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Major Changes to UK Listing Regime

FCA Proposes Significant Reforms to the UK Listing Rules, Creating a Single Segment for Listing Equity Shares in Commercial Companies

SUMMARY

On May 3, 2023, the UK Financial Conduct Authority (“FCA”) published a consultation [paper](#) proposing significant reforms to the structure of the UK’s listing regime. The reforms go further than [proposed](#) by the FCA last year (see our report on the FCA’s initial proposals [here](#)) and aim to make the UK listing regime more accessible, effective, easier to understand and competitive. They also aim to encourage a more diverse range of companies to list and grow in the UK, especially earlier stage and more innovative or acquisitive companies.

The centerpiece of the reforms is the creation of a single listing segment for equity shares in commercial companies, such that commercial companies will no longer have to choose to apply for a “standard” or “premium” listing.

THE KEY PROPOSED CHANGES

The key proposed changes to the UK’s listing regime are set out below.

A. SIMPLIFIED ELIGIBILITY CRITERIA

The eligibility criteria for the single segment are proposed to be broadly the same as for the current premium listing segment, except for:

- Removal of the requirement for a three-year financial and revenue earning track record: it will no longer be a requirement for a new issuer to have three years of audited historical financial information that represents at least 75% of the issuer’s business and a three-year representative revenue earning track record.
- Removal of the requirement for a “clean” or unqualified working capital statement, with investors relying instead on disclosure in the IPO prospectus.
- Simplified requirements for a new issuer to demonstrate it has an independent business and control of its business, in order to open the single segment to more diverse business models and, potentially, more complex corporate structures.

B. MORE FLEXIBILITY FOR DUAL CLASS SHARE STRUCTURES

A wider range of dual class share structures will be permitted in the single segment than are currently permitted in the premium segment, with the following features:

- Enhanced voting rights that can be exercised on votes on all matters at all times (the only exception being the issue of new shares at a discount in excess of 10%).
- No specified voting ratio or weighting limits restricting how many more votes a share carrying enhanced voting rights can have compared to an ordinary share.
- Dual class share structures can only be put in place at IPO and must expire within 10 years of IPO.
- Only directors can hold shares carrying enhanced voting rights.

C. RELAXATION OF RULES ON SIGNIFICANT TRANSACTIONS AND RELATED PARTY TRANSACTIONS

The FCA proposes to relax the rules that currently govern significant and related party transactions by premium listed companies:

- Removal of compulsory shareholder votes and FCA approved circulars for significant (or “Class 1”) transactions (i.e., where any class test for determining whether a transaction is significant is 25% or more).
 - Instead, key details of Class 1 transactions will require an announcement, as is currently the case for “Class 2” transactions (i.e., where any class test is 5% or more but less than 25%).
 - The FCA is considering further whether such announcements will need to include some of the information that is currently required to be disclosed in a Class 1 circular.
- Removal of all requirements in respect of Class 2 transactions, such that key details of Class 2 transactions will no longer need to be announced.
- Removal of compulsory shareholder votes and FCA approved circulars for larger related party transactions (i.e., where any class test is 5% or more).
 - Instead, key details of larger related party transactions will require an announcement and will also require a “fair and reasonable” opinion from the board that is supported by the issuer’s 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 board.
- Sponsors to have greater discretion to apply modifications to the class tests without FCA approval when advising issuers on Class 1 transactions.

D. “COMPLY OR EXPLAIN” REGIME FOR CONTROLLING SHAREHOLDERS

The FCA proposes to remove the obligation that requires premium listed companies to have a relationship agreement with any controlling shareholder(s) (i.e., any shareholder who controls 30% or more of the voting rights). Instead a “comply or explain” approach is proposed, with the lack of a relationship agreement triggering disclosure requirements and risk factors in the IPO prospectus and annual financial report.

E. OTHER PROPOSED CHANGES

The FCA also proposes:

- To combine the Listing Principles and Premium Listing Principles into a single set of principles that will apply to all companies listed in the single segment.
- To create a distinct listing segment for SPACs and other cash shells, as well as a distinct “other shares” segment for equity shares of overseas companies with a secondary listing, preference shares and deferred shares.
- To consult further on whether the premium listing segment for equity shares in sovereign controlled commercial companies should be collapsed into the new single segment.

F. RETAINED CONTINUING OBLIGATIONS AND LISTING SEGMENTS

The consultation refers to several continuing obligations of premium listed commercial companies that will be carried over into the single segment, including:

- Compulsory shareholder votes and FCA approved circulars 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).
- Compulsory shareholder votes and FCA approved circulars for cancellation of listing.
- When there is a controlling shareholder, independent shareholders being given greater voting power on the election of independent directors and cancellation of a listing.
- Compulsory shareholder votes on share issuances at greater than a 10% discount.
- Compulsory shareholder votes on certain share buybacks.
- Mandatory pre-emption rights.
- “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
- Appointment of sponsor: issuers will be required to appoint a sponsor at IPO; to assist in the classification of significant or related party transactions; and to support the board’s “fair and reasonable” opinion on related party transactions where any class test is 5% or more.

The FCA intends to retain the distinct listing segments for closed-ended investment funds, open-ended investment companies, non-equity securities and depositary receipts. However, the segments will be rebranded so as not to use the “premium” and “standard” terminology. The FCA will consider further whether the rules for closed-ended investment funds need to be aligned with the proposed rules for commercial companies.

¹ Currently also applies on a standard listing.

² Currently also applies on a standard listing.

COMMENT

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. In general terms, the proposals represent a move away from prescriptive rules towards a disclosure-based approach.

As the FCA noted in its consultation paper, there has been a "persistent decline over recent years in the number of UK listed companies". The UK's listing regime is only one factor that may have contributed to that decline. Valuation, liquidity, depth of analyst coverage, governance and norms for executive compensation are other important considerations companies assess when deciding whether to IPO in the UK. That said, a clearer and more accommodating rulebook may decide the balance for some founders, major shareholders and boards.

The proposals for the new single segment should also be considered alongside reforms already enacted by the FCA (including to facilitate SPACs, on which we reported [here](#)), HM Treasury's comprehensive review of the UK prospectus regime (on which we reported [here](#)) and the Secondary Capital Raising Review into how listed companies could raise equity financing more quickly and at less expense (on which we reported [here](#)). Taking this package of reforms together, it is evident that there is regulatory momentum behind making the UK a more attractive place to list – and to stay listed.

A few important considerations remain to be resolved. 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 single segment will be eligible for index inclusion, or if the index providers will impose additional requirements. In addition, it is not yet clear what will happen to the listings of companies that presently have a standard listing but cannot meet, or would be unwilling to meet, the requirements of the single segment. The FCA proposes that they would transfer their listings to the proposed "other shares" segment – potentially on a time limited basis. There is a risk that some such issuers, as well as prospective issuers that could currently meet the requirements of the standard segment but not the new single segment, may look to list elsewhere. FTSE Russell has not yet consulted on changes to its index criteria, whilst the FCA plans to consult further on transitional arrangements for standard listed issuers.

NEXT STEPS

Feedback on the consultation paper is due by June 28, 2023. The FCA intends to publish a further consultation in the autumn, which will include draft FCA Handbook rules to implement the proposals. The autumn consultation will also seek views on how existing standard and premium issuers that are commercial companies should transition to the single segment, as well as other consequential issues. The FCA aims to proceed with the reforms on an expedited timetable, with substantial progress targeted by the end of 2023.

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