

Insights

FCA PUBLISHES FEEDBACK AND TRANSFORMATIVE PROPOSALS FOR UK LISTING REGIME

21 December 2023

SUMMARY

Following on from the consultation earlier this year, the FCA has published feedback and detailed proposals which will transform the current listing regime. The FCA is proposing to create a single listing category for UK listings of equity shares in commercial companies (the “**commercial companies**” category) replacing the current premium and standard listing categories.

Under the proposals:

- class transactions will no longer require an FCA approved circular or prior shareholder approval (except for reverse takeovers); and
- a related party transaction, where the transaction is above the 5% threshold, will just require an announcement containing a fair and reasonable statement by the board confirmed by the sponsor.

These changes represent a major overhaul of the current listing regime for companies with equity shares and are part of a package of reforms to attract a wider range of companies to list in the UK.

Comments are required by 16 February 2024 for proposals regarding sponsor competence and by 22 March 2024 for any changes to the new proposed UK Listing Rules Sourcebook (“**UKLR**”). There will then be a short period between publication and implementation of the new UKLR, expected in the second half of 2024.

SUMMARY OF THE PROPOSALS:

NEW COMMERCIAL COMPANY CATEGORY

- Merging the existing premium and standard listing segments into a new category for UK listings of equity shares in commercial companies.

- In addition to the commercial companies category, there will be a shell company category together with three new categories to reflect the different issuers and share types currently listed under the standard listed shares category: (i) transition category - see transitional arrangements below; (ii) secondary listing category for commercial company shares in overseas companies; and (iii) non-equity shares and non-voting equity shares category such as preference shares and deferred shares.
- The FCA proposes to replace the current Listing Rules sourcebook with a new sourcebook called the UK Listing Rules sourcebook (“UKLR”).

COMMERCIAL COMPANIES – ELIGIBILITY REQUIREMENTS

- Removal of eligibility rules requiring a three-year financial and revenue earning track record and the need for a ‘clean’ working capital statement. However, prospectuses will still require disclosure of up to 3 years financial information and a working capital statement (which can be qualified).
- Maintain 10% free float requirement and minimum market capitalisation of £30m.
- Control and independence: removing eligibility and ongoing rules requiring that a company has an independent business and has operational control over its main activities.
- Controlling shareholders: based on feedback, the FCA has decided to retain the requirement for independence from a controlling shareholder via a relationship agreement. The FCA also proposes to carry over the existing premium listing approach within the new commercial companies category for approving cancellation of listing and the election or re-election of independent directors when the company has a controlling shareholder.
- Dual or multiple class share structures (“DCSS”): permitting issuers to have DCSS at admission. Enhanced voting rights only to be held by specified persons including directors, natural persons who are investors or shareholders of the issuer and employees of the issuer. There will be no mandated time-based sunset clauses and founders and other shareholders would be able to exercise influence on most strategic matters affecting the future of the company ie. approving a reverse takeover. The FCA expect any negotiations at initial admission may sometimes result in time-based sunset clauses where DCSS is used, and that any period set will reflect investors’ views on the individual(s) benefiting from enhanced voting rights and the strategic intent of the DCSS.

CONTINUING OBLIGATIONS

- Significant transactions: as previously proposed, this will move to a more disclosure-based regime for transactions at the current class 1 threshold (25%) with no prior shareholder approval for significant transactions (except for reverse takeovers). There will be an enhanced

form of market notification for these types of transactions setting out, among other things, details of any break fee arrangements, the effect of the transaction on the listed company together with certain elements of the financial information required for existing class 1 circulars. There will also be new guidance on what constitutes 'ordinary course of business'. 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.

- Reverse takeovers: continuing to require an FCA approved circular and prior shareholder approval for transactions $\geq 100\%$ or involving a fundamental change in business.
- Related party transactions ("RPT"): rationalising the RPT regime by relinquishing the need for a mandatory independent shareholder vote but maintaining the announcement obligations and the statement by the board, having been advised by a sponsor, that the RPT is fair and reasonable.
- Retaining the 75% majority shareholder approval for de-listing without a takeover offer.
- Annual reporting: maintaining comply or explain disclosure against the UK Corporate Governance Code and reporting on climate (TCFD) and diversity.

SPONSORS

- New applications: there will still be a requirement for a sponsor for new applicants, for reverse takeovers and re-admission to listing (if applicable) including providing declarations similar to current requirements.
- Significant transactions: issuers will not be required to appoint a sponsor for significant transactions, but they may still choose to seek guidance from a sponsor firm (in a non-sponsor service capacity).
- RPT: there will no longer be a specific notification or a fair and reasonable opinion from a sponsor for a RPT below the 5% threshold. The appointment of a sponsor by an issuer, other than for a fair and reasonable opinion, should only be required if the issuer wants to seek individual guidance from the FCA on their requirements in UKLR, DTR or MAR for RPTs or to seek a waiver, modification or substitution of the provisions of UKLR that apply to RPTs, including the class tests.
- Sponsor regime to support commercial companies, SPACs and other shell companies, and closed-ended investment funds at application stage and on reverse takeovers.
- Focus on value and benefits of sponsor role for issuers, FCA and wider market, re-calibrating supervisory and compliance expectations.

- Proposal to allow wider factors to demonstrate sponsor competency and extend lookback for relevant experience from 3 to 5 years (note comments on this proposal are subject to a shorter comment period).

TRANSITIONAL ARRANGEMENTS

- Existing premium listed issuers would be automatically mapped to the new commercial companies category once the new regime goes live.
- Certain existing standard listed commercial companies would be mapped to a new 'transition' category, which would replicate existing standard listing continuing obligations but would be closed to new entrants. This transition category would have no fixed end date. Issuers in this category would be able to apply to transfer to the commercial companies category when and if they wish to do so. A sponsor would be required to be appointed in such cases and there would be a targeted eligibility assessment and sponsor role for such transfers.
- Mapping would also take place to move other existing standard listed issuers into the shell companies category and international secondary listing category, based on FCA analysis. if the new UKLR are adopted, the FCA will contact issuers in advance of the prospective changes to notify them of the proposed category.

FTSE INDICES

FTSE Russell have not yet commented on how the rule changes will affect the criteria for index inclusion.

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MEET THE TEAM



Tom Bacon

Co-Author, London

tom.bacon@bclplaw.com

[+44 \(0\) 20 3400 3706](tel:+442034003706)




Tessa Hastie

Co-Author, London

tessa.hastie@bclplaw.com

[+44 \(0\) 20 3400 4516](tel:+442034004516)

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