

UK listing regime reforms to promote greater access and flexibility on public markets

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On 26 May 2022, the FCA published a discussion paper seeking further views as to how it can make the UK listing regime and the applicable listing rules more effective, easier to understand and flexible. Amongst the possible reforms, the FCA is asking for views on a new single listing segment for equity shares of commercial companies, which would replace the current premium and standard segments for such issuers.

Discussion Paper (DP 22/2) follows the publication of:

- [Lord Hill's UK Listing Review](#) in March 2021, which included a recommendation that the FCA should rebrand and remarket the standard listing segment; and
- [Consultation Paper \(CP 21/21\)](#) in July 2021, which included a discussion on the purpose of the UK listing regime and proposed four potential models as to how the regime could be re-structured. The consultation closed in September 2021.

In [DP 22/2](#), the FCA: (i) summarises and responds to the feedback solicited by CP 21/21 in relation to the future structure of the UK listing regime; and (ii) seeks views on several possible reforms to the UK listing regime. The possible reforms and issues the FCA is seeking views on are summarised below.

Single segment regime

In what would constitute a restructuring of the current UK listing regime, the FCA is considering whether to establish one listing segment for equity shares in commercial companies as compared to the current two-segment regime (premium and standard segments). The new single segment would feature:

- a single set of eligibility criteria (so there would be no “quality” differential between different issuers);
- a robust, minimum set of ‘mandatory’ continuing obligations, which would focus on: (i) transparency; (ii) protecting shareholders where management or a significant shareholder’s interests may be different from that of ordinary shareholders; and (iii) areas such as dilution, where a lack of transparency and accountability could be detrimental to investors; and
- further ‘supplementary’ additional obligations, the adoption of which would be optional for issuers. These would consist of those current premium listing requirements that provide for an enhanced role for shareholders in holding an issuer to account on an ongoing basis.

The FCA would intend that all listed companies in the new segment would require a sponsor in the same way as the current premium listing regime (see paragraph below titled “The Sponsor Regime” for more detail).

Eligibility criteria for a single segment regime

The eligibility criteria for the new single segment would be based on those which currently apply for the premium segment, save that the FCA is considering removing the financial eligibility requirements, being:

1. a three-year representative revenue earning track record;
2. three years of audited historical financial information that represents at least 75% of the issuer's business; and
3. a 'clean' or unqualified working capital statement.

Instead, the FCA is proposing to move to a disclosure-based regime, allowing investors to decide whether to invest based on the applicable prospectus disclosures about the quality of the issuer.

The FCA comments that, for a disclosure-based regime to function effectively, it would need to ensure that the financial disclosure requirements in the new prospectus regime relating to admissions to trading are sufficiently robust. As part of this exercise, the FCA would consider specific places where the Listing Rules currently differ from the prospectus requirements, such as in relation to the age of audited information and complex financial histories.

Listing Principles and dual class share structures (DCSS)

The FCA is seeking views on:

- whether to apply the Premium Listing Principles to all listed companies in the single segment regime. Among others, this would require the principle of ‘one shareholder one vote’ to be respected by all companies listed in the new single segment; and
- how companies with DCSS should be treated in the new regime. One option would be to permit the form of DCSS recently introduced to the premium listing segment (see our [December 3, 2021 client update](#)). The FCA concedes that this would remove some of the existing flexibility in the current standard listing segment's eligibility requirements but considers that it may not be appropriate to move to a more permissive form of DCSS in the single segment regime (given the FCA's intention to maintain high levels of transparency, corporate governance and shareholder protections).

Continuing obligations

As set out above, under the proposed single segment regime, the FCA would reclassify the continuing obligations in the Listing Rules into two groups: (i) those which would be mandatory; and (ii) those which would be optional, known as supplementary obligations. Obligations under the UK Market Abuse Regulation and the Disclosure Guidance and Transparency Rules would continue to apply as part of the wider continuing obligations requirements. The FCA would monitor and enforce against listed companies in relation to all applicable requirements, including the supplementary continuing obligations, where appropriate.

Issuers would decide at the point of listing whether the supplementary continuing obligations were suitable for them and their prospective shareholders. Once listed, moving in and out of the supplementary regime would be analogous to moving listing segments currently and require shareholder approval, where appropriate.

To avoid complexity, the FCA considers that issuers would need to opt into all or none of the supplementary continuing obligations. An alternative would be to allow additional flexibility by allowing issuers to opt in and out of a wider range of requirements, but the FCA is concerned that this might lead to a lack of transparency over which shareholder protections apply to different issuers. Under the proposed regime, the FCA would require each relevant issuer to disclose in its Annual Report as to whether or not it has opted into the supplementary continuing obligations.

Mandatory continuing obligations

The FCA's initial view is that, among others, the mandatory continuing obligations should include the following provisions, which currently apply to premium-listed issuers:

- the related party transaction requirements;
- the rules governing rights issues and open offers, including the maximum 10% discount rule which applies to open offers;
- the need to get shareholder approval for a cancellation of an issuer's listing;
- the control of business requirement (retaining the adjusted regime for mineral companies);
- the rules relating to dealings in own securities and treasury shares;
- the annual comply or explain disclosures relating to corporate governance, climate change reporting and diversity and inclusion; and
- the rules governing constitutional arrangements, including pre-emption rights.

The applicable reverse takeover rules would be those which currently apply to standard-listed issuers, with no requirement for a shareholder vote.

Supplementary continuing obligations

The FCA's initial view is that the supplementary continuing obligations would include the following provisions which currently apply to premium-listed issuers:

- the controlling shareholder regime;
- the independent business requirement; and
- the rules regarding significant transactions (including a shareholder vote for reverse takeovers).

Significant transactions regime

The FCA is asking for views as to what factors it should take into account when considering the level of the threshold for Class 1 transactions and as to what threshold would be appropriate. Some feedback to CP 21/21 suggested raising the threshold from the current 25% to 33%.

Index inclusion

The FCA acknowledges that while many respondents to CP 21/21 noted the relationship between the premium listing segment and the FTSE UK series, this is not a matter that is directly within the FCA's control to amend or maintain. The FCA has taken into account how index providers may react to the possible listing regime reforms but notes that such providers may choose to introduce criteria for inclusion that require issuers to adhere to both the mandatory and supplementary continuing obligations and potentially other criteria beyond the listing regime.

Scope of the single segment

As set out in DP 22/2, the single segment would primarily be for equity shares in commercial companies. Accordingly, the FCA would retain separate listing requirements for other types of issuer that are currently listed in the standard listing segment, such as issuers of debt and debt-like securities, issuers of GDRs (albeit the FCA is interested in views as to whether GDRs should be eligible for listing in the single segment) and SPACs (although the FCA notes that following an acquisition, the combined company would likely need to meet the new eligibility criteria for the single segment regime to list its equity shares on the Official List).

The FCA also intends to maintain flexibility for overseas issuers to have a secondary listing in the UK under the current standard listing regime, although it will consider whether to introduce criteria to ensure that such issuers have a primary listing elsewhere before they are admitted under such conditions. Equally, the FCA intends to maintain the current regime

which applies to closed-ended investment funds (in Listing Rule 15) but is interested in views as to any potential reforms.

Branding of listing segments

Under the proposed single segment regime, differences in regulatory requirements would be based on the type of issuer and/or the type of instrument that is listed, which would determine which listing rules applied. In general terms, there would not be a two-tier market as is currently the case. While one group of listed companies would be able to opt to enhance their listing in the form of the supplementary continuing obligations, and the FCA would ensure that this is clearly labelled, the FCA notes that this would not be the step change that currently exists between the premium and standard listing requirements. Companies would simply be listed in the UK or denoted as having a 'UK Listing'. The FCA has asked for views as to whether the 'UK Listing' description would be appropriate.

Transitional provisions

Existing standard listed companies

It is likely that transitional provisions would be introduced to allow standard listed companies that are unable or unwilling to meet the obligations within the new single segment to retain their listing in the standard listing segment. Alternatively, those standard listed issuers that wanted to move to the new single segment could undergo an eligibility assessment with the FCA and do so.

Existing premium listed companies

The FCA considers that moving all premium-listed companies as a block to either the mandatory only or mandatory and supplementary continuing obligations is unlikely to be appropriate. Shareholders and listed companies would be encouraged to have an open conversation about whether the supplementary continuing obligations are appropriate for each listed company. The FCA suggests that one way of achieving this would be to require a shareholder vote by each premium listed company, to determine whether the supplementary continuing obligations are appropriate for them. A period could be specified for listed companies to consider what they would prefer and then propose a resolution to be put forward at their AGM.

The sponsor regime

Reacting to feedback from some respondents to CP 21/21, the FCA is seeking views on potential improvements to the sponsor regime, in particular in relation to sponsor record keeping requirements (including whether these could be reduced without undermining the benefit of the sponsor regime) and sponsor remuneration (including whether more transparency as to how sponsor fees are calculated might help issuers and investors to better understand sponsor services and the role of a sponsor).

More generally, the FCA is seeking views as to whether the role and purpose of the sponsor regime should generally remain the same as now but be expanded to all issuers of equity shares in commercial companies in the new single segment. Adopting this position would mean that listed companies that may have otherwise opted for a standard listing currently, where the sponsor regime does not apply, would come under the scope of the sponsor regime for the purpose of initial listing.

The extent to which a sponsor would be required after initial listing, as part of fulfilling the continuing obligations of issuers in the single segment, would depend on the chosen design of the new single segment regime (chiefly whether the division between mandatory and supplementary continuing obligations is adopted). For example, the FCA notes that if the significant transaction rules only form part of the optional supplementary continuing obligations, there may be fewer points during an issuer's lifecycle at which it would need to appoint a sponsor.

Next steps

The FCA welcomes feedback on the topics discussed in DP 22/2 by 28 July 2022. It will then provide feedback and consider further whether to issue a consultation paper in due course or whether a further discussion paper is appropriate.

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If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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