14 August 2026

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

Submitted via email to: cp26-21@fca.org.uk

Re: *Proposed changes to the UK Listing Rules for closed-ended investment funds (CP26/21)*

Dear Sir or Madam,

The Investment Company Institute (ICI)[1] appreciates the opportunity to provide feedback on the Financial Conduct Authority's (FCA's) consultation paper on *Proposed changes to the UK Listing Rules for closed-ended investment funds* (CP26/21).[2] ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. Our members have significant experience and expertise in serving more than 125 million retail investors in jurisdictions around the world, including in the United Kingdom (UK). These investors rely on regulated funds, including UK closed-ended funds, to achieve important financial goals, including saving for retirement. By supporting the financial health and wellbeing of individual investors, the asset management industry contributes to economic growth by investing client assets in capital markets, providing a critical source of long-term stable funding for companies and projects.

ICI welcomes the FCA's proposed amendments to the UK Listing Rules (UKLRs), which would help safeguard UK closed-ended funds from opportunistic shareholder activist campaigns. In both the UK and the United States, shareholder activism targeting closed-ended funds has grown significantly in its scale, aggressiveness, tactics, objectives, and market impact, with a small number of activist investors increasingly exploiting closed-ended fund structures in ways

[1] The Investment Company Institute (ICI) is the leading association representing the global asset management industry in service of individual investors. ICI members are located in Europe, North America and Asia and manage fund assets of $58.8 trillion, including UCITS, mutual funds, exchange-traded funds (ETFs), closed-end funds, unit investment trusts (UITs) and similar funds in these different jurisdictions. ICI has offices in Brussels, London, and Washington, DC.

[2] CP26/21 is available at https://www.fca.org.uk/publication/consultation/cp26-21.pdf.

that can undermine the interests of long-term retail shareholders and jeopardise the sustainability of an important investment vehicle.

To stem the perpetuation of this harmful behaviour, we support the adoption of measures that are tailored and targeted, while not inadvertently diminishing legitimate shareholder rights. Shareholder engagement and activism can, in appropriate circumstances, improve governance and outcomes for investors. As the FCA finalises these rules, we urge it to continue to focus on striking an appropriate balance between protecting closed-ended funds from predatory campaigns and preserving the ability of shareholders to pursue value-enhancing initiatives.

We broadly support the FCA's proposals to tackle the behaviour of opportunistic shareholder activists by making changes to the UKLRs to (1) bring proposed investment managers within scope of the relevant related party provisions, (2) ensure that the association between a director and a substantial shareholder that proposed them for a board appointment is adequately accounted for, and (3) recognize the conflict that arises when a substantial shareholder is also an investment manager of the closed-ended fund by preventing the substantial shareholder from voting on material changes to the investment policy. We provide our perspectives on certain of the questions raised in CP26/21 below, including recommendations on how to revise elements of the proposed rules to increase their effectiveness in meeting the FCA's objectives.

Question 1: Do you agree that we should not treat a director as independent of a proposed investment manager if they: were appointed as director after being proposed for appointment to the board of directors by the proposed investment manager or its associate; and/or meet any of the descriptions of persons not being independent, based on the criteria under UKLR 11.2.13R? If not, please explain why. Please also provide any other examples of non-independence that we should consider.

We support the FCA's proposal to treat a director as non-independent of a proposed investment manager where the director was appointed to the board following a recommendation by the proposed investment manager or one of its associates, and/or where the director satisfies any of the criteria indicating a lack of independence under UKLR 11.2.13R. Treating such a director as independent would undermine the intent of the "independent" requirement by overlooking the relationship through which the director was proposed and the conflicts of interest that may arise from that relationship, potentially to the detriment of shareholders.

While the FCA's existing rules address the assessment of a director's independence in relation to an incumbent investment manager, they do not explicitly address how independence should be assessed when a closed-ended investment fund proposes to appoint a new investment manager. This gap creates the potential for circumvention of the independence requirements. The FCA's proposal helps close this gap and provides an effective safeguard to reinforce the board's ability to act independently of its investment manager. In our view, it is a proportionate measure that would complement and strengthen the existing governance framework for closed-ended investment funds.

To provide additional clarity and avoid potential circumvention of the revised rules, we recommend that the FCA provide guidance specifying that the term "proposed" should be interpreted as the term is ordinarily used (i.e., put forward, suggest, or advocate a plan, idea, or course of action for consideration) and is not limited to a formal nomination. Clarifying this point would ensure that the rule applies whenever a proposed investment manager has exercised material influence over the appointment of a director, regardless of whether it was involved in the formal nomination process. Absent such clarification, the rule could be readily circumvented by limiting its application to formal nominations while excluding other forms of influence over director appointments.

Question 2: Do you agree that any director that is not independent (as defined in Q1, above) of the proposed investment manager should not take part in the board's consideration of the transaction or arrangement appointing the investment manager? If not, please explain why.

We agree with the FCA's proposal to prohibit any director that is not independent (as defined in the proposed revisions to the rules) of the proposed investment manager from taking part in the board's consideration of the transaction or arrangement appointing the investment manager. In order to protect shareholders' interests and manage conflicts of interest, the UKLRs require the board to act independently of any investment manager, including by requiring the chair and a majority of the board to be independent of any investment manager. The FCA's proposed approach supports this requirement by preventing a director who is not independent of a proposed investment manager from participating in decisions on that manager's appointment to the board. This would safeguard the integrity of the appointment process and help ensure that the board can fulfill its obligation to exercise independent judgment on behalf of shareholders.

Question 3: Do you agree that any director of a closed-ended investment fund appointed after being proposed for appointment by a substantial shareholder, or its associates, should be considered as not independent of that substantial shareholder, or its associates? Do you agree that the director should not participate in votes on a related party transaction or relevant related party transaction with that substantial shareholder, or its associates? If not, please explain why.

We support the proposal in CP26/21 requiring a director of a closed-ended investment fund that was appointed after being proposed for appointment by a substantial shareholder, or its associates, to be considered as not independent of that substantial shareholder, or its associates. We also agree with the FCA's proposal prohibiting such director from participating in votes on a related party transaction or relevant related party transaction with that substantial shareholder, or its associates. The relationship between a director and a significant shareholder could impair the director's independence and be detrimental to the wider shareholder interest. The proposed approach is a reasonable, targeted measure that does not affect the basic rights of the substantial shareholder or its associates.

To more effectively achieve the objective of CP26/21, we further recommend that the FCA address the potential loophole that results from the exclusion in UKLR 8.1.14 of the voting rights

of an "investment manager" and "collective investment undertaking" from the assessment of a shareholder's voting rights. The existing rule allows an activist, acting through an investment manager and/or collective investment undertaking, to avoid being identified as a substantial shareholder. While these exclusions may be appropriate for ordinary asset management arrangements, they present a significant vulnerability because they allow an activist investor to avoid being treated as a substantial shareholder where the activist is able to exercise influence or control through such structures. We urge the FCA to remedy this loophole by specifying that the exclusions in UKLR 8.1.14 do not apply to the proposed rules or by otherwise providing that voting rights should not be excluded where an investor has the ability, directly or indirectly, to direct or influence how those rights are exercised.

Question 4: Are there unintended consequences that we have not identified. For example, would it materially impede the appointment of directors? If so, could such a risk be mitigated by applying a time limit of, for example 2 years?

While we support the FCA's proposal regarding the independence of directors, we believe that further revisions are needed to more effectively and comprehensively stem the problematic activist behaviour the FCA seeks to address. Because the current related party transactions rules require shareholder approval of related party transactions only in certain circumstances based on financial thresholds, they offer limited protections. To protect against the limitations of the current rules and intentional circumvention, we recommend that the FCA revise the rules to provide that any related party transaction with a substantial shareholder or an associate of the substantial shareholder, including the appointment of an investment manager, be subject to shareholder approval (excluding the substantial shareholder and its associates). If the FCA declines to make this revision, we urge that the FCA, at a minimum, require independent shareholder approval for the appointment of the substantial shareholder or any of its associates as investment manager.

Question 7: Do you agree that a proposed investment manager should be treated as a related party to ensure protections around its fees are consistent before and after the appointment? If not please explain why.

Yes, we agree that a proposed investment manager should be treated as a related party. This provision ensures that the protections around the size of investment manager fees apply consistently before and after appointment of the investment manager.

Question 9: Do you agree that it would be beneficial to address the potential conflicts of interest where a substantial shareholder, or one of its associates, is also a closed-ended investment fund's appointed investment manager? If not, please explain why.

We agree with the FCA that it would be beneficial to address the potential conflicts of interest where a substantial shareholder, or one of its associates, is also a closed-ended investment fund's appointed investment manager. We believe that the FCA's proposed approach appropriately provides protection for shareholders where a substantial shareholder that is also

an investment manager seeks to, or is perceived as seeking to, amend the investment mandate for its own advantage without wider consideration of other shareholders.

Question 10: Do you agree with our proposal to exclude: (a) a substantial shareholder that is also a closed-ended investment fund's appointed investment manager, and any of its associates, from participating in a shareholder vote on a material change to the fund's published investment policy, (b) a substantial shareholder whose associate is a closed ended investment fund's appointed investment manager, from participating in a shareholder vote on a material change to the fund's published investment policy, and (c) if not, please explain why or suggest alternative approaches?

We support the FCA's proposal to exclude a substantial shareholder that is also a closed-ended investment fund's appointed investment manager, and any of its associates, from participating in a shareholder vote on a material change to the fund's published investment policy. We also support the proposal to exclude a substantial shareholder whose associate is a closed-ended investment fund's appointed investment manager, from participating in a shareholder vote on a material change to the fund's published investment policy. These changes would provide additional safeguards against attempts to sequence activities in a manner that evades being captured by other provisions and ensure that decisions on material changes to the fund's investment policy are made in the best interest of all shareholders.

Question 11: Do you consider if it would also be beneficial to extend this proposal to address the scenario where a material change is being made to the investment policy at the same time that a new investment manager is being appointed? If so, please explain why.

Yes. For the reasons set forth in response to Question 10, we believe it would also be beneficial to extend this proposal to address the scenario where a material change is being made to the investment policy at the same time that a new investment manager is being appointed.

Question 14: Do you agree with our proposed approach to implementation? For example, does a 4-week gap between the rules being finalised and coming into force allow enough time to complete any transactions or arrangements under the current rules?

We recognise that, at any given time, there may be related party transactions or material changes to investment policies that are already in process at the time the policy statement is published and that a short implementation period may be disruptive to these transactions. However, due to the significant policy concerns the FCA is addressing and the ongoing threat to shareholders' interests, we urge the FCA to provide for a transitional period that is as short as reasonably possible and, in any case, no longer than four weeks after adoption of the policy statement.

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We appreciate the opportunity to provide feedback on CP26/21. If you have any questions, please contact me at tracey.wingate@ici.org or Eva Mykolenko at emykolenko@ici.org.

Sincerely,

/s/ Tracey Wingate

Tracey Wingate
Chief Global Affairs Officer
Investment Company Institute