

FCA Publishes Updated Reform Proposals on UK Listing Regime

21 December 2023

KEY POINTS

- In response to a significant decline in UK listings (and initial public offerings globally),¹ the FCA is consulting on landmark reforms to simplify and modernise the UK listing regime. The proposed reforms are part of a wider array of government-backed measures to reduce regulatory burdens and make the UK a more attractive venue for market participants worldwide.
- At the core of the reforms is the replacement of the standard and premium listing categories with a single category for shares in commercial companies, with a more streamlined set of rules relating to eligibility and continuing obligations. In particular, the proposed reforms emphasise a disclosure-based regime for the majority of significant transactions, and more permissive rules relating to dual class share structures.
- The proposals are open for consultation until March 2024, with the UKLR due to be published in the Summer of 2024. The FCA intends to have “a very short period” between publication and implementation of the new UKLR, with implementation expected to occur in Q3 2024. However the FCA has taken measures to avoid creating “a material up-lift or cliff edge” for existing issuers, including allowing issuers with a standard listing to remain in a new ‘Transition’ category.

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¹ Per CP23/31 and the UK Listing Review, there has been a 40% decline in the number of companies listed in the UK between 2008 and 2020, noting that the UK accounted for only 5% of global initial public offerings of companies between 2015 and 2020.



KEY PROPOSALS UNDER CP23/31

Overview – Following a series of discussion and consultation papers soliciting feedback on initial reform ideas, on 20 December 2023 the FCA published [Consultation Paper \(CP 23/31\)](#). Given the sweeping nature of the proposed reforms, the FCA is in the process of preparing a new, simplified, listing rules sourcebook to incorporate new listing rules and re-structure retained rules into a more accessible framework (the new UK listing rules sourcebook (“UKLR”)), which will replace the current UK Listing Rules. The draft UKLR will be published in two tranches; the first tranche contained in Appendices 1 and 2 of CP23/31, and the second tranche to be published later in Q1 2024. For an overview of the FCA’s proposed reforms, refer to *Table 1: overview of reform proposals, UKLR reference and consultation paper Chapters* on pages 10 - 12 of CP23/31.

Single listing category – The FCA’s core proposed reform is to replace the current standard and premium listing share categories with a single listing category and set of rules for equity shares in commercial companies (“ESCC”). As a result, the proposals for ESCC eligibility are lighter as compared to current premium listing requirements but greater as compared to current standard listing requirements. Listing categories for other types of instruments and issuers are also proposed, including a new ‘Transition’ category for existing issuers (discussed further below). In keeping with the FCA’s stated aim to encourage a diverse range of companies to list and grow on UK markets, the FCA is not proposing to define what constitutes a “commercial company”, and is not proposing to restrict admission to the ESCC category to issuers with specific business models, unless a specific category exists for them under the new UKLR.

Eligibility requirements – The FCA has proposed to retain the core set of eligibility requirements that currently apply to all equity share listings for the new ESCC listing category (such as minimum free float and market capitalisation requirements). Financial eligibility criteria applicable to premium listings will

not be retained, specifically the requirements to produce i) a three-year financial and revenue earning track record; ii) three years of audited historical financial information; and iii) an unqualified working capital statement. The Prospectus Regulation will continue to require disclosure of historical financial information and a working capital statement. The FCA’s broad powers to assess eligibility for listing, and to refuse applications where it considers listing would be detrimental to the interests of investors, remain.

Eligibility and continuing obligations –

Independence and control of business – The FCA has proposed a modified form of the existing premium listing requirement that each applicant and listed company must demonstrate that it carries on an independent business as its main activity and exercises operational control over its main activities. Subject to limited exceptions (involving controlling shareholders or externally managed companies), the FCA does not propose to include any mandatory eligibility requirements or continuing obligations regarding these criteria, to allow a more flexible approach that embraces potentially complex business models and corporate structures.

Eligibility and continuing obligations – Relationships

with controlling shareholders – The FCA notes that the regime governing relationships between companies and controlling shareholders, which currently applies to premium listed companies, is an important shareholder management tool with potentially increased relevance given the wider context of other changes proposed under the new UKLR. The FCA therefore proposes to retain the substance of current eligibility requirements and continuing obligations in relation to controlling shareholders for the new ESCC category. The requirement for a written and legally binding agreement with any controlling shareholder would remain.

Eligibility and continuing obligations – Dual class

share structures (“DCSS”) – The FCA has posited a more flexible approach in relation to DCSSs than under current premium listing rules, seeking to place responsibility in the hands of investors to assess the

quality and track record of those who can exert influence on a company, and to ensure DCSS terms reflect risk appetite. It proposes to remove any mandatory time restrictions ('sunset periods') on enhanced voting rights, to allow market practice and industry norms to determine what is appropriate. The FCA also proposes to expand the categories of persons who can be issued enhanced voting shares and the circumstances in which enhanced voting shares can be exercised (generally this is prohibited where the UKLR requires a shareholder vote, subject to specified exceptions).

Continuing obligations – Significant transactions –

The FCA has proposed simplified rules in relation to significant transactions (also known as class transactions) as compared to rules applicable to current premium listings, opting instead for a disclosure-based approach supported by an issuer's overarching obligation to provide the necessary information to enable investors to assess the terms and impact of a transaction. Proposals include:

1. no requirement for a shareholder vote or circular in connection with significant transactions, even where material at the "class 1" threshold (except reverse takeovers);
2. removing the 'profits test' currently used to classify significant transactions; and
3. an announcement to the market required at the 25% or above threshold only.

Further, the FCA is proposing a new enhanced market notifications regime for 25%+ transactions, to promote transparency on the key information that has informed assessment of a deal (based on existing requirements, but with no requirements for working capital statements, third-party opinions or historical financial information such that notifications will not be subject to mandatory third-party review). Under the proposals, sponsor appointment would no longer be mandatory (except where issuers seek individual guidance in relation to a significant transaction or request an FCA waiver or modification of the UKLR requirements). The FCA has also proposed new guidance on the

assessment of whether a transaction falls within or outside of an issuer's ordinary course of business.

Continuing obligations – Related party transactions –

Under the FCA's proposals, related party transactions will no longer require shareholder approval. The FCA has instead endorsed a disclosure based approach, enhanced by additional governance requirements. No action will be required for transactions below the 5% threshold. Transactions at or above the 5% threshold will require board approval (excluding any conflicted directors) and a timely market announcement including a 'fair and reasonable' statement from the board of directors, with written support from a sponsor. The FCA also proposes to increase the threshold at which a substantial shareholder will be considered a related party from 10% to 20%.

Application of sponsor regime – The FCA has proposed that the sponsor regime be applied to the following listing categories: i) the ESCC category (including issuers transitioning into this category); ii) the closed-ended investment funds category; and iii) the shell companies category. The sponsor regime will remain substantively similar to current requirements during the listing process, but will be reduced post-listing to focus on targeted issuer events including significant increases in share capital, related party fair and reasonable opinions, reverse takeovers and transfers between listing categories. In addition, the FCA is proposing changes to sponsor competence requirements, including a more flexible approach as to how a sponsor may demonstrate its competence. The FCA intends to introduce these changes ahead of the wider reforms, to ensure sponsor support is in place to assist existing and prospective issuers upon implementation of the proposed UKLR.

Cancellation of listing – The new ESCC category would preserve the existing premium listing rules requiring 75% shareholder approval to cancel a listing (with further conditions in cases where there is a controlling shareholder).

INDEXATION

UK listing reform has been widely embraced, however repercussions from the proposed deregulation of the

UK listing regime may impact successful implementation, particularly if the market moves to compensate for protections no longer offered under the new UKLR. Indexation is a key example, which in many cases is a driver of premium listings under the existing regime. The FCA notes that certain index providers set inclusion criteria for UK listed companies linked to the current premium listing rules. Under the proposed UKLR, such index providers would need to reconsider appropriate criteria for determining constituents of a particular index. The FCA notes that index providers may establish criteria that reflect a higher or different standard to the proposed UKLR, and may create a de facto premium segment if criteria are set to this standard. It is unclear at this time how indexation will work under the proposed reforms, and clarity on this will be vital given the importance of indexation to issuers.

DEPOSITARY RECEIPTS

The FCA has not proposed any significant changes to the regime applying to issuers of depositary receipts representing shares, except that this option will no longer be available to companies incorporated in the UK (for which the FCA notes a lack of demand in any event). Issuers of depositary receipts will continue to be subject to the same substantive requirements as under the current regulatory regime, redrafted for alignment with the new UKLR. The FCA proposes to cease listings of certificates representing debt securities (also uncommon in practice).

SECONDARY LISTINGS

Overseas companies with a primary listing on a non-UK market can apply for a secondary listing within a new ‘Secondary’ listing category, which will be subject to rules similar to those of the current standard listing segment but with targeted continuing obligations to accommodate the application of the rules of the overseas market. Notably, this option would not be available to UK-incorporated companies listed overseas (the FCA notes that it wishes to prevent this option being used by companies to avoid certain requirements which they are not capable of meeting –

this being more likely for those that are UK-incorporated and so subject to UK company law).

TRANSITION FOR EXISTING ISSUERS

Responding to feedback and engagement from earlier consultations, CP 23/31 includes new detail on proposed transition arrangements for existing issuers, including:

- existing premium listed issuers would be automatically mapped to the new ESCC category.
- existing standard listed commercial companies would be automatically mapped to the new ‘Transition’ category, which would replicate existing standard listing continuing obligations and would be closed to new entrants, such that no eligibility requirements would apply.
- other existing standard listed issuers would be moved into retained or newly created listing categories such as the shell companies category or the international secondary listing category, as applicable, based on FCA analysis.

Issuers would have the option to transfer to the ESCC category subject to meeting applicable requirements, however the proposed Transition category would have no fixed end date, so there will be no deadline for issuers to transfer out of the category.

The FCA has also identified a cut-off date for ‘in-flight’ listing applications which can be made for listing under the existing regime (a complete eligibility application must have been submitted by the date the final rules are published, expected at the start of the second half of 2024).

NEXT STEPS AND TIMELINE TO IMPLEMENTATION

The FCA continues to seek input on the proposed rules. The consultation period for CP23/31 is now open, with two key deadlines for feedback: i) 16 February 2024 for proposals regarding sponsor competence, and ii) 22 March 2024 for UKLR proposals. Further to the publication of CP23/31 and a first tranche of the draft UKLR, the FCA expects to

publish a second tranche of draft UKLR rules in Q1 2024. Publication of the final UKLR is expected in the Summer of 2024, with a short implementation period of just 2 weeks before the UKLR comes into force. Implementation is therefore expected to occur in Q3 2024.

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