



25 November 2011

FTSE Group
Level 12, 10 Upper Bank Street
Canary Wharf
London E14 5NP

By email to: consultations@ftse.com

Dear Sirs

FTSE UK Index Series User Consultation, November 2011

I am writing on behalf of the Association of General Counsel and Company Secretaries of the FTSE 100, generally known as the GC100, in connection with your current FTSE UK Index Series User Consultation. There are currently more than 120 individual members of the group, representing some 90 issuers.

Although your consultation is primarily directed at investors who are users of the FTSE Indices, members of the GC100 are drawn from Index constituents, who have a natural interest in the impact which any changes may have on the companies whom they represent. We hope that you will therefore be receptive to our written comments, by way of response to your on-line consultation, and we would of course be happy to elaborate in more detail if that would be helpful.

Our responses on the matters on which you are seeking views are set out below.

- 1. Should FTSE apply a minimum free float threshold of 25% for UK incorporated companies when determining eligibility for inclusion in the FTSE UK Index Series (including the FTSE All-Share and the FTSE 100 Index)?**

We have no strong views either way but we agree that aligning the FTSE free float requirement with the Listing Rules premium listing free float requirement seems sensible.

- 2. In the event of FTSE applying a minimum 25% threshold and in cases where the UKLA has granted an exception to the 25% minimum free float it requires of UK incorporated companies seeking a premium listing, should FTSE maintain its 25% threshold or permit flexibility to follow the UKLA's decision?**

We believe that the FTSE free float requirement should also be capable of waiver. A degree of flexibility seems sensible and, as a listing waiver may only be granted by the UKLA, the FTSE eligibility committee should have similar flexibility to follow the UKLA's decision.

3. **In the event of FTSE applying a minimum 25% threshold to UK incorporated companies, FTSE All-Share stocks with less than 25% free float will be grandfathered to allow them time to increase their free float. What period of time do you feel is satisfactory for this purpose?**

We consider that FTSE should give careful consideration to permanent grandfathering of companies which are currently in one of the Indices but have a free float of less than 25%, if the UKLA continues to regard such companies as eligible for a premium listing. We believe that this would be in the interests both of index constituents themselves and of investors who have invested in particular shares in the knowledge that those shares would form part of a particular index, and it would be unfair to those investors to remove a company from the index simply because of a change in the FTSE rules, if no other applicable circumstances have changed, given the potentially negative impact on a company's share price in terms of reduced demand from passive or tracker investors.

If a time limit were to be imposed, we believe that a longer, rather than a shorter, period would be appropriate, and would suggest at least 24 months. It is not always within a company's power to increase its free float, especially in the short term, whilst maintaining an orderly market (especially under current market conditions).

4. **Separate to the above scenario, FTSE is considering the creation of a new set of UK indices, running alongside the current series, which would impose a higher standard of corporate governance. Would you welcome a new index series in which companies would only be admitted based on minimum governance criteria?**

No. It is not clear (at least from the on-line questionnaire) to what higher standard of governance it is proposed that index constituents would be held, although we understand from comments reported in the press that the criterion which might be envisaged is whether companies apply the UK Corporate Governance Code (the "**Code**") in full or not. We believe that this would be a negative development which would undermine the efficacy of the Code and of governance standards rather than enhancing them, and we do not believe that investors would make investment decisions by reference to an Index which is based on whether or not companies apply the Code's provisions in full rather than provide adequate explanations for choosing not to apply them. The Code enshrines generally accepted principles of best practice, but it also makes it clear that the "comply or explain" approach is the trademark of corporate governance in the UK. In particular the Code states that:

"It is recognised that an alternative to following a provision may be justified in particular circumstances *if good governance can be achieved by other means*. A condition of doing so is that the reasons for it should be explained clearly and carefully... In providing an explanation, the company should aim to illustrate how its actual practices are both consistent with the principle to which the particular provision relates and contribute to good governance." (*emphasis added*)

The Code also makes it clear that when considering such explanations, due regard should be paid to a company's individual circumstances and, in particular, the size and complexity of the company, and the nature of the risks and challenges it faces. In addition, the Code states that explanations should not be evaluated in a mechanistic way, and departures from the Code should not automatically be treated as breaches.

It would seem to us that any implementation by FTSE of an index based on "yes or no" corporate governance compliance would be at odds with the approach developed by the Code, which recognises the need for flexibility, and would result in exactly the form of

mechanistic review and narrow interpretation which the Code is at pains to avoid.

As things currently stand, investors can review a company's annual report to understand the nature and extent of non-application of the Code, and make an assessment based on the nature or frequency of non-application by reference to a company's circumstances. An index based on rigid Code corporate governance compliance could result in a market polarisation of companies without any qualitative assessment. As a result, a company which has excellent corporate governance standards but which does not apply a particular Code provision (whether temporarily, potentially through no fault of its own, or longer term, in circumstances which are adequately explained and accepted by its shareholders) could be classified together with those companies who habitually and intentionally fail to meet Code governance requirements without adequate explanation.

Notwithstanding our views, we also believe that if such an Index were to be promoted, it should not exclude companies who satisfy the UKLA requirements for a premium listing, especially in light of the recent changes to the Listing Rules classifications and requirements.

Please note that the views expressed in this letter do not necessarily reflect the views of each and every member of the GC100 or their employing companies.

If you have any questions, please do not hesitate to contact me or John Davidson (general counsel at SABMiller plc and current Chairman of the GC100).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Mary Mullally', with a horizontal line drawn through it.

Mary Mullally
Secretary, GC100