.

Q5: Do you agree with proposed targets on gender and ethnic diversity representation at board-level of companies? Should we consider any additional or different targets?

Answer: No. See general comments above.

Q6: Do you agree with the format and extent of numerical data reporting proposed in the tables in Annex 2? If not, please explain any changes you would suggest or where further clarity is needed.

Answer: No comment.

Q7: Should we consider requiring similar numerical data reporting for the level below the executive management team of in-scope listed companies and / or seek data on representation by sexual orientation? If so, we welcome any drafting suggestions and views on any impact this may have for the CBA and scope of our proposals.

Answer: Absolutely not. The proposals should be scrapped not extended.

Q8: Do you agree with proposed amendment to DTR 7.2.8AR to add to the examples of diversity aspects included in DTR 7.2.8AR which issuers could disclose in their reporting on their diversity policy, and to extend consideration to key board committees? If not, please explain why.

Answer: No.

Q9: Do you agree with our proposed new guidance provision DTR7.2.8CG encouraging in-scope issuers to consider providing numerical data to further inform reporting on the results of their diversity policies? If not, please explain why.

Answer: No. A costly proposal with no justification.

Q10: Do you agree with the proposed implementation timing? If not, please explain why and indicate what alternative timeframe you consider appropriate

Answer: No comment.

Q11: Do you agree with our phased approach to improve our use of data over time? Should we consider other approaches? If so, please suggest these.

Answer: No comment.

Yours sincerely

Roger W. Lawson
Managing Director