

FCA Announces Major Reforms to the UK Listing Rules

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INTRODUCTION

The Financial Conduct Authority (FCA) published its much-anticipated consultation paper [CP23/31](#) in late December 2023 setting out detailed proposed measures aimed at making the UK's Listing Rules more accessible, effective and competitive through a simplified and disclosure-based listing regime. The FCA's key measures reflect most of the proposals set out in previous consultation paper [CP23/10](#) in May 2023, alongside a number of additional changes. The FCA is seeking to modernise its approach and address the regulatory challenges that the UK public markets have encountered in recent times so as to make them relevant and fit for the global stage.

Through these reforms, the FCA is seeking to make the UK public markets: (i) more uniform and consistent from a regulatory perspective; (ii) more accessible at an earlier stage to a wider range of companies with diverse capital structures and business models and which operate in growth sectors of the world economy; and (iii) a more viable exit option for companies owned by financial institutions such as private equity firms. The FCA is also seeking to reduce the regulatory burdens that have been criticised for preventing UK listed companies from being competitive on the global M&A stage.

HIGHLIGHTS

NEW LISTING STRUCTURE

To simplify the listing regime and to enhance issuer and investor confidence, a new single listing category for equity shares in commercial companies (ESCC) will be created, removing the existing distinction between the premium and standard categories. The obligations which currently apply both to the premium and standard categories will apply to the ESCC, meaning that the requirements will be significantly more onerous than those that currently apply to standard listed companies and less so for premium listed companies.

A separate transitional segment will be created which will retain the existing standard listing requirements to give existing standard listed issuers time to adapt to the single segment. This transitional segment will be closed to new entrants and those issuers are expected to transfer out to the new single segment over time.

Separate listing categories will also be created for closed ended investment funds, open ended investment companies, shell companies and SPACs, international secondary listings (i.e., non-UK incorporated companies with a primary listing on a non-UK market), non-equity shares and non-voting equity shares and other debt and debt-like categories. A further consultation paper from the FCA is expected in early 2024 with the detailed draft rules relating to these other categories.

IPO ELIGIBILITY REQUIREMENTS

In order to appeal to a wider range of companies operating in growth sectors of the global economy, IPO eligibility requirements will be relaxed, with the removal of the current premium listing requirements for a three-year revenue-earning track record, historical financial information requirements (on 75% of the issuer's business) and a "clean" or unqualified working capital statement. Sponsors will still need to consider whether an issuer has a reasonable basis for making any working capital statement in a prospectus and declare as such to the FCA, as part of the sponsor assurance process.

In line with the spirit of these reforms, the FCA does not propose to restrict admission to the ESCC category to issuers with specific business models, as long as their characteristics are fairly communicated to allow investors to conduct their own assessment and due diligence. Furthermore, the FCA is also proposing to relax the current premium listing eligibility requirement that imposes a limit on the number of warrants over shares, giving issuers more choice in their method of capital raising and allowing investors more flexibility in how they choose to invest.

SIGNIFICANT TRANSACTIONS

To enable premium listed companies to become more competitive from an M&A perspective, transactions meeting the 25% threshold on the class tests (Class 1 transactions) will require only the release of a transaction announcement and will no longer mandate compulsory shareholder approval or an FCA-approved shareholder circular (except for reverse takeovers). These disclosure requirements would be supported by an overarching obligation of the issuer to include any other relevant circumstances or information necessary to provide an understanding of, or enable the shareholders to assess, the terms of the transaction and its impact on the listed company.

In addition, the requirements for a working capital statement or restated historical financial information will be removed. However, clear disclosures explaining the sources of any unadjusted financial information and the basis upon which the pro forma financial information is prepared would be required in the announcement. These changes would mean that financial information published in connection with notifications will no longer be subject to mandatory third-party scrutiny, potentially reducing costs (although third-party scrutiny is likely to remain best practice).

RELATED-PARTY TRANSACTIONS

In recognition of companies having more complex corporate structures (which for example may arise where a private equity owner becomes a substantial shareholder following an IPO of its portfolio company), larger related-party transactions will no longer necessitate compulsory shareholder approval or an FCA-approved shareholder circular. The board (excluding any conflicted director) will be required to approve a related-party transaction, and the company will be required to make a timely notification containing content prescribed by the Listing Rules, publicly state in the announcement that the transaction has been determined to be "fair and reasonable" and obtain the same confirmation from a sponsor. The FCA is also proposing to increase the threshold at which a substantial shareholder becomes a related party from 10% to 20% so as to ensure that companies in which institutional investors hold an equity interest are not inadvertently caught in the related-party net.

COMPANIES FACING FINANCIAL DIFFICULTY

Through these reforms the FCA has considered situations where companies face financial difficulty and have to implement reconstructions or refinancings to address the issue. For significant transactions undertaken in such circumstances, shareholder approval would not be a requirement under the Listing Rules, with additional enhanced disclosure requirements for the notification where the specified size threshold is met. In addition, the requirement

for premium listed companies to include a working capital statement in significant transaction notifications or Class 1 circulars has been relaxed.

DUAL CLASS SHARE STRUCTURES

Currently, dual class share structures are permitted in the standard category, while premium listed companies have only relatively recently been able to have a restricted form of these, within specific parameters including a five-year sunset period. Dual class share structures were previously introduced in an effort to encourage innovative founder-led companies to enter public markets sooner. The FCA is now proposing a more flexible dual class share structures regime, by removing limits on the maximum enhanced voting ratio that can be attached to enhanced voting rights shares, removing a mandatory time-related sunset period on enhanced voting rights, and allowing enhanced voting rights shares to be issued not only to directors but also employees and natural persons who are investors in, or shareholders of, the issuer. The enhanced voting rights can be exercised on a wider range of matters but dilutive transactions and listing cancellations will be excluded.

CONTROLLING SHAREHOLDERS

The current controlling shareholder regime for premium listed companies will be retained and largely unchanged under the single listing category. In particular, the FCA will maintain the requirement whereby an issuer with a controlling shareholder must show that it is able to carry on its main business activity independently from such controlling shareholder. In particular, the requirement to implement a relationship agreement to ensure independence from a controlling shareholder will be retained.

SPONSOR REGIME

The FCA proposes that a revised sponsor regime apply to companies in the ESCC category, closed ended investment funds and SPACs and other shell companies. The FCA expects that the sponsor's role at admission stage would largely reflect the current role sponsors play in an IPO for a premium listing, subject to the proposed removal of certain of the existing eligibility requirements.

Following the initial listing, in order to reduce regulatory cost burdens, the sponsor's involvement would be reduced, focusing largely on significant increases in share capital requiring a prospectus, the provision of "fair and reasonable opinions" on related-party transactions, or where issuers seek guidance, modifications or waivers to FCA rules, as well as where the issuer is proposing to enter into a reverse takeover and for certain transfers between listing categories. The FCA is consulting on modifications to the sponsor competency requirements.

NEXT STEPS

Given the nature of the reforms, the FCA is proposing a completely new 'UK Listing Rules' or UKLR sourcebook, including a restructuring of the existing Listing Rules.

The consultation period for the new UK Listing Rules closes on 22 March 2024 (save for a shorter comment period on the sponsor competency proposals, which closes on 16 February 2024).

The FCA intends to publish the final UK Listing Rules at the start of the second half of 2024, followed by a two-week period before the new UK Listing Rules come into force.

6 Min Read

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