Introduction

Legal Feminist is a collective of practising solicitors and barristers who are interested in feminist analysis of law, and legal analysis of feminism. Between us we have a wide range of specialist areas of law including company law, corporate finance, financial services, employment, data protection and privacy, discrimination and human rights law. Our range of specialisms enables us to consider holistically the issues raised in the Consultation Paper (**CP**) and our collective experience enables us to comment on the practical implications of some of those issues. As a non-aligned collective of lawyers from a range of backgrounds, we do not represent any particular firm or issuer and are therefore well-placed to give candid feedback on the issues raised by the CP.

We responded to Discussion Paper 21/2 published by the Prudential Regulatory Authority, the Bank of England and the Financial Conduct Authority (**FCA**). To the extent the DP and CP raise common issues, we may address those issues in the same terms.

As feminists, we generally welcome initiatives aimed at promoting diversity and inclusion (**D&I**) and we thank the FCA for its efforts to drive forward D&I initiatives. We particularly support proposals that seek to gather data to support policy making, provided this is done carefully. However, we recognise that such initiatives engage a range of legal issues and therefore need to be carefully considered by specialists to avoid unintended harm.

As the FCA has no direct responsibility for D&I matters, we are concerned that it does not have access to the particular expertise in international employment, data protection and privacy or human rights law required for a full consideration of the issues raised by the CP. Regretfully, we have formed the view that the proposals outlined in the CP are flawed, perhaps fatally, in view of the difficulty of reconciling them with other laws and regulations in these specialist areas.

Past practice in relation to regulatory intervention in matters of Environmental, Social and Governance has tended towards entrenching rules or policies developed by groups with relevant expertise - for example in relation to the codification in the Listing Rules of recommendations of the Task Force on Climate-related Financial Disclosures. We recommend that the FCA consider appointing a working group, comprising stakeholders with a range of expertise and interests, to consider its proposals further. Members of the Legal Feminist collective would be glad to serve on such a working party.

A number of our concerns are relevant to more than one consultation question. Accordingly, we have framed our response as a general discussion of some of these issues, to which we

then refer in answers to the specific consultation questions. We have also included an Executive Summary.

1. Executive summary

The potential consequences of the proposals in the CP include:

- confusing disclosures in annual reports as a result of the FCA's failure to take account of the existing mandatory disclosure regime in the Companies Act 2006 (**CA 2006**)
- poor response rate and/or non-standardised disclosures as a result of incompatibility of data collection and reporting with data protection rules of the UK and other jurisdictions
- individuals with certain protected characteristics[1] being easily identified, giving rise to issues of privacy and even personal safety
- poor quality disclosures as a result of failure to take account of different ethnicity considerations applicable to global and overseas Issuers
- poor quality data resulting from failure to collect data on sex on a disaggregated basis
- difficulty of comparing data to other data sources, such as the UK Census, resulting from self-identification of gender (**Self ID**)
- Issuers being exposed to possible discrimination claims from employees as a result of seeking to comply with rules based on Self ID
- breach of the FCA's Public Sector Equality Duty (**PSED**) set out in the Equality Act 2010 (**EqA**) through the adoption of Self ID, which is not recognised by the EqA

2. General discussion of issues

In this section we give general views on certain issues arising out of the CP, being:

- Data protection
- Compatibility with existing UK disclosure regimes
- Self ID
- Privacy
- Considerations for overseas and international Issuers
- Cost Benefit Analysis (**CBA**) and the Compatibility Statement.

2.1 Size of data set

The proposals in the CP do not take into account of, or even mention as a consideration, the small data sets involved. Even the largest listed company Boards will comprise very small numbers in data sampling terms - a Board of 15 would be considered relatively large and, at the smaller end, Boards of four are not unusual. The problem is exacerbated where the proposals envisage Issuers reporting data on the composition of the "Big 4" of CEO, CFO, Chair and SID, a maximum of four

1Throughout this response we adopt the term "protected characteristic" as used in the Equality Act 2010.

individuals. The proposed modifications to the Disclosure and Transparency Rules (**DTRs**) would also encourage reporting data on members of Board committees (which usually comprise 4-7 individuals).

This gives rise, firstly, to the risk of identification of particular individuals and secondly, to disproportionate sensitivity of data to changes in respect of single individuals. Both risks are heightened by the FCA's decision to include Self ID in its proposals and would also be particularly acute in the case of a decision in the future to require reporting in relation to sexual orientation. We come back to these risks in various parts of our response.

2.2 Data protection

The CP acknowledges that in-scope Issuers will need to consider, and seek advice on, their obligations under UK data protection legislation[2]. We doubt that Issuers could comply with the proposed new Listing Rules (and DTR recommendation) without breaching UK GDPR. Personal data revealing racial or ethnic background and concerning a person's sexual orientation are "special category data" under UK GDPR and information on a person's "gender" may also be special category data (as it may reveal information about a person's health, sexual orientation, religious or philosophical beliefs - in this case beliefs relating to gender identity or innate gender). Given the risks of identification of an individual and linking them to special category data, we doubt that collecting, holding and publishing this data could be done with sufficient safeguard to their rights or proper respect to the essence of the right of data protection.

The CP does not address the fact that collecting the data envisaged by the CP might not be permissible at all for Issuers (including UK Issuers) with board members and employees in jurisdictions outside the UK.

We do not think it is appropriate for the FCA to adopt Listing Rules with which a significant number of Issuers are likely to be materially unable to comply without risking potentially serious breaches of data protection laws. If the rules were to be adopted in their current form, we expect the risk of breaching data protection laws will force Issuers to "explain" rather than "comply", thus affecting the quality of the data published and, in our view, calling into question whether the proposed Listing Rules can achieve their stated aims.

2.3 Existing UK disclosure regimes

<u>CA 2006</u>

Throughout the CP, the FCA refers to the fact that existing D&I disclosure regimes in the UK are voluntary[3]. However, this fails to take account of the requirement in CA 2006[4] for quoted companies to include in the strategic report forming part of their Annual Report:

a breakdown showing at the end of the financial year—

(i) the number of persons of each sex who were directors of the company;

(ii) the number of persons of each sex who were senior managers of the company (other than persons falling within sub-paragraph (i)); and

2Encompassing the UK General Data Protection Regulation (**UK GDPR**) and the Data Protection Act 2018.
3See in particular, paragraph 5 of Annex 3 of the CP "Cost benefit analysis"
4Section 414C(8)(c)

(iii) the number of persons of each sex who were employees of the company.

This legislation applies to a significant percentage of Issuers covered by the proposed new Listing Rules and we are therefore surprised to find no reference to it in the CP. Requiring two sets of overlapping, but non-identical, disclosures is more likely to cause confusion and opacity than to further the transparency and consistency aims expressed in the CP.

In our view, the existence of section 414C CA 2006 calls into question the claimed benefits of the gender reporting obligations set out in the CP and, as further explained in section 2.4, dooms to failure the proposal to adopt Self ID.

Existing voluntary disclosure regimes

The CP underestimates the force of the Corporate Governance Code. Full compliance with the code is strongly encouraged by the investment community and failure to comply may result in votes against the Board at Annual General Meetings. We do note, and agree with, the Financial Reporting Council's view that compliance in the area of reporting on diversity has considerable scope for improvement[5], but question whether the adoption of a parallel (and inconsistent) set of reporting requirements is the right solution for this problem.

Although the proposals in the CP are intended to be consistent with the Hampton Alexander review[6], there is no evidence to suggest that the Hampton Alexander review collects data on the basis of Self ID. Accordingly, this is another area where the proposals in the CP could result in inconsistent data reporting.

In our view, a better area of focus for regulation would be the enhancement of reporting on the Corporate Governance Code or the Hampton Alexander review or an extension of the provisions of section 414C CA 2006 to a wider group of Issuers, rather than proposing a new set of regulations that sit alongside those regimes, overlapping in some respects and inconsistent in others.

Office for National Statistics (**ONS**)

The CP also claims that the proposed reporting criteria are aligned with those used by the ONS[7]. This may be the case in relation to ethnicity (whether these criteria are always appropriate is discussed elsewhere in this response) but it is not the case in relation to "gender" (which is the term the FCA proposes to adopt). We discuss this further in section 2.4.

2.4 Self ID

The FCA proposes to require Issuers to report on Board/executive management's *self-identified* gender rather than their sex (which, under the Gender Recognition Act 2004 (**GRA**) would capture sex as either registered at birth or recorded on a gender recognition certificate (**GRC**)). In doing so, the FCA seeks to side-step the GRA. However, the interaction between the GRA and the EqA, while not flawless, has been carefully thought out and it is almost impossible, under current law, to adopt Self ID in regulation without running into problems under the EqA.

Furthermore, many people with other protected characteristics (including women, gay men and lesbian women, people with the protected characteristic of gender reassignment and followers of certain religions) oppose and/or are negatively

5CP para 3.23
6CP para 4.8
7CP para 4.25

impacted by Self ID. As Self ID is not provided for in law, the FCA's purported adoption of it in regulation amounts to the promotion of a viewpoint, and a controversial one at that. As well as leading to a probable breach of the FCA's PSED, there is a risk of perceived partiality, which is heightened by the facts of the FCA's participation in the Stonewall Diversity Champions Scheme (at a time when many public bodies are terminating their membership of the scheme) and its employment, as a senior executive, of Stonewall's Chair of Trustees (neither of which conflicts is disclosed in the CP)[8].

Policy considerations

a) As noted in paragraph 1.32 of the CP, the FCA is subject to the PSED under the EqA. This means that the FCA must have 'due regard' to the need to:

- *eliminate unlawful discrimination, harassment, victimisation and any other conduct that is prohibited by or under [the EqA]*
- *advance equality of opportunity between people who share a protected characteristic and those who do not share it and,*
- *foster good relations between people who share a protected characteristic and those who do not share it.*

Application of the PSED must be related to the protected characteristics in the EqA. While "sex" is a protected characteristic, the effect of allowing Self-ID is to purport to create a new characteristic of "gender", which is not a protected characteristic and therefore application of the PSED to "gender" cannot comply with the EqA.

Proposals that seek to advance equality of opportunity between women and men cannot be successful where those proposals also apply to a subset of men[9]. It would therefore be a breach of the FCA's duties under the PSED to implement proposals to adopt an alternative definition of sex.

b) Following the decision of the Employment Appeals Tribunal in *Forstater*[10], it is clear that gender critical beliefs (ie the belief that sex is material and immutable and a disbelief in an innate gender) are protected under the EqA. In requiring reporting on the basis of Self ID, the FCA may itself be discriminating against those with gender critical beliefs, or requiring Issuers to do so. We envisage that those holding orthodox religious views would similarly disbelieve in innate gender overwriting sex and so would be discriminated against. Encouraging discrimination is inconsistent with the PSED.

c) The government has very recently conducted a consultation on proposed reform of the GRA, which included consideration of Self ID, to which thousands of public responses were received. Following the consultation, the government decided not to implement Self ID. It is inappropriate for the FCA to seek to implement Self ID through financial markets regulation, contrary to an evidence-based government policy decision.

d) The inclusion of Self ID in this proposal exacerbates the concerns about

8Stonewall's current Chair of Trustees is currently the Executive Director, Consumers and Competition at the FCA and until December 2020 was the Interim Executive Director of Strategy and Competition

9A male self-identifying (i.e. without a GRC) as a woman is a man for legal purposes.

10Maya Forstater v CGD Europe and Others UKEAT/0105/20/JOJ

privacy, data protection and personal safety highlighted elsewhere in this response. The FCA's position would cause individuals to be faced with a choice between disclosing a deeply personal matter such as gender identity or, for reasons of privacy or personal safety, declining to do so, which may feel like a denial of their inner identity and which may inevitably result in inferences being drawn - "prefer not to say" is not a neutral disclosure.

Quality of data

e) One of the stated purposes of the proposals in the CP is to gather data about the potential benefits of diversity (particularly "gender diversity") on corporate governance and corporate performance[11]. We agree that this could be an interesting area for further research. However, by aggregating data on women with data on men who self-identify as women, the FCA places in its own path obstacles to obtaining further evidence for that hypothesis. Many males who have experienced gender reassignment have transitioned later in life, after their education and early career and in many cases child rearing. Common sense would suggest that, for this reason, their approach to governance and risk will be more akin to those of other men. If this were the case, and given the small data sets highlighted in section 2.1, the data analysis would be affected by aggregating their data with that of women. There could be an opportunity to conduct further research to analyse whether males with the protected characteristic of gender reassignment do approach governance and risk in the same way as women. However, this opportunity is missed unless it is possible to disaggregate the data.

f) As noted in section 2.3, collecting data based on Self ID is not consistent with the approach taken by the ONS in the UK Census, which is to collect data on sex on a disaggregated basis. Best practice in the collation of diversity data would be to adopt an approach consistent to that of the ONS to facilitate comparison of data in the public domain[12]. Collecting data on a basis that is inconsistent with other widely-relied upon data sources is unlikely to promote transparency in the way that the FCA intends. The same is true for international comparison purposes. Of the D&I reporting initiatives referred to in Chapter 3 of the CP, only the new NASDAQ rules explicitly refer to Self ID. It is clear from a reading of the other initiatives referred to in Chapter 3 that they use the term "gender" in place of "sex".

g) As noted in section 2.3, the proposed new requirement for listed companies to disclose data on gender would, in many cases, be in addition to the existing requirements of section 414C CA 2006. As a consequence of the FCA's decision to focus the Listing Rule disclosure regime around Self ID gender, rather than sex, a single disclosure covering both regimes may not suffice, since, in the absence of a GRC, a person's sex and gender may not match at law. We highlight in section 2.5, the practical risks of running the proposed new Listing Rules alongside the existing legislation in CA 2006.

2.5 Privacy

We refer to Principle 6 of the Yogyakarta Principles 2007,[13] which states:

11See, for example CP para 2.2 and para 3.31

12See, for example, section 4 of the Diversity Data Guide published by the Investment Association in collaboration with PricewaterhouseCoopers LLP, June 2021 https://insights.theia.org/story/ia-diversity-data-guide/

13We acknowledge that the Yogyakarta Principles do not have the status of international human rights law but we consider that they are, nevertheless,useful when considering jurisprudence in this

> Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. **The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one's sexual orientation or gender identity,** as well as decisions and choices regarding both one's own body and consensual sexual and other relations with others. [*Our emphasis*]

Gender identity is sensitive personal information and it is inappropriate for regulation to put people in a position of being required to either disclose or decline to answer.

To demonstrate our concerns about privacy, we set out below some examples of how the proposed Listing Rules might interact with section 414C CA 2006.

Example 1

Under section 414C CA 2006, Issuer A discloses that its Board of ten members comprises seven males and three females[14]. Under the proposed new Listing Rules, Issuer A also discloses that its Board of ten comprises six men and four women. The clear inference is that one of these women is a male who identifies as a woman. It would not be difficult to identify this person using other publicly available data such as the annual reports of other companies on whose boards the Directors of Issuer A sit and the photographs of Board members that are almost always included in annual reports. Identification would become even easier if the Issuer made further numerical disclosures in relation to the gender of the members of its committees, as envisaged by the proposed amendments to the DTRs.

The situation would be ameliorated only a little if the disclosure under the new Listing Rules were that the Board comprised six men, three women and one "prefer not to say".

Example 2

Issuer A reports a board of ten comprising six males and four females (CA 2006) and six men and four women (Listing Rules). The next year, the Board members are the same people but the Issuer now reports a board of ten comprising six males and four females (CA 2006) and six men, three women and one non-binary person. The Issuer would now need to disclose that it no longer met the targets for at least 40% of the members of the board being women and to explain why. In this situation a single person's decision to change gender (a) is put very much in the spotlight and (b) causes a compliant Issuer to cease to be so.

The position if the new rules did not seek to impose Self ID

Issuer A would disclose the composition of its Board by sex (i.e. six men and four women). This disclosure would:

- satisfy the requirements of both the CA 2006 and the new Listing Rules; and
- if, say, one of the men (Person A) was a female with a gender recognition certificate, allow Issuer A to include Person A in the disclosures as a man, since the GRA would operate to treat Person A as a man for legal purposes.

area

14 Section 414C CA 2006 requires quoted companies to disclose, among other things, the composition of their boards broken down by sex. See further section [2.3] of this response.

If Person A joined the Board as a woman but transitioned over time and gained a GRC, then we acknowledge that the change in disclosures from "six men and four women to seven men and three women" would place Person A in a potentially uncomfortable position and would also have implications for Issuer A in terms of reporting compliance with targets.

We consider the privacy question further below. In terms of Issuer A's position, we think this is unavoidable, but is at least more manageable under the CA 2006 regime, which, by requiring discloure of sex and thereby taking account of transition only once a person has a GRC and has therefore lived "as their acquired gender" for at least two years, gives the Board of Issuer A time to redress the Board composition imbalance caused by Person A's transition.

Privacy in disclosures other than "gender"

Although our response focuses on the privacy implications of the gender aspects of the CP, similar considerations apply in the cases of ethnicity and sexual orientation and any other characteristics that are "invisible". For example, Person A, a lesbian, may be a non-executive director of both Issuer A and Issuer B. Issuer A may disclose that its Board of 4 includes one homosexual person and Issuer B may disclose that its Board of 10 includes two homosexual people. Person A's privacy is effectively compromised by these parallel disclosures. We reiterate that "prefer not to say" is not a neutral disclosure unless all board members state that they prefer not to state their sexual orientation, which renders the whole exercise pointless.

Balance between privacy and transparency

If the wider public policy objective is to promote transparency in D&I statistics, then some loss of individuals' privacy is an unavoidable cost. We make no recommendation as to whether this cost is ever acceptable but are of the view that, in highlighting personal and invisible characteristics in groups of as few as four people, the proposals in the CP pose a greater risk to privacy than is reasonable or proportionate.

2.6 Considerations for overseas and international Issuers

We consider that the privacy issues highlighted in section 2.5, coupled with the issues of identification resulting from small data sets, as outlined in section 2.1 are particularly acute in relation to overseas Issuers and UK Issuers with significant overseas businesses (**international Issuers**). While reporting of Board composition by sex (had that been proposed) and ethnicity, may not be controversial, reporting based on Self ID could create issues of personal safety as well as privacy. Reporting in relation to other characteristics, such as sexual orientation and disability (particularly in relation to invisible disabilities) may also carry greater risks in relation to privacy and personal safety in some countries than in the UK. We also refer to our comments in section 2.2.

We think that the FCA needs to be more explicit about how overseas and international Issuers should report against the Anglo-centric target of at least one non-white minority ethnic Board member.

2.7 CBA and Compatibility Statement

CBA

For the reasons given below, we think that the FCA should reconsider whether the expected benefits of its proposals outweigh the costs.

a) One of the perceived harms the FCA is seeking to address is the "harm under the current voluntary reporting regime" [*our emphasis*], which "does not concern issuers outside the FTSE 350"[15]. As explained elsewhere reporting on sex is mandatory for quoted companies under section 414C CA 2006. Less weight should therefore be attached to this harm and the frictional costs of investors seeking this information.

b) The CP also seeks to address the harm caused by a lack of standardised disclosure[16]. However, in relation to sex, the proposals in the CP increase the harm by creating overlapping but inconsistent disclosure requirements that do not relate to a protected characteristic and do not map across either to ONS data or to Hampton Alexander reporting.

c) The CP purports to address financial and non-financial harm caused by Boards which are not diverse not taking into account a sufficiently wide range of perspectives and therefore not meeting the diverse needs of different consumers through the products and services they offer[17]. While we note the FCA's operational objective to secure an appropriate degree of protection for consumers (**the consumer protection objective**), we think the consumer protection objective only extends to consumers of financial products and services. Issuers covered by the proposed new Listing Rules would be from the full range of industrial and commercial sectors and we submit that the FCA does not have power to make rules aimed at meeting the needs of diverse consumers outside the financial services sector.

d) Given the issues of privacy and data protection highlighted in our response, we expect the balance of "comply or explain" will fall significantly more on the side of "explain". We therefore doubt that the proposed rules will address the drivers of harm identified in the CBA[18], being asymmetric information and coordination failure among investors.

e) in terms of benefits:

- for the reasons given above, we do not think that the proposals in the CP will "improve the availability of clear, reliable and easily comparable information"

- we think that, because compliance with the Listing Rules engages the risk of serious breaches of data protection and privacy rules and because the CP fails to make clear enough provision for Issuers with majority non-white boards, many more Issuers will "explain" than will "comply", and thus the intended benefits of transparency will not arise[19]

- we think it is inappropriate for the FCA to take into account potential consumer benefits outside the financial services sector[20]

- we think the possible benefits outlined in paragraph 44 of the CBA are too uncertain for account to be properly taken of them

Compatibility Statement

Finally, we question whether the proposals in the CP relating to the purported

15CP, CBA para 5
16CP, CBA para 6
17CP, CBA para 7
18Para 8
19CP, CBA para 42
20CP, CBA para 43

adoption of Self ID are compatible with the FCA's legal obligations. In section 2.4(a), we explain that the adoption of Self ID is incompatible with the FCA's PSED. In addition, Self ID will not improve transparency or standardised data reporting[21], will not improve the representation of women[22] and is not targeted at cases where action is needed[23].

21CP, Compatibility statement paras 8-11
22CP, Compatibility statement para 17
23CP, Compatibility statement para 26

Consultation Questions

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

Subject to our answer to Question 4, we agree with the targets relating to ethnicity.

We believe that the proposed targets relating to gender require further thought and consultation, for the reasons explained further above relating to:

- privacy and data protection
- inconsistency/overlap with section 414C CA 2006, and with voluntary disclosure regimes, creating the potential for confusing reporting and exacerbating privacy and data protection risks
- inconsistency with ONS data
- imperfect disaggregation of data across protected characteristics

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?

Please see our answer to Question 1, which raises issues of equal relevance here.

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.

We broadly agree.

However, in light of the requirements of section 414C CA 2006, we question whether numerical reporting requirements in relation to gender are required at all. Existing law covers the majority of UK issuers and we think that rules such as those consulted on in the CP may be better driven at national level, which would enable the rules and disclosures to be more sensitive to non-UK cultural norms. The FCA could instead consider making Listing Rules to build on voluntary initiatives such as the Parker review and Hampton Alexander.

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?

If targets are to be proposed (see our answer to Question 3 above):

- smaller issuers are likely to have smaller Boards and therefore to be more significantly impacted by the issues noted above in section 2.1.
- we refer to our comments in section 2.6 in relation to ethnicity targets for overseas and international issuers
- consideration will need to be given to the data protection issues (particularly the potential impact of the laws of other jurisdictions) highlighted in section 2.2 above

In all of these cases, we think further consideration and either guidance or appropriate exemptions are required to enable smaller and overseas/ international issuers to comply with the proposed new rules in a meaningful way that will not simply result in non-standardised narrative reporting.

The alternative would be to adopt the narrative disclosure approach suggested in our answer to Question 3 and to rely on national laws to develop disclosure requirements that are consistent with national laws and culture.

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?

Please see our answer to Question 1.

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.

Please see our comments in sections 2.1-2.6 and our answers to Questions 1-5.

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.

As explained in section 2 of our response, we have serious reservations about the fitness of the proposals in the CP for their intended purpose. We therefore find it difficult to support the extension of the proposed requirements to further groups, save that as one goes down further levels, the data sets would likely become larger and so the limitations described in section 2.1 would be less relevant.

While we welcome the intention behind the proposal to seek data on sexual orientation, we think that the risks of identification and the concomitant threats to privacy and safety make this unworkable.

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.

Yes, we agree, provided it is made clear that compliance with the amended rules is secondary to matters of privacy.

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.

We agree, but recommend that the FCA draft guidance to the effect that the provision of numerical data must give way to matters of privacy.

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

We urge the FCA to take further time to address the issues raised in this response, which we think are critical to resolve in order to achieve the FCA's objective.

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.

We have no particular comment.