July 12, 2024

Major Changes to UK Listing Regime

FCA Finalises Most Significant Reforms to the UK Listing Regime in a Generation

SUMMARY

On July 11, 2024, the UK Financial Conduct Authority ("FCA") published its final rules to reform the UK listing regime, with particularly significant implications for listings of equity shares in commercial companies. The FCA's final rules remain broadly as consulted on in December 2023, with certain key amendments as summarised below (see our memorandum on the December consultation here).

The new rules, which will come into effect on July 29, 2024, are the biggest changes to the UK listing regime in over three decades and aim to create a simpler regime, with an increased emphasis on a disclosure-based approach intended to encourage growth and innovation of the UK capital markets and to support a wider range of UK listed companies.

The centrepiece of the reforms is the creation of a single listing segment for equity shares in commercial companies, meaning such companies seeking to list in London will no longer have to choose to apply for a "premium" or "standard" listing. Most significantly, commercial companies will no longer need shareholder approval to carry out significant transactions or related party transactions.

The FCA considers that the main potential benefits of its reforms are the reduction of barriers for London listed companies to participate in global M&A, the reduction of London listed companies' transaction costs and the removal of obstacles to listing in London such that investors will benefit from a wider choice of liquid investments. The FCA recognises that the reforms will remove some protections afforded to investors by the current, more prescriptive listing rules and it is anticipated that the transition from the current rules to a more disclosure-based approach may require investors to enhance their approach to due diligence and risk assessment, placing an onus on companies and investors to engage effectively on transactions without FCA intervention.

On July 29, 2024, the new rules will come into effect, and the existing Listing Rules will be replaced in their entirety by a new "UK Listing Rules" section of the FCA Handbook.

The FCA has made the following key changes in the final rules compared to those previously consulted on:

- Although the requirement that companies must be independent from any "controlling shareholder" (i.e., any shareholder who controls 30% or more of the voting rights) has been retained, the requirement for a legally binding agreement with that controlling shareholder has been removed.
- As previously proposed, pre-IPO directors, employees, and natural persons who are investors or shareholders in a commercial company, will be able to hold shares carrying enhanced voting rights. Under the final rules, in addition, pre-IPO investors or shareholders who are not natural persons (e.g., institutional investors) can also hold shares carrying enhanced voting rights but subject to a 10-year sunset period from listing. (Sovereign controlling shareholders will be exempt from this sunset provision.)
- As previously proposed, commercial companies will no longer need to obtain shareholder approval to carry out "significant" (currently termed "Class 1") transactions (i.e., where any class test for determining whether a transaction is significant is 25% or more but less than 100%). The FCA had proposed that a subset of the information previously disclosable in the circular seeking shareholder approval would, under the new rules, need to be disclosed in an announcement made as soon as possible after the terms of the transaction have been agreed. Under the final rules, companies will need to announce certain key information once terms are agreed but will have flexibility to announce other information (e.g., on legal proceedings and material contracts, and, for disposals, historical financial information on the target) by no later than completion. In addition, for acquisitions, audited financial information on the target will not need to be disclosed.
- Under the final rules, the rules governing significant and related party transactions by closed-ended investment funds have been more closely aligned with the rules for commercial companies. A closed-ended investment fund will only need to seek shareholder approval for a transaction that relates to the fees or other remuneration paid by the fund to its investment manager and that is a larger related party transaction (i.e., where any class test is 5% or more).
- Under the final rules, the rules applicable to special purpose acquisition companies ("SPACs") and other shell companies are less prescriptive than consulted on: it will not be mandatory to ring-fence public shareholder funds or to obtain shareholder approval for transactions. The UK listing regime will continue to accommodate a wide variety of SPACs structures.

The following sections of this memorandum set out in further detail key elements of the new rules compared to the current Listing Rules.

SINGLE SEGMENT FOR EQUITY SHARES IN COMMERCIAL COMPANIES

The key elements of the new single listing segment for equity shares in commercial companies seeking to list in London are set out below.

A. SIMPLIFIED ELIGIBLITY CRITERIA

The key eligibility criteria for the commercial companies segment will be as follows:

- If the issuer is incorporated in a country that does not provide for pre-emption rights equivalent to UK statutory pre-emption rights, its constitution must provide for rights which are at least equivalent.
- If the issuer is incorporated outside of the UK and is not listed either in its country of incorporation or in the country in which a majority of its shares are held, the FCA must be satisfied that the absence of the listing is not due to the need to protect investors.
- 10% of the issuer's shares must be in public hands.
- The issuer must have a market capitalisation of at least £30 million.

- For issuers that are externally managed, the issuer's board must have discretion to make strategic decisions and the capability to act on key strategic matters without reference to an individual or entity outside of the issuer's group.

By virtue of the UK's current prospectus regime, up to three years of historical financial information and a working capital statement will need to be disclosed in the IPO or listing prospectus. However, commercial companies will no longer be subject to the current premium listing rules that require three years of audited historical financial information representing at least 75% of the issuer's business and a three-year representative revenue earning track record. Nor will the current requirement to have a "clean" or unqualified working capital statement be carried over. The new regime will therefore accommodate the listing of commercial companies that, for instance, have operated for fewer than three years or cannot make a "clean" or unqualified working capital statement, provided this is disclosed.

B. MORE FLEXIBILITY FOR DUAL CLASS SHARE STRUCTURES

A wider range of dual class share structures will be permitted in the commercial companies segment under the new rules than is currently provided for in the premium segment under the existing rules, within the following parameters:

- Dual class share structures must be put in place before an application for listing is made and no further shares carrying enhanced voting rights would be able to be issued after listing.
- Shares carrying enhanced voting rights can only be held by directors, employees, investors or shareholders, or holding entities of such persons, in each case at the time the application for listing is made. Transfer restrictions prevent the voting rights attached to such shares from being subsequently transferred, except to a holding entity of the person to whom the shares were issued.
- Enhanced voting rights can be exercised on all matters at all times, except votes required to: (i) cancel a listing or transfer between listing segments; (ii) approve employee share schemes, LTIPs and discounted option arrangements; (iii) issue new shares at a discount in excess of 10%; and (iv) buy back 15% or more of any class of shares other than by way of tender offer. These exceptions are intended to protect holders of the listed shares from actions that could devalue those shares.
- No specified voting ratio or weighting limits: there are no restrictions on how many more votes a share carrying enhanced voting rights can have compared to a listed share.
- No time limit on when enhanced voting rights expire: the current five-year limit will be removed. As an exception, enhanced voting rights attached to the shares issued to an investor or shareholder that is not a natural person (and that is neither the holding vehicle for a natural person nor a sovereign controlling shareholder) are subject to a sunset period of 10 years from the date the company listed.
- FCA has discretion to modify the rules in exceptional circumstances, e.g., to accommodate the operation of golden shares by sovereign controlled entities.

C. CONTROLLING SHAREHOLDERS REGIME MODIFIED

The FCA has decided to carry over to the new rules a streamlined version of the regime that currently applies where a premium listed issuer has a "controlling shareholder". An issuer with a controlling shareholder will still be required to demonstrate that it can carry on its business independently of its controlling shareholder. However, such issuers will no longer be required to put in place legally binding relationship agreements with their controlling shareholders. Independent shareholders will continue to be granted greater voting power on the election of independent directors and cancellation of listing.

A new requirement will be introduced such that, if a controlling shareholder (or any of its associates) proposes or procures the proposal of a shareholder resolution which a director of the listed company considers is intended or appears to be intended to circumvent the proper application of the new rules, the shareholder circular must include a statement from the listed company's board of the director's opinion in respect of the resolution.

D. RELAXATION OF RULES ON SIGNIFICANT TRANSACTIONS

The new rules will materially relax the rules that currently govern significant transactions by premium listed companies, as follows:

- Removal of the requirements for mandatory sponsor consultation, compulsory shareholder votes and FCA-approved circulars for significant transactions.
  - Instead, significant transactions will require only announcements to be made.
  - Such announcements will need to include a subset of the information currently required to be disclosed in a Class 1 circular. Key transaction details must be announced as soon as the terms of the transaction are agreed. Other information (e.g., on legal proceedings and material contracts, and, for disposals, historical financial information on the target) can be announced later, once it has been prepared, provided the announcement is made by completion.
  - Significantly, a working capital statement will no longer be needed. This applies even for significant transactions undertaken to alleviate financial difficulty. New guidance provides that, where a transaction is entered into to alleviate financial difficulty, the announcement made as soon as terms are agreed should describe the nature, urgency and severity of that financial difficulty.
  - Financial information relating to the target or fairness statements will no longer be required at all for acquisitions.
  - As an exception, mandatory sponsor consultation, compulsory shareholder votes and FCA-approved circulars will be retained for reverse takeovers (i.e., any transaction where any class test is 100% or more or which in substance results in a fundamental change in the issuer's business or in a change in board or voting control of the issuer).
- Removal of all requirements in respect of Class 2 transactions (i.e., where any class test for determining whether a transaction is significant is 5% or more but less than 25%), such that key details of Class 2 transactions will no longer need to be announced.
- New guidance on what sorts of transactions may be exempt from the significant transaction rules on the basis that they are "in the ordinary course of business".

The FCA has proceeded with the proposals to remove compulsory shareholder votes notwithstanding strong opposition from the investor community. The FCA has suggested that such concerns are outweighed by the detrimental impact of compulsory votes on issuers' ability to compete in global M&A. Throughout its consultation process, the FCA has explored other mechanisms by which shareholders could engage with issuers in lieu of a shareholder vote, and has acknowledged that major shareholders, in particular, expect to have regular engagement with an issuer's management and may also be wall-crossed in advance of significant transactions. Significantly, in response to concerns raised, the FCA will clarify its guidance on the selective disclosure of inside information under the UK Market Abuse Regulation (set out in Disclosure Guidance and Transparency Rule 2.5.7G). Previously the guidance provided that an issuer contemplating a major transaction "which requires shareholder support" may selectively disclose details of the proposed transaction to major shareholders as long as the recipients

are bound by a duty of confidentiality. The guidance has been revised to clarify that it extends to selective disclosure made ahead of the announcement of a transaction that will not be formally approved by shareholders – such as significant and related party transactions under the new regime. The FCA has, though, cautioned that it does not consider the adjusted guidance to change how UK MAR applies and has reminded companies that they must continue to consider their wider UK MAR obligations before selectively disclosing information about a transaction to any shareholder.

E. RELAXATION OF RULES ON RELATED PARTY TRANSACTIONS

The new rules will also materially relax the rules that currently govern related party transactions by premium listed companies in the following ways:

- Removal of the requirements for compulsory shareholder votes and FCA-approved circulars for larger related party transactions.
    - Instead, larger related party transactions will require an announcement and will also require a "fair and reasonable" opinion from the issuer's board that is supported by a sponsor.
- Removal of all requirements in respect of smaller related party transactions (i.e., where any class test is 0.25% or more but less than 5%), such that key details of smaller related party transactions will no longer need to be announced and a "fair and reasonable" opinion will no longer need to be given by the issuer's board.
- New 20% ownership threshold at which a shareholder will be considered a related party (increased from 10%).
- New guidance on what sorts of transactions may be exempt from the related party transaction rules on the basis that they are "in the ordinary course of business".

F. OTHER RETAINED CONTINUING OBLIGATIONS

The most significant current continuing obligations of premium listed commercial companies (not discussed above) that will be carried over into the commercial companies segment under the new rules are:

- Mandatory sponsor consultation, compulsory shareholder votes and FCA-approved circulars for cancellation of listing or transfer to another listing segment.
- Mandatory pre-emption rights.
- Compulsory shareholder votes on adoption of certain employee share schemes, LTIPs and discounted option arrangements.
- Matters relating to the conduct of rights issues and open offers, vendor consideration placings and offers for sale or subscription.
- Compulsory shareholder votes on share issuances at a discount of more than 10%.
- Compulsory shareholder votes on certain share buybacks.
- "Comply or explain" with the UK Corporate Governance Code reporting regime.
- "Comply or explain" with the Task Force on Climate-Related Financial Disclosures ("TCFD") reporting regime.
- "Comply or explain" with the gender and racial diversity targets reporting regime.

G. REQUIREMENT TO APPOINT A SPONSOR

Issuers in the commercial companies segment will, under the new rules, be required to appoint a sponsor:

- For an IPO or initial listing.
- For listing applications for further share issuances that require a prospectus.
- To transfer from the commercial companies segment to certain other segments.
- In connection with a significant or related party transaction: (i) if proposing to request that the FCA modifies or waives a relevant rule; (ii) if proposing to submit to the FCA a request for individual guidance; or (iii) to support the board's "fair and reasonable" opinion on a related party transaction where any class test is 5% or more.
- If proposing to enter into a transaction that could amount to a reverse takeover.

A sponsor will no longer need to be appointed simply because an issuer is proposing to enter into a transaction that could amount to a significant or related party transaction.

Shell companies, which will be listed outside of the commercial companies segment, will also need to appoint a sponsor in certain circumstances. (See *Segment for Equity Shares in Shell Companies (including SPACs)* below for the new requirements for SPACs to appoint a sponsor.) Closed-ended investment funds will be required to appoint a sponsor in the same circumstances as commercial companies and, in addition, in the limited circumstances in which they are required to submit a related party transaction circular to the FCA for approval or to obtain a "fair and reasonable" opinion for a smaller related party transaction (see below).

H. SOVEREIGN CONTROLLED COMMERCIAL COMPANIES

The current premium segment for equity shares in sovereign controlled commercial companies will be collapsed into the new commercial companies segment. Certain aspects of the controlling shareholders and related party transactions regimes will, however, be disapplied to sovereign controlled commercial companies.

SEGMENT FOR EQUITY SHARES IN CLOSED-ENDED INVESTMENT FUNDS

All voting equity shares of closed-ended investment funds will continue to be listed in a distinct closed-ended investment funds segment. The segment will be renamed so as no longer to refer to a premium listing.

The rules for listing in the segment will remain substantially the same. The current independence criteria requiring that (i) a closed-ended investment fund's board of directors can act independently of the fund's investment manager and (ii) the chair and a majority of the board are independent will be retained. As a new carve-out, where the fund has an external Alternative Investment Fund Manager ("AIFM") which has delegated portfolio management to another investment manager which is not in the same group as the external AIFM, the fact that a director of the fund is also the director of another investment company

or fund managed by the same external AIFM (or another company in the external AIFM's group) will not prevent that director from being regarded as independent for these purposes.

Significantly, the significant and related party transactions rules applicable to closed-ended investment funds will be materially relaxed in substantially the same way as the rules applicable to commercial companies, with two modifications:

- The current exemption from the rules for significant transactions executed within the scope of the fund's published investment policy will be retained.
- Where a transaction relates to the fees or other remuneration payable to the fund's investment manager (or the manager's group), a compulsory shareholder vote and FCA-approved circular will be required if the transaction amounts to a larger related party transaction and a "fair and reasonable" opinion will be required if it amounts to a smaller related party transaction.

Closed-ended investment funds will therefore never need to seek shareholder approval for a significant transaction and will only need to seek shareholder approval for a related party transaction in the narrow circumstances set out above.

As at present, closed-ended investment funds will be able to list multiple classes of equity shares provided that the aggregate voting rights of the equity shares in each class are broadly proportionate to the relative interests of those classes in the equity of the fund. Where a closed-ended investment fund issues a new class of shares that is ultimately intended to convert into an existing class of shares (so-called "C shares"), the listing segment in which the C shares can be listed will depend on whether or not they carry voting rights prior to conversion. If the C shares carry voting rights, they will be listed in the closed-ended investment funds segment. If the C shares do not carry voting rights, they will be listed in a separate segment for non-equity shares and non-voting equity shares (see below).

SEGMENT FOR EQUITY SHARES IN SHELL COMPANIES (INCLUDING SPACS)

Equity shares of shell companies, including SPACs, will now be listed in a specific segment limited to shell companies actively pursuing an acquisition strategy or whose assets consist solely or predominantly of cash or short-dated securities.

The rules introduced in 2021 disapplying the presumption that a shell company's shares will be suspended from listing on the announcement of a potential acquisition target, provided certain investor protections are in place, will be preserved. One such protection, namely that the shell company has a constitution providing for the winding-up of the shell company if it has not completed an acquisition within 24 months, will become a mandatory eligibility criteria for the shell companies segment but with additional flexibility to extend by 12 months up to three times subject to shareholder approval, which itself can be extended for a further period of up to six months in certain circumstances.

A new regime regulating the "initial transactions" (i.e., the "de-SPAC" transaction) carried out by shell companies will replace the current regime that treats such transactions as reverse takeovers. An "initial transaction" will encompass any of the following, however effected:

- The acquisition of a part of or the entirety of a business, a company and/or assets.

- The entry into a loan or any form of financing agreement.
- The entry into a joint venture agreement.

This definition is broader than the current definition of a "reverse takeover", which does not capture financing or joint venture agreements. It also does not rely upon the class tests − with a test of 100% meaning that the transaction is a reverse takeover − or, alternatively, require there to be a fundamental change in the shell company's business or board or voting control. Instead, a transaction of any size or significance to the shell company could constitute an initial transaction. New guidance provides that the first transaction a shell company enters into will generally constitute an initial transaction.

Shell companies will need to do the following in relation to an initial transaction:

- Instruct a sponsor to contact the FCA as early as possible before the announcement of an initial transaction which has been agreed or is in contemplation to discuss whether a suspension of the shell company's shares from trading is appropriate (or, where details of the initial transaction has been leaked, to request a suspension).
- Obtain board approval before an initial transaction is entered into and ensure that any director connected with the target or who has a conflict of interest in relation to the target does not take part in the board's consideration of the initial transaction or vote on the relevant board resolution.
- Make a public announcement as soon as possible after the terms of an initial transaction are agreed, setting out information on the transaction.

Contrary to the FCA's December consultation, shareholder approval of initial transactions will not be mandatory and therefore the FCA will not need to approve shareholder circulars. (However, shareholder approval is still needed to take advantage of the rules disapplying the presumption that the shell company's shares will be suspended.)

The continuing obligations for shell companies will otherwise be carried over from the (limited) continuing obligations under the current standard segment. Existing exemptions for shell companies from certain disclosure requirements will be preserved (e.g., exemptions from the carried over TCFD and diversity targets reporting regimes).

Under the new rules, shell companies will be required to appoint a sponsor at IPO or initial listing, for listing applications for further share issuances that require a prospectus, if proposing to enter into a transaction that could amount to an initial transaction and on any application for re-admission to listing following a successful acquisition. Currently, shell companies do not need to appoint a sponsor save where applying for listing following completion of a reverse takeover.

OTHER NEW SEGMENTS, AND RETAINED SEGMENTS

In addition to the new single segment for equity shares in commercial companies and the new segment for equity shares in shell companies, the following new segments will be created for listing shares. Together with the segment for equity shares in shell companies, these will replace the current standard segment.

- **International secondary listing.** This segment will be open to issuers incorporated outside of the UK that have a primary listing of equity shares in another jurisdiction. A targeted set of eligibility

criteria will include that the issuer's central place of management and control is located in either its jurisdiction of incorporation or its place of primary listing − although the FCA may dispense with this requirement on a case-by-case basis, including in circumstances where the FCA is satisfied that the issuer's operational and governance arrangements are not intended to reduce, and do not have the effect of reducing, the FCA's ability to monitor an issuer's compliance with the new listing rules and other applicable rules. The shares to be listed in the UK must be of the same class as are listed overseas. In the final rules, the FCA has clarified that the segment will be open to companies that have foreign private issuer status in respect of a U.S. listing (or its equivalent in other jurisdictions). The continuing obligations for this segment will be modelled on the (limited) continuing obligations of the current standard segment. Issuers will also need to make an annual corporate governance statement setting out, amongst other things, the corporate governance code to which the issuer is subject or which the issuer voluntarily applies (rather than "comply or explain" with the UK Corporate Governance Code). Companies will also be required to notify the FCA of any non-compliance with the rules of the company's home listing.

- **Transition.** This segment will maintain the *status quo* for existing commercial companies that are issuers with a standard listing of shares for whom it is their only or primary listing. The continuing obligations for this segment will be carried over from the (limited) continuing obligations of the current standard segment. The segment will not admit new applicants. The FCA does not propose to limit the time period during which issuers can remain in this segment. However, it will keep this under review and may, subject to consultation, seek to wind down the segment in the medium term if few issuers remain and the FCA considers it is no longer necessary.
- **Non-equity shares and non-voting equity shares.** This segment will be open to listings of non-equity or non-voting shares, such as preference shares and deferred shares. The eligibility criteria and continuing obligations for this segment will be carried over from the (limited) criteria and obligations of the current standard segment.

The FCA proposes to retain the following further listing categories:

- Open-ended investment funds (current Listing Rule 16A).
- Debt and debt-like securities (current Listing Rule 17).
- Certificates representing certain securities (depositary receipts), renamed from "Certificates Representing Certain Securities" (current Listing Rule 18).
- Securitised derivatives (current Listing Rule 19).
- Warrants options, and other miscellaneous securities, renamed from "Miscellaneous Securities" (current Listing Rule 20).

The requirements for the above listing segments will be carried over largely without substantive amendment, save that the "certificates representing certain securities" segment will now only admit certificates representing equity securities in non-UK companies.

The current Listing Principles and Premium Listing Principles will be combined into a single set of principles applicable to all issuers listed in any of the new or retained segments. As an exception, existing Premium Listing Principle 3 (equality of voting rights between shares of a listed class) and existing Premium Listing Principle 4 (proportionality of aggregate voting rights between two or more listed classes of shares) will be restated as rules applicable only to commercial companies and closed-ended investment funds.

NEXT STEPS

On July 29, the FCA will "map" all listings into the most applicable of the new listing segments with immediate effect. The FCA has already written to issuers to advise them of the listing segment into which their securities will be mapped.

FTSE Russell has previously confirmed that companies mapped into the commercial companies and closed-ended investment funds segments will remain eligible for FTSE indexation. As a result, FTSE Russell considers that "the immediate impact to the index composition is expected to be minimal on day one of the new regime".

A modified transfer process will apply to issuers mapped to the new secondary listing or transition segments on the implementation date that subsequently wish to transfer to the commercial companies segment. This streamlined transfer process will include an eligibility assessment focussed on the additional requirements of the commercial companies segment, rather than overlapping requirements that the issuer would already have satisfied at the time it was originally listed. A sponsor will need to be appointed for the transition to the commercial companies segment. A similar transfer process will also apply to eligible issuers mapped to the transition segment that wish to transfer to either the shell company segment or the secondary listing segment.

* * *

ABOUT SULLIVAN & CROMWELL LLP

Sullivan & Cromwell LLP is a global law firm that advises on major domestic and cross-border M&A, finance, corporate and real estate transactions, significant litigation and corporate investigations, and complex restructuring, regulatory, tax and estate planning matters. Founded in 1879, Sullivan & Cromwell LLP has more than 900 lawyers on four continents, with four offices in the United States, including its headquarters in New York, four offices in Europe, two in Australia and three in Asia.

CONTACTING SULLIVAN & CROMWELL LLP

This publication is provided by Sullivan & Cromwell LLP as a service to clients and colleagues. The information contained in this publication should not be construed as legal advice. Questions regarding the matters discussed in this publication may be directed to any of our lawyers or to any Sullivan & Cromwell LLP lawyer with whom you have consulted in the past on similar matters. If you have not received this publication directly from us, you may obtain a copy of any past or future publications by sending an e-mail to SCPublications@sullcrom.com.