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UK Financial Conduct Authority Changes Listing Rules to Boost Growth and Innovation

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On 2 December 2021, the UK Financial Conduct Authority (FCA) confirmed a series of rule changes designed to remove immediate barriers to listing, make its rulebooks more accessible, and protect and enhance market integrity. These changes came into force on 3 December 2021, except for minor changes to modernise and streamline the rulebooks, which will come into force on 10 January 2022.

High-level summary

The FCA made the following changes:

- Allowing a targeted form of dual-class share structure (DCSS) within the premium listing segment.
- Increasing the minimum market capitalisation threshold for the premium and standard listing segments for shares of commercial companies from £700,000 to £30 million.
- Reducing the free float requirement from 25% to 10%.
- Making minor modernisation amendments to the Listing Rules, the Disclosure Guidance and Transparency Rules, and the Prospectus Regulation Rules.

By making these changes, the FCA aims to reduce barriers to companies listing in the UK and encourage private companies to consider listing at an earlier stage, while still retaining high standards for investors. Encouraging more companies to enter the UK's listed markets will also provide more investment opportunities for investors on well-regulated and transparent listed markets.

The FCA believes that the increase of the minimum market capitalisation threshold to £30 million will reduce the potential for investor detriment due to misconduct or poor compliance by smaller listed companies, and increase confidence in UK listed markets by reducing cases of suspicious trading and potential market abuse.

Background to the review

As part of the FCA's wider ongoing review into the effectiveness of the UK primary markets, the FCA published a consultation paper on 5 July 2021 to:

1. Gather key input on how the FCA could improve the regime to make it more efficient and accessible while keeping high standards for the UK public markets.
2. Consult on targeted changes to remove immediate barriers to listing and to improve the accessibility of its rulebook.

The review is part of the FCA's response to the UK Listing Review chaired by Lord Jonathan Hill and the Kalifa Review of UK FinTech, which highlighted specific elements of the listing regime that act as barriers to the listing of companies.

The changes

Allow a targeted form of dual-class share structure (DCSS)

DCSS involves a class of shares that allows a shareholder (or a group of shareholders) to retain voting control over a company that is disproportionate to their economic interest in the company. The previous Listing Rules

required certain matters in a company to be resolved by the holders of premium listed shares only. Generally speaking, these rules made it impractical for a company with DCSS to list shares in the premium listing segment. However, it was possible for companies with DCSS to list shares in the standard listing segment and several have chosen to do so. For example, Deliveroo and Wise both listed shares in the standard segment with a form of DCSS earlier this year.

The FCA has introduced a conditional five-year exception to such rule, and under the new rules, companies with the specified weighted voting rights shares (as discussed below) will be eligible for the premium listing segment. Five years after the listing, the weighted voting rights would need to be removed or the issuer would need to move to the standard listing segment or cancel its listing.

The exception only applies to a specific kind of DCSS where the class of shares with weighted voting rights meets the following conditions (known as specified weighted voting rights shares):

1. There is a maximum weighted voting ratio of 20-to-1.
2. Shares are only held by directors of the company or, following the death of a director, beneficiaries of such a director's estate.
3. Weighted voting rights are only to be available in two limited circumstances:
    a. A vote on the removal of the holder as a director at any time.
    b. After a change of control, on any matter (to operate as a strong deterrent to a takeover).
4. Shares are converted to ordinary premium listed shares upon transfer to anyone other than a beneficiary of the director's estate.

The FCA believes the new rules on DCSS will encourage innovative growth companies to list on public markets at an earlier stage in their development, which will in turn expand the opportunities available to investors to participate as these companies grow.

Premium Listing Principle 4 under the Listing Rules is not being amended as part of the rule changes. It is still the case that where a listed company has more than one class of securities admitted to premium listing, the aggregate voting rights of the securities in each class should be broadly proportionate to the relative interests of those classes in the equity of the listed company.

Increase the minimum market capitalisation threshold

The FCA has amended the Listing Rules to require that the expected aggregate market value of all securities to be listed on the premium and standard listing segments is increased from its previous threshold of £700,000 to at least £30 million. (The FCA lowered this from the £50 million minimum market capitalisation set out in the consultation, based on feedback received.) This requirement will apply to new listings only and will not be applied as a continuing obligation. The minimum market capitalisation for closed-ended investment funds and open-ended investment companies remains at £700,000.

The FCA also put in place transitional measures that allow:

- Applicants that have made a complete submission to the FCA for a listing eligibility review as of 4 pm on 2 December 2021 to apply for listing based on the minimum market capitalisation of £700,000 provided they have applied to list by 2 June 2023 (i.e., within 18 months from the date the new rules apply).
- Shell companies, including special purpose acquisition companies (SPACs), that have existing listed shares (or have recently cancelled a listing and subsequently reapply to list shares following a reverse takeover) to apply for listing based on the minimum market capitalisation of £700,000. This is provided that they have completed a submission to the FCA for an eligibility review for listing and a prospectus review on or before 1 December 2023 (i.e., allowing such companies up to two years to find a target and start the process to list a new entity).
- Companies with existing classes of shares admitted to listing before 3 December 2021 and that continue to have at least one class of shares listed to list additional classes of shares based on a minimum market capitalisation of £700,000, which is not time-limited.

The above transitional provisions will not be extended to applicants in cases where there has been a material change to their overall business proposition during the transition period.
The FCA believes that raising the threshold will reduce issues arising from the high number of smaller companies that struggle to meet the FCA's expectations when initially listing, and noted that these companies

often have further difficulties in complying with ongoing regulatory obligations and are subject to suspicious trading activity. This change will give investors greater trust and clarity about the types of companies with shares admitted to different markets.

Reduce the free float requirement from 25% to 10%

The FCA has amended the Listing Rules to require a minimum of 10% of shares to be in public hands (known as free float) at admission and as an ongoing requirement, rather than the previous 25%.

This modification is on the basis that a company is able to demonstrate that a liquid market in its shares will exist upon listing. If existing listed issuers breach the 10% level, the FCA would no longer allow them to show that they had liquidity via other means. Instead, the FCA would ask the listed issuer to present a plan for coming back into compliance with the Listing Rules as soon as possible.

The 10% threshold is intended to be the minimum – not a target – and the FCA does not expect that a majority of the listed companies will only maintain a 10% free float. Existing applicants will need to reflect their intention to use a lower free float level under the new rules in their eligibility submission and listing application. As such, an updated Listing Rules eligibility checklist should be submitted with information about the level of free float and the number of shareholders in their listing application.

Minor changes to Listing Rules, Disclosure Guidance and Transparency Rules, and Prospectus Regulation Rules

The FCA will make changes to the Listing Rules, the Disclosure Guidance and Transparency Rules, and the Prospectus Regulation Rules to remove conflicting requirements, some of which result from changes to the EU Prospectus Regulation (EU 2017/1129) made before the UK's exit from the European Union. The FCA will also update for technological changes, for example by removing gender-charged terms and the need for multiple copies of documents.

What comes next?

Apart from the above changes, the FCA will conduct a wider review of the requirements for the financial track record of premium listed companies in response to feedback received during the consultation. The FCA will consider the existing requirement for a three-year revenue track record covering 75% of the applicant's business as part of its work in 2022 on the structure of the listing regime. The FCA will also maintain its approach of engaging with issuers and sponsors to find acceptable and pragmatic ways to meet this rule in the interim where it may pose challenges for some companies.

The FCA received strong engagement and detailed views in relation to the possible models for a new structure to the listing regime, and will provide more information in the first half of 2022, including the proposed next steps.

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