

Diversity and inclusion on company boards and executive management

Policy Statement

PS22/3

April 2022

This relates to

Consultation Paper 21/24
which is available on our website at
www.fca.org.uk/publications

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1 Summary

Our measures on diversity and inclusion

- 1.1** This Policy Statement sets out our final policy decision for proposals set out in CP 21/24 'Diversity and inclusion on company boards and executive committees'.
- 1.2** These measures will improve transparency on the diversity of company boards and their executive management for investors and other market participants, increasing engagement on this area and informing investment decisions. We hope, in turn through investor pressure, issuers are encouraged towards greater diversity in practice, which may have further benefits for corporate governance and decision-making.
- 1.3** Overall, we received broad support from consultation responses on the main elements of the proposals, with the exception of concerns raised around the basis for reporting on the representation of women (see below) and some feedback relating to overseas data protection laws. So, we are finalising rules on a broadly similar basis to that which we consulted on, although we have provided more flexibility for companies on:
- how they collect and report data relating to the representation of women.
 - the data reporting requirements for companies with board members or executive management situated overseas, where feedback noted that local privacy and data protection laws may prevent companies asking for the relevant data which is required to be reported.
- 1.4** Given this flexibility, we have also added requirements for additional transparency from issuers on their approach to collecting the data used for the purposes of our reporting requirements. This will ensure that investors can meaningfully compare the data provided by issuers.
- 1.5** We have also made small changes to the language of our proposed target to be disclosed against in relation to individuals from minority ethnic backgrounds.
- 1.6** We have maintained requirements to disclose against targets for the representation of women and minority ethnic groups on a comply or explain basis. We are also confirming a requirement to make accompanying numerical disclosures in a table format on the diversity of a company's board and executive management level. We have also finalised amendments to the corporate governance rules in our Disclosure Guidance and Transparency Rules (DTRs) broadly as consulted on, which include encouragement for in-scope companies to consider broader aspects of diversity in the context of their reporting on board diversity policies.
- 1.7** In light of feedback relating to the proposed basis for reporting on women's representation, including privacy concerns regarding the interaction between our proposed disclosure requirements and similar reporting under the Companies Act, our finalised rules give companies flexibility to decide on the most appropriate approach to collecting data for the purposes of reporting against the target on women's

representation and for the related numerical disclosures. Companies will determine themselves how best to collect and report data but will be required to explain the approach they have taken and be expected to take a consistent approach. This will enable companies to harness existing methods and data they already gather to meet other legal obligations or voluntary initiatives, or to adopt their own preferred approach in the context of their business. It will also give companies the flexibility to manage any privacy and data protection issues that may arise depending on their existing reporting and in the context of their own workforce.

- 1.8** We consider this approach will avoid prescription in an area that is sensitive and where views are evolving in both public policy and wider social debate. At the same time, contextualised disclosures by companies will meet our policy objective of promoting transparency that supports market integrity and investors' engagement with companies. We intend to review this policy in 3 years' time to assess the impact. At that time, we will consider whether to revise the nature or level of the targets in our rules, and whether to consider targets on other aspects of diversity. Our final rules will apply to accounting periods starting on or after 1 April 2022 meaning that these new disclosures will start to appear in annual financial reports published from around Q2 2023 onwards. However, we encourage companies whose financial years began before then (from 1 January 2022) to consider reporting on the targets and making numerical disclosures in relation to their current accounting period on a voluntary basis.

Our proposals in CP21/24

- 1.9** In CP21/24 we proposed changes our Listing Rules to set requirements:
- That certain listed companies would disclose in their annual financial reports on a 'comply or explain' basis against targets that:
 - At least 40% of the board are women (including those self-identifying as women).
 - At least one of the senior board positions (Chair, Chief Executive Officer (CEO), Senior Independent Director (SID) or Chief Financial Officer (CFO)) is a woman (including those self-identifying as a woman).
 - At least one member of the board is from a non-White ethnic minority background (as referenced in categories recommended by the Office for National Statistics (ONS)).
 - That listed companies also disclose in annual financial reports a standardised numerical table on the diversity of their board and executive management by gender and ethnicity.
- 1.10** In terms of the scope, we proposed that our new Listing Rule disclosures should apply to companies with UK-listed equity shares or certificates representing equity shares (premium or standard), including closed-ended investment funds (eg, investment trusts) and sovereign controlled commercial companies. We proposed to exclude open-ended investment companies (OEICs) and 'shell companies' (as defined in our Handbook) for whom diversity and inclusion disclosures of this nature may be less relevant.
- 1.11** We also proposed changes to the corporate governance rule in DTR 7.2.8A, which applies to certain UK issuers admitted to UK regulated markets and, through the

Listing Rules, to certain overseas listed companies, subject to existing exemptions for small and medium companies (see DTR 1B.1.7R). These changes are to clarify that existing disclosures on board diversity policies could consider wider diversity aspects than those currently referenced, such as sexual orientation, socio-economic background, and disability and to extend the requirement to disclose a diversity policy (where such a policy is applied) to include policies of key board committees (audit, remuneration and nominations).

1.12 We also proposed accompanying guidance to encourage companies, where appropriate, to disclose data on diversity as part of the results of their diversity policy.

1.13 Our proposals were intended to increase transparency for investors and companies by establishing better, comparable information on the diversity of companies' boards and executive management. This would serve to enhance market integrity and make markets work better in line with our objectives.

1.14 We also proposed to not extend our listing rule requirements to issuers of standard listed debt and debt-like securities and other non-equity securities as it is difficult to differentiate within these listing categories between commercial firms and other shell companies / non-operating companies where diversity and inclusion disclosures are less relevant. This approach is consistent with our current approach to climate-related financial disclosures (TCFD).

1.15 We proposed that our new Listing Rule requirements would apply to accounting periods starting on or after 1 January 2022 so that reporting would start to appear in annual financial reports published in early 2023.

Feedback to CP21/24

1.16 The consultation closed on 20 October 2021 with 540 responses in total.

1.17 Feedback from institutional market participants and trade bodies was broadly supportive of our proposals to require disclosures against targets for representation of women and ethnic minorities, to require numerical disclosures and our proposed change to DTR 7.2.8AR. Many companies are already participating in voluntary initiatives and already make disclosures in these areas. There was also support for the proposed scope and timing of our proposals. Those views that were against or mixed tended to be split between whether they wanted the FCA to be more or less ambitious in the scope and design of the requirements.

1.18 We also received a high volume of responses from individuals and interest groups (439 of the 540 responses) specifically focusing on the FCA proposal for reporting against targets for women that included those self-identifying as women, as opposed to against targets for women defined by sex. Many of these respondents argued that this policy approach would not be consistent with equalities legislation and that it could lead to a range of unintended consequences.

1.19 In relation to UK incorporated companies, some responses highlighted risks to data quality if data collected under our requirements differed from that collected for the purposes of reporting under the Companies Act 2006 (which requires reporting on the

sex of directors and senior managers) and that these differences could lead to privacy risks.

- 1.20** We also had feedback that we should align our targets with those of the Hampton Alexander review by using 'women' on boards. Some responses also identified that our proposal to require numerical disclosures may present data privacy challenges to companies with shares listed in the UK but that are based overseas or have operations and persons situated overseas. We provide a more detailed summary of feedback in Chapter 2.

Our response to this feedback

- 1.21** In light of the broad support for the main elements of the proposals, we are proceeding with the proposed focus of setting annual disclosure requirements on the representation of women and people from an ethnic minority background at board and executive management levels (both against targets on a comply or explain basis and the accompanying numerical tables). We have also maintained the proposed scope of the requirements. We are also proceeding with our proposed changes to the DTRs.
- 1.22** In light of the feedback on our proposed basis for reporting on women's representation, including the privacy concerns raised by respondents due to the interaction between our proposed disclosures and existing requirements for disclosure under the Companies Act, we have decided to adopt a framework that gives companies more flexibility in how they report. We have removed the guidance on self-identification which accompanied the targets and data disclosure table and have given companies more flexibility to determine how best to collect data from employees, provided their approach is explained and applied consistently. In particular, for the numerical disclosures, we have made it clear that companies can report either on the basis of sex or gender identity.
- 1.23** We are also giving greater flexibility to issuers who have members of their board or executive management situated overseas in relation to numerical disclosures. In those cases, where local law prevents the collection and / or publication of relevant data, a company may instead explain the extent to which it is unable to make the numerical disclosures and complete the tables.
- 1.24** Following feedback on our wording in relation to the target for individuals from a "non-White ethnic minority background", we have made a minor change to the language used for this target.
- 1.25** Further, we have added a new limb to the disclosure which requires transparency on the issuer's approach to collecting the data. We consider that, overall, our amended approach will provide flexibility for companies while still achieving our policy objective of enhanced transparency for investors, including by ensuring that the basis on which data is collected and reported is explained. In addition, we expect any differences in the data reported by companies depending on their approach (eg whether using sex or gender identity) will be small and should not materially affect investors' considerations of this information.
- 1.26** We are also changing the commencement date to financial years starting on or after 1 April 2022.

Who these measures apply to

- 1.27** The companies in scope of our new Listing Rules are UK and overseas issuers with equity shares, or certificates representing equity shares, admitted to the premium or standard segment of the FCA's Official List, including closed-ended investment funds and sovereign controlled companies, but excluding open-ended investment companies and 'shell companies' as defined in LR 5.6.5AR. We are not applying the rules to issuers of listed debt and debt-like securities, securitised derivatives or miscellaneous securities.
- 1.28** DTR 7.2.8AR applies to certain UK issuers with securities admitted to UK regulated markets and, through the Listing Rules, to certain overseas listed companies, subject to existing exemptions for small and medium companies (see DTR 1B.1.7R).

What we are changing

- 1.29** We are introducing new Listing Rules (LR 9.8.6R(9) and LR 14.3.33R(1)) to require, as an ongoing listing obligation, issuers that are in scope to include a statement in their annual financial report setting out whether they have met specific board diversity targets on a 'comply or explain' basis, as at a chosen reference date within their accounting period and, if they have not met the targets, why not. This allows companies flexibility to provide relevant context on their approach to board diversity, whether or not these targets are met. The targets are:
- At least 40% of the board are women.
 - At least one of the senior board positions (Chair, Chief Executive Officer (CEO), Senior Independent Director (SID) or Chief Financial Officer (CFO)) is a woman.
 - At least one member of the board is from a minority ethnic background (which is defined by reference to categories recommended by the Office for National Statistics (ONS)) excluding those listed, by the ONS, as coming from a White ethnic background).
- 1.30** Issuers will also have to set out in their statement:
- the reference date used, and where this is different from the reference date used in respect of the previous accounting period, an explanation of why, and
 - any changes to the board that have occurred between the reference date and the date on which the annual financial report is approved that have affected the company's ability to meet one or more of the targets.
- 1.31** Alongside the annual narrative comply or explain disclosure, we require also (in LR 9.8.6R (10) and LR 14.3.33R (2)) in-scope companies to publish numerical data on the sex or gender identity and ethnic diversity of their board, senior board positions (Chair, CEO, SID and CFO) and executive management in a table. Data is to be reported in a standardised table format (as at the reference date selected for the purposes of the comply-or-explain disclosure) which is included at Annex 2. There is flexibility in the format of the prescribed table for reporting on sex or gender identity, in order for companies to reflect their approach to data collection.
- 1.32** Issuers are also required to explain their approach to collecting the data. We have included guidance (in LR 9.8.6I G and LR 14.3.36G) on our expectations of what this

explanation should cover, as well as our expectation that companies take a consistent approach to data collection, both:

- across the individuals being reported on, and
- for reporting against the targets and numerical disclosures.

1.33 As well as the adjustments for issuers with board members or executive management situated overseas (see paragraph 1.23), closed-ended investment funds and sovereign controlled companies will be permitted to adjust their disclosures on senior board positions and their numerical data disclosures in the event that these disclosures are inapplicable to the fund, provided they set out the reasons why the disclosures are inapplicable.

1.34 We also include guidance (in LR 9.8.6IG and LR 14.3.36G) to the effect that in-scope companies may, in addition to the disclosure requirements described above, wish to include the following in its annual financial report to provide further context:

- a brief summary of any key policies, procedures and processes, and any wider context that it considers contributes to improving the diversity of its board and executive management.
- any mitigating factors or circumstances which make achieving diversity on its board more challenging (for example, the size of the board or the country where its main operations are located).
- any risks it foresees in being able to meet or continue to meet the board diversity targets in the next accounting period, or any plans to improve the diversity of its board.

1.35 Issuers should also be reminded that they remain subject to equalities legislation, including the Equality Act 2010 and its provisions on discrimination. Whilst the FCA has set targets on board diversity for issuers to report against, it is an issuer's responsibility to ensure its practices (including in relation to board appointments) are lawful and compliant with equalities legislation.

1.36 We are also changing DTR 7.2.8AR which requires in-scope companies to disclose in their corporate governance statement the diversity policy applied to their board, or to explain where no such diversity policy is applied. These changes are to expand the reporting requirements to cover the diversity policies of key board committees and to indicate that reporting on board and board committee diversity policies could consider wider diversity characteristics .

Outcome we are seeking

1.37 We seek to increase transparency for investors on the diversity of boards and executive management of certain companies with UK listed equity shares or certificates representing equity shares.

1.38 Setting targets on a 'comply or explain' basis for the representation of women and people from a minority ethnic background is designed to be a positive reporting benchmark to encourage progress. However, it serves as a starting point to encourage scrutiny and consideration of diversity and inclusion more broadly, both at senior levels of listed companies and throughout their businesses. We are also harnessing

progress made under existing UK voluntary initiatives, the Hampton Alexander (FTSE Women Leaders) and Parker reviews. We consider that numerical disclosures will add to transparency for investors on companies' board diversity.

- 1.39** We are also seeking to improve considerations of broader diversity aspects within diversity policies and related disclosures by issuers who disclose their policies under DTR7.2.8AR. This should encourage additional information for investors to consider as part of their investment decisions.

How this links to our objectives

- 1.40** This policy supports our market integrity objective by increasing transparency (and reducing access costs associated with such transparency) for investors about the companies they invest in. This promotes more efficient pricing in the market and fosters market effectiveness.
- 1.41** Over time, we intend these disclosures to strengthen incentives for in-scope companies towards greater diversity, which may, in turn, have wider benefits in terms of the quality of corporate governance and the performance of such companies.
- 1.42** Although we have allowed issuers greater flexibility in how they collect data and report under our new Listing Rules, we consider the final rules will still deliver against our objectives to promote transparency since:
- We require companies to explain the approach they have taken to data collection, eg describing the source of data or survey terminology used to gather and report on the diversity of their boards and executive management, which provides transparency and context to investors.
 - We also indicate we expect companies to be consistent in their approach to data collection for the purposes of our rules, and
 - In practical terms, the differences in data for companies reporting on sex or gender indicate that identity is likely to be negligible or not present. The Government Equalities Office estimates that there are between 200,000 and 500,000 trans people in the UK. In light of this, the numbers of transgender individuals on company boards or at executive management levels are likely to be very small.

Measuring success

- 1.43** The required disclosures will allow issuers, the FCA, investors and interested parties to assess and compare board and executive management diversity. We expect that investors may use this information to engage more with companies on greater diversity and inclusion.
- 1.44** The first success measure will be the fullness and clarity of the data that our measures generate. We will assess whether the dataset being provided by in-scope companies is comparable and meaningful.

- 1.45** The second success measure will be feedback from investors and other stakeholders about whether the data is useful. As part of this, we will also consider how it may be improved.
- 1.46** We may see interested parties using the data in their own policy analysis and research. Over time, we will assess if the policy is making it easier for investors to compare issuers' board and executive management diversity as part of their investment and stewardship decision and whether the data shows that diversity is increasing.
- 1.47** Our changes to DTR 7.2.8AR seek to encourage issuers to consider diversity more broadly in the context of this rule. Under our guidance on DTR 7.2.8AR(1)(d) issuers may consider where appropriate publishing numerical data on the diversity of their board and relevant board committees, where currently there is relatively little information. This may also provide us with data to inform whether we consider broadening the scope of our disclosure requirements.

The FCA's broader focus on diversity and inclusion

Diversity and inclusion in the financial services sector

- 1.48** Alongside the final measures set out in this Policy Statement, the FCA has also been considering ways to improve diversity and inclusion in the financial services sector. This would advance our objectives of consumer protection, enhancing the integrity of the financial system and promoting effective competition. It supports healthy cultures within firms and in-turn delivers high standards of conduct, reduces groupthink and supports effective decision-making. It also promotes innovation and competition in products that meet diverse customer needs and unlocks talent.
- 1.49** DP21/2: 'Diversity & inclusion in the financial sector' (our joint paper with the PRA and Bank of England) was published in July 2021. Through DP21/2 we have used our unique position as regulators to open broad-based discussion with the industry on driving change in diversity and inclusion across UK financial services, including on the potential policy interventions we could make. It is the first step in setting out a new regulatory framework on diversity and inclusion and builds on the other FCA work that seeks to deliver better outcomes for consumers.
- 1.50** In taking forward this work, we are seeking to achieve 4 outcomes:
- supporting a healthy culture to deliver higher standards of conduct.
 - reducing groupthink to support effective governance, challenge and decision making.
 - promoting innovation and competition in products that cater for a diverse customer base.
 - unlocking talent and making the UK market an attractive place to do business.
- 1.51** The deadline for contributions to DP21/2 was September 2021. We are now considering the responses alongside responses to our recent diversity and inclusion pilot data survey and cost benefit analysis survey. We expect to publish a consultation paper in 2022. These proposals are expected to apply broadly across the financial sector so are likely to be relevant for financial services firms authorised by the FCA which are also listed.

Our approach to diversity and inclusion within the FCA

- 1.52** Diversity and inclusion are central to the FCA's approach, as an employer and as a regulator and public body. As an employer, we are keen to be as diverse and inclusive as possible, reflecting the communities in which we operate, and the consumers whom we protect. We know that diversity has many benefits. People with different life experiences can bring new thinking and their experiences can inspire new approaches to problem solving and decision making. Our work touches almost every UK resident's daily life, and the lives of millions who rely on UK markets. We operate in an increasingly complex environment and we need diverse teams capable of dealing with the challenges we face and the judgements we need to make.
- 1.53** As a public body, we are subject to the requirements of the Public Sector Equality Duty (PSED). This means that we must, in the exercise of our functions, have due regard to the need to eliminate unlawful discrimination and other prohibited conduct and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. Promoting diversity and inclusion within the FCA will in turn support us in meeting the PSED.
- 1.54** We take positive action to be a leading diverse and inclusive organisation, both as a regulator and an employer and currently align to 4 equality objectives.
- Reflecting the society we serve; we attract and develop a diverse mix of people at all levels of the organisation.
 - Inclusive culture: our working environment is inclusive. People can bring their whole selves to work and difference is embraced and celebrated.
 - Consumer-focused: we always consider the impact of our work on the different groups in the population.
 - Leading by example within the financial services sector, highlighting diversity and inclusion as an integral element of good conduct.
- 1.55** All aspects of diversity and inclusion are important to us. That includes diversity in the context of the 9 protected characteristics, but also in relation to other attributes including lived experience, diversity of thought, background and working style.
- 1.56** In 2016 the FCA was in the first group of organisations to sign up to the Women in Finance Charter, which seeks to increase the representation of women in the financial services sector, particularly at senior levels. In line with the charter we set stretching targets for our Senior Leadership Team (SLT) for gender parity (50%) to be met by 2025. At the same time, we set targets to improve senior representation for minority ethnic individuals, targeting 13% representation in our SLT by 2025.
- 1.57** After reviewing progress against our targets in 2021, we have expanded our gender and ethnicity targets beyond our SLT, introducing targets at Manager, Technical Specialist and Senior Associate (inclusive of Lead and Senior Associate) levels in July 2021. Improving diversity at these levels is vital, not least because individuals in these roles are the pipeline for our future senior leadership and setting these targets will ensure we drive positive change and are held accountable for our progress across the organisation. Our targets for women remain 50% and we have extended these to all relevant grades.
- 1.58** We increased our 2025 SLT ethnicity target from 13% to 20% and introduced a 25% target for minority ethnic representation across all pipeline grades. We acknowledge that lived experience and career progression is not the same across all ethnic minority

groups and are particularly aware of a lack of Black individuals in senior roles in financial services. Our own data demonstrates slower career progression for Black individuals at the FCA and we have therefore also committed to increasing Black representation at SLT level, targeting 4% SLT Black representation within our target for 2025.

- 1.59** We're working hard to become a truly diverse and inclusive organisation. We operate our reporting on a self-identification basis and will continue to do so going forwards. It allows our employees to share their diversity data so that we can implement strategies to build a culture that supports all employees and measure our progress towards our diversity goals. We are now collecting data from our employees on a wide range of diversity characteristics, including sex and gender identity. We report on this annually within our Annual Diversity report and we continue to focus on increased declaration rates for our diversity information.

Equality and diversity considerations

- 1.60** We consider that this decision is aligned with our obligation under the Public Sector Equality Duty (PSED) to have due regard to the need to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

Next steps

- 1.61** In-scope companies are required to make these disclosures in their annual reports for financial years starting on or after 1 April 2022. Details on the tables for reporting are in Annex 2.

2 Feedback to CP21/24

2.1 This section summarises feedback to CP21/24 and sets out our response. Details of the new reporting tables are included at Annex 2. Details of the new rules are included at Appendix 1.

Summary of responses

2.2 There were 540 responses to CP21/24. There were 439 responses focused specifically on our proposal to include those self-identifying as women as part of the targets on the representation of women and related data disclosures, which generally responded to only one of the consultation questions.

2.3 The other 101 responses, which typically addressed the wider range of consultation questions represented a broad scope of stakeholders including sell-side and buy-side companies and trade associations, consumer representatives, law firms, campaigning groups, voluntary initiatives in this space and relevant interest groups. Overall, the majority of these responses were supportive of our proposals, with only around a third of respondents raising concerns.

Responses on self-identification

2.4 We asked the following question in CP21/24 in relation to targets on gender and ethnic diversity.

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?*

2.5 439 responses, mainly from individuals and interest groups, focused specifically and solely on this question and the issue of whether we should set targets for women which include in the dataset those self-identifying as women. 438 of these responses opposed our proposed approach on the basis they disagreed with explicitly focusing on self-identified gender, with one in favour of it.

2.6 The responses which opposed our proposed approach to including those who self-identify as women in the targets included the following reasons:

- They viewed that approach may be in breach of the Equality Act 2010, including due to the targets being based on self-identified gender (which is not a protected characteristic) rather than sex, citing reference to a recent legal ruling against the Office for National Statistics (ONS) and the Forstater case.
- Targets based on self-identified gender could lead to more men by sex on boards (to the extent that they identify as women), undermining the stated purpose of the proposals to improve diversity, and not providing the perspective / experience of women by sex to reduce risks of 'groupthink'.

- Including those who self-identify as women in the data (both for the targets and the numerical disclosures) will compromise the data set by aggregating data on trans women and biological women and preventing analysis on either group. It may also reduce consistency with other data (such as Companies Act reporting on the sex of directors and senior managers).
- Collecting data on self-identified gender could lead to data privacy concerns, in particular where our proposed approach would be inconsistent with reporting required under the Companies Act or made in response to voluntary initiatives (this is discussed in more detail below).
- There may be a read-across from our approach to collection of other data such as gender pay gap reporting or data collection by asset managers and investment banks in the context of stewardship and ESG related disclosures potentially compromising the quality of wider data.
- Transgender individuals should be separately identified because of different life experiences.
- Men may game the targets defeating the point of the measures.
- The target fails to recognise the under-representation of women based on sex and the structural discrimination they may face.

Our response and final policy approach

We have considered these points and the wider legal and public policy context around sex or gender-based reporting carefully. We have also consulted extensively with other public bodies.

We do not consider that our consultation proposals which provided for reporting on the basis of self-identified gender for both the targets and numerical disclosures by listed companies were incompatible with the Equality Act 2010. The several legal cases cited concerned particular legislation or factual circumstances which have no clear relation to our policy.

We also consider that the disclosures we proposed would support our policy objective of enhanced transparency on diversity and that concerns about the effects on data quality (in terms distinguishing between different diversity characteristics within the data set) should be seen in the context that the impact of transgender individuals within any data reporting is likely to be very small, and that of the additional transparency requirements on the approach to data collection. Our policy intention was and remains for targets to promote investor scrutiny and engagement on diversity in listed companies in general, rather than to favour any one specific underrepresented group in this space. We want to encourage an inclusive and non-intrusive approach to data collection.

However, we accept and agree with representations that companies would benefit from having greater flexibility in how they gather and report data on the representation of women at senior levels of companies, given the other legal obligations and voluntary initiatives in this space (in particular reporting under the Companies Act 2006 for UK incorporated issuers). We also note the privacy and data protection considerations that companies need to manage in this area, recognising the sensitivity

of the data being collected and the potential implications of how it is reported publicly, including the fact that it will sit alongside other legislative or voluntary public reporting.

We have therefore amended the finalised Listing Rules from the proposals we consulted on by not prescribing specific terminology for how companies report on the representation of women and allowing more flexibility. We have removed references to self-identification and indicate that companies can decide how to approach data collection on the representation of women, eg whether to collect data based on sex or gender identity.

As part of our final policy, we are introducing a new Listing Rule requirement for in-scope companies to include a statement in their annual financial report setting out whether they have met the following targets on board diversity, as at a specific date within the accounting period selected by the listed company (referred to as the 'reference date').

The targets related to women's representation to be reported against are as follows:

- At least 40% of the board are women.
- At least one of the senior board positions (Chair, Chief Executive Officer (CEO), Senior Independent Director (SID) or Chief Financial Officer (CFO)) is a woman.

Consistent with this approach, we have referred to 'men' and 'women' in the tables for the purposes of making numerical disclosures without expressly including those self-identifying as men or women, as companies will have a choice of reporting based on sex or gender identity for the numerical disclosures.

This means that, for the numerical disclosures, there will be flexibility in the format of the prescribed table for reporting to enable companies to reflect the basis on which they have collected data for this purpose. For example, they will be able to add to the categories of 'women' and 'men' to include 'non-binary' or other gender identities when reporting on gender.

We have also introduced an additional requirement that issuers have to disclose the basis on which they've collected data for reporting against the targets and numerical disclosures. Companies can clarify if they have relied upon existing data collection (eg for the purposes of payroll) or whether they have sent out a questionnaire and, if so, what questions they have asked.

Overall, in reporting against the target on women's representation and making related numerical disclosures, our rules will give companies the flexibility to determine how they collect such data, including the terms they use, provided they explain their approach to data collection and ensure consistency in their approach. Companies will therefore be able to harness existing data collection used for other purposes in order to

make disclosures under our rules where this is appropriate, or they can choose to adopt an approach that they feel best suits their workforce. This also gives companies the flexibility to consider the best approach to mitigate potential privacy and data protection issues associated with data that is sensitive for individuals (see further detail later on wider data protection considerations).

This approach is consistent with the wider 'comply or explain' flexibility of our proposals and with that of initiatives such as the Women in Business.

It will also continue to deliver our objective of enhanced transparency to market participants around diversity, since the reporting basis for any data will be explained by issuers and as it still facilitates investor engagement.

To further support this, we have added a new guidance provision indicating that we expect companies to take a consistent approach to data collection for the purpose of reporting under our rules. We also expect any difference in data between companies reporting on sex or gender identity is likely to be small in most cases, given the small numbers of transgender individuals.

We also consider that our final approach allows for further evolution in legal and public policy debate on sex and gender identity, rather than fixing terms in our rules. We will, however, review our rules within 3 years to assess whether the nature and level of targets we are setting remain appropriate and sufficiently ambitious.

Other responses on the focus of our targets

- 2.7** There were 66 other responses to Q5. Of these 36 supported our proposed approach, 28 were against and 2 expressed mixed views.
- 2.8** Those who supported our proposals included those who agreed that this was a good starting point to drive the right behaviours in companies, building on the progress achieved under voluntary initiatives. This included a number of respondents who argued that we should expand the range of these targets in future to include other categories such as those with a disability and those from a lower socio-economic background and that we should set more ambitious targets.
- 2.9** Those against who had answered on a range of questions again expressed concerns that we may face legal challenge in relation to gender identity reporting given legal uncertainties on this issue. Others argued that we should not go beyond reporting under the voluntary initiatives and that our targets may have unintended consequences for example in driving moves towards diversity exclusively towards representation of women and ethnic minorities to the exclusion of other groups.
- 2.10** Other points made by a small minority of respondents were that there was a lack of evidence for our proposals, that we should include sexual orientation or lower socio-

economic background from our targets to be disclosed against and that diversity policies were also important (as well as any targets).

- 2.11** We also received some very specific feedback that our use of the phrase 'Non-white ethnic minority background' could be confusing and causes offence to some.

Our response and final policy approach

We are confirming final rules for reporting against targets on a 'comply or explain' basis focused on the representation of women and minority ethnic groups. As some respondents noted, this is very much a first step in enhancing transparency and serves as a means to promote broader engagement on diversity between investors and companies. We consider that the targets should focus companies on maintaining the progress initially achieved by voluntary initiatives, and go further over time, as opposed to being viewed as a cap or end point (sometimes referred to as a 'one and done' approach).

Ultimately, we consider diversity of thought and experience on company boards and at executive management can be promoted by having a wider representation of many other diversity characteristics and groups. Improving disclosure on the representation of women and people from a minority ethnic background is a starting point in this respect, and we encourage efforts by companies to promote diversity more broadly both at senior levels and throughout their companies, and for investors to hold them to account on progress.

Based on feedback on the use of 'non-White' in our draft rules we have amended the language used in the target by removing the reference to "non-White" and instead referring to individuals from a 'minority ethnic background', which is defined to include those from an ethnic group other than a white ethnic group, as specified in categories recommended by the Office for National Statistics (ONS).

Our 'comply or explain' proposals and the appropriateness of the targets set

- 2.12** We asked the following question about our comply or explain proposals and the appropriateness of the targets set.

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

- 2.13** Of the 93 respondents to this question, 56 supported our approach, 29 opposed it and there were 8 mixed responses.

- 2.14** Comments from those in favour highlighted that this would drive positive behaviours and 'make a change', while 'comply or explain' provided necessary flexibility for issuers

with specific circumstances or context to explain against the targets. Some noted that the proposals aligned well with other initiatives (such as climate-related disclosures in relation to TCFD) and the approach to the UK Corporate Governance Code. It was also noted that if more diversity is achieved, it would have wider benefits of challenging groupthink and improving corporate decision-making.

- 2.15** There was a reasonable minority that opposed the approach, for different reasons. Some felt that targets may create a 'box ticking' attitude versus promoting a more holistic cultural change and corporate focus on diversity and inclusion. Some argued that the rules would be too costly and may encourage companies to remain private rather than enter public markets. A few respondents queried the evidence base for the proposals, although these seemed to relate more to whether corporate governance and corporate performance can be shown to be improved by diversity. We recognised in our CP that evidence was not conclusive on this point, but that our focus is on enhancing transparency to support investors and to enable more effective engagement on diversity, with any impact on corporate governance a secondary potential benefit. One or two respondents suggested that this type of reporting should be left to the Corporate Governance Code to address, not in standalone FCA Listing Rules.
- 2.16** In terms of the specific targets, a few respondents expressed a view that our targets should either go further or be less ambitious. Those advocating going further included views that we should increase the 40% target for women (eg, to 50%), include a target for LGBTQ+ representation, and / or set mandatory quotas rather than targets to be disclosed against. Others said that 40% went too far, and we should set 33% as per the Hampton-Alexander review. There was also a small minority that suggested we could consider a different formulation of the targets, eg, at least 2 women on boards, rather than a % figure.
- 2.17** Some argued against the inclusion of 'Senior Independent Director' (SID) as one of 4 'senior' board positions (for the target of having at least 1 senior board position held by a women). This was generally from the perspective that this may make it easier for companies to comply without promoting women into the most important decision-making roles (CEO, Chair or CFO).

Our response and final policy approach

Recognising the clear balance of support for our proposed 'comply or explain' approach we have decided to proceed with this approach. This will give companies more flexibility to provide investors with a narrative disclosure on their board diversity, giving context and added meaning to the numerical disclosures and thereby increasing transparency.

We also note the support for the broad shape of the targets set, which is reflected in feedback elsewhere. Given this, we have proceeded with our proposed broader policy design, though, as noted above, we have made some changes to the specific wording of the targets to be disclosed against.

We propose to review our policy in 3 years' time to consider if the targets remain appropriate, both in terms of the levels we are setting

and their focus, eg, if we should consider further targets for other aspects of diversity.

Requiring a numerical disclosure table and the format of the data

2.18 We asked the following questions in relation to our numerical disclosure table and the format of data:

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?*

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.*

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.*

2.19 44 of the 64 who responded to Question 2 supported the requirements for numerical disclosures of the breakdown by gender and ethnicity of the board, senior board positions and those in executive management. Supporting responses considered that additional data would drive accountability and scrutiny. Some mentioned that most companies are gathering this data anyway and the cost was also small versus potential benefits.

2.20 Of those who opposed, some argued that disclosure would add costs for companies and that there were implications for privacy and data protection. Some asked for more guidance on data gathering and/or simplification of the tables. Some argued that numerical disclosures can be misleading, particularly % figures. At least one respondent conversely sought more numerical disclosures, suggesting that disability should also be reported on. One respondent argued also that these requirements only showed a simplistic view of diversity, another that there should be more categories.

2.21 Of the 53 respondents who responded to Question 6, 37 supported the proposals, 14 were against and there were 2 mixed responses. Some comments overlapped with the above, arguing that additional diversity categories should be included. One response suggested that General Counsel be included in the positions reported on. In terms of the format proposed, around two-thirds supported it. Of those opposing, some respondents again argued that additional diversity categories should be included.

2.22 3 of those who responded to Question 6 echoed the point above that we should require companies to collect data on the basis of sex rather than gender. One

respondent suggested that we should include General Counsel in our targets and one raised privacy concerns about us including 'prefer not to say' which it felt would still reveal the identity of board members'. A small minority raised concerns about whether overseas companies would be able to complete the data tables.

- 2.23** On whether to capture reporting below executive management and/or whether to address sexual orientation (Question 7), 23 of the 45 who responded were for and 19 against.
- 2.24** Those in favour of expanding the reporting below executive management noted that it aligned with Hampton Alexander reporting on women's representation, was not unduly costly to collect, and that disclosures on Executive Management would encourage a diverse talent pipeline with a company. Others suggested reporting should go to the level below executive management to include direct reports.
- 2.25** Those against noted the additional burden of data collection, potential privacy concerns in relation to sexual orientation, risks of definitional inconsistencies around terms such as 'direct-reports to executive management', and in some cases stated that we should not go beyond current UK Corporate Governance Code reporting. Privacy and legal risks in seeking and disclosing data on sexual or 'romantic' orientation were a strong theme in the responses, with these respondents also proposing more generally that we consider adopting a 'comply or explain' rather than mandatory approach to numerical disclosures. 1 respondent raised the concern that expanding reporting below executive management may make data collection difficult.

Our response and final policy approach

As most respondents who commented on this issue were supportive of our proposals, we have decided to proceed broadly with the numerical disclosure requirements as consulted upon.

However, as discussed above, we have made changes to allow companies the flexibility to determine how they collect and report data in this area. In particular, we have given companies the option to report on either sex or gender identity for the numerical disclosures, provided they explain their approach to data collection and ensure consistency in their approach. We have provided flexibility in the data reporting tables to align with this, allowing companies to add to the fields 'men' and 'women' to reflect the basis on which they have collected data, eg to report on non-binary gender identities. We have also introduced a requirement for in scope companies to be transparent about their approach to data collection for the purposes of reporting. For example, we want companies to be clear about whether data is drawn from existing data sets eg employee / payroll data – or from self-reporting – and if it is self-reporting, the nature of the questions asked.

We have also allowed companies with directors and executive management based overseas to explain why if they are unable to meet mandatory requirements in relation to numerical disclosures.

We note the range of comments about the format and extent of numerical data reporting. We consider that the changes we have made

to provide greater flexibility for companies will allow companies to align their disclosures with reporting under the voluntary initiatives and that under the Companies Act where they wish to.

We also note the comments made both for and against extending our reporting to representation on sexual orientation or other categories such as lower socio-economic background. At this time, we have not decided to extend our reporting requirements but have aimed to encourage reporting on wider aspects of diversity through our changes to the corporate governance rules in DTR 7. This could provide additional data for us to consider further steps in this area.

We have also considered responses in relation to whether we should set requirements for the level below executive management. Whilst we would encourage issuers to be as transparent as possible about diversity in this area, we do not think it is appropriate for us to set requirements on this at this time.

Scope of issuers captured and our approach to smaller and overseas issuers

2.26 In relation to the scope of issuers captured and our approach to smaller and overseas issuers we asked the following questions:

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.*

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?*

2.27 42 of the 56 who responded on this issue supported our proposed scope of issuers, which focused on listed equity shares and certificates representing equity shares and excluded listed debt and debt-like securities. 11 were against and 3 expressed mixed views.

2.28 A few respondents suggested all companies with listed securities should be included as diversity should be a common focus for all.

2.29 39 of the 51 who responded to Q4 supported our proposal, 10 were opposed and 2 expressed mixed views. Many commented that the flexibility of 'comply or explain' was particularly important for these smaller or overseas issuers, but that the same rules should apply. Some made the point that both smaller and overseas companies should still strive towards greater diversity and investors would want the same information for all those with UK-listed equity shares and certificates representing shares. 6

respondents commented that it was important for market integrity that issuers had the same requirements.

2.30 Of those against, most referenced that companies with smaller boards (which are more likely to be smaller companies) may find it harder to meet targets, and the small number of individuals concerned may exacerbate privacy concerns with disclosures. For overseas companies, some noted that disclosure based on UK-defined groups of ethnicities may not indicate 'diversity' within the context of where an issuer is located or chiefly operates. Legal responses also identified potential legal difficulties for overseas companies and companies with overseas operations in complying with our proposed requirements, in particular the numerical disclosures, due to data privacy requirements under local law.

Our response and final policy approach

Recognising the clear balance of support for our proposed scope of who would be required to report under the requirements we are proceeding with the proposed approach. This means we have not extended the requirements to issuers of listed debt and debt like securities and have included smaller companies and overseas companies in scope of our requirements.

The companies in scope of our new requirements are therefore UK and overseas issuers with equity shares, or certificates representing equity shares, admitted to the premium or standard segment of the FCA's Official List. This scope includes closed-ended investment funds and sovereign controlled commercial companies, but excludes OEICs and shell companies for the standard listing segment.

However, recognising the concern that it may not always be possible for some overseas companies and companies with overseas operations to collect and process diversity data under local law, we will only require numerical disclosures by companies with board members or executive management situated overseas, to the extent it is permitted under local data protection law. Where local law prevents the collection and / or disclosure of this information, we will permit companies to instead provide an explanation of why they cannot complete the relevant numerical disclosures in the tables, for example the issuer could explain that they were prevented from collecting data eg on ethnicity. For reporting against the targets on a comply-or-explain basis, companies can 'explain' in the event they are unable to collect the data needed to make the relevant disclosures / confirm whether they meet the targets.

Changes to corporate governance rules on existing disclosures of board diversity policies

2.31 We asked the following questions related to changes in transparency rules:

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.*

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.*

2.32 We proposed changes to an existing requirement in DTR 7.2.8AR on companies with board diversity policies to disclose details relating to that policy. These included explicitly referencing additional diversity aspects companies could consider in the context of their policies, such as ethnicity, disability, sexual orientation, and socio-economic background, as well as extending reporting to diversity policies of key committees of the board (remuneration, audit, and nominations). We also proposed guidance to encourage companies, where appropriate, to disclose data on diversity as part of the results of their diversity policies.

2.33 Of the 55 who responded to Q8, 34 supported our proposed amendment, 13 were against and 8 expressed mixed views. There were 47 responses to Q9 on the proposed new guidance provision, 28 supported our approach, 14 were against and 5 expressed mixed views.

2.34 Most agreed with these amendments. Some noted the importance of other diversity aspects, such as socio-economic background, and the impacts of 'intersectionality' of diversity (eg, where an individual represents several diversity characteristics or 'groups'). They felt the change may encourage broader considerations and more meaningful disclosure by companies, and less 'boiler plate'. More data, where possible, was similarly welcomed. A small minority welcomed the proposal on the basis that they felt would have a positive educational effect on companies about diversity.

2.35 Those against commented that the requirements may be burdensome or felt that privacy concerns would be heightened when issuers disclosed data on smaller datasets eg, on specific board committees, or on particular aspects, such as sexual orientation. There were also views in the opposite direction, though, disagreeing because we did not propose making disclosures on the board for other diversity aspects mandatory which some thought that we should.

Our response and final policy approach

Recognising the balance of support for our proposed changes, and that we are not mandating disclosure of diversity data in connection with DTR 7.2.8AR (our guidance just encourages disclosure, where the issuer considers it appropriate), we propose to proceed with our approach.

To summarise the changes, we are amending the existing rule in DTR 7.2.8AR to indicate that a company's disclosure on its board diversity policy (where such a policy is applied), should:

- a. also include the diversity policy applied to its board committees, specifically its remuneration, audit and nominations committees.
- b. be with regard to diversity aspects such as, for instance, ethnicity, sexual orientation, disability and socio-economic background, supplementing those aspects the rule already references (age, gender, and educational and professional backgrounds).

We are also including guidance (at DTR 7.2.8CG) setting out that in-scope companies may, where they consider it appropriate, include numerical data on the diversity of the board and board committees referred to above in their description of the results in the reporting period (DTR 7.2.8AR(1)(d)).

Implementation timing and future data approach

2.36 We asked the following questions in relation to implementation timing and future data approach:

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

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.*

2.37 35 of the 55 who responded to Q10 supported our proposed implementation timing which was that companies would be required to make disclosures in relation to financial years starting on or after 1 January 2022. 19 were against it and 1 expressed mixed views.

2.38 Supportive comments echoed earlier views that this data is already gathered by many companies, comply or explain provides flexibility, and that this was sufficient time to implement the requirements. A small minority also suggested that the flexibility around the reference date was helpful. Those who were against included those who wanted longer, eg, to start with accounting periods in 2023, or to phase in rules requiring to require numerical disclosures in the first year, with comply or explain disclosures against targets starting a year later. They commented that this would allow companies more time.

2.39 Of the 42 respondents who responded to Q11, 34 supported our proposal, 7 were against and 1 expressed mixed views.

2.40 Most supported our longer-term ambition to encourage more data and to examine the case for further targets or measures to promote other diversity characteristics over time, as part of a phased policy approach. A few of the responses also noted the importance of working with other public bodies, including to improve definitions used to collect data on diversity. Others commented that, under our phased approach, we could use data for policy evaluation and may seek to use other evidence such as case studies.

- 2.41** Few opposed our suggested strategy. Among those that did, some cited concerns that data may remain inconsistent or misleading. Others commented that it was costly and difficult to collect data in this area. Conversely, a few respondents wanted us to move quicker (i.e., to require data on disability and / or sexual orientation now).

Our response and final policy approach

In CP21/24 we stated that we would seek to make relevant rules before the end of 2021.

Given that we have taken additional time to decide and publish final rules, in part reflecting the high numbers of responses received, we have decided to apply our final rules such that issuers will be required to make these disclosures in relation to accounting periods starting on or after 1 April 2022. This will mean that the first disclosures will start to appear in annual financial reports that are published from around Q2 2023 onwards.

However, we encourage companies to consider reporting voluntarily on the basis we have set out for earlier periods, in particular for accounting periods starting on or after 1 January 2022. Since the relevant data can be collected at a single reference date during a financial year, such companies would still have plenty of time to develop and implement an approach by the end of 2022 to report the relevant information in annual financial reports published from early 2023. We expect investors would positively receive such enhanced transparency by companies on a voluntary basis.

Data protection issues

- 2.42** Across several consultation responses, we received some concerns as to the data protection implications for companies seeking data on board members and executive management relating to the representation of women and ethnic minorities. In particular there were concerns about the requirement to report on the basis of self-identified gender for disclosures against the targets for women and related numerical disclosures. This included potential issues arising if reporting under our rules would sit alongside and differ from reporting under other legislative requirements or voluntary initiatives (for example Companies Act reporting on the basis of sex), in a way that may highlight apparent differences in how individuals are reported under different data gathering approaches.
- 2.43** Another particular concern has been the interaction between our requirement for numerical disclosures more generally and companies' obligations under data protection legislation, due to the processing of personal data and special category data (in relation to ethnicity).

Our response and final policy approach

We recognise the privacy concerns raised in relation to our original proposal, particularly in relation to the interaction of data collected under our rules with that reported under the Companies Act, where UK incorporated companies already have to state in their strategic report the number of persons of each sex who are directors, senior managers and employees. We appreciate points raised about privacy and data protections issues in response to our consultation and have considered data protection issues raised by respondents and input from the ICO on our original proposals.

We consider that our decision to give companies flexibility on how they collect and report data both in relation to the targets for women and the reporting of related numerical data (i.e. either on the basis of gender identity or sex) will mitigate some of these privacy concerns. Our decision should allow issuers to adopt an approach to data collection and processing which is most appropriate in the context of their workforce and manage any specific data privacy issues that may arise (eg, in the event they have a transgender board member).

In addition, the following should help to mitigate and manage data protection concerns:

- We have maintained a 'prefer not to say' option for all the numerical disclosures.
- Collection and publication of personal data on sex has been workable in the context of UK data protection law to date and our final rules enable issuers to use the same data for the purposes of reporting under our rules.
- We have provided a caveat to our numerical disclosure requirements for companies with board members or executive management situated overseas, where local data protection law prevents collection or disclosure of relevant data.

However, as data controllers, it will be for companies to ensure their own compliance with UK GDPR and the DPA 2018 requirements, including making their own determination on the legal basis they use to process the information. Companies can find further guidance on the legal duties related to handling special category data on the Information Commissioner's Office's (ICO) website.

If we consider widening our disclosures to other groups in future, we will further consider any impacts on data protection at that stage.

Cost benefit analysis (CBA)

- 2.44** A few respondents to CP21/24 commented that we had not provided evidence of a causal link between greater diversity and improved corporate governance or increased corporate returns.

- 2.45** Others commented that our CBA may have underestimated additional costs for companies associated with our proposed measures, which may mean that companies have to do additional data collection and reporting to that they undertake already to meet Companies Act requirements or under voluntary initiatives.

Our response and final policy approach

Our CBA in CP21/24 considered the costs and benefits of our proposals for alleviating harms caused by asymmetric information between issuers and investors on diversity and coordination failure among investors who may not be able to coordinate effectively to encourage issuers to disclose this information.

We proposed measures which would require standardised disclosures against targets and promote easier access to diversity data. These would reduce the frictional costs for investors associated with obtaining information related to diversity.

Respondents did not provide detailed evidence or data that would lead us to question the findings of our CBA, that any costs associated with our proposals would likely be outweighed by these benefits.

However, we note that changes we have made to our proposals which allow companies to harness existing data collection methods for reporting data relating to the representation of women, act to further reduce costs associated with our new requirements.

Annex 1

List of non-confidential respondents

ABRDN plc

Acadian Asset management LLC

Antofagasta PLC (not sure)

Aquis Exchange PLC

Association of Accounting Technicians (AAT)

Association of Investment Companies

Baillie Gifford

Beazley Plc

Blackrock

Braydon Heape LLP

Brewin Dolphin Ltd

Brunel university London

CFA Society of the UK

Changing the Chemistry

Chartered Governance Institute UK and Ireland

Church Commissioners for England

The City of London Law Society

Deloitte LLP

Delta Alpha Psi

Employment Lawyers Association

Face Equality International

Fair by Design

FCA Practitioner Panel

Fieldfisher LLP

For Women Scotland

GC 100

Glass Lewis Europe Ltd

Hargreaves Landsdown

Hiscox Group

Institute of Chartered Accountants England and Wales (ICAEW)#

Interactive Investor Services Ltd

The International Capital Markets Association (ICMA)

The Investment and Life Assurance Group

The Investment Association

The Investor Relations Society

Invesco

IP Group Ltd

The Law Society

Legal Feminist

London Stock Exchange Group

M&G Plc

Mazars

The Money Charity

MSCI

Nationwide Building Society

Out Leadership

The Parker Review

PensionBee

Quoted Companies Alliance (QCA)

RHI Magnesita

Roliscon Ltd

Sabre Insurance

Scottish Widows Ltd

Sexnotgender

Sexmatters

Social Mobility Commission

Spencer Stuart

SSE Plc

St James Place Wealth Management

Tate and Lyle Plc

Templeton Emerging Markets Investment Trust (TEMIT)

The Weir Group Plc

Annex 2

Numerical reporting tables

Table 1: Reporting table on sex/gender representation

	Number of board members	Percentage of the board	Number of senior positions on the board (CEO, CFO, SID and Chair)	Number in executive management	Percentage of executive management
Men					
Women					
[Other categories]					
Not specified/ prefer not to say					

Table 2: Reporting table on ethnicity representation

	Number of board members	Percentage of the board	Number of senior positions on the board (CEO, CFO, SID and Chair)	Number in executive management	Percentage of executive management
White British or other White (including minority-white groups)					
Mixed/Multiple Ethnic Groups					
Asian/Asian British					
Black/African/Caribbean/Black British					
Other ethnic group, including Arab					
Not specified/ prefer not to say					

Annex 3

Abbreviations used in this paper

Abbreviation	Description
CBA	Cost Benefits Analysis
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CP	Consultation Paper
DP	Discussion Paper
DPA	Data Protection Act
DTRs	Disclosure Guidance and Transparency Rules
FCA	Financial Conduct Authority
FTSE	Financial Times Stock Exchange
GDPR	General Data Protection Regulation
ICO	Information Commissioner's Office
LGBTQ+	Lesbian Gay Bisexual Transgender Queer and Non Binary
LR	Listing Rule
OEICs	Open Ended Investment Companies
ONS	Office for National Statistics
PRA	Prudential Regulation Authority
PSED	Public Sector Equality Duty
SID	Senior Independent Director
SLT	Senior Leadership Team
TCFD	Taskforce for climate related financial disclosures
UK	United Kingdom

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Appendix 1

Draft Handbook text

**LISTING RULES AND DISCLOSURE GUIDANCE AND TRANSPARENCY RULES
(DIVERSITY AND INCLUSION) INSTRUMENT 2022**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 73A (Part 6 Rules);
 - (2) section 89O (Corporate governance rules);
 - (3) section 96 (Obligations of issuers of listed securities);
 - (4) section 137A (The FCA’s general rules);
 - (5) section 137T (General supplementary powers); and
 - (6) section 139A (Power of the FCA to give guidance).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 20 April 2022.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes in this instrument listed in column (2) below.

(1)	(2)
Glossary of definitions	Annex A
Listing Rules sourcebook (LR)	Annex B
Disclosure Guidance and Transparency Rules sourcebook (DTR)	Annex C

Citation

- E. This instrument may be cited as the Listing Rules and Disclosure Guidance and Transparency Rules (Diversity and Inclusion) Instrument 2022.

By order of the Board
24 March 2022

Annex A**Amendments to the Glossary of definitions**

Insert the following new definitions in the appropriate alphabetical position. The text is not underlined.

executive management (in *LR*) the executive committee or most senior executive or managerial body below the board (or where there is no such formal committee or body, the most senior level of managers reporting to the chief executive), including the company secretary but excluding administrative and support staff.

minority ethnic background (in *LR*) from one of the following categories of ethnic background, as set out in the tables in *LR* 9 Annex 2.1R(b) and *LR* 14 Annex 1.1R(b), excluding the category “White British or other White (including minority-white groups)”:

- (1) Asian/Asian British;
- (2) Black/African/Caribbean/Black British;
- (3) Mixed/Multiple Ethnic Groups; and
- (4) Other ethnic group, including Arab.

Annex B

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

9 Continuing obligations

...

9.8 Annual financial report

...

Additional information

9.8.6 R In the case of a *listed company* incorporated in the *United Kingdom*, the following additional items must be included in its annual financial report:

...

(7) a report to the shareholders by the Board which contains the information set out in *LR 9.8.8R*; ~~and~~

(8) a statement setting out:

...

(c) where in its annual financial report or (where appropriate) other document the climate-related financial disclosures referred to in (a) can be found;

(9) a statement setting out:

(a) whether the *listed company* has met the following targets on board diversity as at a chosen reference date within its accounting period:

(i) at least 40% of the individuals on its board of *directors* are women;

(ii) at least one of the following senior positions on its board of *directors* is held by a woman:

(A) the chair;

(B) the chief executive;

(C) the senior independent director; or

(D) the chief financial officer; and

- (iii) at least one individual on its board of *directors* is from a *minority ethnic background*;
- (b) in cases where the *listed company* has not met all of the targets in (a):
 - (i) the targets it has not met; and
 - (ii) the reasons for not meeting those targets;
- (c) the reference date used for the purposes of (a) and, where this is different from the reference date used for the purposes of reporting this information in respect of the previous accounting period, an explanation as to why; and
- (d) any changes to the board that have occurred between the reference date used for the purposes of (a) and the date on which the annual financial report is approved that have affected the *listed company's* ability to meet one or more of the targets in (a);
- (10) subject to LR 9.8.6GR, numerical data on the ethnic background and the gender identity or sex of the individuals on the *listed company's* board and in its *executive management* as at the reference date used for the purposes of LR 9.8.6R(9)(a), which should be set out in the format of the tables contained in LR 9 Annex 2 and contain the information prescribed by those tables; and
- (11) an explanation of the *listed company's* approach to collecting the data used for the purposes of making the disclosures in LR 9.8.6 R(9) and (10).

...

- 9.8.6G R In relation to LR 9.8.6R(10), where individuals on a *listed company's* board or in its *executive management* are situated *overseas*, and data protection laws in that jurisdiction prevent the collection or publication of some or all of the personal data required to be disclosed under that provision, then a *listed company* may instead explain the extent to which it is unable to make the relevant disclosures.
- 9.8.6H G Given the range of possible approaches to data collection for reporting on gender identity or sex for the purposes of LR 9.8.6R(10), a *listed company* may add to the categories included in the first column of the table in LR 9 Annex 2.1R (a) in order to reflect the basis on which it has collected data.
- 9.8.6I G In relation to LR 9.8.6R(11), the *FCA* expects a *listed company's* approach to data collection to be:
- (a) consistent for the purposes of reporting under both LR 9.8.6R(9) and (10), and

(b) consistent across all individuals in relation to whom data is being reported.

The FCA expects the explanation of a listed company’s approach to data collection to include the method of collection and / or source of the data, and where data collection is done on the basis of self-reporting by the individuals concerned, a description of the questions asked.

9.8.6J G In addition to the information required under LR 9.8.6R (9) to (11) (and without prejudice to the requirements of DTR 7.2.8AR), a listed company may, if it wishes to do so, include the following in its annual financial report:

- (a) a brief summary of any key policies, procedures and processes, and any wider context, that it considers contribute to improving the diversity of its board and executive management;
- (b) any mitigating factors or circumstances which make achieving diversity on its board more challenging (for example, the size of the board or the country where its main operations are located); and
- (c) any risks it foresees in being able to meet or continue to meet the board diversity targets in LR 9.8.6R(9)(a) in the next accounting period, or any plans to improve the diversity of its board.

9.8.7 R An overseas company with a premium listing must include in its annual report and accounts the information in LR 9.8.6R(5), LR 9.8.6R(6), LR 9.8.6R(8) to (11) and LR 9.8.8R.

...

After LR 9 Annex 1 (THE MODEL CODE (R)), insert the following annex as LR 9 Annex 2. The text is not underlined.

9 Annex 2 Data on the diversity of the individuals on a listed company’s board and in its executive management

9 Annex 2.1 R The following tables set out the information a listed company must include in its annual financial report under LR 9.8.6R(10), and the format in which it must be set out.

(a) Table for reporting on gender identity or sex

	Number of board members	Percentage of the board	Number of senior positions on the board (CEO, CFO, SID)	Number in executive management	Percentage of executive management

			and Chair)		
Men					
Women					
[Other categor ies]					
Not speci fied/ prefer not to say					

[**Note:** the placeholder for ‘Other categories’ is optional and should be used to indicate additional categories which a *listed company* may wish to include in accordance with LR 9.8.6HG.]

(b) Table for reporting on ethnic background

	Number of board members	Perce ntage of the board	Number of senior positions on the board (CEO, CFO, SID and Chair)	Number in <i>executive managem ent</i>	Percentage of <i>executive managem ent</i>
White British or other White (includ ing minority- white groups)					
Mixed/M ultiple Ethnic Groups					
Asian/As ian British					

Black/African/Caribbean/Black British					
Other ethnic group, including Arab					
Not specified/prefer not to say					

...

14 Standard listing (shares)

...

14.3 Continuing obligations

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Information to be included in annual report and accounts

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14.3.33 **R** In addition to the requirements set out in DTR 4.1, a company with a standard listing of equity shares (other than an open-ended investment company or shell company) must include in its annual financial report:

(1) a statement setting out:

(a) whether the listed company has met the following targets on board diversity as at a chosen reference date within its accounting period:

(i) at least 40% of the individuals on its board of directors are women;

(ii) at least one of the following senior positions on its board of directors is held by a woman:

(A) the chair;

(B) the chief executive;

- (C) the senior independent director; or
 - (D) the chief financial officer; and
 - (iii) at least one individual on its board of *directors* is from a *minority ethnic background*;
 - (b) in cases where the *listed company* has not met all of the targets in (a):
 - (i) the targets it has not met; and
 - (ii) the reasons for not meeting those targets;
 - (c) the reference date used for the purposes of (a) and, where this is different from the reference date used for the purposes of reporting this information in respect of the previous accounting period, an explanation as to why; and
 - (d) any changes to the board that have occurred between the reference date used for the purposes of (a) and the date on which the annual financial report is approved that have affected the *listed company's* ability to meet one or more of the targets in (a);
 - (2) subject to LR 14.3.34R, numerical data on the ethnic background and the gender identity or sex of the individuals on the *listed company's* board and in its *executive management* as at the reference date used for the purposes of LR 14.3.33 R(1)(a), which should be set out in the format of the tables contained in LR 14 Annex 1 and contain the information prescribed by those tables; and
 - (3) an explanation of the *listed company's* approach to collecting the data used for the purposes of making the disclosures in LR 14.3.33 R(1) and (2).
- 14.3.34 R In relation to LR 14.3.33 R(2), where individuals on a *listed company's* board or in its *executive management* are situated *overseas*, and data protection laws in that jurisdiction prevent the collection or publication of some or all of the personal data required to be disclosed under that provision, then a *listed company* may instead explain the extent to which it is unable to make the relevant disclosures.
- 14.3.35 G Given the range of possible approaches to data collection for reporting on gender identity or sex for the purposes of LR 14.3.33R(2), a *listed company* may add to the categories included in the first column of the table in LR 14 Annex 1.1R(a) in order to reflect the basis on which it has collected data.
- 14.3.36 G In relation to LR 14.3.33R(3), the *FCA* expects a *listed company's* approach to data collection to be:

- (a) consistent for the purposes of reporting under both LR 14.3.33R(1) and (2), and
- (b) consistent across all individuals in relation to whom data is being reported.

The FCA expects the explanation of a listed company's approach to data collection to include the method of collection and / or source of the data, and where data collection is done on the basis of self-reporting by the individuals concerned, a description of the questions asked.

- 14.3.37 G In addition to the information required under LR 14.3.33R(1) to (3) (and without prejudice to the requirements of DTR 7.2.8AR), a listed company may, if it wishes to do so, include the following in its annual financial report:
- (a) a brief summary of any key policies, procedures and processes, and any wider context, that it considers contribute to improving the diversity of its board and executive management;
 - (b) any mitigating factors or circumstances which make achieving diversity on its board more challenging (for example, the size of the board or the country where its main operations are located); and
 - (c) any risks it foresees in being able to meet or continue to meet the board diversity targets in LR 14.3.33R(1)(a) in the next accounting period, or any plans to improve the diversity of its board.
- 14.3.38 R When making a statement required by LR 14.3.33R(1) in its annual financial report, a closed-ended investment fund need not set out the following matters if they are inapplicable to the closed-ended investment fund and its statement sets out the reasons why those matters are inapplicable:
- (1) whether the closed-ended investment fund has met the board diversity target in LR 14.3.33R(1)(a)(ii); and
 - (2) matters set out in LR 14.3.33R(1)(b) to the extent that they relate to the board diversity target in LR 14.3.33R(1)(a)(ii).
- 14.3.39 R When including numerical data required by LR 14.3.33R(2) in its annual financial report, a closed-ended investment fund need not include the fields in the first row of each of the tables in LR 14 Annex 1, and the corresponding data for those fields, that are inapplicable to the closed-ended investment fund, if it sets out in a statement accompanying the numerical data the reasons why those fields are inapplicable.

Insert the following annex as LR 14 Annex 1. The text is not underlined.

14 **Data on the diversity of the individuals on a listed company's board and in its**
Annex **executive management**
1

- 14 R The following tables set out the information a *listed company* must include in
Annex its annual financial report under LR 14.3.33R(2), and the format in which it
1.1 must be set out.

- (a) Table for reporting on gender identity or sex

	Number of board members	Percentage of the board	Number of senior positions on the board (CEO, CFO, SID and Chair)	Number in executive management	Percentage of executive management
Men					
Women					
[Other categories]					
Not specified/ prefer not to say					

[**Note:** the placeholder for ‘Other categories’ is optional and should be used to indicate additional categories which a *listed company* may wish to include in accordance with LR 14.3.35G]

- (b) Table for reporting on ethnic background

	Number of board members	Percentage of the board	Number of senior positions on the board (CEO, CFO, SID and Chair)	Number in executive management	Percentage of executive management
White British or other					

White (including minority-white groups)					
Mixed/Multiple Ethnic Groups					
Asian/Asian British					
Black/African/Caribbean/Black British					
Other ethnic group, including Arab					
Not specified/prefer not to say					

15 Closed-Ended Investment Funds: Premium listing

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15.4 Continuing obligations

...

Annual financial statement

...

15.4.29 R When making a statement required by LR 9.8.6R(9) in its annual financial report, a closed-ended investment fund need not set out the following matters

A

if they are inapplicable to the *closed-ended investment fund* and its statement sets out the reasons why those matters are inapplicable:

- (1) whether the *closed-ended investment fund* has met the board diversity target in LR 9.8.6R(9)(a)(ii); and
- (2) matters set out in LR 9.8.6R(9)(b) to the extent that they relate to the board diversity target in LR 9.8.6R(9)(a)(ii).

15.4.29 R When including numerical data required by LR 9.8.6R(10) in its annual
B financial report, a *closed-ended investment fund* need not include the fields in the first row of each of the tables in LR 9 Annex 2, and the corresponding data for those fields, that are inapplicable to the *closed-ended investment fund*, if it sets out in a statement accompanying the numerical data the reasons why those fields are inapplicable.

...

Insert the following new definitions in the appropriate alphabetical position.

App 1 **Relevant definitions**

App 1.1 **Relevant definitions**

1.1.1 **Note:** The following definitions relevant to the *listing rules* are extracted from the *Glossary*.

...

<u><i>executive management</i></u>	<u>the executive committee or most senior executive or managerial body below the board (or where there is no such formal committee or body, the most senior level of managers reporting to the chief executive), including the company secretary but excluding administrative and support staff.</u>	
<u><i>minority ethnic background</i></u>	<u>from one of the following categories of ethnic background, as set out in the tables in LR 9 Annex 2.1R(b) and LR 14 Annex 1.1R(b), excluding the category “White British or other White (including minority-white groups)”:</u>	
	(1)	<u>Asian/Asian British;</u>
	(2)	<u>Black/African/Caribbean/Black British;</u>
	(3)	<u>Mixed/Multiple Ethnic Groups; and</u>
	(4)	<u>Other ethnic group, including Arab.</u>

Insert the following new transitional provision, LR TR 18, after LR TR 17 (Transitional Provisions in relation to climate-related financial disclosures under LR 14.3.27R and LR 9.8.6R(8)). The text is not underlined.

TR 18 Transitional Provisions in relation to diversity and inclusion

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
1.	LR 9.8.6R(9), LR 9.8.6R(10), LR 9.8.6R(11) and LR 9.8.6G R	R	LR 9.8.6R(9), LR 9.8.6R(10), LR 9.8.6R(11) and LR 9.8.6G R apply in relation to a financial year of a <i>listed company</i> beginning on or after 1 April 2022.	From 20 April 2022	20 April 2022
2.	LR 14.3.33R and LR 14.3.34R	R	LR 14.3.33R and LR 14.3.34R apply in relation to a financial year of a <i>listed company</i> beginning on or after 1 April 2022.	From 20 April 2022	20 April 2022

Annex C

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

7 Corporate governance

...

7.2 Corporate governance statements

...

7.2.8A R (1) The corporate governance statement must contain a description of:

- (a) the diversity policy applied to the *issuer's* administrative, management and supervisory bodies and the remuneration, audit and nomination committees of those bodies with regard to aspects such as, for instance, age, gender, ethnicity, sexual orientation, disability or educational ~~and~~, professional and socio-economic backgrounds;
- (b) the objectives of the diversity policy in (a);
- (c) how the diversity policy in (a) has been implemented; and
- (d) the results in the reporting period.

(2) If no diversity policy is applied by the *issuer*, the corporate governance statement must contain an explanation as to why this is the case.

[**Note:** article 20(1)(g) of the *Accounting Directive*]

...

...

7.2.8C G For the purposes of the description in DTR 7.2.8AR(1)(d), the issuer may, where it considers appropriate, include numerical data on the diversity of the members of the bodies and committees referred to in DTR 7.2.8AR(1)(a).

...

TP1	Disclosure and transparency rules
	Transitional Provisions

(1)	(2) Material to which the Transitional Provision applies	(3)	(4) Transitional Provision		(5) Transitional Provision: dates in force	(6) Handbook Provision: coming into force
...						
41	<u>DTR 7.2.8AR</u> and <u>DTR 7.2.8CG</u>	R	(1)	<u>DTR 7.2.8AR(1) and DTR 7.2.8CG apply in relation to a financial year of an issuer beginning on or after 1 April 2022.</u>	From 20 April 2022	20 April 2022
			(2)	<u>In relation to a financial year beginning before 1 April 2022, the corporate governance statement must contain a description of:</u>		
			(a)	<u>the diversity policy applied to the issuer's administrative, management and supervisory bodies with regard to aspects such as, for instance, age, gender, or educational and professional backgrounds;</u>		
			(b)	<u>the objectives of the diversity policy in (a);</u>		
			(c)	<u>how the diversity policy in (a) has been implemented; and</u>		
			(d)	<u>the results in the reporting period.</u>		

