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# Financial Regulation Monthly Breakfast Seminar

# Overview



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The latest Consumer Duty update on fair value  
assessments  
Nicola Higgs

# FCA Consumer Duty: Fair Value Update

- 10 May 2023: FCA speech & findings on fair value review
- Firms (specifically Consumer Duty Champions + Chairs) should ask themselves:
  - Does your purpose and culture align with your obligations under the Duty and support the delivery of good outcomes for customers?
  - Is the Duty being considered in all relevant discussions such as strategy, remuneration, and risk?
  - Have you made sure your remuneration and incentive structures drive good outcomes for customers?
  - Are you prioritising delivering good outcomes for customers in a changing external environment?

# FCA Consumer Duty: Fair Value Update

Criteria	Good practice	Areas for improvement
<b>Considering contextual factors</b>	<ul style="list-style-type: none"><li>▪ Consider the interaction between fair value and the other consumer outcomes.</li><li>▪ Take the impact of consumer choice and behavioural biases into account, as well as factors like which products and services consumers already hold with the firm.</li></ul>	<ul style="list-style-type: none"><li>▪ Consider broader contextual factors, and do not rely on an overly simplistic approach to fair value.</li><li>▪ Ensure the firm considers whether it needs information from other firms in the distribution chain to properly assess fair value.</li></ul>
<b>Assessing differential outcomes</b>	<ul style="list-style-type: none"><li>▪ Set out a range of ways to segment customers, and include tailored analysis of fair value for consumers with characteristics of vulnerability.</li><li>▪ Consider product or service-level cross-subsidies.</li></ul>	<ul style="list-style-type: none"><li>▪ Understand the full distribution of outcomes rather than relying on average outcomes.</li><li>▪ Demonstrate how each group of customers receives fair value where differential pricing exists between groups of customers.</li></ul>

# FCA Consumer Duty: Fair Value Update

Criteria	Good practice	Areas for improvement
<b>Understanding fair value</b>	<ul style="list-style-type: none"><li>▪ Clearly setting out principles for how the firm would apply the concept of fair value, both generally and across product lines.</li></ul>	<ul style="list-style-type: none"><li>▪ Stating the firm's business model or ethos is inherently based around fair value, without sufficient evidence or critical analysis.</li><li>▪ Give sufficient thought to the distinction between manufacturers and distributors, and the relevant requirements that apply.</li></ul>
<b>Assessing value</b>	<ul style="list-style-type: none"><li>▪ Provide a sufficiently broad view of the overall costs to the consumer, including fees and charges, any non-monetary costs, as well as any potential distribution costs to consumers.</li><li>▪ Orient the framework toward the person undertaking the assessment, for instance by guiding the reviewer or providing practical statements, questions, or challenges to consider at different stages.</li><li>▪ Include clear discussion about how to price products sold as a package or bundle and assess them for value.</li></ul>	<ul style="list-style-type: none"><li>▪ Consider how to adapt the firm's approach across different market sectors, rather than relying on a single generalised template.</li><li>▪ Make sure profit margins are included as a relevant factor when considering fair value.</li><li>▪ Consider the non-financial costs and benefits that consumers may expect to pay or receive.</li></ul>

# FCA Consumer Duty: Fair Value Update

Criteria	Good practice	Areas for improvement
<b>Data and governance</b>	<ul style="list-style-type: none"><li>▪ Set out appropriate data-led plans to monitor and review customer outcomes, including clear timelines for value assessments and reviews.</li><li>▪ Set out clear rectification processes, complete with named owners, that the firm must follow if it identifies that a product no longer provides fair value.</li></ul>	<ul style="list-style-type: none"><li>▪ Ensuring the firm has a clear plan to monitor fair value, with clear steps for remediation where appropriate.</li><li>▪ Consider whether sufficient critical analysis is carried out around ratings where points-based or traffic light systems are used.</li><li>▪ Ensure that the limitations of evidence are made clear so that decision-makers can make critical assessments.</li><li>▪ Ensure that, where market-level benchmarks or comparators are used, firms are considering how they are delivering fair value in absolute rather than just relative terms.</li></ul>

# FCA Consumer Duty: Fair Value Update

- The FCA highlights the following as areas of particular focus for firms:
  - Ensure MI provides adequate evidence as to why products or services provide fair value
  - Analysis of outcomes across groups of consumers in the target market, to demonstrate how each group receives fair value, rather than relying on broad averages
  - Clear oversight and accountability of the necessary remedial actions that they should take if their products or services do not provide fair value
  - Summarising and presenting fair value assessments in a way that enables decision-makers to critically analyse whether the product or service represents fair value, such as by explaining any limitations in the analysis or evidence
- Firms may not be challenging themselves enough by asking uncomfortable questions such as whether high profit margins on a product could indicate that customers are not getting fair value





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The FCA's proposed UK listing regime reforms  
James Inness

# Overview

- On 3 May 2023, the FCA published a consultation paper (CP23/10) setting out a blueprint for changes to the UK listing regime
- Addresses feedback from DP22/2 published in May 2022. DP22/2 envisaged a more complex structure whereby the single segment would in effect be split between companies that opt into supplementary investor protections, and those that do not
- The FCA is now aiming to produce a true **single segment** for commercial companies, **replacing the existing premium and standard listing segments**
- Certain longstanding investor protections under the premium segment would not be present in the single segment. Requirements would focus on transparency and disclosure

# Single segment

- The existing premium and standard listing segments would be replaced with a single segment for commercial companies
  - Subject to a set of eligibility and ongoing listing obligations
- Additional listing categories for other types of issuers and security types:
  - Separate listing categories for CEIFs, OEICs, depositary receipts and other miscellaneous securities
  - New listing category for SPACs and cash shells
  - Potentially new listing category for secondary listings/other shares (e.g. existing standard listed overseas incorporated issuers with UK secondary listings)
  - FCA considering approach for Sovereign Controlled Commercial Companies
- Further details expected in follow-up Consultation Paper

# IPO eligibility

- **Removal of financial information eligibility requirements**
  - Currently, companies seeking to list on the premium segment are required to disclose a **three-year revenue earning track record** and satisfy the FCA that they have **sufficient working capital** for at least the next 12 months
  - The FCA proposes to **remove these requirements** from the new single segment to enable a wider range of companies (particularly tech & early stage issuers) to list
- **Independent business and operational control**
  - Currently, premium listed companies are required to demonstrate (at the point of IPO and on a continuing basis) that they carry on an independent business and exercise operational control over the business carried on as its main activity
  - The FCA proposes to explore **modifying these requirements** to clarify that the single segment is open to **diverse business models** and, potentially, more complex corporate structures (including companies that act as strategic investors holding non-controlling positions in investee companies, but which are not funds)

# Significant transactions

- Currently, premium listed companies are subject to requirements for significant transactions.
  - These include the need to obtain **shareholder approval** and production of a FCA-approved **shareholder circular** for certain larger (“Class 1”) transactions, and a **transaction announcement** with prescribed disclosures for smaller “Class 2” transactions
- The FCA proposes to modify the significant transactions regime for the single segment, focusing on disclosure:
  - The current requirement to seek a shareholder approval and produce a FCA-approved shareholder circular for Class 1 transactions would be removed (other than in the case of a reverse takeover or a company in financial difficulty)
  - The requirement to make a “Class 2” transaction announcement would apply at the current Class 1 threshold of 25% (rather than at the 5% threshold)

# Related party transactions

- Currently, premium listed companies are subject to requirements for related party transactions
  - These include the need to obtain **shareholder approval** and production of a FCA-approved **shareholder circular** for certain larger related party transactions (class tested 5% or above), and a **transaction announcement** with prescribed disclosures for smaller related party transactions (class tested at above 0.25% but less than 5%)
  - In both instances, the company must obtain a “**fair and reasonable**” confirmation from a sponsor

# Related party transactions

- The FCA proposes to modify the related party transactions regime for the single segment, focusing on disclosure:
  - The current requirement to seek a shareholder approval and produce a FCA-approved shareholder circular for larger related party transactions (class tested 5% or above) would be removed
  - Instead, such transactions would be subject to certain transaction announcement requirements which would include a “fair and reasonable” statement from the board (as advised by the sponsor)
  - The requirements for smaller related party transactions (class tested at above 0.25% but less than 5%) would be removed
  - DTR 7.3 disclosure regime would be retained

# Controlling shareholders

- Currently, premium listed companies with controlling shareholders are subject to a suite of requirements to protect the interests of minority shareholders. These include:
  - The requirement to put in place a **relationship agreement** with the controlling shareholder. Minority shareholders are able to veto all transactions between the company and its controlling shareholder if a relationship agreement is not in place
  - Additional voting powers to the minority (i.e. “independent”) shareholders on the election of independent directors



# Controlling shareholders

- The FCA proposes to:
  - Replace the existing rules requiring a relationship agreement between a listed company and its controlling shareholder with a **comply-or-explain approach** in which the absence of a relationship agreement would require specific disclosures in the prospectus and annual report
  - Retain certain investor protections, being the requirement to seek the prior approval of a simple majority of independent shareholders for a delisting and additional voting powers for independent shareholders on the election of independent directors

# Dual class share structures

- Since December 2021, premium listed companies were permitted to adopt a targeted and time-limited form of dual class share structure (DCSS) on IPO. In contrast, the standard listing segment does not impose regulatory restrictions against DCSSs

# Dual class share structures

- The FCA proposes to introduce a **more flexible approach to DCSSs** under the single segment with the features below:

	Single Segment (CP23/10)	Premium Segment
<b>Instrument</b>	May only be held by directors. Subject to transfer restrictions (i.e., automatically convert to ordinary shares upon holder ceasing to be a director)	Unlisted weighted voting rights shares – may only be held by director(s) of the company or beneficiaries of such director(s) estate
<b>Voting Rights</b>	No specified limits on weighted voting ratio	A maximum weighted voting ratio of 20:1
<b>Restrictions</b>	Weighted voting rights may be exercised on all matters – other than the approval of a share offering at a discount of more than 10%	Weighted voted rights only to be available in two limited circumstances: <ul style="list-style-type: none"> <li>a vote on the removal of the holder as a director at any time; and</li> <li>following a change of control, on any matter (to operate as a strong deterrent to a takeover)</li> </ul>
<b>Duration of Rights</b>	10 years from admission	Five years from admission

# Sponsor regime

- A modified sponsor regime would be retained for the single segment to support companies at application stage and for certain disclosure or reporting obligations:
  - Provide key assurances at IPO. Sponsor diligence to be modified to take account of amended eligibility requirements
  - Reduced instances where a sponsor is required post-listing (given changes to the significant transactions and RPT regimes). Sponsor services would still be required to advise issuers on transaction “classification” if the company is in any doubt about the correct application of the rules. FCA considering whether to make it mandatory to consult sponsor on RPTs
- FCA considering changes to record-keeping requirements to ensure regime is proportionate. Details to be included in autumn consultation

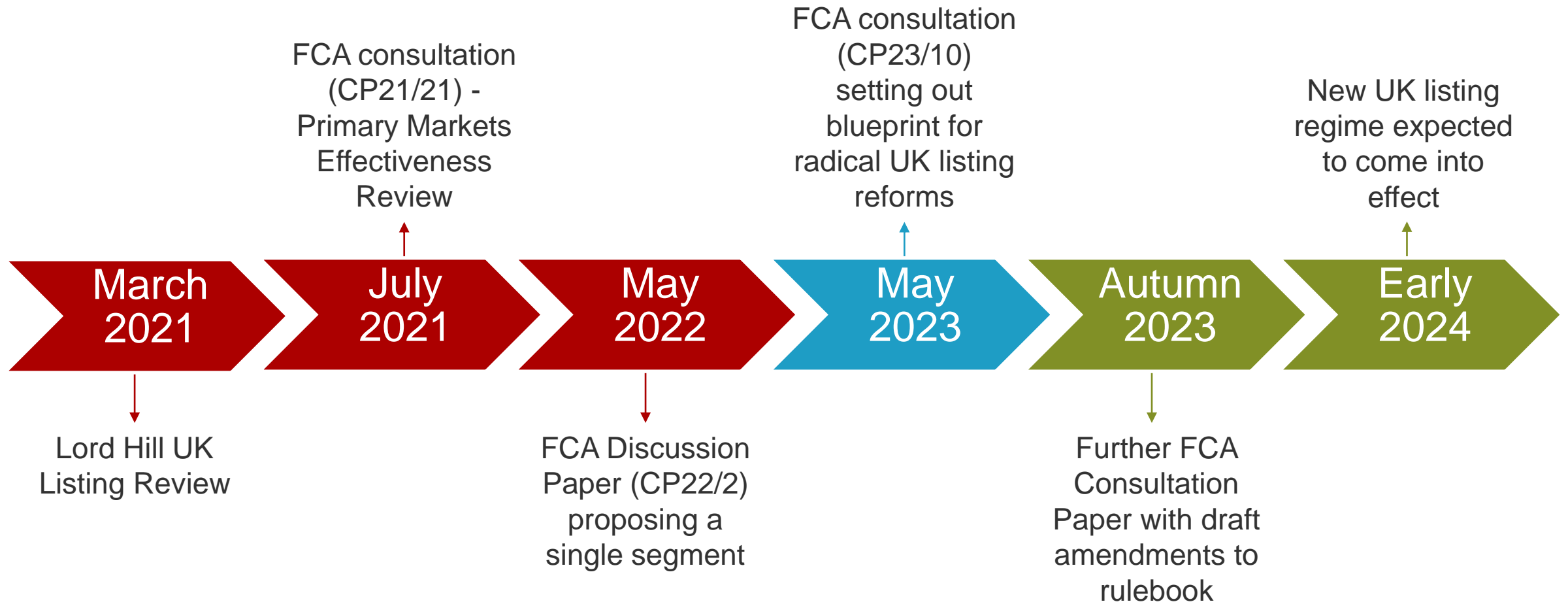
# Other requirements retained for the single segment

- Shareholder approval required on share issuances discounted >10% and share buybacks
- Pre-emption rights
- Comply-or-explain against the UK Corporate Governance Code
- TCFD and diversity disclosures

# Next steps

- The FCA's deadline for responses to the Consultation Paper is 28 June 2023. The FCA aims to issue a further consultation with the proposed specific revisions to the listing rules this autumn
- CP also considers transitional arrangements for transferring existing issuers to the new single segment. Further details to be set out in autumn consultation
- FCA will also engage with exchanges and index providers. Index providers may change their criteria for index inclusion

# Timeline





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# The FCA's final rules for improving equity secondary markets

Rob Moulton



# FCA PS23/4 – Improving Equity Secondary Markets

- Part of Wholesale Markets Review Edinburgh Reform agenda
- Follow up to CP22/12 (July 2022)
- Proposals pay little regard either to ongoing EU reforms, or cost/benefit of divergence

# Post-Trade – FCA largely confirms CP22/12

- Post-trade reporting only applies if transaction reporting is required
- Inter-fund transfers excluded (with improved definition, such that other investment firms can intermediate)
- Give-ups and give-ins are excluded (although the definition still does not work)
  - A give-up transaction or give-in transaction means:
    - A transaction where an investment firm passes a client trade to, or receives a client trade from, another investment firm for the purpose of post-trade processing; or
    - Where an investment firm executing a trade passes it to, or receives it from, another investment firm for the purpose of hedging the position that it has committed to enter into with a client
- New exemption for inter-affiliate transactions confirmed (and definition improved)

# Post-Trade Deferral for OTC Transactions and ETFs

- Original proposal was to apply post-trade transparency to trades executed OTC, but permitted deferral until the opening of the next trading date
- FCA is dropping this “interim solution”
- FCA to consider aligning the regime for transactions executed on a venue with those executed OTC “in due course”
- FCA will also consult on a new deferral regime for transactions in ETFs executed at NAV

# Flags

- FCA will delete the flags “SIZE”, “ILQD” and “RPRI”
- FCA will delete the agency cross flag “ACTX” and the duplicate trade flag “DUPL”
- FCA has decided not to delete the algorithmic trade flag “ALGO”
- FCA will retain the separate flags “BENC” and “TMCP”
- FCA will introduce a new flag “CLSE” for benchmark trades at closing price, and “PORT” for portfolio transactions
- FCA will aggregate the existing flags for negotiated transactions into a new flag for negotiated trade waivers “NETW”
- FCA will introduce a new flag “NTLS” for transactions above pre-trade large in scale thresholds

# Content of Trade Reporting Fields

- FCA acknowledges that “divergence... is a potential source of complexity and cost... changing reporting systems is costly and imposes some cost on firms”
- However, benefits seen as outweighing the cost
- FCA will introduce new field reports for “price” and “price currency”

# Designated Reporter Regime

- MiFID II sets out a waterfall to determine who reports
- CP22/12 proposed instead a Designated Reporter Regime (which de-linked SI status from post-trade transparency)
- FCA will proceed with this de-linking, but provide the option for Designated Reporters to bilaterally agree who will report
  - Seller will always have the regulatory obligation but may discharge it through such an agreement instead

# Waivers from Pre-Trade Transparency

- FCA will proceed with the plan to permit overseas venues to be used for the purposes of reference price waiver
- FCA will proceed with the plan to permit trading venues to set minimum sizes for the Order Management Facility regime (instead of a fixed threshold of €10,000)

# Tick Size Regime

- FCA will proceed with the plan to allow trading venues to adopt minimum tick size of primary market, even when overseas
  - Came into effect immediately on publication



# RSP Market

- Majority of respondents were explicitly critical or suggested a review of the RSP market was required
- FCA has decided to “continue discussions” with stakeholders
  - What are the key gaps that the review should look to fill?
  - How can FCA test the competing views on the quality of execution provided by RSPs, compared to hypothetical alternatives?
  - What is the future for the RSP market?



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A round-up of recent enforcement matters  
Andrea Monks

# Banque Havilland SA, Rowland, Weller, Bolelyy

- Banque Havilland and the three individuals failed to act with integrity
- Fines
  - Banque Havilland - £10m
  - Edmund Rowland, former CEO London branch - £352k
  - David Weller, former London branch senior manager - £54k
  - Vladimir Bolelyy, former London branch employee - £14.2k
- All 3 individuals found to be not fit and proper to perform regulated activities and were banned from working in financial services
  - Banque Havilland, Rowland and Bolelyy all appealing to the Upper Tribunal
- Background
  - Banque Havilland created and disseminated a document containing manipulative trading strategies, with the objective of harming the economy of Qatar

# Banque Havilland SA, Rowland, Weller, Bolelyy

- Findings
  - The document signalled to potential investors that the Firm was willing to engage in improper market conduct to further its clients' objectives
  - The individuals designed a manipulative trading strategy intended to serve the political interests of certain nation states, and in doing so put an authorised firm at risk of facilitating financial crime
- Other takeaways
  - Digging their own grave
  - “It’s just a joke”
  - SMF fine....but not particularly helpful
    - The actions of Rowland and Weller were found to be particularly serious as both held positions of influence and were involved in creating the document

# Changes to the PRA's approach to enforcement

- Consultation Paper proposing changes to:
  - enforcement policies and procedures;
  - policies and procedures for making supervisory and non-enforcement statutory notice decisions; and
  - procedures of the Enforcement Decision Making Committee
- Early Account Scheme
  - Expedites the information gathering stage
  - Requires senior manager attestation
- Enhanced Settlement Discount
  - To incentivise earlier admissions, an enhanced discount of 50%

# Market Watch 73 – CFD firms and MAR

- FCA analysed data from 9 firms
- Recommended peer review of STORs submitted by Compliance
- Key focus on manipulative behaviour by “narrowing the spread”
  - Barnett Alexander fine in 2011
  - Narrow spread in underlying market with small buy (or sell) orders
  - More profitable execution of CFD in larger size
  - CFD providers must focus on identifying this risk
- Identifies issues with tipping off front office when investigating pre-STOR

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