Diversity and inclusion on company boards and executive committees

Consultation Paper
CP21/24**

July 2021

How to respond

We are asking for comments on this Consultation Paper (CP) by **20 October 2021**.

You can send them to us using the form on our website at: www.fca.org.uk/cp21-24-response-form

Or in writing to:

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1 Summary

Why we are consulting

1.1 We are consulting on a proposal to change our Listing Rules to require in scope companies to disclose publicly in their annual financial report whether they meet specific board diversity targets relating to gender and ethnicity on a 'comply or explain' basis. Alongside this, we are proposing that in-scope companies publish standardised data on the composition of their board and most senior level of executive management by gender and ethnic background.

1.2 To encourage a broader consideration of diversity at board level, we are also proposing to amend the corporate governance rules within our disclosure guidance and transparency rules (DTRs) to indicate that existing reporting requirements on board diversity policies by in-scope companies on could consider wider diversity characteristics. This could include ethnicity, sexual orientation, disability and socio-economic background.

1.3 Our proposals are intended to increase transparency by establishing better, comparable information on the diversity of companies' boards and executive management. This would provide improved data for companies and investors to assess progress in these areas and would inform shareholder engagement and investment decisions, enhancing market integrity. Over time, we expect enhanced transparency may strengthen incentives for in-scope companies towards greater diversity on their boards. This may have further benefits of improving the quality of corporate governance and company performance in due course.

1.4 We also consider that better data will give us information to allow us to assess whether and how best to take further steps to promote greater diversity of company boards, for example, in relation to sexual orientation, lower socio-economic background and people with disabilities. At this stage, we focus on disclosure of representation and targets on gender and ethnicity, with proposals aligning to areas that FTSE 350 issuers already report on under voluntary initiatives. However, by encouraging wider considerations of diversity in board diversity policies, including key committees of the board, we may later look to expand reporting and targets to other protected characteristics such as sexual orientation and disability and other aspects of diversity such as lower socio-economic background. We may also seek to widen the scope of the targets to levels below executive management.

1.5 Our proposals seek to build on progress achieved under existing initiatives to improve diversity on the boards of the largest UK companies. Such initiatives include the Hampton Alexander Review and the Parker Review, and similar initiatives in international markets. We also recognise that investors and companies are increasingly interested in diversity. This is often linked to a focus on environmental, social and governance (ESG) factors in investment decision-making.

1.6 We consider it timely to explore and implement changes in this area. In parallel, we are also exploring how to promote diversity and inclusion across financial services as a sector, with our recent joint FCA/PRA discussion paper (DP21/2) published earlier in July. Diversity will therefore be an ongoing focus for the FCA, beyond the proposals we set out here.

Who this applies to

1.7 The companies in scope of our Listing Rule proposals 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.

1.8 We are proposing to exclude open-ended investment companies, and 'shell companies' as defined in LR5.6.5AR from the companies in scope of the proposal. We are not proposing to apply the proposals to issuers of debt securities, securitised derivatives or miscellaneous securities at this stage.

1.9 DTR 7.2.8AR 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).

1.10 The consultation should therefore be read by:

- UK and overseas companies that have securities admitted to listing or trading on a regulated market in the UK
- existing and prospective investors in listed companies or issuers admitted to a regulated market, including institutional and individual investors
- law firms, investment banks and other advisors and intermediaries who may assist issuers
- exchanges or venue operators
- intermediaries who may facilitate, including providing execution and/or marketing of, investments in issuers, whether at initial public offering (IPO) or in secondary markets
- members of a company's board, board committees and executive management, as well as those wishing to become such members
- sponsors of listed companies.

1.11 This consultation will also be of interest to:

- trade associations representing the various market participants above
- think tanks and civil society groups
- public bodies who may have an interest in promoting greater diversity
- other stakeholders with an interest in promoting greater diversity, including the Hampton Alexander Review and the Parker Review

The wider context of this consultation

1.12 We make this proposal in the context of:

- wider international initiatives to promote greater diversity on listed public company boards
- increasing scrutiny of companies by investors looking at environmental, social and governance (ESG) factors, and a desire for better data to inform decisions
- academic studies which suggest that greater diversity on boards may have positive effects on corporate governance and corporate performance

1.13 Further details on this background are set out in the following Chapter.

What we want to change

1.14 We want to change our Listing Rules to require, as an ongoing listing obligation, issuers that are in scope to disclose publicly in their annual financial report whether they meet specific board diversity targets on a 'comply or explain' basis. This allows companies flexibility to provide relevant context on their approach to board diversity, whether or not these targets are met. The targets we are consulting on are:

- At least 40% of the board should be 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)) should be a woman (including those self-identifying as a woman).
- At least one member of the board should be from a non-White ethnic minority background (as referenced in categories recommended by the Office for National Statistics (ONS)).

1.15 Alongside the 'narrative' comply or explain disclosure, we would also want to require such companies to publish data in their annual financial report on the composition of their board and the most senior level of executive management by gender and ethnicity, as of a specified date during their accounting year. This would be produced in a standardised table format, as set out in Annex 2. We also seek views on whether in future we should consider requiring data on representation by sexual orientation at these levels, and / or whether to extend the diversity data reporting to capture one level below executive-level management.

1.16 We also propose to amend DTR 7.2.8AR, which requires companies in-scope of that rule to disclose in their corporate governance statement the diversity policy applied to their board (where such a policy is applied), or to explain where no such diversity policy is applied. Under our proposed change, DTR7.2.8AR would be amended to:

a. indicate that this disclosure should also include how any diversity policies apply to the key committees of the board, specifically the committees on remuneration, audit and nominations, and
b. clarify that the aspects of diversity to which the diversity policy may relate could include, for example, ethnicity, sexual orientation, disability and socio-economic background (in addition to the aspects of diversity already referred to in the rule)

1.17 We also propose a separate guidance provision which encourages companies to where appropriate adding numerical data on the diversity of members of the boards and the committees referred to above in their description of the results in the reporting period (DTR 7.2.8AR(1)(d))

1.18 While, for now, we are not proposing board-level targets or specific data disclosures on other aspects of diversity, we do want to encourage issuers to consider diversity broadly (including the intersectionality of different diversity characteristics). By focusing initial targets and reporting on gender and ethnicity, we do not wish to diminish the importance of representation of other groups and the barriers to progression and opportunity they may face. We will consider whether further measures to encourage transparency and progress on other diversity aspects, such as new targets, are appropriate in due course.

Outcome we are seeking

1.19 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. We are also seeking to improve considerations of broader diversity aspects within diversity policies and related disclosures by all issuers who are required to comply with DTR7.2.8AR. This will provide additional information for investors to consider as part of their investment decisions.

1.20 This supports our objective of market integrity by increasing transparency (and reducing 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. 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.

1.21 We may also seek to use the numerical and narrative disclosures that these companies provide to build up an evidence base for evaluating further policy proposals in this area. This may involve considering the benefits for companies from greater diversity and how this policy may evolve to help companies capture those benefits best over time. Further details of our data strategy in this area are provided in Chapter 4.

1.22 Finally, we intend that expectations placed on UK-listed companies should keep pace with developments in other jurisdictions and with wider public interest. As such, we recognise any targets, if finalised, may need to be reviewed and updated in time.

Measuring success

1.23 The listing rule proposal to require numerical data disclosures on the gender and ethnic diversity of the board and executive management by in scope companies will provide valuable data which will allow issuers, the FCA, investors and interested parties to assess and compare board and executive management diversity.

1.24 Investors can use the data to understand more easily the companies they invest in. We expect that they may use this information to put greater pressure on companies towards greater diversity and inclusion. Over time, we would expect also that this may strengthen incentives for such companies to put more focus on greater diversity and inclusion.

1.25 This data could also be used for future policy evaluation in this area, for example, to assist us in future analysis of the effects of greater diversity on corporate performance and corporate governance, and in seeking to identify why and how some companies get the most positive impacts from it.

1.26 The first success measure will be the fullness and clarity of the data that our proposed changes generate. We could assess whether the dataset is complete and if the data being provided by in scope companies is comparable and meaningful. If we find it is not, then we may review the parameters of our reporting.

1.27 The second way in which we can judge the success of this measure will be in feedback we receive from investors and other stakeholders about whether they are finding the data useful, for example, to inform their engagement with companies and investment decisions, and how this data may be improved.

1.28 We would expect that we may see interested parties using the data in their own policy analysis and research. Over time we will be able to see whether the data is having its expected effects in making it easier for investors to compare issuers' board and executive management diversity and whether the data shows that diversity is increasing.

1.29 While we consider that the reporting requirements (which in relation to targets are set on a comply or explain basis) are proportionate, we are also interested in views about the costs that these measures may impose on in scope companies and how easy it is for them to comply.

1.30 Our proposed changes to DTR 7.2.8AR seek to encourage issuers to consider diversity more broadly in the context of this rule.

1.31 Under our proposed guidance on DTR 7.2.8AR(1)(d) issuers may consider where appropriate publishing fuller data on the diversity of their board and relevant board committees, where currently there is relatively little information. We expect that this may also provide us with data to inform whether we consider broadening the scope of our disclosure requirements in the future.

1.32 We consider that this proposal 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

1.33 We are consulting for 12 weeks on these proposals. The consultation closes on 20 October 2021.

1.34 Subject to consultation feedback and FCA Board approval, we will seek to make relevant rules by late 2021.

2 The wider context

The improvement to market function we are seeking to make

2.1 We consider that, at present, there is lack of standardised and mandatory transparency about diversity on listed company boards, particularly of those (mainly outside the FTSE 350) who do not provide data to the voluntary initiatives in this area. But, interest from investors is growing and companies are increasingly focusing on the topic due to ESG investing, as well as wider social and public policy concerns. We consider market integrity and efficiency would be improved by better company disclosures on diversity, which may inform pricing and reduce investor search costs.

2.2 Lack of transparency could result in the following undesirable outcomes:

- Investors do not have sufficient information about the companies they invest in to be able to choose between them on the basis of their diversity policies or to press them to do more in this area.
- The companies in scope of our proposals do not have sufficient information to assess their diversity against that of other companies or to identify and benefit from best practice on this issue.
- There is a lack of data about the benefits of greater diversity on boards of companies in scope of our proposals on corporate governance and corporate performance.
- Companies and investors in turn may miss out on the benefits of greater diversity if, as some studies suggest, it can drive better corporate governance and performance over time.

2.3 By requiring better data on diversity, we intend to work towards a more effective market. We also consider that our proposal should provide us with better data to evaluate future policies and consider potential future next steps.

How it links to our objectives

Market integrity

2.4 Improved transparency on factors that investors may consider increasingly relevant to their investment decisions about companies with listed shares will act to improve market efficiency.

2.5 If transparency subsequently drives improved diversity, and this has further benefits on company boards' effectiveness, the risk of potential corporate failures or misconduct in the UK could decrease, improving market confidence and reducing unexpected losses for investors.

Consumer protection

2.6 More transparency on diversity of company boards will provide better information to inform investment decisions, in the context of increased focus on investing based on environmental, social and governance (ESG) factors. Standardised information in company reports will lower search costs for investors seeking headline information on diversity of company boards, particularly if they are seeking to compare companies to peers. It will also improve the ability of existing shareholders to engage and challenge issuers based on data.

2.7 Longer term, investors may see better financial outcomes, including more positive broader impacts of a company's activities, for example in an environmental or social context) and reduced risks of corporate failure or under-performance if:

- greater transparency promotes progress in greater diversity, and
- this in turn has positive effects, such as reducing group think and improved corporate governance and decision-making.

2.8 This lack of transparency may also be causing consumer harm, as it could act against a clear understanding of the benefits of greater diversity on boards, which allows companies to better represent diverse consumer needs.

2.9 Further, if our proposal encourages greater diversity on boards this will act towards in scope companies better representing diverse consumer needs.

Wider effects of this consultation

2.10 This consultation paper complements our recent joint FCA/PRA Discussion Paper: 'Diversity and inclusion in the financial sector – working together to drive change'. It seeks to engage financial firms and other stakeholders in a discussion on how we can accelerate the pace of meaningful change on diversity.

2.11 We recognise our two documents overlap, in particular for financial services firms that have shares admitted to the FCA's Official List. We consider our approach to be consistent, although targeting slightly different aspects of diversity and inclusion and different ways to achieve progress. In this consultation, we are seeking to improve disclosure and transparency around board composition on key diversity elements to inform investors when considering investing in public companies. This aligns with existing market-based initiatives.

2.12 In our joint DP, we reiterate why diversity and inclusion are important. And we explore how to build on existing requirements to support and monitor progress in the UK financial sector. The FCA and PRA are working together to clarify our regulatory approach to diversity and inclusion to achieve our statutory objectives and having due regard to our Public Sector Equality Duty (PSED). This discussion will support our engagement with stakeholders and policy development, helping to determine which interventions could have the greatest impact.

2.13 The proposals relating to companies with listed shares build from, and have implications for, the future development of voluntary initiatives involved in promoting greater diversity on company boards and related industry initiatives. We discuss these further in Chapter 3.

2.14 Our proposal also links to other areas where we are seeking to improve the information that investors have about the companies they invest in, for example in relation to wider corporate reporting on ESG factors and metrics.

2.15 Further, by affecting corporate governance, it links into the work of the Financial Reporting Council (FRC) in monitoring how effectively companies adhere to the UK Corporate Governance Code.

2.16 Encouraging diversity on company boards can also be seen as having a wider social benefit and public interest, encouraging fairness in society by ensuring the most senior roles in public companies are more open to all. Minority groups having greater representation in such roles may lead to greater diversity in workforces and better opportunities (or fewer barriers) to development and progression. This would be so especially if companies think strategically as to how they promote a pipeline of more diverse future leaders. While broader social outcomes are not strictly within the remit of the FCA, it may nonetheless be an ancillary benefit many would support.

Unintended consequences of our intervention

2.17 We have considered whether our proposal may make listing on the FCA's Official List and admission to trading on UK-regulated markets more onerous and, therefore, less attractive, particularly to overseas issuers.

2.18 However, we consider that, by setting these targets (on a comply or explain basis) and improving transparency, the UK would continue to be a thought-leader with high standards of corporate governance and market integrity. Our proposal supports shareholder and investor scrutiny of companies' performance against ESG factors. We note also that other jurisdictions are taking similar steps in this area.

2.19 We do not consider that any burdens imposed would be disproportionate as we propose:

- aligning the reporting requirements with those under existing voluntary initiatives, and
- providing flexibility by allowing a 'comply or explain' approach

2.20 We recognise that, by focusing on women (including those who self-identify as women) and ethnicity in our Listing Rule proposals, there may be concerns that we are overlooking the importance of other minority groups and protected characteristics (as described in the Equalities Act 2010). However, we have chosen to focus initially on gender and ethnicity given that there are existing data initiatives that allow us to more easily develop proposals and set meaningful targets.

2.21 This approach does not seek to diminish the importance of other diversity aspects and groups that may be under-represented on company boards, nor do we consider that achieving one representative from an ethnic minority background should necessarily be seen as sufficient. We encourage companies within their internal policies and recruitment approaches, and in their external corporate reporting as appropriate, to focus on the wider diversity agenda and how they promote representation of all groups. This may include LGBTQ+, those with disabilities, and those from lower socio-economic backgrounds. We consider shareholders and investors will also demand better information from companies in these areas. We will look to build on our own proposals in due course to consider whether wider disclosures or other measures may benefit our markets.

What we are doing

2.22 As summarised above, and outlined in more detail below, we are proposing specific disclosure of certain data and a 'comply or explain' statement to be made annually by UK and overseas companies with listed equity shares (other than OEICs and shell companies) or listed-certificates representing equity shares on the gender and ethnic diversity of their boards and key positions on the board. We are also proposing the same data disclosure to address the diversity of the top executive management team of a company.

2.23 In addition, we propose to amend an existing rule on disclosure obligations in DTR 7.2.8AR relating to a company's corporate governance. We want to make it clearer to issuers that the requirement to disclose their diversity policies should include considerations of broader diversity aspects than those currently listed in DTR 7.2.8AR. This could include sexual orientation, people with disabilities and individuals from lower socio-economic backgrounds. We also encourage companies to consider if they can provide more data on these aspects, if possible, as part of indicating the results of their diversity policy.

Equality and diversity considerations

2.24 We have considered the equality and diversity issues that may arise from the proposals in this Consultation Paper and we have undertaken an Equality Impact Assessment. We consider our measures should positively promote equality, in particularly for women and those from ethnic minority backgrounds. We consider the 'comply or explain' targets and data disclosure should prompt issuers to consider, and investors to scrutinise, how companies encourage more diversity of gender and ethnicities on their boards and senior management committees, improving opportunities for these groups.

2.25 We expect our changes to DTR 7.2.8AR should also encourage wider diversity considerations by companies in relation to their boards and relevant committees, which may also promote better equality of opportunity for other protected groups.

3 Background and analysis

3.1 In this Chapter we set out an overview of the most relevant background to our proposals.

3.2 We consider the following:

- How the debate over diversity and inclusion has been framed internationally and the emphasis on greater representation of women on company boards.
- The UK legal context and progress under UK voluntary initiatives related to representation of women and ethnic minorities on boards.
- Developments of representation of women and ethnic minorities in other jurisdictions.
- Findings of research and data limitations.

The international policy discussion around diversity on listed company boards

3.3 Based on a large number of studies, which focused on the impact of women's representation on company boards, in 2012 the European Commission proposed a Directive which would require a quota of 40% for women's representation on listed company boards. The analysis and evidence were summarised in the European Commission's impact assessment for the proposal.

3.4 This proposal was controversial and did not receive sufficient support in the European Council to become legislation.

3.5 To date, there has not been a similar proposal at EU level for other forms of diverse representation, such as that of ethnicity or social mobility, or other protected characteristics such as age or disability. Therefore, data on these aspects, and on the effects of these aspects of greater diversity, are more limited for EU issuers.

3.6 In December 2020 in the US, NASDAQ proposed a new listing rule to require all companies on NASDAQ's US Exchange to publicly disclose consistent, transparent, diversity statistics on their board of directors. Additionally, the rules would require most NASDAQ-listed companies to have, or explain why they do not have, at least two diverse directors, including:

- one who self-identifies as female and
- one who self-identifies as either an underrepresented minority (based on a US-centric definition) or LGBTQ+

3.7 Foreign companies and smaller reporting companies would have additional flexibility, being allowed to satisfy the requirement with two female directors.

3.8 NASDAQ has since proposed further amendments to add flexibility, including allowing a company with five or fewer directors to have only one director meeting one of the above diversity criteria and to allow a one-year grace period if a company board falls below the requirement because an existing diverse member has left. This is pertinent for NASDAQ's approach since its rule is a condition of listing. NASDAQ has also clarified that foreign issuers may consider 'an underrepresented individual based on national, racial, ethnic, indigenous, cultural, religious or linguistic identity in the country of the company's principal executive offices'. NASDAQ applies a further annual reporting requirement via a 'Board Diversity Matrix' disclosure which includes definitions of relevant categories.

3.9 The US Securities Exchange Commission (US SEC) is expected to decide whether to accept or reject the proposal over the summer.

3.10 There have also been moves to promote greater gender diversity in other jurisdictions.

3.11 In Hong Kong, the Stock Exchange of Hong Kong Limited (SEHK) published a consultation paper on its Corporate Governance Code and Listing Rules in April 2021. This includes proposals that:

- listed issuers with single-gender boards have a three-year transition period to appoint at least one director of the absent gender
- IPO applicants are not expected to have single-gender boards
- all listed issuers are required to set and disclose numerical targets and timelines for achieving gender diversity, both at the board level and across the workforce (including senior management), and
- boards are required to review the implementation and effectiveness of diversity policies annually

3.12 The SEHK proposes to implement the revisions to the Listing Rules and the Corporate Governance Code for financial years commencing on or after 1 January 2022.

3.13 In April 2021, the Financial Services Agency in Japan published a consultation on proposals to revise its Corporate Governance Code to require companies to disclose a policy and voluntary measurable targets in respect of promoting diversity in senior management by appointing females, non-Japanese and mid-career professionals. They are also required to disclose human resource development policies ensuring diversity, including the status of implementation.

3.14 In Australia, diversity and inclusion on boards' obligations are set through the Corporate Governance Principles applicable to companies listed on the Australian Securities Exchange (ASX). Principle One, which applies to listed entities from financial years commencing on or after 1 January 2020, requires the entity to "lay solid foundations for management and oversight". It includes the recommendation that the board sets "measurable objectives for achieving gender diversity in the composition of the board, senior executives and workforce generally". For S&P/ASX 300 entities, this objective should be not less than 30% of directors of each gender.

3.15 In Singapore, the Ministry of Social and Family Development has established the he Council for Board Diversity (CBD) to promote a sustained increase in the number of women on boards of listed companies, statutory boards and non-profit organisations. This has set a target for the 100 largest listed companies of 20% women on boards.

The UK context: voluntary initiatives and current regulation

Progress under voluntary initiatives

3.16 In the UK, several voluntary initiatives have promoted greater diversity on company boards including the following:

- The Davies Review 2011 and the subsequent Hampton-Alexander Review addressed the under-representation of women on boards.
- The Macgregor Smith Review in 2017 called for action by businesses to address issues such as unconscious bias, to establish diversity as a key performance indicator and to remove employment barriers to 'BME individuals'.
- The Parker Review 2017 set targets for at least one 'person of colour' to be a Director of FTSE 100 companies by 2021 and FTSE 250 by 2024.

The Hampton Alexander Review

3.17 At the time of the Davies Review in 2011, women represented only 12.5% of boards. The Review set a target for women's representation on FTSE 350 boards of 25% to be achieved by 2015. Its successor, the Hampton Alexander Review, set a target of 33% of boards to be women across the FTSE 350. The latest Hampton Alexander report from 2020 suggests that the targets set by the Review have largely been met:

- 36.2% of FTSE 100 boards are women
- 33.2% of FTSE 250 boards are women
- 34.3% of FTSE 350 boards are women
- 30.6% of FTSE 100 Executive Committee and Direct reports are women

3.18 The Hampton Alexander review has also looked at improving women's representation below board level. It includes reporting on executive committee and direct reports to the executive committees.

3.19 The data on gender representation in the UK shows an increase in representation of women that is slightly lower than levels in some EU Member States, including France, Germany, Italy and Belgium. In those countries they have chosen to use quotas consistent with the European Commission's proposal for quotas of 40% in 2012. Broader data from the Gender Equality Index shows the UK is fourth on the (European) index but lags badly on some indicators such as the percentage of women or those self-identifying as women who are chairs of Boards (3%).

The Parker Review

3.20 The Parker Review in 2017 found that of FTSE 100 companies, only 2% of directors and only 6 Chairs or CEOs were 'persons of colour'. The Review set targets that each FTSE 100 board should have at least one director of colour by 2021; and each FTSE 250 board should have at least one director of colour by 2024.

3.21 The Parker Review 2020 reports that targets for representation of 'persons of colour' on boards have not been met. There are 172 Directors 'of colour' in FTSE 350 (178 Director positions). This amounts to only 7.5% of the total number of Directors. In the FTSE 100, 31 out of 83 companies, and 119 out of 173 companies who provided data from the FTSE 250, had no persons of colour on their boards. More recent data suggests that 74 of the FTSE 100 have a 'person of colour' on the board with a further seven likely to do so by March 2021.

UK regulatory context

3.22 Our Listing Rules do not set explicit expectations on diversity of listed companies' boards.

3.23 However, Listing Rule 9.8.6 R(5) requires a statement to be included in the annual financial report of how a premium listed company has applied the Principles set out in the Financial Reporting Council's (FRC) UK Corporate Governance Code, in a manner that would enable shareholders to evaluate how the principles have been applied.

3.24 Certain Principles in the UK Corporate Governance Code 2018 refer to how diversity should be considered in the appointment, succession and evaluation of the Board. FRC work in November 2020 suggested that current compliance by companies in this area has considerable scope for improvement.

3.25 In addition, DTR 7.2.8A R requires that the issuer's corporate governance statement must contain a description of the diversity policy applied to the issuer's board, with regard to aspects such as, for instance, age, gender, or educational and professional backgrounds. It also requires the company to outline the objectives of the policy, how it has been implemented, and its results in the reporting period. Where no such policy is applied, the issuer must include an explanation as to why this is the case.

3.26 We consider that our proposals for this rule should lead to fuller disclosure. DTR 7.2.8A R applies to certain UK incorporated issuers with securities admitted to trading on UK regulated markets and to certain overseas companies through the Listing Rules.

Research and data

3.27 We have found that much of the relevant research focuses on the impact of gender diversity, initially as part of the debate around the European Commission proposal for a quota of women on company boards in 2012.

3.28 The impact assessment which the European Commission used to support its proposal included a comprehensive review by Catalyst, an independent consultancy company, of previous studies. This review concluded that the balance of evidence suggested that greater diversity has positive effects on corporate performance and on corporate governance. This assessment relied on assessing the number of studies finding positive impacts being more than those finding neutral or negative impacts.

3.29 More recently, EU authorities have concluded that, overall, the data is inconclusive about whether greater gender diversity always drives better corporate governance or corporate performance.

3.30 Our own literature review of academic and other research published alongside our DP concludes that, overall, the empirical evidence for the impact of diverse workforces and boards on financial performance is inconclusive.

3.31 Our literature review does find evidence that greater gender diversity on boards is strongly associated with improved risk management and corporate governance outcomes. We find that increased gender diversity in the boardroom positively influences board monitoring functions, such as attendance, quality of discussions, and monitoring effectiveness including better oversight of a firm's disclosures and reports.

The review also reports from studies that link board gender-diversity with lower performance volatility and fewer cases of fraud and misconduct.

3.32 We also see an association between more 'inclusive' firms and those with diverse sexual orientation-supportive policies or disability inclusion strategies and improved corporate governance outcomes but there are fewer studies conducted in these areas.

3.33 We note, however, that the data available on the impact of diversity on corporate governance and performance is rarely complete and it is not always feasible for researchers to consider all possible factors that could be influencing outcomes. This means it is difficult to prove a causal link between our policy proposal and any desired outcomes deriving from greater diversity.

3.34 However, we believe the benefits of the policy in driving greater transparency outweigh the limited cost of a 'comply and explain' implementation.

3.35 The additional data our proposals provide may allow the causal link between greater diversity and corporate performance and corporate governance to be further analysed and may result in the policy evolving over time. Further detail on our cost benefit analysis (CBA) is set out in Annex 3.

4 Proposals

4.1 In this Chapter we set out our policy proposals and the rationale for the changes. We seek views on the detail and scope of our measures.

What we are changing

New Listing Rule requirements

4.2 We are proposing to create new provisions within our Listing Rules to require certain companies to make public annual disclosures in their annual financial reports covering:

i. a 'comply or explain statement' on whether they have achieved certain proposed targets (see below) for gender and ethnic minority representation on their board, and
ii. a standardised numerical disclosure on the gender and ethnic diversity of a company's board, key board positions, and executive management team

4.3 The companies in scope of this proposal 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. We are proposing to exclude open-ended investment companies and 'shell companies' as defined in LR5.6.5AR from the companies in scope of the proposal. We are not proposing to include issuers of debt securities, securitised derivatives or miscellaneous securities within the scope of the proposal.

4.4 We propose to change LR 9.8.6R and LR 14.3 by adding in a new requirement (LR 9.8.6R(9) and LR 14.3.27R(1)) that in scope companies include a statement in their annual financial report setting out whether the listed company has 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'):

- At least 40% of the board are women (including individuals self-identifying as women)
- At least one of the senior board positions (Chair, CEO, SID or CFO) is held by a woman (including individuals self-identifying as a woman)
- At least one member of the board is from a non-White ethnic minority background (as categorised by the ONS)

4.5 In cases where in scope companies have not met all of the targets, we propose to require them also to indicate the targets they have not met and to explain the reasons for not meeting the target(s). We propose that statement sets out 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. In addition, we propose that the statement sets out any changes to the board that have occurred between the reference date and the date on which the annual financial report is approved that materially affected the company's ability to meet one or more of the targets.

4.6 As part of the same annual disclosure obligation, we would also require (in LR 9.8.6R(10) and LR 14.3.27R(2)) in-scope companies to publish numerical data on the gender and ethnic diversity of their board, senior board positions (Chair, CEO, SID and CFO) and most senior level of executive management in a table. Data to be reported (as at the reference date selected for the purposes of the comply-or-explain disclosure) is included at Annex 2.

4.7 We also propose to include guidance 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.

Data protection considerations for companies

If we proceed to make final rules as proposed in this consultation, in-scope companies will need to consider their obligations under the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA 2018). Companies should be aware that personal data revealing racial or ethnic background and concerning a person's sexual orientation are 'special category data' under the UK GDPR.

While companies are not precluded from collecting and processing such information, companies will need to identify a lawful basis under Article 6 of the UK GDPR and a separate condition for processing such data under Article 9. Companies can find further guidance on the legal duties related to handling special category data on the Information Commissioner's Office's (ICO) website. 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 collect the information, should we proceed to make final rules.

The FCA consulted with the ICO under Article 36(4) of UK GDPR prior to publishing this consultation. We will continue to consider any data protection issues raised in responses to our proposals and engage further with the ICO as relevant before making any decision on final rules, which is subject to FCA Board approval.

4.8 We consider the proposed reporting targets to be consistent as far as possible with those set under the Hampton Alexander review and the Parker review. Our reporting targets on representation of women on boards go further than those currently set under the Hampton Alexander review reflecting that FTSE 350 companies have already met those targets and that we want to set targets which build on where companies are in their current performance. Our target on representation of ethnic minorities is in line with that set under the Parker Review.

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

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?

The scope of the Listing Rule requirements

4.9 We consider that our proposed new Listing Rules requirements in relation to the comply or explain statement and numerical disclosures on board and executive management diversity should apply to premium and standard listed companies with UK-listed equity shares, subject to the exclusions set out below. This will include closed-ended investment funds, noting that investment trusts are also included in the Hampton Alexander review, and sovereign-controlled companies. We also propose to include companies with UK-listed global depositary receipts (GDRs) that represent equity shares.

4.10 Although we are proposing to include closed-ended investment funds, these issuers will be permitted to adjust their disclosures on senior board positions and their numerical data disclosures where these are not applicable, provided they set out the reasons why those disclosures are inapplicable.

4.11 We are proposing to exclude both premium and standard-listed open-ended investment companies (OEICs) from the scope of the proposed new LR requirements. We consider this is appropriate because the governance of OEICs is subject to other regulation.

4.12 We are also proposing to exclude 'shell companies' (companies whose assets consist solely or predominantly of cash or short-dated securities, or whose predominant purpose or objective is to undertake an acquisition or series of acquisitions) for whom D&I may be less relevant.

4.13 The remaining companies in scope of our LRs proposals are predominantly commercial companies

4.14 We have considered a narrower scope (e.g. only premium listed commercial companies) and a wider one (any issuer with listed securities, including debt securities).

4.15 In proposing the new LR requirements for the above mentioned commercial companies and closed-ended investment funds, our focus is on the corporate entity itself and its relationship with investors. This approach, which focuses on the benefits of increased transparency for investors, is consistent with our approach to climate-related financial disclosures, as we have discussed in recent consultations on that topic (for example, see CP21/18).

4.16 This additional transparency can be particularly useful for investors who are directly engaged in the stewardship of companies they invest in.

4.17 We would propose to stay aligned with that approach in terms of excluding standard listed debt and debt-like securities and other non-equity securities. Recent analysis of the Official List to support our Task Force on Climate-related Disclosures (TCFD) proposals in CP21/18 has shown that listed debt is issued by a wide range of companies, including special purpose vehicles (SPVs) and issuing vehicles of companies that already have an equity listing.

4.18 However, we consider the proposed scope will provide a level playing field between relevant companies and provide useful insight in relation to the listed company population where there is scrutiny by shareholders.

4.19 In principle, we consider that our Listing Rules should hold UK and overseas issuers to common standards. This acts to ensure a level regulatory playing field and that investors on UK markets have access to information they need to inform their investment decisions, especially as investors' focus on board diversity has increased, alongside the growth in investment mandates focusing on ESG.

4.20 However, we recognise that progress on gender diversity may vary in different countries, while the composition of ethnic minorities may be 'country-specific'. Alongside applying the same rules as for UK-incorporated issuers, due to these differing country specifics and cultural contexts, we have also considered the following alternative options for overseas issuers:

- Taking the proposed NASDAQ approach of applying a general contextual provision allowing overseas issuers to consider underrepresented minorities relative to the national, racial, ethnic, indigenous, cultural, religious or linguistic identity in their country of incorporation. This may also be relevant to the representation of women. This has a benefit of encouraging diversity against a more relevant backdrop and allows investors to scrutinise such information. However, data from such disclosures would not be comparable with that from UK-incorporated issuers and it may not be proportionate for the FCA to monitor whether issuers from certain jurisdictions have adopted an appropriate concept of minority groups for that country, or
- Allowing an overseas issuer to indicate they comply with a comparable national initiative related to diversity of its board members based on e.g. national company law or corporate governance codes, as an alternative to complying with our proposed listing rules. We could require them to provide relevant links to any public disclosures they provide in such cases and to the law or code they comply with. While this may be less accessible for investors, it may avoid duplicative obligations for some overseas issuers. However, not all jurisdictions will have a comparable initiative (and what would be considered a comparable initiative is also a matter of judgement) which would leave some overseas issuers still subject to our rules.

4.21 We have considered:

- whether these alternatives would create, improve or reduce the consistency in the reporting burden for companies (especially where companies would need to consider more factors as part of the reporting) and
- our ability to monitor the appropriateness of the judgement companies deploy.

4.22 We have decided to propose to apply the same LR requirements for overseas issuers as for UK-incorporated issuers given that:

- the requirements in relation to targets are set on a 'comply or explain' basis and
- the issuer may simply disclose and explain their performance, which could include, for example, cultural or religious context.

Smaller companies

4.23 We recognise that the proposed LR board diversity targets may be challenging for smaller companies who may have fewer directors on their boards. However, we do not wish to exclude such companies per se, since the costs are unlikely to be high from this additional annual comply-or-explain disclosure. The ability to 'explain' also provides flexibility if, for example, they have smaller boards and may need time to recruit diverse board members (for example if a director leaves unexpectedly). We will consider providing additional guidance to issuers on this point if necessary.

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?**

Policy rationale for the targets and data reporting

4.24 Reporting under our Listing Rules proposals will be against targets which build on those set by the voluntary initiatives to minimise burdens for in-scope companies.

4.25 Further, we have used reporting criteria aligned with those used by the ONS. This is described in further detail in Annex 2. This will allow for data which can be compared easily with other statistics, and benchmarked.

4.26 We consider that this will address the investor appetite for better data points without being too burdensome for issuers to collect, particularly as many of these issuers already gather such data. This data will supplement more sophisticated analysis that buy-side investors may carry out and other data vendor metrics.

4.27 We are also proposing that these numerical disclosure requirements cover diversity of a company's executive management (in addition to the board) in terms of gender and ethnicity. We recognise the Hampton Alexander Review has expanded reporting on gender to this level, and to a further level to direct reports to a company's executive level.

4.28 We have not proposed requirements to extend reporting of numerical disclosures on diversity to the level of management below the executive committee or executive management team at this stage. But we welcome views on whether we should do so, and if this would affect the scope, costs and benefits of our proposals.

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?**

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.**

Proposed amendments to our DTR requirements

4.29 We propose to amend an existing rule on disclosure obligations, DTR 7.2.8AR, relating to a company's corporate governance.

4.30 Under our proposed change, DTR 7.2.8AR would be amended to indicate that a company's disclosure on its diversity policy, where it has one, should:

- **i.** also include the diversity policy applied to its board committees, specifically its remuneration, audit and nominations committees
- **ii.** 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).

4.31 We also propose to add guidance (at DTR 7.2.8CG) that in scope companies may, where 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)).

Policy rationale

4.32 These changes would widen the range of examples of diversity aspects for issuers to consider in the description of their diversity policy to include ethnicity, sexual orientation, disability and socio-economic background. This complements the slightly narrow focus of our proposed Listing Rule requirements. Addressing board committees in this disclosure requirement also encourages companies to consider whether diversity in their boards extends to key committees overseeing key aspects of the company's corporate governance.

4.33 While we consider it to be implicit in our rules that a diversity policy may encapsulate a broader purview of diversity than just the examples currently listed in the rule, we would like to make this more explicit by adding to the examples of aspects of diversity that the diversity policy could cover. We also propose adding guidance that companies may, where appropriate, include numerical data as part of their disclosures to support a description of the results of any board or board committee diversity policy. Companies may only be able to provide this in as far as it does not create any legal issues around equality or data protection law, and / or subject to employees' willingness to provide information on wider diversity aspects.

4.34 We propose this change to encourage companies to consider providing more transparency and data on diversity policies related to a wider range of categories of diversity. This will inform investors seeking more detail on which to assess a company's progress and approach to diversity, potentially linking to the 'social' and 'governance' aspects of ESG investing. More information and data on company policies across broader diversity aspects will also allow us to widen our evidence base in this area.

Scope of our disclosure and transparency amendment

4.35 DTR 7.2.8AR applies to certain UK issuers admitted to UK regulated markets and, through the Listing Rules, to certain overseas listed companies. But issuers which qualify as a small or medium company under DTR 1B.1.7R are exempt from DTR 7.2.8AR requirements. DTR 7.2.8AR includes a requirement that an issuer's corporate governance statement must contain a description of any 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. If an issuer does not apply any diversity policy, they must explain why in the corporate governance statement.

4.36 We are not proposing any change to the existing scope of DTR 7.2.8AR in relation to these changes. We are simply proposing additional specificity or encouraging more information where possible from issuers as part of their disclosure.

> **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.**

Proposed timing for introducing measures

4.37 We propose that our new Listing Rule requirements will apply to accounting periods starting on or after 1 January 2022, so that reporting will start to be seen in annual financial reports published for that year in spring 2023. We encourage companies to consider making disclosures on a voluntary basis in annual financial reports published before then.

4.38 We propose to give issuers flexibility in the timeframe they use for their diversity reporting, for example, in setting the reference date when the data is captured within the accounting period covered in the annual financial report.

4.39 We understand that some issuers may be reporting also under the voluntary initiatives and would suggest that they could continue to use the point in time set by those initiatives for companies to capture and submit data, to also capture the data for our proposed disclosure tables.

4.40 However, to ensure that we can see the time series trend in the data we would propose to require that issuers specify the reference date they have set in their reporting and, if the reference date is different from the date used in respect of the previous accounting period, explain why this is the case.

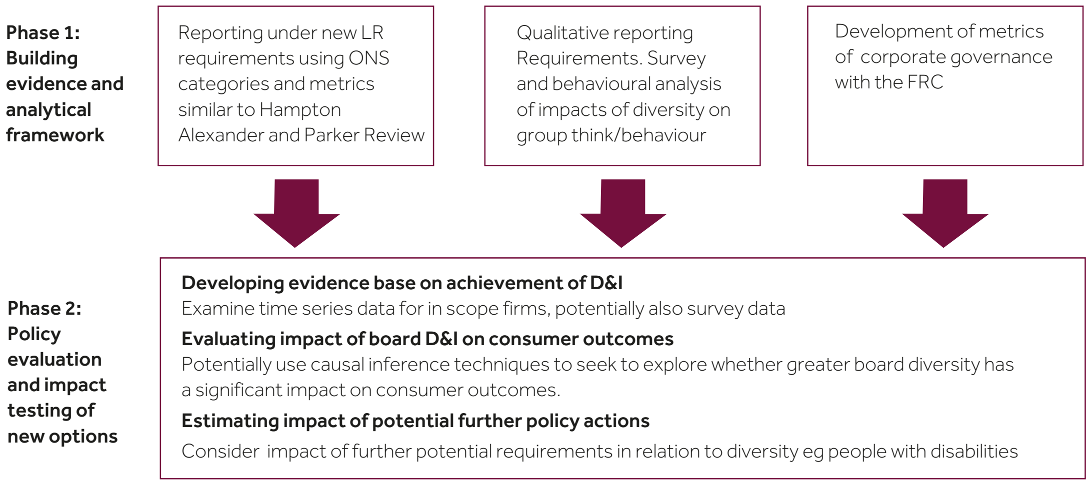
4.41 We would encourage issuers to consider their disclosures under DTR 7.2.8AR in light of our proposals as soon as possible. However, in order to provide them with more opportunity to address these matters, we propose that the changes to DTR 7.2.8AR and the new guidance would come into force at the same time and for the same accounting period as our new LR requirements.

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

Our future data strategy on diversity

4.42 The information on other aspects of Board diversity should allow us to consider whether to widen the parameters of the reporting. Our future analysis of data in this area could follow the model in Figure 1 below:

Figure 1: Data evaluation and future policy framework



4.43 We may use this data also for future policy evaluation in this area, for example if we consider further the effects of greater diversity on corporate performance and corporate governance and if we identify why and how some companies get the most positive impacts from it.

> **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.**

How we measure the success of our proposal

4.44 In making this proposal, we aim to increase transparency about issuers' performance in relation to diversity and inclusion and therefore over time to promote greater diversity and inclusion.

How we will supervise and monitor compliance

4.45 We will review issuers' public disclosures to assess their compliance with our requirements. This will link in with the work of the FRC in reviewing the disclosures made about diversity policies under the UK Corporate Governance Code.

How the data will be used

4.46 We expect that the numerical public disclosures provided by in-scope companies will provide valuable data which will allow issuers, the FCA, investors and interested parties to assess and compare this performance on diversity.

4.47 We expect that investors will use the data to understand more about the companies they invest in. We expect also that they may use this information to put pressure on companies towards greater diversity and inclusion. Over time we would expect that this may strengthen incentives for such companies to put more focus on greater diversity and inclusion.

4.48 We will judge the success of this measure in two ways:

- **a.** The quality of the data that it generates. We would hope to see data from in-scope companies that is complete, comparable and meaningful. If not, we may review the parameters of our reporting requirements over time.
- **b.** The feedback we receive from investors and other stakeholders about whether they are finding the data useful and how it may be made more useful. We expect to see interested parties using the data in their own policy analysis and research.

4.49 Over time we will be able to see whether the data is having its expected effects in strengthening incentives towards greater diversity and inclusion.

4.50 By amending and adding guidance on DTR 7.2.8AR we are seeking to encourage companies to actively consider other aspects of diversity in their policies (to the extent they are not already doing so), as well as encouraging further data on areas where currently there is relatively little information. As above, this should be mainly used by investors to understand how companies are progressing in this area, as well as wider stakeholders. We expect that this may also provide us with data about whether or not to broaden the scope of our requirements in future.

Next steps

4.51 Subject to the feedback to this consultation and FCA Board approval, we will aim to make final rules and publish a Policy Statement before the end of 2021.

Annex 1
Questions in this paper

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

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?**

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?**

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?**

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.**

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.**

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.**

Annex 2
Reporting requirements

1. Current reporting under the Hampton Alexander review is for:

- % and number of women on Boards
- % and number of women- NEDs, Chairs, Senior Independent Directors (SIDs), Executive Directors.
- % and number of women on executive committees
- % and number of women CFOs, CIOs, HR managers
- To ensure consistency of reporting it would be reasonable to mirror these with a slight change in relation to senior Board positions to reflect our different targets.

2. To ensure consistency of reporting it would be reasonable to mirror these with a slight change in relation to senior Board positions to reflect our different targets.

3. To be consistent with this reporting whilst taking account of wider gender categories we would propose the following categories of reporting in Table 1 below.

Table 1 Gender reporting categories

Gender	Number of Board Members	% of Board	Number of senior positions on the board (CEO/ CFO, SID or Chair)	Number in executive management	% of executive management
Men (including those self- identifying as men)					
Women (including those self-identifying as women)					
Non-binary					
Not specified/prefer not to say					

4. We propose to use ONS categories for ethnicity broken down across five categories as follows:

- White (White British, White Other)
- Black, African, Caribbean or Black British
- Asian (Chinese, Indian, Bangladeshi, Pakistani, Other Asian)
- Mixed or Multiple ethnic groups
- Other ethnic group (Arab, Other ethnic group)

5. We therefore propose a disclosure as per the following in Table 2:

Table 2: Ethnicity categories

ONS ethnicity category	Number of Board Members	% of Board	Number of senior positions on the board (CEO/CFO Chair or SID)	Number in executive management	% of executive management
White British or White Other					
Mixed/Multiple Ethnic Groups					
Asian/Asian British					
Black/African/Caribbean/ Black British					
Other Ethnic Group					
Not specified/prefer not to say					

Annex 3
Cost benefit analysis

Introduction

1. FSMA, as amended by the Financial Services Act 2012, requires us to publish a cost benefit analysis (CBA) of our proposed rules. Specifically, section 138I requires us to publish a CBA of proposed rules, defined as 'an analysis of the costs, together with an analysis of the benefits that will arise if the proposed rules are made'.

2. This analysis presents estimates of the significant impacts of our proposal. We provide monetary values for the impacts where we believe it is reasonably practicable to do so. For others, we provide estimates of outcomes in other dimensions. Our proposals are based on carefully weighing up these multiple dimensions and reaching a judgement about the appropriate level of consumer protection, taking into account all the other impacts we foresee.

3. This CBA considers this potential harm and assesses the costs and benefits of introducing disclosure requirements for in scope companies related to diversity on their company boards.

Problem and rationale for the intervention

The harms

4. Our rationale for intervening is based on potential harm as set out below.

5. The harm under the current voluntary reporting regime is that there is a lack of transparency in the market about the diversity of boards in listed companies. Although there are voluntary initiatives to meet specific targets for both gender and ethnic diversity and disclose against them, these initiatives are voluntary only and do not concern issuers outside the FTSE 350.

6. This leads to frictional costs for investors who seek this information to make investment decisions and for issuers who may wish to compare their performance on diversity. Without disclosures on the diversity of senior board and executive committees, issuers and investors may face costs in compiling this information themselves. In addition, the lack of standardised disclosure makes it difficult for issuers and investors to compare diversity-related metrics across firms.

7. In addition, different consumers have diverse needs. We are concerned that boards which are not diverse may not take into account a wide range of perspectives and therefore may prevent firms from best meeting those needs through the products and services they offer, which could lead to financial and non-financial harm.

Drivers of harm

8. We consider that these potential harms may arise from market failures, which include:

- **Asymmetric information:** not all issuers disclose as much information on the diversity of their boards as investors may prefer. This is because they may lack incentives to do so (e.g. costs of disclosure or fear of reputational damage).
- **Coordination failure among investors:** investors who wish to include diversity performance as part of their decision-making may not be able to coordinate effectively to encourage issuers across the market to disclose this information.

Our proposal

9. We want to change our Listing Rules to require certain companies with listed equity (including listed certificates representing equity shares) listed on UK regulated markets to make an annual quantitative and qualitative disclosure against % targets on board diversity on a 'comply or explain' basis.

10. Most FTSE 350 companies currently provide data under the Hampton-Alexander review on FTSE women leaders and the Parker review on ethnic diversity of UK boards, which we refer to as the voluntary initiatives. Reporting to the Hampton-Alexander review is based on a target of one third of boards being women and that to the Parker review of one 'person of colour' on the board.

11. We consider that our requirements should be aligned with the form of these existing disclosures to minimise costs for in scope companies and to avoid duplication of data reporting for those reporting to these reviews.

12. Our proposal to introduce disclosure requirements for in scope companies are set out in detail in the CP. These comprise the following:

13. We want to change our Listing Rules to require headline numerical data in tabular format on the composition of their board and their executive committees during the accounting year (and post year-end updating if necessary), in terms of gender and ethnicity.

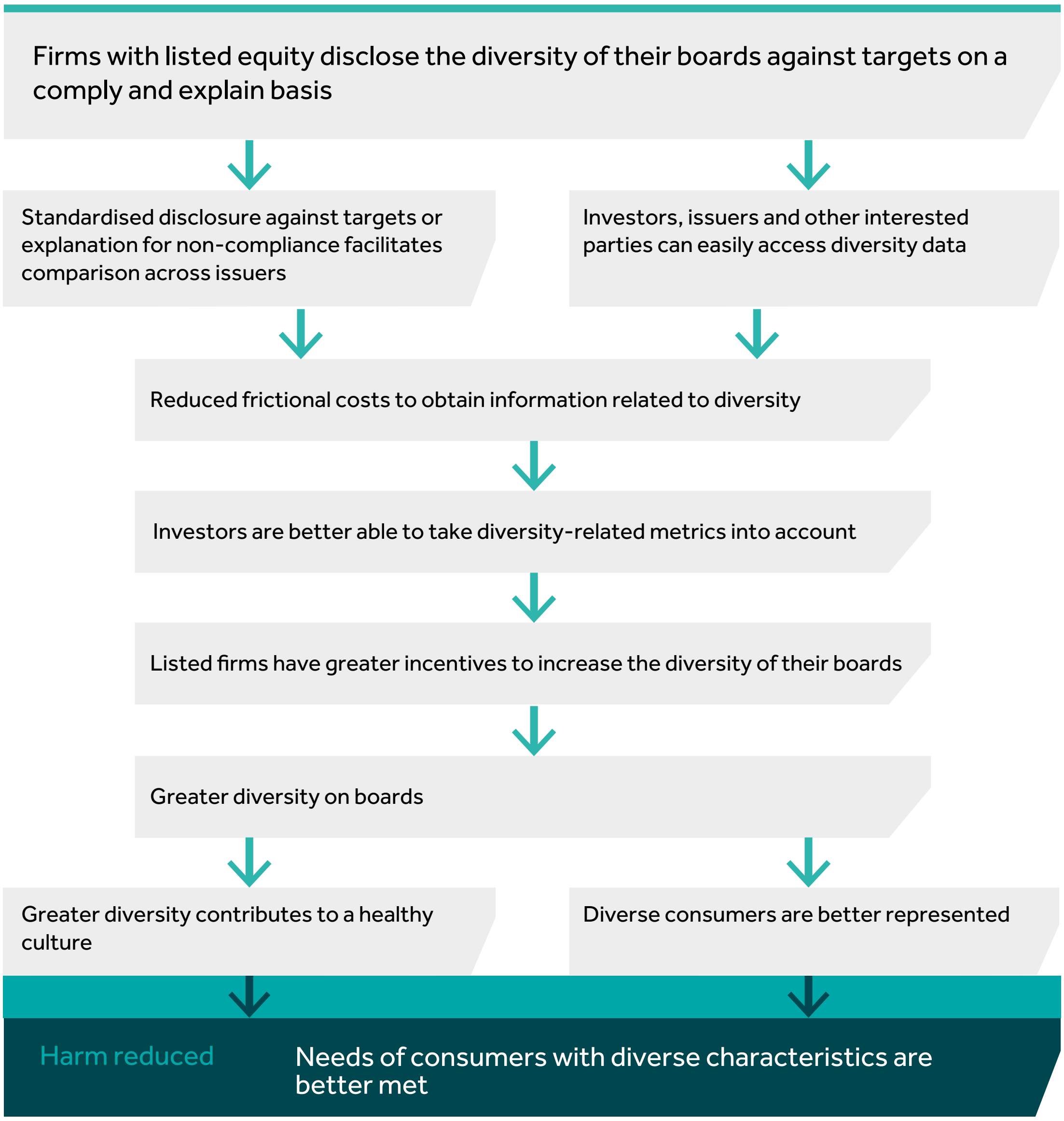
14. The targets we are consulting upon are:

- At least 40% of the Board should be women (including those self-identifying as women).
- At least one of the senior Board positions (Chair, Chief Executive Officer, Senior Independent Director or Chief Financial Officer) should be a woman (including those self-identifying as a woman).
- At least one member of the Board should be from a Non-White ethnic minority background (as defined by the ONS).

15. We also propose adding further clarification to the list of aspects of diversity set out as examples in DTR 7.2.8AR(1), which requires in-scope companies to disclose their diversity policy for their board (where such a policy is applied). This would include, for example, adding reference to ethnicity, and other aspects of diversity (such as sexual orientation). These proposals also include diversity of board committees and guidance to encourage data on the results of diversity policies where appropriate.

16. The mechanisms through which we expect our proposal to address the harms described above are set out in the causal chain (figure 1) and in the benefits section.

Figure 1: Causal chain for our proposal to introduce D&I disclosure requirements



Baseline and key assumptions

17. To consider our proposal we have drawn on data from the Hampton-Alexander and Parker reviews, our Discussion Paper (DP21/2) on Diversity and inclusion in the financial sector and the literature review published alongside DP 21/2. We have also used a staff working paper published by the Bank of England on organisational culture and bank risk.

18. We consider that without our intervention, out of the listed firms in the FTSE 350, all continue to report with regards to gender composition of their boards under the Hampton-Alexander Review, and 299 continue to do so with regards to ethnic composition under the Parker Review, based on those reporting in 2020.

19. We assume that firms continue reporting on diversity under the Corporate Governance Code. We also assume a continuation of current trends in relation to the improvement towards greater representation of women and ethnic minorities as under the voluntary initiatives.

20. In this CBA, all price estimates are in nominal terms. When estimating the net present value of costs we use a 3.5% discount rate, as per HM Treasury's Green Book.

Number of firms

21. We estimate that there are 1106 issuers with listed equity who are in scope of our proposal. To obtain this estimate from the FCA's Official List as of 6 July 2021, we sum the number of premium equity commercial companies, premium equity closed ended investment funds and standard shares listed firms.

22. We use the market capitalisation of issuers as a proxy for their size.[1] Firm numbers by size are illustrated in table 1 below.

Table 1. Number of in-scope firms by size used for our estimates

Issuer type	Estimated number
Large issuers	766
Small and medium-sized issuers	340
Total	**1,106**

Summary of costs and benefits of our proposal

23. Compared to the baseline described above, we expect that our proposal may have the following costs and benefits as summarised in table 2 below:

Table 2: Summary of costs and benefits of our proposal

Market participant	Estimated costs	Estimated benefits
Investors	N/A	Greater transparency on board diversity and executive management Issuers are more easily compared on diversity-related metrics Reduced frictional costs for investors and companies in obtaining data on board diversity Greater diversity contributes to healthy culture in firms
Issuers	**One-off:** Familiarisation and legal review costs – £908,000 **Ongoing:** Annual reporting costs for in-scope issuers who do not report under the voluntary initiatives – £196,000 per year for a net present value of £1.7m over 10 years Potential costs associated with companies trying to meet the targets for example, recruitment or reorganisation costs. May be one-off or ongoing. Not quantified	

1 We define small and medium-sized entreprises (SMEs) as those which have a market capitalisation below €200m (£179m using the HRMC average exchange rate for the year to March 2021), in line with our Handbook Glossary Definition in MAR 5. Large issuers are defined as those which have a market capitalisation above or equal to this threshold.

Market participant	Estimated costs	Estimated benefits
Consumers	N/A	Companies with more diverse boards better meet diverse consumer needs

24. We estimate the total costs for the industry to be £908,000 for the one-off familiarisation and legal review costs. We further estimate that 807 listed firms who do not currently report under the voluntary initiatives will incur £196,000 per year for annual reporting, for a net present value of £1.7m over 10 years. Due to the practical challenges, we consider it not reasonably practicable to produce monetary estimates for the expected benefits of our proposals. However, we consider that the expected benefits of this proposal outweigh these costs.

Expected costs

Familiarisation costs and legal review costs

25. We use our Standardised Cost Model (SCM) to estimate the familiarisation and legal costs issuers may incur as a result of our proposed changes.

26. We expect market participants affected by our intervention will read relevant changes put forward as part of the proposals in this consultation and will familiarise themselves with the requirements of the proposed rules. Based on our analysis of companies in scope of our proposal, we assume that 1106 companies will consider the proposed changes.

27. We estimate the familiarisation costs based on assumptions on the time required to read the 46 pages-long CP, excluding the legal instruments. We assume 300 words per page and a speed of 100 words per minute and estimate that it would take around 2.3 hours to read the document. We convert this into a monetary value by applying an estimate of the cost of time to market participants, based on the Willis Towers Watson 2016 Financial Services Report, adjusted for subsequent annual wage inflation and including 30% overheads.

28. Total familiarisation costs by participant size and the corresponding assumptions are set out in table 3. In total, we estimate that the one-off familiarisation costs for the industry would be £388,000.

Table 3 Familiarisation costs and assumptions

Category	Number of staff required to read the consultation	Hourly compliance staff salary	Total familiarisation costs
Large issuers	3	£59	£314,000
Small and medium-sized issuers[2]	1.5	£63	£74,000
Total industry one-off familiarisation costs			£388,000

Source: FCA approach to CBA, Willis Towers Watson 2016 Financial Services Report

2 For small and medium-sized issuers, we use the average compliance cost of medium-sized firms. This is for simplicity as we are not able to further classify firms in a more granular breakdown based on their market capitalisation only. In practice, average compliance salaries are higher for medium-sized firms than small firms in our Standardised Cost Model and the total cost may be therefore be an overestimate.

29. Following familiarisation with the proposal put forward, we expect issuers to conduct a legal review of the proposals and a gap analysis to check their current practices against expectations.

30. We estimate the legal costs for market participants based on assumptions on the time required to read the 15 pages-long legal instrument. We convert this into a monetary value by applying an estimate of the cost of time to firms based on the Willis Towers Watson 2016 Financial Services Report, adjusted for subsequent annual wage inflation and including 30% overheads.

31. Total legal review costs and the corresponding assumptions are set out in table 4. We estimate total legal review costs for the industry would be £520,000.

Table 4: Legal review costs and assumptions

Category	Hours per team member to review 50 pages of legal text	Number of legal staff required to read the legal instrument	Hourly legal staff salary	Total legal costs
Large issuers	14	2	£69	£446,000
Small and medium-sized issuers[3]	7	2	£69	£74,000
	Total one-off industry legal costs			£520,000

Source: FCA approach to CBA, Willis Towers Watson 2016 Financial Services Report

32. We therefore estimate the total familiarisation and legal review costs for the industry would be £908,000.

Additional reporting costs

33. We have structured our proposal to minimise costs for FTSE 350 companies who report under the voluntary initiatives. For example, we have based our reporting categories on those used by these initiatives. We have also provided in-scope companies with flexibility about their reporting timetables to allow them to align their data collection with that undertaken under the voluntary initiatives.

34. Given this, we consider that companies providing data to the voluntary initiatives will not face material reporting costs. To identify companies which will incur additional reporting costs, we have looked at reporting from 2020. In 2020 all FTSE 350 companies provided data on gender diversity to the Hampton-Alexander review but only 299 provided data on ethnic minorities representation to the Parker Review. We consider therefore that these 299 companies will not have material additional reporting costs under our proposal.

35. We understand that many issuers outside the FTSE 350 will already be reporting against diversity targets. However, to make a cautious estimate of possible costs under our proposal we assume that all those not currently reporting to the voluntary initiatives will bear additional reporting costs.

3 For small and medium-sized issuers, we also use the average legal cost of medium-sized firms.

36. Based on the firm numbers described in table 1, we assume that out of the 766 large issuers with a market capitalisation above €200m, 299 already report under the voluntary initiatives. This means that a total of 807 issuers, of which 467 large and 340 small and medium-sized, will face additional annual reporting costs.

37. We expect these costs to arise from the time needed to collect the necessary information and complete the disclosure tables, or, if a firm chooses to explain rather than comply, from the time needed to write an explanation. We estimate these tasks should take no longer than half a day (4 hours) on average for firms and may be executed by a compliance officer. We use the compliance staff salaries from our Standardised Cost Model as described in table 5 to calculate ongoing costs and the net present value of the annual reporting costs over a 10 years horizon, discounted at 3.5%, in line with the HM Treasury Green Book guidance, using 2020 as the base year. Total estimates are presented in table 5 below. In total, we estimate the net present value of additional reporting to be £1.7m.

Table 5: Annual reporting costs for some in-scope issuers

Type of issuer	Hourly salary	Number of issuers	Annual reporting cost	Total net present value
Large issuers	£59	766-299 = 467	£110k	£949,000
Small and medium-sized issuers	£63	340	£86k	£738,000
Total		807	£196k	£1.7m

Source: FCA approach to CBA, Willis Towers Watson 2016 Financial Services Report

Other potential costs

38. We consider that there may be other potential costs associated with reporting on and meeting the proposed targets (if companies choose to do so). For example, listed firms may decide to increase the size of their board, and/or may incur increased recruitment costs. These costs may be either on a one-off or ongoing basis and may be higher for those whose boards are less diverse.

39. Due to the technical challenges involved with quantifying these costs, we do not considerate it reasonably practical to provide monetary estimates.

Expected benefits

40. We consider that our proposal is likely to have a range of benefits for investors, issuers and wider consumers.

41. Our proposal will improve the availability of clear, reliable and easily comparable information on the diversity of boards and executive management teams. This greater transparency may reduce frictional costs for investors, issuers and other interested parties who seek to obtain this information. Standardised disclosure against set targets and the requirement that firms provide an explanation if they do not comply will also make it easier to compare issuers on this aspect of diversity.

42. Increased transparency will facilitate informed decision-making for investors. In addition, we expect the potential reputational impact of explaining rather than complying may incentivise more firms to comply, further enhancing the benefits associated with greater transparency.

43. Overall, we expect this greater transparency to reinforce the incentives issuers have in increasing the diversity of their boards. We believe that there are potential benefits to decisionmakers in listed companies to being representative of the wider society and the heterogeneous consumers they serve – including with respect to gender and ethnic minorities. Our proposal will act towards FCA objectives as greater diversity on boards will enable companies to better represent consumers and meet their diverse needs.

44. Additionally, there may be wider benefits accruing to society and markets from greater diversity in boards. As set out in our discussion paper on diversity and inclusion in financial services (DP 21/2)[4], we expect diversity and inclusion to contribute to healthy cultures and good outcomes. For example, the Bank of England found that a healthy culture, of which diversity and inclusion is a component, reduces bank risk (Bank of England, 2021).[5]

45. Although we do not consider it reasonably practical to quantify the expected benefits of our proposal, we consider that, overall, they are likely to outweigh their costs.

4 Financial Conduct Authority, Prudential Regulation Authority and Bank of England (2021) Diversity and inclusion in the financial sector - working together to drive change. FCA Discussion Paper 21/2

5 Bank of England (2021) Organisational culture and bank risk. Bank of England Staff Working Paper No.912

Annex 4
Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements applicable to the proposals in this consultation, including an explanation of the FCA's reasons for concluding that our proposals in this consultation are compatible with certain requirements under the Financial Services and Markets Act 2000 (FSMA).

2. When consulting on new rules, the FCA is required by section 138I(2)(d) FSMA to include an explanation of why it believes making the proposed rules is (a) compatible with its general duty, under s. 1B(1) FSMA, so far as reasonably possible, to act in a way which is compatible with its strategic objective and advances one or more of its operational objectives, and (b) its general duty under s. 1B(5)(a) FSMA to have regard to the regulatory principles in s. 3B FSMA. The FCA is also required by s. 138K(2) FSMA to state its opinion on whether the proposed rules will have a significantly different impact on mutual societies as opposed to other authorised persons.

3. This Annex also sets out the FCA's view of how the proposed rules are compatible with the duty on the FCA to discharge its general functions (which include rule-making) in a way which promotes effective competition in the interests of consumers (s. 1B(4)). This duty applies in so far as promoting competition is compatible with advancing the FCA's consumer protection and/or integrity objectives.

4. In addition, this Annex explains how we have considered the recommendations made by the Treasury under s. 1JA FSMA about aspects of the economic policy of Her Majesty's Government to which we should have regard in connection with our general duties.

5. This Annex includes our assessment of the equality and diversity implications of these proposals.

6. Under the Legislative and Regulatory Reform Act 2006 (LRRA) the FCA is subject to requirements to have regard to a number of high-level 'Principles' in the exercise of some of our regulatory functions and to have regard to a 'Regulators' Code' when determining general policies and principles and giving general guidance (but not when exercising other legislative functions like making rules). This Annex sets out how we have complied with requirements under the LRRA.

The FCA's objectives and regulatory principles: Compatibility statement

7. The proposals set out in this consultation are primarily intended to advance the FCA's operational objective of protecting and enhancing the integrity of the UK financial system. They are also relevant to the FCA's consumer protection objective.

8. We consider these proposals will enhance market integrity by improving transparency on diversity of certain listed companies' boards and their executive management. This will support transparent price formation by providing shareholders and investors with key information that will inform their valuation of issuers' securities and subsequent investment decisions, especially when investing based on ESG factors (s.1D(2)(e) FSMA).

9. It will also inform companies themselves and may influence their behaviour, with a view to encouraging improvements in the diversity of boards and executive level staff. This may have further benefits to corporate governance and performance over time, which may help to reduce future risks of underperformance or corporate failures. This may then improve the orderly operation and soundness of UK markets (s.1D(2)(a) and (d) FSMA).

10. These measures also support our consumer protection objective, since improved disclosures on diversity may also support investment decision-making for consumers by ensuring they have timely information that is fit for purpose (s1C(2)(c) FSMA). Even if consumers do not access this information directly, it may inform intermediaries that offer advice or portfolio management services to them, or third parties such as research providers.

11. We consider these proposals are compatible with the FCA's strategic objective of ensuring that the relevant markets function well for the same reasons as noted above. Greater transparency on board and executive management diversity should promote better price transparency and investor stewardship, by improving access to information that will inform investment decisions and shareholder engagement. The proposals may also positively influence relevant listed companies' behaviour, potentially driving higher corporate governance standards and performance over time, so improving the functioning of, and confidence in, certain UK listed markets.

12. In preparing the proposals set out in this consultation, the FCA has had regard to the regulatory principles set out in s3B FSMA.

The need to use our resources in the most efficient and economic way

13. We consider the proposed measures in this consultation are a proportionate use of our resources, as the relevant disclosures will be public and standardised, thereby simple to monitor. The data provided under the proposals may also help support future monitoring of companies' progress in this area and assess further the potential benefits of greater diversity on boards. This may in turn inform our future policy, for example whether we go further to enhance transparency and promote progress on other aspects of diversity on company boards, such as representation of sexual orientation and disabilities.

The principle that a burden or restriction should be proportionate to the benefits

14. We consider our proposals to be proportionate to the benefits, as indicated by our policy analysis and cost benefit analysis above.

The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term

15. To the extent better disclosures on diversity are made and progress towards targets is encouraged by our measures, which then may result in more diverse boards, this may lead to further benefits to corporate governance and performance by relevant companies over time. This may encourage listed companies to operate in a way that ensures they pursue a business strategy that is more consistent with UK sustainable growth, as well as considering the wider environmental and social impact of their business.

The general principle that consumers should take responsibility for their decisions

16. Clearer public information on the diversity of listed companies' boards and executive management will allow self-directed investors wishing to assess prospective investments against ESG considerations, in particular, to make better informed decisions.

The responsibilities of senior management

17. By mandating transparency on diversity, including comply or explain disclosures against targets, our measures should encourage relevant companies to consider their current approach to diversity, in particular the representation of women and ethnic minorities on their boards and on their executive management team. It may prompt action and thought in these areas, or promote further progress where companies are already actively pursuing greater diversity and providing transparency to the market.

The desirability of recognising differences in the nature of, and objectives of, businesses carried on by different persons including mutual societies and other kinds of business organisation

18. We think our measures reflect that most of the companies who are in scope of our Listings proposals are those with listed equity shares, whereby their existing shareholders or prospective investors expect a high degree of transparency and these companies should be capable of producing the proposed disclosures at relatively limited cost.

19. However, to reflect the range of companies covered we propose that the disclosure measures regarding diversity targets are to be on a comply or explain basis which will allow different companies flexibility to explain how they have made their disclosures.

The principle that we should exercise of our functions as transparently as possible

20. This consultation paper sets out our policy justification for these proposals, cost benefit analysis and compatibility with our legal duties. The consultation is open for 12 weeks and we welcome responses from all stakeholders. We will consider all

responses before deciding whether to proceed to make rules. We will summarise submissions and provide feedback in due course, including on whether we are proceeding with final rules and any changes made following the consultation process. This is subject to the approval of the FCA Board.

21. In formulating these proposals, the FCA has had regard to the importance of taking action intended to minimise the extent to which it is possible for a business carried on (i) by an authorised person or a recognised investment exchange; or (ii) in contravention of the general prohibition, to be used for a purpose connected with financial crime (as required by s. 1B(5)(b) FSMA). We do not consider our proposals to be relevant in this regard.

Expected effect on mutual societies

22. The FCA does not expect the proposals in this paper to have a significantly different impact on mutual societies. We do not think these measures have any direct relevance to mutual societies.

Compatibility with the duty to promote effective competition in the interests of consumers

23. In preparing the proposals as set out in this consultation, we have had regard to the FCA's duty to promote effective competition in the interests of consumers. While we do not think our measures will have any strong effect on competition, greater transparency may reduce search costs for investors seeking information on diversity. This could benefit firms that produce products or provide services involving investment based on ESG factors, for example, although any effect is likely to be marginal.

Equality and diversity

24. We are required under the Equality Act 2010 in exercising our functions to 'have due regard' to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not, and to foster good relations between people who share a protected characteristic and those who do not.

25. As part of this, we ensure the equality and diversity implications of any new policy proposals are considered. We have conducted an Equality Impact Assessment of these proposals. We have concluded that, on balance this proposal is consistent with our requirements under the Equality Act 2010 as set out above.

Legislative and Regulatory Reform Act 2006 (LRRA)

26. We have had regard to the principles in the LRRA for the parts of the proposals that consist of general policies, principles or guidance and consider that our proposals are transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. Our Listing Rule proposals related to transparency on diversity of boards and executive management are appropriate to the information needs of investors and to promote action by issuers. For example, we think the proposed requirement for disclosure of standardised numerical data on diversity encourages comparability across companies on progress on diversity, ensuring consistent standards and accountability.

27. We have had regard to the Regulators' Code for the parts of the proposals that consist of general policies, principles or guidance. We consider that our proposal is consistent with the principles of the code, for example, by proposing our requirements on a comply or explain basis we have sought to ensure that companies can meet them without incurring unreasonable costs that may make them less commercially successful. By setting a 12-week consultation timeframe, we are providing an opportunity to gain feedback from these companies and to communicate our proposals clearly. We consider that our proposals will foster market integrity and market effectiveness.

Treasury recommendations about economic policy

28. We consider that our proposals are consistent with the aspects of the Government's economic policy to which the Financial Conduct Authority should have regard.

29. In the remit letter from the Chancellor of the Exchequer to the FCA on 23 March 2021, the Chancellor affirms the FCA's role in protecting consumers, promoting competition in financial services and protecting and enhancing the integrity of the UK financial system.

30. The FCA has regard to this letter and the recommendations within. As set out in this Annex, we consider that our proposals are proportionate and aim to enhance market integrity. We consider transparency around diversity on listed company boards will encourage investment in sustainable growth companies, and by promoting more diverse boards there may be longer-term growth and competitiveness benefits for the UK economy if this enhances corporate governance and performance. Promoting transparency on such issues in our financial markets is also likely to enhance London's standing as a leading financial centre, as ESG investing continues to grow.

Annex 5
Abbreviations used in this paper

Abbreviation	Description
CBA	Cost Benefit Analysis
CBD	Council for Board Diversity (Singapore)
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CIO	Chief Information Officer
CP	Consultation Paper
DP	Discussion Paper
DTR	Disclosure Guidance and Transparency Rules
ESG	Environmental, Social and Governance
EU	European Union
FCA	Financial Conduct Authority
FRC	Financial Reporting Council
FSMA	Financial Services and Markets Act 2000
FTSE	Financial Times Stock Exchange
GDRs	Global Depository Receipts
HR	Human Resources
LGBTQ+	Lesbian, Gay, Bisexual, Transgender or Queer/Questioning
LR	Listing Rules
LRRA	Legislative and Regulatory Reform Act 2006
LSE	London Stock Exchange
NASDAQ	National Association of Securities Dealers Automated Quotations

Abbreviation	Description
NEDs	Non Executive Directors
OIECs	Open ended investment companies
ONS	Office for National Statistics
PRA	Prudential Regulation Authority
PSED	Public Sector Equality Duty
SEHK	Stock Exchange of Hong Kong Ltd
SID	Senior Independent Director
TCFD	Task Force on Climate related Financial Disclosures
UK	United Kingdom
US SEC	United States Securities and Exchange Commission

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

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Appendix 1
Draft Handbook text

LISTING RULES AND DISCLOSURE GUIDANCE AND TRANSPARENCY RULES (DIVERSITY AND INCLUSION) INSTRUMENT 2021

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 [*date*].

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 2021.

By order of the Board
[*date*]

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.
reference date	(in *LR*) a specific date within a *listed company*'s accounting period which is selected by the *listed company*.

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 the *reference date*:

(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 non-white ethnic minority 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 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 materially affected the *listed company's* ability to meet one or more of the targets in (a); and

(10) numerical data on the gender and ethnic diversity 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:

(a) be set out in the format of the tables contained in *LR* 9 Annex 2;

(b) contain the information prescribed by those tables, including the categories prescribed in the first column and row of each table and the corresponding data under each category; and

(c) indicate, where appropriate, the categories for which information is not available, as per the final row of each table.

…

9.8.6F G References to women in *LR* 9.8.6R(9)(a) and in the tables contained in *LR* 9 Annex 2 (for the purposes of *LR* 9.8.6R(10)) include any individuals who self-identify as women. References to men in the tables contained in *LR* 9 Annex 2 (for the purposes of *LR* 9.8.6R(10)) include any individuals who self-identify as men.

9.8.6G G In addition to the information required under *LR* 9.8.6R (9) and (10) (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 referred to 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), *LR* 9.8.6R(9), *LR* 9.8.6R(10) 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 R The following tables set out the information a *listed company* must include in its annual financial report under *LR* 9.6.8R(10), and the format in which it must be set out.

Gender	**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					
Non-binary					
Not specified/ prefer not to say					

Ethnic group	**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					
Not specified/prefer not to say					

…

14 Standard listing (shares)

…

14.3 Continuing obligations

…

Information to be included in annual report and accounts

14.3.27 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 the *reference date*:

(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 non-white ethnic minority 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 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 materially affected the *listed company's* ability to meet one or more of the targets in (a); and

(2) numerical data on the gender and ethnic diversity 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* 14.3.27R(1)(a), which should:

(a) be set out in the format of the tables contained in *LR* 14 Annex 1;

(b) contain the information prescribed by those tables, including the categories prescribed in the first column and row of each table and the corresponding data under each category; and

(c) indicate, where appropriate, the categories for which information is not available, as per the final row of each table.

14.3.28 G References to women in *LR* 14.3.27R(1)(a) and in the tables contained in *LR* 14 Annex 1 (for the purposes of *LR* 14.3.27R(2)) include any individuals who self-identify as women. References to men in the tables contained in *LR* 14 Annex 1 (for the purposes of *LR* 14.3.27R(2)) include any individuals who self-identify as men.

14.3.29 G In addition to the information required under *LR* 14.3.27R (1) and (2) (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 referred to in *LR* 14.3.27R(1)(a) in the next accounting period, or any plans to improve the diversity of its board.

14.3.30 R When making a statement required by *LR* 14.3.27R(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 set out in *LR* 14.3.27R(1)(a)(ii); and

(2) matters set out in *LR* 14.3.27R(1)(b) to the extent that they relate to the board diversity target set out in *LR* 14.3.27R(1)(a)(ii).

14.3.31 R When including numerical data required by *LR* 14.3.27R(2) in its annual financial report, a *closed-ended investment fund* need not include categories, and the corresponding data for those categories, that are inapplicable to the *closed-ended investment fund*, if it sets out in a statement accompanying the numerical data the reasons why those categories are inapplicable.

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

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

14 Annex 1 R The following tables set out the information a *listed company* must include in its annual financial report under *LR* 14.3.27R(2), and the format in which it must be set out.

Gender	**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					
Non-binary					
Not specified/ prefer not to say					

Ethnic group	**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					
Not specified/ prefer not to say					

…

15 Closed-Ended Investment Funds: Premium listing

…

15.4 Continuing obligations

…

Annual financial statement

…

15.4.29A 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 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 set out 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 set out in *LR* 9.8.6R(9)(a)(ii).

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

…

16 Open-ended investment companies: Premium listing

…

16.4 Requirements with continuing application

16.4.1 R An *open-ended investment company* must comply with:

(1) *LR* 9 (Continuing obligations) except *LR* 9.2.2AR to *LR* 9.2.2GR, *LR* 9.2.6BR, *LR* 9.2.6CR, *LR* 9.2.6DR, *LR* 9.2.6ER to *LR* 9.2.6HR, *LR* 9.2.15R, *LR* 9.2.20R, *LR* 9.2.21R, *LR* 9.2.23R, *LR* 9.2.24R, *LR* 9.2.25R, *LR* 9.3.11R, *LR* 9.8.4R(14) and *LR* 9.8.6R(8) to *LR* 9.8.6R(10);

…

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*.

…

executive management	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.
reference date	a specific date within a *listed company*'s accounting period which is selected by the *listed company*.

Insert the following new transitional provision, LR TR 16, after LR TR 15 (Transitional Provisions for a prospectus approved before IP completion day). The text is not underlined.

TR 16 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) and *LR* 9.8.6R(10)	R	*LR* 9.8.6R(9) and *LR* 9.8.6R(10) apply in relation to a financial year of a *listed company* beginning on or after 1 January 2022.	From [*date*]	[*date*]
2.	*LR* 14.3.27R	R	*LR* 14.3.27R applies in relation to a financial year of a *company* beginning on or after 1 January 2022.	From [*date*]	[*date*]

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.

...

…

7.2.8C G For the purposes of the description in *DTR* 7.2.8AR(1)(d), the *issuer* may, where 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	*DTR* 7.2.8AR and *DTR* 7.2.8CG	R	(1)	*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 January 2022.		From [*date*]	[*date*]
			(2)	In relation to a financial year beginning before 1 January 2022, the corporate governance statement must contain a description of:			
				(a)	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;		
				(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.		

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