

January 2, 2024

Major Changes to UK Listing Regime

FCA Publishes Consultation Paper on Most Significant Reforms to the UK Listing Regime in a Generation

SUMMARY

On December 20, 2023, the UK Financial Conduct Authority (“FCA”) published a detailed consultation [paper](#) proposing major reforms to the UK listing regime with particularly significant implications for listings of equity shares in commercial companies. The reforms are broadly consistent with proposals on which the FCA previously [consulted](#) in May 2023 (see our report on the May consultation [here](#)). Alongside the consultation, the FCA has published draft rules for the most significant elements of the revised regime – indicating that the proposals are near-final.

This latest consultation represents a significant milestone in a process of reform that began in 2021, when the UK Listing Review, led by Lord Hill, published [recommendations](#) on how to boost the UK as a destination for IPOs and optimise the capital raising process. The FCA aims to create a simpler UK listing regime with an increased emphasis on a disclosure-based approach that is attractive to a wider range of 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. The FCA has also set out detailed proposals for wider reforms to the UK listing regime. Most significantly, commercial companies will no longer need shareholder approval to carry out significant transactions or related party transactions.

The reforms are motivated by a perception that the current premium listing standards are overly prescriptive and burdensome. The FCA is of the view, based on its engagement with market participants, that there is a need for a reset of the current UK listing regime, with significant parts of the current listing rules no longer accommodating the needs of companies. For instance, the current shareholder approval requirements for significant or related party transactions over a certain size place premium listed companies at a disadvantage when competing with their global peers for M&A opportunities, and growth companies may find the requirements for a premium listing challenging to

meet (such as the requirement to demonstrate a three-year revenue earning track record), whilst a standard listing may not generate the investor interest, liquidity and reputational benefits of a premium listing. 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, 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.

This latest consultation recognises that the reforms will remove some protections afforded to investors by the current, more prescriptive listing rules. The FCA has therefore stated that the transition from prescriptive rules to a more disclosure-based approach may require investors to enhance their approach to due diligence and risk assessment, and will place an onus on companies and investors to engage effectively on transactions without FCA intervention. However, the FCA is of the view that the benefits of increased opportunities for investors may outweigh the benefits of the current, more prescriptive rulebook.

The FCA's proposed reforms to the listing regime are part of a wider package of measures to reform the UK's capital markets that has followed in the wake of the UK Listings Review and the UK's withdrawal from the European Union. The Secondary Capital Raising Review into how companies listed in the UK could raise equity financing more quickly and at less expense (on which we reported [here](#)) continues to be implemented. In addition, following publication by the UK Government in 2023 of a [draft statutory instrument](#) setting out a legislative framework for a new UK prospectus regime, the FCA has announced that it will consult on rules for when prospectuses will be required in summer 2024.

Given the breadth of the reforms, the FCA proposes to replace the existing Listing Rules in their entirety with a new "UK Listing Rules" section of the FCA Handbook.

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 ELIGIBILITY 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 capability to act on key strategic matters without reference to an individual or entity outside of the issuer's group.

SULLIVAN & CROMWELL LLP

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 than is currently provided for in the premium segment, 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 be held only by directors, employees, natural persons who are investors or shareholders, or holding entities of such persons, in each case at the time the application for listing is made, with related restrictions on transfers of such shares.
- Enhanced voting rights can be exercised on votes on all matters at all times, except votes required under the UK Listing Rules 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 restricting 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.
- FCA 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 RETAINED

The FCA has decided to carry over the regime that currently applies where a premium listed issuer has a "controlling shareholder" (i.e., any shareholder who controls 30% or more of the issuer's voting rights). An issuer with a controlling shareholder will still be required to demonstrate that it can carry on its business independently of its controlling shareholder, and to enter into a legally binding relationship agreement with its controlling shareholder. Independent shareholders will also continue to be granted greater voting power on the election of independent directors and cancellation of listing.

D. RELAXATION OF RULES ON SIGNIFICANT TRANSACTIONS

The FCA proposes materially to 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" (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%).

- Instead, significant transactions will require an announcement only.
- Such announcements will need to include some, but not all, of the information currently required to be disclosed in a circular to shareholders to approve a Class 1 transaction, such as risk factors and historical financial information on the target.
- Significantly, a working capital statement will no longer be needed. This applies even for significant transactions undertaken by issuers facing financial difficulty. Instead, an enhanced disclosure regime will apply in such cases.
- 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. In the consultation, the FCA suggests that such concerns are outweighed by the detrimental impact of compulsory votes on issuers' ability to compete in global M&A. The FCA reports that it has explored other mechanisms by which shareholders could engage with issuers in lieu of a shareholder vote, and acknowledges 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. However, the FCA does not intend to relax its guidance on the selective disclosure of inside information (in spite of it acknowledging that it received feedback from the legal profession suggesting that it should do so) – policing selective disclosure is a key area of focus for the FCA, having formed part of a recent disciplinary [decision](#) by the FCA in August 2022 and been the subject of a [Primary Market Bulletin](#) issued by the FCA in December 2023. It therefore remains to be seen whether, and if so how, the FCA's view set out in the consultation that issuer boards should be incentivised to keep larger shareholders informed of potential significant transactions can be reconciled with the FCA's increasingly stringent approach to selective disclosure generally.

E. RELAXATION OF RULES ON RELATED PARTY TRANSACTIONS

The FCA also proposes materially to 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 (i.e., where any class test is 5% or more).
 - 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, 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 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.¹
- “Comply or explain” with the gender and racial diversity targets reporting regime.²

G. REQUIREMENT TO APPOINT A SPONSOR

Issuers in the commercial companies segment will be required to appoint a sponsor:

- At 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 also be required to appoint a sponsor at IPO or initial listing, for listing applications for further share issuances that require a prospectus, for any requests to the FCA for individual

¹ Currently also applies on a standard listing.

² Currently also applies on a standard listing.

guidance, and for any aspect of the significant transactions or related party transaction regime that will be applied to closed-ended investment funds.

H. SOVEREIGN CONTROLLED COMMERCIAL COMPANIES

The FCA proposes to collapse the current premium segment for equity shares in sovereign controlled commercial companies 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 SHELL COMPANIES (INCLUDING SPACS)

Equity shares of shell companies, including SPACs, are currently listed in the standard segment. The FCA proposes to introduce a specific segment for such shares. The segment will be limited to shell companies actively pursuing an acquisition strategy or whose assets consist solely or predominantly of cash or short-dated securities.

The FCA intends to preserve the rules [introduced](#) in 2021 that disapply 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. Two such protections are proposed to become mandatory eligibility criteria for the shell companies segment, namely:

- A constitution that provides for the winding-up of the shell company if it has not completed an acquisition within 24 months (extendable in certain circumstances).
- Adequate binding arrangements for the ring-fencing of public shareholders' funds.

Continuing obligations for the shell companies segment will be carried over from the (limited) continuing obligations of the current standard segment, except where they do not currently apply to shell companies (e.g., the TCFD or diversity targets reporting regimes).

Initial acquisitions by issuers in the shell companies segment will be governed by similar rules to those that will apply to reverse takeovers by issuers in the commercial companies segment, including the requirements for mandatory sponsor consultation, shareholder approval and an FCA-approved circular (but with any founding shareholder, SPAC sponsor or director excluded from voting).

New rules will require shell companies to appoint a sponsor at IPO, for listing applications for further share issuances that require a prospectus, and on any application for re-admission to listing following a successful acquisition.

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 FCA proposes to create the following new segments for listing shares. Together with the segment for equity shares in shell companies, these will replace the current standard segment.

- **Equity shares (international commercial companies 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 are proposed, including that the issuer's central place of management and control is located in either its jurisdiction of incorporation or its place of primary listing. The shares to be listed in the UK must be of the same class as are listed overseas. 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.
- **Equity shares (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 listing segments:

- Closed-ended investment funds (current Listing Rule 15).
- Open-ended investment funds (current Listing Rule 16A).
- Debt and debt-like securities (current Listing Rule 17).
- Certificates representing certain securities (depository 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 are expected to be carried over largely without substantive amendment but with some changes, for example to certain of the requirements of significant transactions and related party transactions by closed-ended investment funds.

The FCA also proposes to combine the current Listing Principles and Premium Listing Principles 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 the commercial companies and closed-ended investment funds segments.

NEXT STEPS

The first tranche of draft rules to implement the new regime, focused on the new commercial companies segment, was published alongside the consultation. In Q1 2024, the FCA proposes to publish a second tranche of draft rules comprising draft rules for the other segments and other provisions impacting all

issuers. Feedback on the consultation paper, and on both tranches of draft rules, is due by March 22, 2024. The FCA then intends to publish a policy statement and final rules at the start of the second half of 2024. It is expected that the new regime would take effect as of an implementation date two weeks after the publication of the final rules.

The consultation also included proposals, beyond the scope of this memorandum, on competence requirements for sponsors. Comments on these proposals are due by February 16, 2024. The FCA intends to implement those proposals within the existing Listing Rules in the spring of 2024, and then carry the changes over to the new rules.

PROPOSED IMPLEMENTATION PROCESS

On the implementation date, the FCA proposes to “map” all listings into the most applicable segment with immediate effect. In summary:

- All equity shares currently listed in the premium listing (commercial companies) segment will be mapped into the new commercial companies segment.
- There are currently no equity shares listed in the premium listing (sovereign commercial companies segment), but any such shares would also be mapped into the new commercial companies segment.
- The FCA will assess and determine whether voting equity shares currently listed in the standard segment will be mapped into the new secondary listing segment, the new transition segment or the new shell companies segment, as appropriate.
- Non-equity or non-voting equity shares currently listed in the standard segment will be mapped into the new non-equity shares and non-voting equity shares segment.
- All securities listed in the retained segments will remain in their existing segment.

The FCA has proposed a modified transfer process for 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 would 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 would need to be appointed for the transition to the commercial companies segment. A similar transfer process would 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.

COMMENT

Following publication of the FCA’s May 2023 consultation, we noted that the FCA’s proposals will establish a more permissive UK main market listing regime for commercial companies that is more closely aligned with the UK’s main international competitors. This remains the case. In general terms, the proposals represent a move away from prescriptive rules largely towards a disclosure-based approach.

The FCA’s confirmation that it proposes to remove shareholder votes on significant and related party transactions is particularly welcome from the perspective of commercial companies. It will bring the UK

into line with most other jurisdictions, and remove a disadvantage London listed companies face when competing for M&A opportunities against their international peers or the private markets. As highlighted above, however, it remains to be seen whether, and if so how, the FCA's view set out in the consultation that company boards should be incentivised to keep larger shareholders informed of potential significant transactions can be reconciled with the FCA's increasingly stringent approach to selective disclosure.

The FCA's clarification of how existing issuers of standard listed equity shares will be treated under the new regime is also helpful. Comfort will be taken from the fact that mapping them to new, bespoke segments will largely preserve the *status quo* for those who wish to preserve it.

It remains to be seen how index providers will react to the new listing regime. As the FCA notes in its consultation, the criteria for index inclusion will ultimately be determined by the index providers (e.g., FTSE Russell). As a result, it is not yet known whether all companies listed in the new commercial companies segment will be eligible for index inclusion, or if the index providers will impose additional requirements. FTSE Russell has [announced](#) that it is reviewing the FCA's proposals carefully and will provide a further update during Q1 2024.

Aspects of UK listed company governance that derive from UK company law and other regulation are, of course, unaffected by these reforms. These include binding and advisory votes on directors' remuneration and corporate reporting requirements under the Companies Act 2006 for UK incorporated companies and the FCA's Disclosure Guidance and Transparency Rules.

The wider policy landscape continues to remain relevant to where companies decide to list. The FCA is aware of this. The consultation notes that, "*[i]nvariably, the listing regime is not the only element [...] in decisions made about when and where to take companies public. Influencing other factors that drive those choices – including the macroeconomic environment, taxation, depth of capital markets, valuations, research coverage, indexation, and many other aspects besides – will require others to also act where they have the levers to do so.*" This said, a more accommodating listing regime, taken together with other ongoing efforts to reform UK capital markets regulation, may go some way to levelling the playing field and encouraging companies to decide to list – or to remain listed – in the UK.

* * *

SULLIVAN & CROMWELL LLP

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.