

# FCA Proposes Bold Reforms to UK Listing Process

15 May 2023

## BACKGROUND

On 3 May 2023, the Financial Conduct Authority (the “FCA”) published consultation paper [CP23/10](#), seeking views on its proposed reforms to the UK equity listing regime. The reforms are bold, envisioning a significantly different listing regime, with the goal of attracting issuers and investors to the London Stock Exchange.

One of the main proposals is to combine the premium and standard listing segments into a new single listing category for equity shares in commercial companies with the same eligibility and continuing obligations requirements. However, under the proposals, debt securities and depositary receipts would not be eligible to list on the new single listing category, and thus the current standard listing category would continue to apply to such securities.

The key proposals are summarised below.

## CONSULTATION

### Single Listing Category

As noted above, the FCA proposes to replace the standard and premium listing segments for equity shares with a single listing category, which would be subject to a single set of Listing Rules and related provisions.

While the new single listing category would be available to all commercial companies, the existing premium segment rules would continue to apply to closed-ended investment funds. The FCA will consider making harmonising changes to the premium listing rules that apply to closed-ended investment funds to reflect changes to the rules under the new proposal, with the specialist fund segment continuing to be an alternative listing segment for such funds.

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### **Listing Eligibility**

Under the proposed regime, the existing core eligibility requirements for premium listing, which include the requirement for an FCA-approved prospectus, a minimum 10% free float and a minimum market capitalisation of £30 million, would continue to apply to issuers seeking to list on the new single listing category.

However, in a departure from the eligibility requirements that currently apply to issuers seeking a premium listing, the new single listing category would not require issuers to have the following:

- a three-year audited historical financial information covering 75% of the issuer's business;
- a three-year representative revenue earning track record; and
- a "clean" (or unqualified) working capital statement.

### **Continuing Obligations**

In a prior discussion paper, the FCA had considered a two-tiered continuing obligations framework within the single listing category (see our [article](#) on DP 22/2). In a welcome departure from its previous position, the FCA has now dropped this suggestion, and a single set of continuing obligations would apply across the single listing category.

### **Controlling Shareholders and Relationship Agreements**

The FCA's proposals include a change to the controlling shareholder regime by replacing the current requirement for issuers with a controlling shareholder to put in place a relationship agreement with a "comply or explain" approach. Under the proposal, an issuer without a relationship agreement would instead be required to address the influence of its controlling shareholder through specific disclosures and a discussion of related risk factors in its prospectus and annual financial report.

### **Significant Transactions**

The FCA's proposals also address current requirements applicable to certain significant transactions involving premium listed issuers. The current rules require an issuer to announce the key details of any transaction involving such issuer that exceeds the 5% value threshold under any of the FCA's "class tests" ("Class 1"), while a shareholder vote and circular is required for any transaction in excess of the 25% value threshold ("Class 2"). The FCA's proposals would eliminate the requirement for an announcement for a Class 1 transaction, and only require an announcement for Class 2 transactions.

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Under the FCA's proposals, while the gross assets test, consideration test and gross capital test will be retained, the FCA has identified that the profits test can often be triggered when none of the other tests are, and the FCA is, therefore, proposing to remove the profits test. This change would also apply to thresholds for related party transactions (discussed below).

### ***Related party transactions***

The FCA's proposals would similarly reduce the requirements currently applicable to premium listed companies for related party transactions ("RPTs"). These modifications include:

- eliminating all requirements that currently apply to RPTs of 25% value or less (although, to the extent the transaction constitutes "inside information", the disclosure requirements under the UK Market Abuse Regulation would still apply); and
- only requiring an announcement for RPTs above 25% value, with the announcement including a fair and reasonable statement from the board, in lieu of a shareholder vote and circular.

### ***Independent Business and Control of Business***

Currently, a premium listed company is required to demonstrate that it carries on an independent business and exercises operational control over the business. While the FCA intends to retain that underlying principle, the FCA is considering amendments that would be more flexible for complex corporate structures and diverse business models, including franchise-type models.

### ***Dual Class Share Structures***

The single listing category, if introduced as proposed, would provide further accommodations for issuers with dual class share structures, expanding from changes the FCA introduced in December 2021. In particular, the FCA proposes that enhanced voting rights:

- could be exercised on all matters at all times, with the exception that enhanced voting rights would revert to one share/one vote in respect of approvals of issuances of new shares at a discount in excess of 10%;
- would effectively stop after 10 years, converting to one share/one vote, which would be an increase of the current sunset provision of five years;

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- could only be held by directors, who would be unable to transfer shares with enhanced voting rights, with such shares converting to ordinary shares in the event the holder ceases to be a director; and
  - would not be subject to any weighting limits (currently, enhanced voting shares cannot have voting rights of greater than 20:1).

### RETENTION OF CERTAIN EXISTING REQUIREMENTS

The FCA proposes that the following requirements, currently applicable to premium listed companies, would apply to all companies in the proposed single listing segment:

- shareholder circulars and votes for the de-listing of shares (although the FCA is considering extending the notice period to shareholders for companies considering de-listing);
- shareholder circulars and votes for reverse takeovers;
- shareholder circulars and votes for discounted share offers, where the discount is greater than 10% of the current share price;
- a sponsor regime (which would apply to all equity issuers, including those currently listed on the standard segment, although in a slightly modified form), which the FCA is going to consult further on; and
- obligations regarding pre-emption rights.

In addition, the FCA proposes to retain the “comply or explain” regime of the UK Corporate Governance Code, which would apply to all equity issuers, including those currently listed on the standard segment, and extend the annual reporting requirements under the UK Corporate Governance Code to the single listing category, which includes additional statements from directors on the financial health of the issuer, which are subject to auditor review. The rules relating to climate-related financial disclosures and diversity disclosures, as currently applicable for standard and premium listings, will also be retained in the single listing category.

### Treatment of Listed Debt Securities and Depositary Receipts

The FCA’s proposals address only the equity share regime. Debt securities and depositary receipts would not be eligible for listing on the proposed new single listing

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category, and would instead continue to be subject to the current regime applicable to standard listings. However, in its proposals, the FCA notes the importance of depositary receipts to the London Stock Exchange, and that further details in relation to avoiding disruption to listing depositary receipts will be provided in a consultation paper expected to be published in autumn 2023.

## COMMENT

The FCA's radical proposals reflect its bold vision for transforming the UK listing regime into a more flexible listing regime, in particular for technology and other start-up companies, and make the London Stock Exchange a more attractive listing venue. If implemented, the FCA's proposals would replace the current prescriptive rules-based regime with a disclosure-based approach that would enable investors to assess relevant information, while reducing the cost of compliance for issuers.

As debt securities and depositary receipts would not be able to list on the new single listing category, the listing of those would remain on the standard segment. In addition, while we would expect all issuers listed on the new single listing category to be eligible for inclusion on FTSE indices, FTSE Russell has not yet commented on the FCA's proposals.

The consultation period closes on 28 June 2023, with a draft handbook of rules and wider proposals expected to follow in autumn 2023.

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Please do not hesitate to contact us with any questions.

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