

FCA proposes major changes to the UK's current listing regime

On 20 December 2023, the FCA published consultation paper CP23/31 (the “Paper”) containing detailed proposals for reforms to the UK's existing listing regime (the “Proposals”) following on from various discussion and engagement papers published earlier in 2023. The FCA consultation process will finally close on 22 March 2024 with a Policy Statement to follow mid-way through the year.

The Proposals aim to make the UK a more attractive, flexible and competitive place to list shares particularly in light of a long-term decline in the number of listings and recent headline news of companies such as TUI leaving London to list in Frankfurt and UK companies such as ARM listing in New York. The proposed changes are wide-reaching, particularly in the case of commercial companies, with significant change made to the structure and content of the UK Listing Rules.

We set out our summary of the main points below.

- **New ESCC category:**

The Paper confirms the removal of the current premium and standard listing segments, to be replaced by a single listing for “Equity Shares for Commercial Companies” (“ESCC”) category as first proposed in the FCA's consultation paper CP23/10.

Dual/multiple class structures will be permitted at admission with certain categories of person permitted weighted voting rights (save on certain restricted topics). Importantly, the mandatory sunset clauses for such rights have been dropped (a change from the originally proposed 10 year maximum) following market feedback.
- **New Eligibility Requirements:**

Certain key eligibility criteria will be amended including: an increased minimum market capitalisation of £30 million, reduced free-float requirement (10%) and mandatory pre-emption rights. Changes to the ESCC eligibility requirements include: the removal of the three-year minimum track record and a clean working capital statement. However, the FCA recognises that a prospectus will still require a disclosure of the applicant company's financial track record of up to three years and a working capital statement. It is envisaged that this will ensure companies move towards a disclosure focus regime.
- **Significant Transactions:**

The consultation paper introduces a relaxation to the rules that currently apply to a premium listed company including: changes to class 1 significant transactions (with a threshold of $\geq 25\%$), including the removal of the requirement for a prior shareholder approval but with enhanced market notifications, a removal of the ‘profits test’ and new (and welcome) guidance on what constitutes a transaction in the ‘ordinary course of business’.
- **Notifications:**

Enhanced market notifications regime for class 1 transactions (with a threshold of $\geq 25\%$), which are intended to provide key information including financial information, but not mandating working capital statements or re-stated historical financial information.
- **Related Party Transactions:**

The FCA proposes maintaining a similar approach as set out in the CP23/10, including the removal of the mandatory shareholder vote (and related FCA-approved shareholder circular) for related party transactions at or above the 5% threshold, and no requirement

for any specific notification or a fair and reasonable opinion from a sponsor for proposed related party transactions below the 5% threshold (although the FCA recommends that companies should still continue to consider their MAR (Market Abuse Regulation) or other disclosure obligations in relation to these transactions).

- **Reverse takeovers:**
The FCA is proposing that rules for the commercial companies category carry over the premium listing approach to reverse takeovers, broadly consistent with their CP23/10 proposals. There will be a continuing obligation requiring an FCA approved circular and prior shareholder approval for transactions $\geq 100\%$ or involving a fundamental change in business.
- **Share buy-backs, non pre-emptive discounted share issuances and cancellation:**
The FCA is proposing to retain the substance of the current LR 12 requirements for premium listed shares which they consider to offer sufficient shareholder protections against dilution and transactions with related parties. The FCA is also proposing to carry forward the anti-dilution mechanism in LR 9.2.21R(1) which provides that a resolution on a share buyback required by the listing rules must be approved by the holders of the listed equity shares.
- **Annual Reporting Corporate Governance:**
Obligation to comply or explain disclosure against the UK Corporate Governance Code, reporting on climate (Task Force on Climate-related Financial Disclosures) and diversity, and otherwise maintaining most premium listing annual disclosures.
- **Closed Ended Investment Funds:**
The FCA is proposing to broadly retain the existing obligations under LR 15 with the retention of shareholder votes on material changes to investment policies, management fee changes and certain related party transactions.
- **Sponsors Role in Relation to Closed-Ended Investment Funds:**
The FCA has stated that the sponsor role in relation to closed-ended funds would be retained and broadly remain unchanged. As with commercial companies, a sponsor appointment would be required for any requests for individual guidance from the FCA, or for the waiver or modification of the significant transactions regime, including the class tests, or the related party transactions regime. The sponsor role would also be retained for any other aspect of the significant transactions regime and the related party transactions regime as applied to closed-ended investment funds.
- **Modified Sponsor Regime:**
A revised sponsor regime will apply to support commercial companies, Special Purpose Acquisition Companies (SPACs) and other shell companies, and closed-ended investment funds at application stage and on reverse takeovers. The sponsor's ongoing role will be reserved to further issuance listing applications with a prospectus, providing fair and reasonable opinions for related party transactions, or where issuers seek guidance, modifications, or waivers to FCA rules (including on class tests). According to the FCA there will be a new focus on value and benefits of sponsor role for issuers, FCA and wider market with a re-calibration of supervisory and compliance expectations.

The proposed changes to the Listing Rules are significant in scope and introduce a greater reliance on disclosure by companies and increased emphasis on investors undertaking their own due diligence.

For our VCT clients, we expect the upcoming overhaul of the public offer and admission to trading regime (more on this to follow in a separate article) to have a more significant impact on their regular fundraising activities.

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