

20 October 2021

**Capital Markets Policy Team
Financial Conduct Authority
12 Endeavour Square
London
E20 1JN**

Submitted via email to: cp21-24@fca.org.uk

Dear Sirs

FCA Consultation Paper CP21/24: Diversity and inclusion on company boards and executive committees (the “Consultation Paper”)

BlackRock¹ is pleased to have the opportunity to respond to the Consultation Paper.

BlackRock supports the UK regulators’ commitment to advancing diversity and inclusion across UK listed companies. BlackRock places particular importance on promoting diversity, equity and inclusion, both within our own firm and as an integral part of our stewardship engagement with companies in which we invest on behalf of our clients.

We welcome the opportunity to comment on the issues raised by the Consultation Paper and will continue to contribute to the thinking of the FCA on any issues that may assist in the final outcome.

Yours faithfully

Amra Balic
Managing Director
Head of EMEA BlackRock Investment Stewardship
amra.balic@blackrock.com

Antony Manchester
Managing Director
Head of UK Public Policy
antony.manchester@blackrock.com

¹ BlackRock is one of the world’s leading asset management firms. We manage assets on behalf of institutional and individual clients worldwide, across equity, fixed income, liquidity, real estate, alternatives, and multi-asset strategies. Our client base includes pension plans, endowments, foundations, charities, official institutions, insurers and other financial institutions, as well as individuals around the world.

CONSULTATION PAPER QUESTIONS AND RESPONSES

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

Yes. In our engagement with investee companies, BlackRock takes a multifaceted approach towards evaluating board diversity and the steps companies are taking to draw from the broadest pool of director candidates possible. We regularly engage with members of the relevant nominating and/or governance committees to understand the director recruitment process and efforts to facilitate a diverse and thoughtfully vetted pool of qualified candidates. We seek board diversity to reduce the risk of group think and support robust decision-making and oversight by the board, thus contributing to the company's ability to generate long-term shareholder value. Accordingly, we expect boards to disclose their approach, actions, and progress towards achieving a diverse board composition. We see the proposed comply or explain disclosure requirement as aligned with this expectation. Using the information disclosed, investors and other stakeholders can then assess whether they consider the approach taken by a company to be appropriate given the business and broader context within which the company operates.

When considering the extent to which investee companies are demonstrating a commitment to diversity, BlackRock looks at various factors. These include transparency around diversity (for example the demographic profile of incumbent members, which provides particular insight in markets where companies have a demographically diverse pool of director candidates from which to draw); the existence of time-bound targets for increasing board diversity; public statements that focus on efforts to advance diversity, equity, and inclusion ("DEI") in the boardroom; the appointment within the previous year of a director from an under-represented diverse group to the board; and average board tenure. Alignment with market-level expectations, where they exist, is a particularly important factor, reflecting to a large extent how representative the board is of the company's key stakeholders (which in our view helps to ensure there is appropriate diversity of perspectives in the boardroom).

In the UK, we have therefore sought to understand whether companies in the FTSE 350 have met or have committed to meet targets set by the Hampton-Alexander Review and the Parker Review of 33% female representation at board level and the appointment of one director from an ethnic minority background, respectively. We have the following observations based on our experience of engaging with companies in relation to these targets:

- We welcome the progress made by companies overall towards meeting these targets, and noted in particular the recognition in the Hampton-Alexander Review report published in February 2021 that (as at January 2021) women made up 34.3% of directors in the FTSE 350.²
 - The Hampton-Alexander Review target was important in increasing female representation at board level. However, it is our view that companies need to continue to make further progress towards gender parity, so we are supportive of the proposed approach of requiring companies to report against the higher target of 40% women on boards. We do not see this as an unreasonably stretching next milestone for companies to work towards – indeed, elsewhere in Europe there are two countries (France and Norway) where this 40% level is a mandatory quota for female representation at board level.

² Hampton-Alexander Review (FTSE Women Leaders): Improving gender balance – 5-year summary report, February 2021 (<https://ftsewomenleaders.com/latest-reports/>)

- While it is important to acknowledge that a significant number of FTSE 350 companies had not met the Hampton-Alexander Review target of 33% by January 2021, we see clear evidence that many of these companies are committing to do so in the next 12 months, meaning that there appears to be momentum on which refreshed targets could build.
- We also see this next step as a way to encourage and support companies to re-double their efforts and take further steps to broaden the pool of talent from which they recruit. We believe that the introduction of market-wide expectations through the Listing Rules could help to nurture new ways of thinking³ and give necessary impetus to boards to be bolder in their recruitment of candidates who may not be obvious choices for shortlists in the current market (like first time directors).
- From the perspective of ethnic minority representation, we again see a positive direction of travel in the latest data published by the Parker Review.⁴ Given this progress, and also that the expectation of the Parker Review is that FTSE 100 companies should have appointed at least one director from an ethnic minority background by the end of this year, and that FTSE 250 companies should be taking steps to do so (if they have not already) by the end of 2024, we see the alignment of the Consultation Paper's proposals with this level of ethnic minority representation as appropriate to support robust decision-making and oversight by boards.

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?

Yes – please see our response to question 1 in relation to the importance of transparency.

Collecting diversity data is an important first step for all companies in understanding the diversity of their leadership and wider workforce. It enables companies to identify potential under-representation in their leadership populations and pipelines and inform actions they could take to address any such under-representation. This might include allowing companies to identify areas for improvement in relation to DEI – for example, in recruitment and talent management processes – or to facilitate the setting of appropriate targets against which to assess progress. Data also enables companies to meet other applicable legal and regulatory requirements (such as UK gender pay gap reporting obligations and potentially future initiatives such as ethnicity pay gap reporting) and respond to stakeholder queries and expectations in relation to DEI-related matters.

In this latter respect, as an investor in companies on behalf of our clients we deem robust disclosure to be essential for investors to effectively gauge companies' business practices and strategic planning related to environmental, social and governance ("ESG") risks and opportunities, including DEI. When a company's reporting is insufficient, stakeholders may increasingly conclude that the company is not adequately managing such issues.

We appreciate this remains a journey that all companies are on, shaped in part by the fact that aspects of the data proposed for disclosure depend on self-identification and voluntary disclosure by individuals. Depending on the geographical footprint of an issuer's business – particularly with respect to overseas issuers (see further our response to

³ We are already seeing some evidence of innovative new thinking, such as the appointment of "board trainees" to provide relevant experience/exposure to candidates who may currently be passed over for appointment to a full non-executive role.

⁴ Significant progress on improving ethnic diversity of FTSE 100 boards reveals new data from the Parker Review, 12 March 2021 (https://www.ey.com/en_uk/news/2021/03/significant-process-on-improving-ethnic-diversity-of-ftse-boards-reveals-new-data)

question 4) – it may not be possible to gather the relevant information; indeed, requesting it may not be lawful. Similarly, depending on the business footprint, certain required categories of data (e.g. in relation to ethnicity) may be less meaningful and unsuitable for collection. Companies should therefore have the option of indicating the extent to which it is able to collect/disclose the data, potentially limiting such disclosure to the issuer’s UK business and/or providing data against more locally relevant categories of underrepresented populations (as envisaged in paragraph 4.20 of the Consultation Paper). Clarity on the data’s use, and usefulness, will be important to build up trust and confidence amongst companies and the individuals who will be asked to self-disclose (and also to avoid potential survey fatigue, which can lead to poor response rates). Clear guidance on why the required data is considered beneficial (namely, that it can provide important insight into the effective functioning of the company’s leadership) will help to reinforce individuals’ readiness to provide and update data over time. Explaining the potential benefit that could be realised from the data gathering will also help to underpin the FCA’s Cost Benefit Analysis.

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 (e.g. issuers of listed debt)? If you disagree, please explain why.

As articulated in our response to question 1, we seek board diversity to reduce the risk of group think and support robust decision-making and oversight by a board of directors, thus contributing to the ability of the company it oversees to generate long-term shareholder value. We consider this expectation applicable to all commercial operating companies in which our clients invest, regardless of the security type involved in the investment. Indeed, we seek to avoid undue differentiation in this respect, so as to mitigate the risk of different standards being seen to apply to similarly placed companies depending on the way in which they choose to raise capital. Accordingly, we see reasons why it would be appropriate for at least certain issuers of listed debt to be subject to the proposed requirements.

We acknowledge the points made in the Consultation Paper – which to a large extent mirror points made in the FCA’s consultation paper 21/18 on enhancing climate-related disclosures by UK listed entities – that issuers of debt currently listed in the UK extend well beyond commercial companies to include, for example, special purpose funding vehicles and other non-operating company issuers. We would nonetheless encourage the FCA to explore whether the requirements – which are already envisaged as “comply or explain” – could be framed in a way that would bring into scope those private commercial operating companies that would not otherwise be subject to them (i.e. issuers of listed debt that are not also issuers of listed equity).

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?

Yes, subject to the points raised in our response to question 2 about potential data collection challenges. We agree with the FCA’s position that including these issuers will hold companies in the UK market to common standards. We see DEI as relevant for all companies, and whilst we acknowledge that regulatory expectations must be proportionate and recognise the different types and sizes of companies which are regulated, we do not see the proposed requirements viewed broadly as irrelevant or disproportionate to the cohort of companies proposed for inclusion (considering, in particular, the “comply or explain” nature of the requirements). Recent evidence appears to indicate growing support amongst some boards outside of the UK for more concerted efforts to increase diversity at

board level.⁵ We do, however, support companies (notably overseas issuers) having the option to explain the extent to which their geographical footprint impacts their ability to provide the stated categories of data, and potentially being encouraged (where it is lawful to collect the relevant data) to disclose other categories of data that may provide more meaningful insight into the diversity of senior populations.

With respect to smaller companies (i.e. those outside of the FTSE 350), current data points in our view towards including them within the scope of the requirements, in order to encourage further progress on diversity within those companies. We are aware of analysis⁶ which indicates that:

- 31% of board members in the FTSE All-Share ex350 are women, with 48% of this cohort of companies having boards on which at least 33% of directors are women. These figures – while lower than the equivalent proportions amongst FTSE 350 companies – do not suggest that imposing the same disclosure requirements (on a “comply or explain” basis) would be unreasonable or disproportionate. Indeed, the analysis in question indicates that 48 of these smaller companies have majority female boards (i.e. above the proposed target).
- Notwithstanding this level of representation at many companies outside the FTSE 350, there is a significant minority of their peers that have not made sufficient progress diversifying the composition of their boards – 83 companies have just one female board member and 15 companies have no female board members. We are of the view that excluding smaller companies from the disclosure requirements would have the effect of downplaying the importance of increasing diversity at board level across the UK market, and therefore not encouraging the progress which seemingly still needs to be made at this level.
- Equally, from the perspective of ethnic diversity, only 16% of FTSE All-Share ex350 companies have appointed at least one director from an ethnic minority background (compared to 57% of the FTSE 350). Accordingly, we see scope for these companies to make important progress in respect of ethnic as well as gender diversity, which disclosure requirements could facilitate.

The gap between the FTSE 350 and smaller companies on ethnic diversity is notable, but the “comply or explain” framework should give those not currently subject to the Parker Review target the ability to highlight this and explain how their present positioning and future plans reflect this context.

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

Yes – please see our response to question 1 above.

In our experience – which is supported by the FRC’s recent research into how diverse boards lead to better corporate culture and performance⁷ – companies with engaged and experienced board directors with a diverse range of backgrounds, experiences, and

⁵ See, for example, the US perspective outlined in “The director’s new playbook: Taking on change – PwC’s 2021 Annual Corporate Directors Survey” (<https://www.pwc.com/us/en/services/governance-insights-center/assets/pwc-2021-annual-corporate-directors-survey.pdf>)

⁶ The Hidden Truth: Diversity and Inclusion in the FTSE All-Share – A report from Women on Boards UK, June 2021 (https://www.womenonboards.net/womenonboards-AU/media/UK-PDFs-Miscellaneous/WoB_HiddenTruth_FINAL.pdf)

⁷ Board Diversity and Effectiveness in FTSE 350 Companies, July 2021 (<https://www.frc.org.uk/getattachment/3cc05eae-2024-45d8-b14c-abb2ac7497aa/FRC-Board-Diversity-and-Effectiveness-in-FTSE-350-Companies.pdf>)

skillsets, who actively advise and oversee management, have a competitive advantage. Specifically, we believe that strong management and oversight practices help companies deal effectively with the financial and ESG factors material to their businesses. We recognise that a focus on gender and ethnic diversity reflects only certain aspects of what facilitates the sharing of diverse perspectives and experiences in the boardroom. Nonetheless, these aspects are now widely accepted in the UK market to be relevant to the aim of improving board effectiveness, and (as highlighted in relation to question 1) important indicators of the boards of UK companies being appropriately representative of their stakeholders.

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.

We do not have any particular views on this question.

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.

In our engagement with investee companies, we seek to understand their approach and commitment to fostering a diverse, equitable, and inclusive workforce culture at all levels, and advocate for practices that foster such a culture.

Regarding the potential requirement for similar data relating to the level below the executive management team, we would therefore again highlight the point we outlined in our response to question 2 about the importance of data collection (where lawful and to the extent the categories of data collected are meaningful). Collecting relevant diversity data is an important step for all companies to identify potential under-representation in their pipelines and inform actions they could take to address any such under-representation.

The importance of pipelines should not be overlooked in this context. In our engagements with investee companies, we are frequently told that the lack of talent from under-represented populations coming through into senior roles is limiting their ability to broaden diversity at board and executive levels if they want to recruit individuals with these skills and experiences. The additional data collection this would entail for companies will naturally need to be considered, but guidance on how to make this suitably efficient could potentially be sought from respondents to the Hampton-Alexander Review, to understand how they managed the process of gathering the level of information requested sought under that initiative. For companies not currently gathering data for these initiatives, the required disclosures could potentially be phased in, so as to allow those companies to build up their capacity for collection and assurance (while at the same time underscoring the importance of the information across the whole market).

In terms of seeking data on other aspects of diversity, guidance could highlight the extent to which data could help companies understand possible under-representation and therefore start to take corresponding action. We do not see a strong case for making further data disclosures mandatory, particularly in light of the challenges companies would face in collecting further data through voluntary self-disclosure (which again could lead to the data produced not giving a sufficiently meaningful picture of the relevant population to be suitable for external publication). However, we would encourage companies to provide insight through their reporting on how internal data collection and analysis is shaping DEI priorities, initiatives and goals.

As companies start to collect more data on diversity (for both internal and external consumption), the FCA might consider implementing in addition to disclosure

requirements a communication channel for those subject to the requirements to share observations, concerns and challenges associated with the collection and reporting processes.

Q8: Do you agree with proposed amendment to DTR 7.2.8AR to add 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.

We largely support the need for a broader assessment within DEI of characteristics beyond the existing “traditional” factors of age, gender and educational/professional background. This would likely start with legally protected characteristics, but in our view a focus on these characteristics could potentially be limiting – for example, neither socio-economic diversity (which is raised in Consultation Paper) nor the wider notion of neurodiversity (which is not) fall into this category, but are considered by boards to be important factors.⁸ We also view boards’ recognition of the concept of “intersectionality” – the acknowledgement that individuals have multiple aspects that shape their identities and lived experiences and so shape their diversity of thought – as important to their assessment of diversity. Accordingly, while we understand the rationale for reviewing the aspects of diversity currently included in DTR 7.2.8AR, we are not convinced that supplementing them in the way proposed would be the most effective way forward. Instead, we would suggest that the FCA consider ways in which boards could be encouraged to disclose their assessment of diversity in the context of their business model, long-term strategy and stakeholders.

Concerning the proposal around disclosure of how the board diversity policy was applied in the composition of the board’s key committees, we welcome this more granular focus on how diverse perspectives are brought to bear in all aspects of board decision-making. The FRC’s recent research highlighted that a notable consideration in assessing the weight a company puts on the appointment of more diverse candidates is to look at how diverse the nomination committee itself is.⁹ We would encourage this disclosure requirement to put a specific focus on the position of the nomination committee chair, as we see the individual in this role as critical to fostering a diverse and inclusive committee environment.

Q9: Do you agree with our proposed new guidance provision DTR 7.2.8CG 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.

Yes, subject to the points raised in our response to question 8. Given the potential insight that data collection and reporting can provide to companies’ stakeholders, we see this being appropriate as guidance (as opposed to a disclosure expectation).

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

Yes. The broad alignment of the proposals with the main elements of the existing voluntary initiatives (the Hampton-Alexander and Parker Reviews) means that it should not be onerous for companies in the FTSE 350 to start implementing them from 1 January 2022. BlackRock will in the meantime continue to expect these companies to be taking the necessary action to meet the targets of the Hampton-Alexander and Parker Reviews.

Given the intention for the proposals to cover a broader cohort of companies than the FTSE 350 (including smaller companies that will likely have less available resource to address the requirements), the FCA might, however, consider a slightly longer implementation period for those companies not currently in scope of the existing initiatives.

⁸ Ibid.

⁹ Ibid.

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

Yes. Recognising that this is an evolving space, both in the UK and globally, we believe it would be appropriate to take a phased approach which focuses initially on building evidence and appropriate analytical frameworks.