

FCA Proposes Radical Reforms to Encourage UK Listings

Proposals significantly reduce the regulatory burden on premium listed companies.

On 3 May 2023, the FCA published a consultation paper [CP23/10](#) which sets out a blueprint for changes to the UK listing regime and the feedback to its prior discussion paper [DP22/2](#).¹

Key Proposals

The FCA proposes to create a single listing segment for commercial companies, replacing the existing premium and standard listing segments. Issuers which are not commercial companies and securities that are not equity shares (such as funds, SPACs, preference shares, and GDRs) would list under separate listing categories.

The new listing segment will be subject to a single set of listing principles, eligibility requirements, and ongoing listing obligations, in each case incorporating elements (with modifications) from the existing standard and premium listing segments. Investor protections under this new regime would be largely disclosure-based.

The FCA is aiming to produce a true single listing segment, unlike the first iteration suggested in DP22/2 which envisaged a more complex structure, whereby the single segment for commercial companies would have been split between companies that opt into supplementary investor protections and those that do not.

This Client Alert discusses some of the key proposals for the single listing segment and sets out at the end of this Alert a more detailed overview.

IPO Eligibility

- Removal of certain financial information eligibility requirements

Companies seeking to list on the premium listing segment are required to disclose a three-year revenue earning track record and satisfy the FCA that they have sufficient working capital. These requirements in effect restrict many early-stage/growth companies from listing on the premium segment. Standard listing applicants are not subject to these requirements.

The FCA proposes to remove these requirements from the new single listing segment and rely on the prospectus requirements, on the basis that potential investors would review the prospectus disclosures in deciding whether to invest.

- Independent business and operational control

Premium listed companies are required to demonstrate (at the point of listing and on a continuing basis) that they carry on an independent business and exercise operational control over the business carried on as their main activity. These requirements ensure that only commercial companies (rather than funds, for example) are admitted to the premium listing segment. Standard listing applicants are not subject to these requirements.

The FCA is considering modifying these requirements to clarify that the single listing segment is open to diverse business models and, potentially, more complex corporate structures. Such structures include companies that act as strategic investors holding non-controlling positions in investee companies, but which are not funds. Funds and other investment entities would still be able to list on separate listing categories.

The FCA would, however, retain its power to refuse an application for listing if it considers that permitting the listing of the proposed corporate structure would be detrimental to the interests of investors.

Class 1 and Related Party Transactions (RPTs)

- The removal of compulsory shareholder votes and shareholder circulars for significant transactions

Premium listed companies are subject to requirements for significant transactions. Broadly, these requirements include obtaining shareholder approval and producing an FCA-approved shareholder circular for certain larger (“Class 1”) transactions, and a transaction announcement with prescribed disclosures for smaller “Class 2” transactions. Standard listed companies are not subject to these requirements.

The FCA proposes to modify the significant transactions regime for the single listing segment, focusing on disclosure:

- The current requirement to seek a shareholder approval and produce an FCA-approved shareholder circular for Class 1 transactions would be removed (except in the case of a reverse takeover or when proposed by a company in financial difficulty). The FCA is however open to views on whether any of the current Class 1 disclosure requirements should be retained to enable shareholder scrutiny of proposed transactions.
- 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).
- Listed companies will still have to run the class tests and, where in doubt about the correct application of the rules, seek the guidance of a sponsor. However, without the requirement for a circular, working capital statement or shareholder vote, these changes are likely to bring significant benefits to UK-listed companies in competitive M&A auction processes, for example.

- The removal of compulsory shareholder votes and shareholder circulars for RPTs

Currently, premium listed companies are subject to requirements for related party transactions. Broadly, these include the need to obtain shareholder approval and production of an 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 would need to obtain a “fair and reasonable” confirmation from a sponsor. Standard listed companies are not subject to these requirements.

The FCA proposes to remove the current requirement to seek a shareholder approval and produce an FCA-approved shareholder circular for larger related party transactions (class tested 5% or above). Instead, such transactions would be subject to certain transaction announcement requirements which would include a “fair and reasonable” statement from the board (having been so advised by a sponsor). The requirements for smaller related party transactions (class tested at above 0.25% but less than 5%) would be removed.

Controlling Shareholders

Premium listed companies with controlling shareholders are subject to a suite of requirements to protect the interests of minority shareholders. These requirements include implementing a relationship agreement with the controlling shareholder on an ongoing basis, and additional voting powers to the minority (i.e., “independent”) shareholders on the election of independent directors. Minority shareholders can also veto all transactions between the company and its controlling shareholder if a relationship agreement is not in place. Standard listed companies are not subject to these requirements.

The FCA proposes to replace the relationship agreement requirement with a comply-or-explain approach in which the absence of a relationship agreement would require specific disclosures in the prospectus and annual report. The FCA however proposes to retain certain investor protections (against controlling shareholders) for the single listing segment. These protections include 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. The enhanced voting rights under this structure could only be exercised in limited circumstances, primarily to deter unwanted takeovers for five years post-IPO. In contrast, the standard listing segment does not impose any regulatory restrictions against DCSSs.

The FCA proposes to introduce a more flexible approach to DCSSs under the single listing segment with the following features:

- Exercise of weighted voting rights — the weighted voting rights may be exercised on all matters, other than the approval of a share offering at a discount of more than 10%. This contrasts with the current premium listing requirements which limit the exercise of such rights to any matter following a change of control or to prevent the removal of the holder as a director.
- 10 year sunset — the weighted voting rights would be subject to a maximum sunset period of 10 years following admission (compared with the current maximum sunset period of five years under the premium listing segment).
- Transfer restrictions — the weighted voting rights shares can only be held by directors and would automatically convert to ordinary listed shares when the holder ceases to be a director. This is more stringent than the current position under the premium listing segment which allows the weighted voting rights shares to be transferred to beneficiaries of a director's estate.

- Voting ratios/weighting limits — the weighted voting rights shares would not be subject to any limits on the maximum weighted voting ratio. This contrasts with the current position under the premium listing segment which stipulated a maximum weighted voting ratio of 20:1.

Impact on Sponsors

A modified sponsor regime would be retained for the single listing segment. Listing applicants would still be required to engage a sponsor to provide key assurances to the FCA at the listing stage. Post-IPO, companies within the single listing segment would need to engage a sponsor in certain situations, including for transfers to another listing category, significant transactions (if in doubt about the correct application of the rules), and related party transactions.

However, the sponsor's role on significant and related party transactions would be reduced in comparison with the existing premium listing regime, given the reforms removing the need for an FCA-approved circular as referred to above. Instead, the sponsor's role would focus on providing guidance on transaction "classification" and potentially assurances around related party transactions being fair and reasonable. The sponsor's role could be further reduced depending on the outcome of the new regime for public offers and admission to trading which may significantly reduce the transactions on which a prospectus is needed post-IPO.

The FCA is also considering changes to ensure that the sponsors' record keeping obligations are proportionate. Further details would be set out in a following consultation.

Comment

By introducing a lighter listing regime, these one-in-a-generation reforms should help promote London as a competitive listing destination. The FCA's pivot towards a "caveat emptor" approach, with investor protections under the single listing segment being largely disclosure-based, is a significant mindset change and is clearly encouraged by the FCA's new secondary objective (introduced as part of the Financial Services and Markets Bill) to focus on international competitiveness and growth.

Existing premium listed companies would benefit from the reduced regulatory burden, given the removal or modification of onerous continuing requirements such as the Class 1 and related party regimes. Certain IPO applicants (particularly growth/tech companies) should now encounter fewer regulatory hurdles to listing in London.

The impact on existing standard listed issuers would be more nuanced as their regulatory burden would increase. The FCA's consultation paper envisages that only a fraction of standard listed companies would transfer to the single listing segment (and thereby need to familiarise themselves with additional requirements), with the remainder to be listed on separate categories akin to the existing standard segment. This expectation is based on the FCA's proposal that the single segment would cater for equity shares in commercial companies, thereby excluding, for example, funds, SPACs, and GDR issuers. In addition, the FCA is considering retaining a separate listing category for overseas issuers with a secondary listing in the UK².

A further important consideration for market participants will be the reaction of the privately run index providers such as FTSE Russell. Index eligibility criteria would likely be revisited given the proposed removal of many longstanding investor protections which are required for index inclusion.

Finally, as the FCA notes, such rule changes cannot alone solve the decline in London's share of the international IPO market. This reform is only one part of a broader debate on whether a much wider

package of reforms (such as the recommendations set out in [UK Finance's recent report analysing the state of the UK Capital Markets](#)) is needed to enhance the attractiveness of UK public markets.

Next Steps

The FCA's deadline for responses to the consultation paper is 28 June 2023. A further consultation paper (with the proposed specific revisions to the listing rules) is expected this autumn.

The FCA is also consulting on transitional arrangements and expects that the proposed regime would take effect from a specified date, with the new rules published potentially by early 2024.

Overview of the Single Listing Segment

	Key Listing Rules	Standard listing	Premium listing	New single category proposals
Overarching	Listing principles	Two principles	Additional principles apply	Combined and enhanced principles
	Co-operation and information gathering	Existing application	Existing application	New requirements to enhance access to information
	Sponsor regime	Does not apply	Applies	Applies – subject to changes to significant transaction and related party transaction rules
Eligibility/ gateway	Minimum market capitalisation	£30m	£30m	£30m
	Historical financial information on 75% of business covering 3 years	Not required	Required	Not required
	3-year revenue track record	Not required	Required	Not required
	Clean working capital statement	Not required	Required	Not required
	Prospectus disclosure	Required	Required	Required
Initial/ ongoing	Free float	10%	10%	10%
	Independence	Not required	Required	<ul style="list-style-type: none"> Amended rules or guidance to reduce uncertainty for 'franchise' type companies and strategic investment companies with a view to including within the new commercial company category Existing prospectus disclosure should continue to identify any relevant risks to independence or control of business
	Control of business	Not required	Required	

	Key Listing Rules	Standard listing	Premium listing	New single category proposals
				<ul style="list-style-type: none"> Maintain expectation that issuers of listed securities have adequate information flows, including from investee companies, to meet Listing and Transparency Rules and MAR obligations
	Controlling shareholder regime	Does not apply	Apply	<ul style="list-style-type: none"> Applies but on an amended basis Comply or explain and disclosure-based approach to controlling shareholder agreements indicating where these agreements are in place Retain requirements on election of independent board members No enhanced oversight of RPTs for failure to comply with controlling shareholder regime
	Dual class share structures (i.e., enhanced voting rights)	No restrictions, any permitted	Targeted form involving: <ul style="list-style-type: none"> Takeover deterrent or use to prevent director removal 5-year sunset clause 20:1 cap on voting ratio Restrictions on transfer 	Broadly permitted subject to 1 exception, i.e., in relation to the approval of discounted share offers where enhanced voting shares revert to one share one vote: <ul style="list-style-type: none"> 10-year expiration ('sunset') clause Shares with enhanced voting rights can only be held by a director, and are subject to transfer restrictions
Continuing obligations	TCFD and D&I disclosures	Required (comply or explain)	Required (comply or explain)	Required (comply or explain)
	UK corporate governance code disclosure	Disclose if an issuer is subject to, or opts to follow, any code	Required (comply or explain)	Required (comply or explain) <ul style="list-style-type: none"> Seeking views on revising how 'explain' applies to issuers following an overseas corporate governance code
	Related party transaction rules	At value $\geq 5\%$ (based on rules in DTR 7.3): <ul style="list-style-type: none"> Announce key details and further information to enable market to 	$\geq 0.25\%$ value ('smaller RPT'): <ul style="list-style-type: none"> Board to obtain sponsor fair and reasonable opinion 	$\geq 5\%$ value: <ul style="list-style-type: none"> Disclosure of key details Fair and reasonable statement by board and sponsor confirmation Board approval (excluding conflicted directors)

	Key Listing Rules	Standard listing	Premium listing	New single category proposals
		<p>assess whether terms are fair and reasonable</p> <ul style="list-style-type: none"> Board approval excluding conflicted director(s) 	<ul style="list-style-type: none"> Announce brief details on entering into transaction <p>≥5% value:</p> <ul style="list-style-type: none"> Independent shareholder approval with FCA-approved circular required prior to vote Includes board fair and reasonable statement confirmed by sponsor 	<ul style="list-style-type: none"> No shareholder vote or circular required Seeking views on the merits of any further disclosure enhancements, including: <ul style="list-style-type: none"> Ex ante timing to support shareholder engagement (subject to market abuse considerations) Requiring additional financial or other information in market notifications that is currently required in a shareholder circular
	Significant transaction rules	None apply	<p>≥5% value ('Class 2'):</p> <ul style="list-style-type: none"> Prescribed announcement of key transaction details at time of entry <p>≥25% value ('Class 1'):</p> <ul style="list-style-type: none"> Shareholder approval with FCA-approved circular required prior to vote 	<p>≥25% value (review 'class tests' as well):</p> <ul style="list-style-type: none"> Prescribed announcement of key transaction details No shareholder vote or circular required Seek views on the merits of any further disclosure enhancements, including: <ul style="list-style-type: none"> Ex ante timing to support shareholder engagement (subject to market abuse considerations) Requiring additional financial or other information in market notifications that is currently required in a shareholder circular
	Shareholder vote on reverse takeovers	Not required	Reverse takeover subject to similar shareholder approval and information requirements as 'Class 1' significant transaction	Keep votes (and the requirements for a class 1 circular) on reverse takeovers, subject to refining definition
	Shareholder vote to de-list	Not required	Required (75% approval) and controlling shareholder regime applies	<p>Required and controlling shareholder regime applies.</p> <ul style="list-style-type: none"> Seek views on de-listing process and timing

	Key Listing Rules	Standard listing	Premium listing	New single category proposals
	Shareholder vote on discounted share offers	Not required	Required	Required

(Source: [CP23/10](#))

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Endnotes

¹ For further details on the FCA's discussion paper [DP22/2](#), see this Latham [blog post](#).

² According to the FCA's data, there are 328 listings of shares on the standard segment of which 167 are equity shares in commercial companies. Of these commercial companies, 96 are UK companies and the remainder based overseas. In addition, there are 140 GDR issuers listed on standard segment.