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21 August 2017

For: Primary Markets Policy Team  
Financial Conduct Authority  
25 The North Colonnade  
London  
E14 5HS

24 August 2017

Dear Sir or Madam,

## Response to Consultation Paper CP17/21: Proposal to create a new premium listing category for sovereign controlled companies

### Background

ShareAction, a registered charity established to promote transparency and responsible investment (“RI”) practices by pension funds and other institutional investors. We are a member organisation and count amongst our members well-known NGOs and charitable foundations, as well as over 26,000 individual supporters. We work with asset managers and institutional investors to promote stewardship and engagement, and we also conduct annual industry-wide surveys to rank them on these activities. We recently gave evidence to the BEIS Select Committee on their corporate governance inquiry and have extensive experience of research and policy development on barriers to long-termism having fed into consultations such as the 2012 Kay Review.

ShareAction is funded by a series of foundations and trusts, government departments and individuals, not by financial institutions.

We have recently undertaken a specific project to review various aspects of the proposed initial public offering of Saudi Aramco.

This response is compiled by Toby Belsom (Head of Research and Analytics) who spent 17 years as a UK equity portfolio manager and equity analyst at several large financial institutions. In this role, he regularly dealt with primary and secondary equity raisings, reviewing governance structures and analysing sovereign and jurisdictional risks.

### Summary of our view

Our overall perspective on the Consultation Paper is:

1. ShareAction has no fundamental objection to the objective of introducing measures to increase the attractiveness of the UK capital market to non-UK state-owned controlled businesses.
2. We are supportive of occasional reviews of the UKLA listing requirements to ensure they are ‘fit for purpose’.
3. We believe that there are other ways which might be considered to enable state owned enterprises to access London capital markets such as an adapting the

principles in the SEC's ADR level I, II, III to the UK context and ensuring the inclusion of governance protections in an equivalent Level I category.

4. Though we understand gaining a Primary listing in this category would not necessarily result in FTSE index inclusion, we are concerned that businesses in this new category would be widely held.
5. We have concerns around investor's ability to make proper judgement on sovereign and ownership risks in the new market segment due to the different levels of protection this segment will provide to minority shareholders.
6. If the UKLA does look to introduce a new Premium listing category for state owned enterprises, we believe there should also be a clear and rapid mechanism for delisting businesses which have transgressed the new listing criteria. This should be laid out clearly in the initial criteria and policed by the UKLA.
7. We see no reason why state owned enterprises should not be considered as controlling shareholders.

### Q1: Do you agree with the overall proposal outlined in this paper of creating a premium listing category for sovereign controlled companies?

We are supportive of the UKLA occasionally reviewing the listing requirements to ensure they are 'fit for purpose' and undertaking a consultation process to ensure all participants views are understood and incorporated.

We have no fundamental issues with state owned or controlled enterprises or entities accessing the pool of capital available in London for business purposes.

The London market, and especially the FTSE 100, includes a wide range of well governed, multi-national businesses who meet and exceed the established and accepted corporate governance codes and listing requirements. For the purpose of listing requirement we see no supporting evidence in the consultation paper as to why treating state owned enterprises differently would benefit retail or institutional investors.

We have concerns that these changes may result in unintended consequences and expose individual and institutional investors to specific risks related to dilution of minority rights and a loss of protections. We will outline some of these concerns later in the response.

### Q2: Do you agree that the changes proposed are best effected through the addition of a new listing category?

We do not think introducing a new Premium listing is the optimum way to ensure state owned enterprises are able to access the London market. Removing protections for minority shareholders (such as controlling shareholders/related parties) raises the probability of investors being exposed to issues such as those that surrounded BUMI, Essar Energy and Vallar plc and resulted in a significant and largely avoidable loss of shareholder value.

Though state owned enterprises are unlikely to be included in the FTSE Russell indices, they may become widely held across a range of institutional and retail funds. For example, Premium listed, state-owned enterprises with a high dividend yield might become widely held in retail funds in the IMA UK Equity Income fund sector. Fund Managers and trustees are likely to perceive the new Premium listing category as a 'stamp of approval' from the FCA/UKLA and not recognise, not be aware of or choose to ignore the extra governance and ownership related risks.

We believe that other routes might be more appropriate. For example, we think that the model developed by the US Securities and Exchange Commission in categorising ADRs Level I, II and III is a possible model. Though these Levels refer to SEC accounting standards, the UKLA could look to introduce a version of the US ADR with different levels reflecting differing governance standards and minority shareholder protections.

This would clearly differentiate between UK premium listed equity and foreign state owned enterprises looking to access the London market.

If the UKLA does go forward in creating a new Premium listing category for state owned enterprises, we believe there should be a clear and rapid mechanism for delisting businesses which have transgressed the new listing criteria. This should be laid out clearly in the initial criteria and policed by the UKLA/FCA.

**Q3: Do you agree that the threshold for control should be set at 30%?**

We see no reason why the UKLA should take a different view from existing definitions in various regulatory frameworks.

We also might expect that the definition of state owned and state influenced shareholders will be difficult to differentiate for UK based shareholders and the UKLA. We therefore would want to understand clearly how the UKLA will define and differentiate state 'controlled' and 'state-influenced' shareholders.

**Q4: Do you agree that eligibility for the new category should not be restricted on grounds of national identity of the controlling shareholder? Do you agree that it should also not be restricted on grounds of country of incorporation of the company?**

We see no reason to limit eligibility for the new category on national identity or country of incorporation unless these countries breach certain UN backed trade embargoes or widely held ethical standards.

**Q5: Do you agree that independent shareholder approval should be required for a transfer from an existing premium listing into the new category?**

From your consultation paper we understand that you mean a transfer from an existing listing category to the new Premium listing would require approval by a vote of the independent shareholders. We assume you mean, it would only be approved by a majority vote of independent shareholders only. On this assumption, we would see no reason to disagree with the proposal.

**Q6: Do you agree that the sovereign controlling shareholder should not be considered a related party for the purposes of the Listing Rules?**

We agree that sovereign countries are very different entities from private-sector shareholders and are unlikely to have the same set of motivations as private-sector investors. We have less faith in the UKLA's proposition that "Capital markets, many of whose participants have extensive experience of investing in sovereign securities, understand this and are well-positioned to assess the relevant sovereign and jurisdictional risks".

This may be the case for certain investors, but returns to the point raised in Response 2 (investors chasing yield) and the previous market experience from businesses such as Essar Energy and BUMI plc.

This shows that the UKLA's faith in market participants with 'extensive experience' needs to be questioned and challenged.

Both these reasons would point to the need for equivalent if not higher levels of minority shareholder protections and transparency. It is on this basis that we think the state-owned enterprises should be considered for what they are – related parties.

**Q7: Do you agree that MAR-mandated disclosures are sufficient to secure the necessary at-the-time transparency?**

No response.

**Q8: Do you agree that controlling shareholder provisions should not apply in respect of the sovereign controlling shareholder for companies listed in this category?**

We see no reason why state owned enterprises should not be considered as controlling shareholders. Our arguments outlined in Q6 also address Q8.

**Q9: Do you agree that DRs over equity shares should be eligible for this category?**

No response.

**Q10: Do you agree that full pass-through of voting and other rights on the basis described should be a requirement for eligibility of DRs for listing in the proposed category?**

As we discussed earlier in the responses to the consultation, the UKLA should investigate the possibility of introducing a similar system to the SEC's ADR Level I, II and III with graduated levels of governance and protections of minority rights. We believe such a proposal would enable and facilitate state owned enterprises to access the London capital markets and clearly differentiate between state owned enterprises and Premium listed foreign based/overseas incorporated enterprises.

**Q11: Do you agree with the proposed consequential changes to the Listing Rules and to the Fees manual set out in Appendix 1?**

No response.

We would welcome the opportunity to discuss in person.

Yours sincerely,

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