

FCA Publishes Discussion Paper on UK Listing Regime and Reforms under Its Primary Markets Effectiveness Review

23 June 2022

Introduction. On 26 May 2022, the Financial Conduct Authority (the “FCA”) published a [discussion paper \(DP 22/2\)](#) (the “Discussion Paper”) setting out its proposed reforms of the UK listing regime and seeking views on its proposals. The Discussion Paper summarises the feedback received by the FCA on certain aspects of its [consultation paper \(CP 21/21\)](#) that was published on 5 July 2021 following Lord Hill’s recommendations relating to the structure of the UK listing regime, including to rebrand and re-market the standard listing segment.

The reforms set out in the Discussion Paper are intended, among other things, to remove the complexity of the UK listing regime, to provide access to listing to a broader range of companies while continuing to set clear and robust ongoing reporting requirements for listed issuers and to empower investors to assess whether listed issuers meet their investment needs through high-quality disclosure.

Key Proposals. The key proposals under the Discussion Paper are:

- to establish a single listing segment for equity shares;
- to set out a single set of eligibility criteria for listing on the single segment;
- to put in place two sets of continuing obligations, one mandatory and one supplementary, which companies may adopt on an opt in basis; and
- to maintain the sponsor regime.

Single Segment. The FCA proposes to establish one listing segment for equity shares of commercial companies, which would involve a single set of eligibility criteria and a minimum (or mandatory) set of continuing obligations, with issuers having the option to adopt supplementary continuing obligations (as discussed below). The regime that currently applies to standard listed companies with securities other than equity shares would be retained (though the Discussion Paper is soliciting comments about whether any additional instruments, such as depository receipts, should be eligible for inclusion in the single segment). Issuers of depository receipts, SPACs and secondary listings by

overseas incorporated companies of equity shares would also continue to be listed on the standard segment. Standard listed issuers who would want to move to the new single segment would have to undergo an eligibility assessment with the FCA.

Eligibility Criteria. The FCA proposes that eligibility for the single segment would be based on the current premium eligibility requirements. Given, however, that certain companies (such as technology and life sciences companies) who would typically seek a premium listing would be unable to satisfy the financial eligibility criteria to do so, the FCA is considering removing the following financial eligibility requirements in favour of a disclosure-based regime:

- the three-year representative track record for revenue earning;
- three years of audited historical financial information representing at least 75% of the company's business; and
- the unqualified working capital statement.

The effect of these proposals would still require companies to make appropriate disclosures in the prospectus while also giving investors greater flexibility to use their own criteria to evaluate the individual characteristics of an issuer when deciding whether to invest in that issuer.

Continuing Obligations. Under the proposals set out in the Discussion Paper, companies listed on the new single segment would be required to comply with one set of mandatory continuing obligations, in addition to the existing obligations under the UK Market Abuse Regulation and the FCA's Disclosure and Transparency Rules. Companies will also have the option to adopt a second set of more stringent supplementary continuing obligations if considered beneficial for them and their investors. For transparency purposes, issuers would be required to disclose in their annual report whether they have opted in to such supplementary continuing obligations.

Mandatory continuing obligations will focus on transparency and shareholder protection in areas of heightened risk (e.g., where the interests of a significant shareholder may conflict with those of the other shareholders). The rules relating to related party transactions, pre-emption rights and the "comply or explain" disclosures relating to corporate governance would also fall under mandatory continuing obligations.

Supplementary continuing obligations would be based on the continuing obligations that currently apply to premium listed companies. Supplementary continuing obligations would include the rules relating to significant transactions, for which the

FCA is considering increasing the threshold for class 1 transactions from 25% to 33%. At the time of listing, companies would have to decide if they wish to adopt the supplementary continuing obligations; companies choosing to opt in would be required to adopt all of the supplementary obligations and would not be permitted to cherry-pick a sub-set of obligations.

Companies that do not opt in to the supplementary reporting regime at the time of listing could later decide to opt in to such supplementary regime; likewise, a company that opts in to the supplementary regime could later decide to opt out of the supplementary regime. The process for doing so would be the same as the process for moving between the standard and premium segments under the current regime (as set out in Listing Rule 5.4A) and may require, amongst other things, a special resolution in favour of the change, the appointment of a sponsor and a notification to the Regulatory Information Service.

Maintaining the Sponsor Regime. The Discussion Paper maintains the importance of the sponsor regime in providing a key assurance role at the time of an IPO or when a company moves from the mandatory continuing obligations regime to the supplementary continuing obligations regime. If the proposed single segment regime for equity share listings is put in place, a sponsor will be required for all commercial companies that wish to list their shares on the London Stock Exchange.

The Discussion Paper seeks views on improving the sponsor regime. The FCA has asked for feedback on improving the transparency of fee arrangements, managing conflicts of interest and taking a more proportionate approach on record-keeping requirements.

Transitioning to the New Regime. If the single segment, as envisioned by the Discussion Paper were to be established, companies currently listed on the standard segment that are unwilling or unable to meet the eligibility requirements for the new single segment may remain listed on the standard segment. Those that wish to move to the new single segment may do so after undergoing an eligibility assessment with the FCA.

Dealing with Dual Class Share Structures. As part of the Discussion Paper, the FCA seeks views on how the proposed single segment regime should treat companies with dual class share structures. One suggested approach could be to admit only companies whose dual class share structures are currently eligible for the premium segment. Dual class share structures currently eligible for the premium segment have weighted voting rights that: (i) have a maximum weighted voting ratio of 20:1; (ii) may only be held by directors of the company or beneficiaries of such a director's estate; (iii) may only be exercised in a vote to remove the holder as a director or, following a change of control, in a vote relating to any matter; and (iv) have a five-year sunset period.

The Discussion Paper notes that this approach would, however, restrict some of the flexibility that applies to the existing eligibility requirements for the standard regime. Given the feedback that the FCA has received to date on the listing regime for dual class share structures, it seems unlikely that the FCA will be reducing the listing requirements for issuers with dual class share structures.

Comment. The proposals set out in the Discussion Paper mark a significant change to the current listing regime. Importantly, the FCA has recognised the need for greater flexibility to attract high-growth companies and to accommodate for the different business strategies of international companies.

The effectiveness of the proposals, if enacted, are likely to depend largely on whether the proposed mandatory continuing obligations are sufficient for FTSE to protect the interests of institutional investors and to include companies who decide to make only the mandatory continuing obligations disclosures in their indices. If FTSE were to require companies to opt in to the supplementary continuing obligations regime as a condition of being included in its indices, then arguably the proposals would not mark a material departure from the current standard/premium regime.

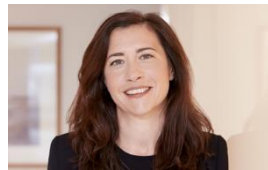
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Please do not hesitate to contact us with any questions.

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