

## FCA Releases Consultation Paper on Proposed Reforms to UK Listing Rules

May 8, 2023

Following a stream of high-value companies turning to alternative stock exchanges, the UK's financial regulator, the Financial Conduct Authority (FCA), is taking steps to boost London as an attractive listing venue with wide-sweeping reforms to its Listing Rules. The urgency is clear, as companies considering listing in London may benefit from the new rules as early as 2024.

On May 3, 2023, [the FCA released a consultation paper \(CP23/10\)](#) proposing significant reforms to the UK listing regime. The FCA's stated aim is to help encourage a more diverse range of companies to list and grow on UK markets, especially earlier-stage and more innovative or acquisitive companies.

### The key proposals are:

- A single listing category to replace the current standard and premium segments of the Official List.
- The removal of eligibility rules requiring a three-year financial and revenue earning track record as a condition for listing, and no longer requiring a 'clean' working capital statement.
- Modified and simplified eligibility and ongoing rules requiring that a company has an independent business and operational control over its main activities, to create a more permissive approach to accommodate a range of business models and corporate structures.
- Modified rules requiring listed companies to conclude a shareholder agreement with a controlling shareholder to ensure flexibility by moving to a 'comply or explain' and disclosure-based approach, which also would create a more permissive approach for a wider range of business models and corporate structures.
- A more permissive approach to dual class share structures.
- The removal of compulsory shareholder votes and shareholder circulars for significant transactions.
- The removal of compulsory shareholder votes and shareholder circulars for related party transactions, including where a controlling shareholder is involved, and a controlling shareholder agreement is not in place.

The proposals build on the recommendations set out in Lord Hill's UK Listing Review conducted in 2021 and represent a continuation of the FCA's late 2021 efforts to introduce changes to the Listing Rules to reduce barriers to companies listing in the UK. (For more information, refer to our client alerts on [Lord Hill's review](#) and [the FCA's 2021 reforms](#).)

The FCA acknowledges that further consultation is needed on the proposals in order to move towards draft revised Listing Rules. In addition, the position of FTSE Russell in respect of the inclusion criteria it applies for the FTSE UK indices (including the FTSE 100 and FTSE 250) after these rule changes will be key. The FCA notes in its consultation paper that it will remain open to index providers setting higher or different standards, or creating alternative indices reflecting different users' preferences, should they wish to supplement the standards required by the reformed Listing Rules.

### Summary of key proposals

## New single listing category

The FCA has proposed a new single listing category for equity shares in commercial companies. The proposed single listing category will replace the current premium and standard listing segments of the Official List and is intended to apply to most commercial companies whether they are UK or non-UK incorporated.

## Removed, modified and simplified eligibility and ongoing rules

Under the proposed single listing category, certain eligibility criteria specific to the premium listed segment would be removed. Each case represents an alignment with the less restrictive rules of the standard segment, as outlined below.

**Financial information eligibility:** It would no longer be necessary for companies to demonstrate that they have a three-year financial track record representing at least 75% of their business or a revenue-earning track record before listing, nor to satisfy the FCA that they have sufficient working capital for at least 12 months. (A working capital statement still will be required in the listing prospectus, but in theory it could be qualified.)

**Business model eligibility:** The proposals are designed to better accommodate diverse business models. Currently, applicants for a premium listing need to demonstrate that they carry out 'an independent business' as their main activity and that they exercise operational control over this business. The single listing category is proposed to be more flexible, accommodating issuers with operational businesses that generate, or have the prospect of generating, revenue from their own activities or ventures. This is expected to remove barriers to franchise-type models and those companies making minority investments in other entities, among others. The FCA is exploring a modified form of the current obligations for the new single listing category to achieve these aims.

## Dual class share structures

Currently, companies listing on the standard segment have flexibility around dual class share structures, whereas since 2021 (see the [FCA's 2021 reforms](#)), companies listing on the premium segment can have a more limited form of dual class share structures. The FCA is proposing an approach for the single listing segment that is more flexible than the current arrangements for the premium segment, as follows:

- **Enhanced voting rights would be exercisable on all matters and at all times**, not just to stop a change of control or to protect a founder's position as a director, subject to one exception. The exception would be a requirement that enhanced voting rights shares revert to one share, one vote to approve the issuance of new shares at a discount in excess of 10%.
- **Enhanced voting rights should cease to be exercisable after 10 years**, and enhanced voting rights shares would convert to ordinary shares with one share, one vote (currently, the FCA has set a maximum sunset period of five years for the premium segment).
- **Restrictions on transfer remain.** The FCA proposes to maintain a modified form of the transfer-based sunset provision currently permitted in a premium listing, which would mean that shares with enhanced voting rights will automatically convert to ordinary listed shares upon the holder ceasing to be a director.
- **Enhanced voting rights shares can be held only by directors of the company.** In line with the existing premium listed rules, the FCA proposes that enhanced voting rights can only exist if an individual remains involved in setting the strategic direction of the company for which the FCA uses being a director as a proxy.
- **There are no specified voting ratio or weighting limits.** The FCA proposes removing limits on the maximum enhanced voting ratio that can be attached to enhanced voting rights shares and leaving it to the market to negotiate a suitable level.

We note that these proposals would still mean that dual class share structures available in the UK would be more limited in certain respects than in the US. For example, in the US, it would be typical for all pre-IPO shareholders (not just directors) to receive high-

vote shares and, while sunset provisions are common, there currently is no mandatory requirement in the US for a time-based sunset.

## **Controlling shareholders**

The FCA proposes to reframe the requirement for a controlling shareholder agreement (also referred to as a relationship agreement) under a 'comply or explain' approach. Under the proposal, where an applicant lacks a controlling shareholder agreement (as would currently be required of premium listed issuers), they would instead be required to make specific disclosures and include a discussion of risk factors in their prospectuses and annual financial reports. For those listed entities with controlling shareholder agreements, the FCA also plans to introduce a new market notification requirement if such an agreement is altered post-admission.

## **Significant transactions**

While the premium segment's significant transactions regime will not be abolished, the FCA proposes to amend it for the single listing category such that mandatory shareholder approval of significant transactions and the related shareholder circular preapproved by the FCA will no longer be required (except in the event of a reverse takeover). While class 2 announcements will be retained, the triggering threshold under the class tests will be replaced by the current class 1 threshold of 25%, rather than the current class 2 threshold of 5%. The FCA does not intend to require sponsor signoff or FCA preapproval for these announcements, although a sponsor still would need to be appointed to guide the company on the application of the rules.

While the calculation of the class tests themselves is likely to remain largely unchanged, the FCA proposes that the profits test will no longer apply (given the frequent anomalous results produced), and the FCA is proposing to allow sponsors more discretion to apply appropriate modifications to the class test without a submission to the FCA. Whilst these proposals would considerably reduce the regulatory burden on existing premium listed companies who wish to enter into significant transactions, they will increase the burden on standard listed companies who are not currently subject to the significant transactions regime. This change in approach towards significant transactions will not impact a company's disclosure obligations under the UK Market Abuse Regulation. The FCA flagged that it would set out proposals for transactions undertaken by companies in financial difficulty in the new single listing category in a future consultation paper.

## **Related party transaction (RPT) regimes**

The new regime proposed for the single listing category would replace the two RPT regimes for standard and premium listed issuers. The FCA proposes to dispense with mandatory shareholder approval of RPTs and related requirements for shareholder circulars preapproved by the FCA. The triggering thresholds of the two regimes would be consolidated – meaning that only RPTs exceeding the 5% threshold under the class tests would trigger RPT obligations. These obligations would comprise a market announcement of the transaction containing certain prescribed details about the RPT and including a statement by the board that the RPT is fair and reasonable as far as shareholders are concerned, and that the directors have been so advised by the sponsor. Notably, the disclosure regime on RPTs under DTR 7.3 will be retained, as this has a slightly different scope and is not limited to listed companies, although where the RPT falls within both regimes, compliance with the provisions in the revised Listing Rules will be sufficient.

## **Listing cancellations**

The current rules governing delisting differ for premium listed and standard listed issuers. Given the significant impact delisting has on the transparency and liquidity available to shareholders, and the risk that a larger shareholder may exploit their position to take

private a company to the detriment of other shareholders, the FCA proposes to retain the requirement for a shareholder vote to cancel listings of shares in the single listing category, including the 75% majority requirement (and additional requirements where a controlling shareholder is involved). The FCA also proposes retaining requirements for a supporting circular approved by the FCA and the existing notice period of 20 business days following shareholder approval. These reflect the current rules for premium listed issuers and would therefore increase the burden for issuers with a standard listing.

## Corporate governance

The FCA proposes to apply the existing premium listing provisions relating to the UK Corporate Governance Code requiring 'comply or explain' disclosures in the annual report to companies within the new single listing category.

## What about special purpose acquisition companies (SPACs)?

It is likely that the FCA will, under the new issuer/security-type focused regime, cater for SPACs and other shell companies through a new discrete listing category. Details remain limited, but they can be expected in Q3 2023. Among the high-level considerations set out in the consultation paper was the extension of the sponsor regime to this category, requiring issuers to appoint a sponsor to assist with applications to list and reverse takeover transactions thereafter.

## Not everything will change

The proposed single listing regime will retain aspects of the current Listing Rules. Fundamental eligibility and ongoing listing obligations currently shared by the premium and standard listing segments (e.g., minimum market capitalisation) are not expected to change. For **reverse takeovers**, the requirement for shareholder approval, including the requirement for an FCA-approved circular and readmission with a new prospectus covering the enlarged group will remain. Equally, **shareholder approvals required under other current Listing Rules** (e.g., those governing discounted nonpreemptive share offers where the offer price represents a discount of more than 10% to the current share price and those relating to certain share buybacks) will be retained alongside requirements concerning **climate-related financial disclosures** and **diversity disclosures** already applicable to premium and standard listings.

Rules governing closed-ended investment funds, other share categories such as deferred and preference shares, and debt capital markets are not expected to change significantly. The FCA has made clear that it will ensure the depository receipts mechanisms of the UK listed markets will not be disrupted.

## Timing

The proposed reforms are subject to an accelerated timetable, with possible implementation as early as 2024, but an exact implementation date is yet to be set. For companies already included on the Official List, a transitional period can be expected, which will allow issuers – particularly those with standard listings and therefore likely subject to additional obligations – time to prepare and implement any necessary changes. Further detail on transitional arrangements is expected in Q3 2023.

Consultation on the proposed regime is open for public comment until 28 June 2023 and will involve roundtable discussions with interested groups of market participants.

A further consultation on wider reforms to the UK listing regime is expected in Q3 2023. This will include the draft rules for the single listing category and further detail on proposed approaches to noncommercial companies (i.e., SPACs and other shell companies), among others. If adopted, the proposed rules will be reflected in a new Listing Rules sourcebook.

If you have any questions about the proposed reforms to the UK listing regime, please reach out to any member of the Cooley team listed below.

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