HM Treasury – Securities and Markets
Primary Markets and Competitiveness – Listings Power
1 Horse Guards Road
SW1A 2HQ

By email: listingspower@hmtreasury.gov.uk

27 August 2021

Dear Sir, Madam,

Re: BVCA response to the HMT consultation on a Power to Block Listings on National Security Grounds

We are writing on behalf of the British Private Equity and Venture Capital Association ("BVCA"), which is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 700 firms, we represent the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers and investors. Between 2015 and 2019, BVCA members invested over £43bn into nearly 3,230 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ 972,000 people in the UK and the majority of the businesses our members invest in are small and medium-sized businesses.

We welcome the opportunity to comment on the Treasury's consultation on the power to block listings on national security grounds. We have responded only to those questions on which our members have a view or contribution to make.

1. **What are your views on the Government's intended scope of the listings blocking power as outlined in point 3.6?**

   The BVCA is supportive, in principle, of measures to protect the UK's national security interests and consider that such measures should be helpful in ensuring the UK remains an attractive location for investment and conducting business, including in the equity capital markets. However, any such measures must strike a balance between protection of genuine areas of critical national security interest and unnecessary interference with access to the UK capital markets, investment in UK listed companies and economic activity benefiting the wider UK economy. While our members' funds predominantly invest in unlisted companies, they will often develop their investee portfolio companies with a view to listing them on the public markets. As such they have an interest in maintaining the accessibility (as well as the reputation) of UK capital markets.

   The BVCA has a concern that adding additional further procedural requirements for admission or decreasing the certainty of the listing process may discourage issuers, backed by our members' funds, from seeking a listing in the UK. Such issuers may instead opt for one of the many other regulated capital markets which do not have similar blocking regimes on grounds of national security.

   We also note that the FCA currently is the independent authority that determines whether to permit an application for listing in accordance with the Listing Rules. Any power should therefore be limited to considering purely national security concerns rather than overlapping with the Listing Rules or the FCA's determination as to whether a listing may cause "investor detriment". The consultation makes clear that the government considers the assessment of national security to be

one for Government rather than an independent authority, but equally the power should be clearly framed so that it is not capable of being exercised purely on political grounds.

We therefore think it is important that the scope of the power be clearly defined, the impact on existing admission process be minimal and that its application is (as per the policy intention) very limited. Clarity, transparency, precision and proportionality are key. Limiting the scope of the blocking power to those 17 sectors already in scope for mandatory notification under the National Security and Investment Act 2021 (the NSI Act) would be the obvious way to achieve this. Alternatively, safe harbours for certain sectors or businesses which have no nexus with national security might be appropriate.

As a general comment, it will be helpful if relevant definitions are aligned with those set out in the NSI Act so that the investment community can benefit from the experience and jurisprudence arising from the NSI Act.

2. **What are your views on the exclusion of debt securities from the scope of the blocking power?**

We agree that debt securities should be excluded from the scope of the blocking power.

3. **Do you agree with the list of disclosure outlined? Do you have any other comment about the disclosures outlined?**

As explained above, it will be important to minimise the additional cost and administrative burden of additional disclosures or processes required to facilitate the exercise of this power. Indeed, given the extensive disclosure requirements imposed on an issuer being admitted to trading, we consider that the specific additional disclosure obligations be limited only to those details not ascertainable or already confirmed in a prospectus, unless pre-clearance is being sought (see question 6 below).

4. **In your view, will the disclosures outlined in Chart 4.A add a material burden to the listing or admission process?**

The listing process is already one requiring significant work, time and expense. Given most of these disclosures will be included in a prospectus (or excluded because they do not apply), ideally these disclosures would not be required as a separate workstream or process. However, the concern is not so much the level of disclosure but rather the uncertainty this regime may introduce into the listing transaction. That being the case, we would favour the regime to facilitate the early clearance of issuers, before the prospectus is fully drafted and before the intention to float announcement, as part of a pre-clearance process (see question 6 below).

As stated above, to minimise this burden, we consider that limiting the scope of the power to those 17 sectors in scope for mandatory notification under the NSI Act would be appropriate. Alternatively, safe harbours for certain sectors or businesses which have no nexus with national security should be considered.

It will also be necessary for this process to be strictly confidential. As stated in the consultation, the Government may decide that a company is not suitable for listing due to concerns about the ability of such company to raise finance "in a manner that might enhance the capabilities of hostile actors". This may be through no fault or governance failure of the company but purely given the nature of its business and the liquidity that the public markets inherently offer. Such decisions should be kept confidential to avoid any negative impact on the proposed issuer or its shareholders.

5. **Where a prospectus is not produced, what burdens, if any, do you anticipate the disclosures outlined in Chart 4.A creating for prospective issuers and, in particular, SMEs?**

   We consider that if a prospectus is not produced, these disclosures will be an additional burden involving some additional cost and time. Please see our response to question 4 on limiting the scope of the power, which would ease the burden for SMEs and other exempted issuers, as well as reducing the burden on Government to review disclosures.

6. **At what stage in the listing process would you consider most appropriate for these disclosures to be submitted?**

   We consider it appropriate to have the suitability tested early in the listing process, ahead of the eligibility assessment by the FCA and the intention to float announcement, before the issuer and other stakeholders incur significant costs.

7. **What are your views on the pre-clearance process proposed in point 4.5?**

   We would favour having a pre-clearance process with a clear and short timeline so that issuers can minimise the risk of a late refusal of admission. This would need to be done on a timely basis given there are typically narrow windows for an initial public offering that are dependent on timing of financial information as well as market conditions. This process should be available at the same time as or prior to the eligibility submission to the FCA.

   Clearly confidentiality will be important and it is imperative that any pre-clearance process or notification obligations be done on a strictly confidential basis.

8. **What are your views on the likelihood of companies choosing a pre-clearance process when they would otherwise be able to make the disclosures outlined in Chart 4.A alongside the prospectus?**

   We consider that companies involved in businesses that concern national security (such as defence or critical infrastructure) are likely to require comfort of a pre-clearance process before expending significant time and expense on IPO preparation. Closed end private equity funds require a strategy for divestment after their hold period. Understanding whether or not the UK capital markets are accessible for a particular portfolio company is critical to that strategy.

We would be happy to discuss the contents of this letter with you; please contact Ciarán Harris charris@bvca.co.uk.

Yours faithfully,

Amy Mahon
Chair, BVCA Legal and Accounting Committee