

## FCA consults further on major changes to the UK listing regime

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The Financial Conduct Authority has published its long-awaited, further consultation paper seeking views on major proposed reforms to the UK listing regime, and setting out proposals for revised listing rules, including the creation of a single listing category for shares in commercial companies and modified and simplified eligibility and ongoing rules applicable to listed companies.

[Consultation Paper \(CP 23/31\)](#), follows the publications of the Financial Conduct Authority's (FCA) previous [Consultation Paper \(CP 23/10\)](#) (see our [client update](#)) in May 2023 and [Discussion Paper \(DP 22/2\)](#) (see our [client update](#)) in May 2022. The FCA has retained the majority of its proposals for listing regime reform set out in its previous consultation CP 23/10 and is proposing a number of additional changes intended to further simplify the rules and encourage UK listings, highlights of which are summarised below.

### Which proposals have changed or developed further since CP 23/10?

#### Dual class share structures (DCSS)

The FCA is proposing removing any mandatory sunset period (having put forward a 10-year limit in CP 23/10) on enhanced voting rights continuing post-listing for companies adopting a DCSS and widening the group of persons who can be issued such shares at listing beyond directors only, to include natural persons who are shareholders or employees (or persons established for the sole benefit of, or solely owned and controlled by such directors, shareholders or employees). In addition, in a change in approach as to the circumstances in which specified weighted voting rights can be exercised, the FCA is proposing that other than in relation to approving a reverse takeover and the election or re-election of independent directors (where a company has a controlling shareholder), enhanced voting rights would not be allowed to be exercised by holders of DCSS on matters that are subject to a vote under the Listing Rules, which should be decided upon by a vote of the commercial companies listed class of shares only.

#### Controlling shareholders

Following feedback, the FCA considers that the current controlling shareholder regime for premium listed companies continues to serve an important function and will be retained. The FCA is proposing to retain a requirement that an applicant with a controlling shareholder must demonstrate that, despite having a controlling shareholder, the applicant is able to carry on its main business activity independently from such controlling shareholder.

The FCA is proposing to carry over the current eligibility requirements and continuing obligations in relation to controlling shareholders largely unchanged, including the requirement for a written and legally binding agreement with the controlling shareholder which is intended to ensure that the controlling shareholder complies with specified undertakings. In addition, the FCA is also proposing to carry over the existing premium listing approach within the new ESCC category for approving cancellation of listing and the election or re-election of independent directors when the company has a controlling shareholder.

## Significant transactions

In addition to the FCA's existing proposals for simplifying the rules governing significant transactions by (i) removing the requirement for a shareholder vote or circular in connection with class 1 transactions (except for a reverse takeover), and (ii) removing the 'profits test' currently used to classify significant transactions, the FCA is proposing a new enhanced market notifications regime for 25%+ transactions, intended to provide key information. based on existing class 2 notification requirements and elements of the financial information required for class 1 circulars currently in Listing Rule 13 with modifications, including target historical financial information (for at least two years, where available), but not mandating working capital statements or restated historical financial information. These disclosure requirements would be supported by an overarching obligation on 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.

These changes would mean that financial information published in connection with notifications will no longer be subject to mandatory third-party scrutiny. As such, the role of advisers in the preparation of financial information for a notification for a significant transaction (or a circular for reverse takeovers) would be at the discretion of the issuer. Issuers will still be required to appoint a sponsor when it seeks individual guidance in relation to a significant transaction or requests an FCA waiver or modification of the Listing Rules requirements for significant transactions, including on the class tests (with the FCA dropping its previous proposal to grant sponsors more discretion to apply appropriate modifications to the class tests without having to submit a request for the FCA to modify such tests).

The FCA is also proposing new guidance on whether a transaction is to be assessed as within or outside of the issuer's ordinary course of business – by clarifying that, for example, transactions that are undertaken to support the existing business may be ordinary course even if not regularly undertaken as part of the day-to-day business activities.

## Listing categories

The FCA has retained its cornerstone proposal to create a new single listing category for commercial companies (equity shares) category or ESCC to replace the current premium and standard segments. The initial and ongoing obligations which currently apply both to the premium and standard segments would apply to the ESCC (for example, a minimum free float of 10% and a minimum market capitalisation of £30 million). The FCA has confirmed that all companies on the ESCC category need to adhere to the UK Corporate Governance Code on a "comply or explain" basis.

In addition to the new ESCC category, CP 23/31 sets out greater detail on the FCA's proposed separate listing categories for equity shares of closed ended investment funds, open ended investment companies, shell companies and SPACs, international secondary listings (i.e., for non-UK incorporated companies with more than one listing where 'primary' listing is on a non-UK market) and discrete categories for non-equity shares and non-voting equity shares and other debt and debt-like categories.

A transition category (based on the current rules for standard listed shares) is proposed for commercial companies currently with an existing standard listing wishing to move to the ESCC category in the future (and who are not categorised by the FCA at the time of implementation of the new rules to move into the shell companies category or international secondary listing category). Unlike the transition category, the secondary listing category is proposed to be open to new applicants subject to meeting specific eligibility criteria and continuing obligations.

## What proposals remain consistent with those proposed in CP 23/10?

## Eligibility requirements

The FCA has retained its proposal that the current premium listing eligibility requirements for a three-year representative revenue earning track record; three years of audited historical financial information that represents at least 75% of the issuer's business; and a 'clean' or unqualified working capital statement would not apply to the ESCC category. As a result, the existing alternative approaches to these eligibility requirements for specialist companies will no longer be necessary. New applicants will require a sponsor and sponsors will be required to provide declarations to the FCA similar to existing declarations, including whether an issuer has a reasonable basis for making any working capital statement in a prospectus.

In addition, the FCA is proposing that the current premium listing eligibility requirement that imposes a limit on the number of warrants over shares would not apply to the ESCC category, giving issuers more choice in their capital raising and allowing investors more flexibility in how they choose to invest.

## Related party transactions (RPTs)

Consistent with its approach to significant transactions, the FCA has retained its proposal to remove any requirement for a listed company on the ESCC category to obtain independent shareholder approval or produce a shareholder circular in relation to any RPT, including those above the 5% class test threshold. In addition, the FCA proposes that its rules will require the board to approve an RPT excluding any conflicted director from taking part, state publicly in the announcement that the transaction is 'fair and reasonable' as far as its security holders are concerned (having obtained the same confirmation from a sponsor) and make a timely notification containing specific content prescribed by the Listing Rules (based on the current content requirements for announcements of smaller RPTs).

Among other clarifications, changes and consequential amendments to the related party transaction rules, the FCA is proposing to increase the threshold at which a substantial shareholder becomes a related party from 10% to 20%; as with significant transactions, introduce new guidance on the exemption for transactions within the ordinary course of business; and to clarify when a further related party transaction needs to be aggregated with earlier transactions or the issuer is required to comply afresh with the related party rules.

The FCA is also proposing to depart from its previous proposal that an issuer must obtain the guidance of a sponsor on its obligations when it proposes to enter into a transaction that 'may be a related party transaction', on the basis that the issuer should be afforded the same discretion to seek expert advice as per the FCA's proposals for significant transactions.

Further, the FCA is proposing that the related party requirements in DTR 7.3 will not apply to companies listed in the ESCC category, addressing feedback that requiring issuers to be subject to two separate related party regimes is overly complex.

## Initial and continuing obligations

### Independence and control of business

The FCA is proposing to not mandate any eligibility requirements and continuing obligations around independence of business (other than where a controlling shareholder is present) and control of business in the ESCC category. The FCA is proposing to set the scope of the ESCC category such that it is open to issuers that are able to meet the applicable eligibility requirements and continuing obligations and are not a type of issuer for which there exists a separate listing category (for example a shell company or a closed-ended investment fund). Where such a separate listing category exists, the issuer would have to meet the eligibility requirements of that category in order to be eligible for a listing. This would mean that the FCA could refuse a listing of equity shares in the ESCC category if it is not satisfied that the eligibility requirements for the category are met or there is another listing category for the relevant type of entity.

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.

## Listing principles

As envisaged in CP 23/10, the FCA is proposing having one set of Listing Principles to underpin a reformed listing regime, by combining the current Listing Principles and Premium Listing Principles. In addition, as trailed by the FCA, it is proposing to clarify in guidance that a listed company should take reasonable steps to ensure that its directors deal with the FCA in an open and co-operative manner, and that the FCA would expect directors to deal with the FCA in an open and co-operative manner, including when responding to information requests and attending interviews with the FCA.

## Cancellation of listing

The FCA is proposing to keep the current premium listing requirement for a shareholder vote to cancel listings of shares in the ESCC category, including the 75% majority requirement (and additional requirements where a controlling shareholder is involved). It is envisaged that this vote be supported by an FCA approved circular and that the existing notice period of 20 business days following shareholder approval be retained.

## Shareholder vote on discounted share offers

It is proposed that the ESCC category will retain the premium listing requirements for companies to obtain shareholder approval for share issuances with a discount of more than 10% and share buybacks in certain circumstances.

## Sponsor regime

Consistent with CP 23/10, the FCA proposes the sponsor regime applies to the proposed ESCC category; issuers transitioning to the ESCC category from another category; the closed-ended investment fund category; and to SPACs and other shell companies.

The FCA expects the sponsor's role at the time of listing will remain largely unchanged from how it operates currently but taking into account the proposed removal of many existing eligibility requirements, which sponsors would no longer need to assess as part of the requirements for listing in the ESCC category. However, companies would still need to have a prospectus, the content of which would contain historical financial information, including revenue track record, for up to three years, and a working capital statement. The sponsor would still have a role in undertaking reasonable enquiries on an applicant's prospectus, including considering whether an issuer has a reasonable basis for any working capital statement within a prospectus and that its historical financial information is complete and accurate as part of the sponsor assurance provided. As such, the FCA expects the overall due diligence process at initial listing to remain similar. If a company seeks to list that has a more limited track record, the FCA will expect due and careful enquiry by a sponsor.

Under the FCA's proposed reforms, post-IPO, the role of sponsors in supporting issuers listed in the ESCC category would be more targeted, to focus on significant further increases in the issuer's listed share capital involving an FCA approved prospectus (although the FCA will further explore when prospectuses are required for further issuances involving admissions to regulated markets as part of consulting on the public offers and prospectus regime during 2024); related party transaction fair and reasonable opinions; where the issuer is proposing to enter into a reverse takeover; and certain transfers between listing categories.

## Next steps and transitional arrangements

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. To expedite the consultation process, the FCA has split the publication of the draft new UK Listing Rules instrument into two tranches. The first tranche of draft rules is contained in CP 23/31 and focuses on the new regime underpinning the new ESCC category. A second tranche of draft rules for the other listing categories and remaining provisions impacting all issuers, providing the full draft of new UK Listing Rules, will be published in Q1 2024, together with proposed revisions to key FCA Technical and Procedural Notes.

The consultation period on CP 23/31 will be open until 22 March 2024 (other than in relation to sponsor competence where the FCA requests feedback by 16 February 2024), including for comments on the second tranche of the draft UK Listing Rules instrument.

The FCA will aim to publish the final UK Listing Rules via a Policy Statement at the start of the second half of 2024, with a very short period between publication and implementation of the new rules.

Finally, CP 23/31 contains detailed proposals relating to implementation of and transition to the proposed new UK Listing Rules regime, including how existing issuers would be mapped to their relevant listing category at implementation; dealing with applications for premium listing (commercial companies) and for standard listing (shares) that are in-flight at the date of implementation; dealing with applications to transfer between listing categories that are in-flight at the date of implementation; and how the FCA proposes to create a proportionate transfer process to facilitate, post implementation, the transition for certain existing issuers of standard listed shares to the proposed ESCC category, the proposed shell companies category or the proposed secondary listing category. All new listing submissions for eligibility review received on or after the implementation date would be required to be submitted in accordance with the new UK Listing Rules process and requirements.

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