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Changes to the UK Listing Rules

UK Financial Conduct Authority Publishes Final Changes to the UK Listing Rules for Companies Listed on the London Stock Exchange Following Its Primary Market Effectiveness Review

On 2 December 2021, the UK Financial Conduct Authority (the "**FCA**") published a policy statement[1] setting out certain changes to the UK Listing Rules intended to encourage companies to become or stay listed in the UK. These changes follow a recent FCA consultation reviewing the effectiveness of the UK primary markets[2] and form part of the FCA's response to the UK Government's review of the UK listing regime, as discussed in our client memo[3] of March 3, 2021.

The key changes introduce a specific form of dual class share structure for commercial companies within the premium listing segment, an increased minimum market capitalisation requirement for commercial companies, and a reduced minimum free float requirement for the premium and standard listing segments.

The changes to the UK Listing Rules took effect on December 3, 2021.

KEY CHANGES TO THE LISTING RULES

A. DUAL CLASS SHARE STRUCTURES

Previously, commercial companies with dual class share structures were not eligible for a premium listing and could only obtain a standard listing. The new rules are intended to facilitate innovative, founder-led growth companies listing on the premium listing segment, and introduce a specific form of dual class share structure within the premium listing segment through a conditional five-year exception to the existing listing requirement that votes on matters relevant to a premium listing are restricted to holders of premium listed shares only. The effect of this change is that it will now be possible for a company to have a certain type of dual class share structure comprising "specified weighted voting rights shares" that will allow a shareholder (or group of shareholders) to retain voting control over the company for no more than a five-year period and still be eligible to list on the premium segment, provided certain conditions are met. This relaxation only applies to commercial companies, not close-ended investment funds or open-ended investment companies.

The conditions for "specified weighted voting rights shares" are as follows:

- a maximum weighted voting right of 20:1 will be available in two limited circumstances:
    - a vote on the removal of the holder of the specified weighted voting rights shares as a director; and
    - a vote on any matter following a change of control of the listed company (to operate as a strong deterrent to a takeover);
- the specified weighted voting rights shares may only be held by a director of the listed company or, following the death of a director, a beneficiary of the director's estate; and
- the weighted voting rights must have a 'sunset' provision of five years, meaning they are to expire after five years.

B. MINIMUM MARKET CAPITALISATION

The FCA has increased the minimum market capitalisation requirement for all listed securities from £700,000 to at least £30 million in both the standard and premium listing segments. This represents a reduction from the initial £50 million threshold originally proposed by the FCA.

The £700,000 market capitalisation threshold will continue to apply to listing applications made by close-ended investment funds and open-ended investment companies. Companies with existing classes of shares admitted to listing and that continue to have one class of shares listed will also be able to list additional classes of shares based on the £700,000 threshold. This will not be time-limited.

Transitional provisions have also been introduced to allow applicants who are applying to list shares and who have made a complete submission to the FCA for a listing eligibility review as of 4 p.m. on December 2, 2021 to apply for listing based on the £700,000 threshold, provided they have applied to list by June 2, 2023 (within 18 months from when the new rules apply).

A transitional provision has also been introduced to allow already listed shell companies (including SPACs) to make listing applications in connection with business combination transactions based on the £700,000 threshold, provided that complete submissions to the FCA for a listing eligibility review and a prospectus review are made on or before December 1, 2023. This essentially allows shell companies up to two years to find a target and commence the process to list a new entity.

C. MINIMUM NUMBER OF SHARES IN PUBLIC HANDS: "FREE FLOAT" REQUIREMENT

The minimum number of shares in public hands (i.e. the free float requirement) has been reduced from 25 per cent. to 10 per cent. for the premium and standard listing segments, both at the time of listing and as a continuing obligation. This is intended to reduce uncertainty arising from the previous rules, which allowed issuers to apply for modification of the free float requirement in order to list below the 25 per cent. level. The discretionary ability of the FCA to accept a lower free float level has been removed, so a free float of below 10 per cent. will not be available in any circumstances.

FUTURE CHANGES

The aim of the FCA in making these changes is to remove barriers to companies listing in the UK and to encourage private companies to consider listing at an earlier stage, while still retaining high standards for investors, thus leading to the enhanced attractiveness of the UK markets. Moving forward, the FCA has indicated that it will engage in a more detailed review of the financial track record requirements for premium listed companies next year.

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ENDNOTES

1 PS21/22, "Primary Market Effectiveness Review: Feedback and final changes to the Listing Rules" (December 2021, Financial Conduct Authority).

2 CP21/21, "Primary Markets Effectiveness Review" (July 2021, Financial Conduct Authority).

3 S&C Memo, "U.K. Listing Review Recommends Material Reforms to the U.K. Listing Regime" (March 3, 2021, Sullivan & Cromwell LLP).

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