

# Linklaters

## Reform of the UK Listing Regime: a rebalanced approach

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The FCA has published a “blueprint” for overhauling its listing rules to help London remain at the forefront of the global competition to attract companies to list their shares. The proposals will do away with the “standard” and “premium” listing segments for share listings of commercial companies in favour of creating a single segment which retains many of the premium segment’s requirements but in a more streamlined and lighter touch way.

In particular, there will be simplified listing eligibility requirements and the recently introduced dual class share rules will be extended to allow directors of newly-listed companies to retain a greater degree of control. Current premium listed companies will also benefit from the changes, which include proposals to remove mandatory shareholder votes on substantial and related party transactions. The proposals represent a move from a relatively prescriptive regime to one that is more disclosure-based and relies on investors making their own risk assessments.

### Key points

- A single segment for equity shares in commercial companies (ESCC); separate categories of listing will remain for other types of securities and shares in investment vehicles
- Removal of a three-year financial and revenue earning track record and a clean working capital statement as conditions for listing
- More permissive approach to dual share structures
- A controlling shareholder (or relationship) agreement with a controlling shareholder will no longer be mandatory but concluded on a comply or explain basis
- No need for shareholder approval for class 1 or large related party transactions

### Single listing segment for equities shares in commercial companies

The FCA proposes establishing a single segment for ESCC (i.e. excluding funds, SPACs etc). The new single segment will be more onerous than the current standard segment but will have simplified eligibility criteria and leaner continuing obligations than the current premium segment enabling younger companies to list and grow in a more agile environment.

The FCA is consulting on transitional arrangements for existing standard listed companies including those not able to satisfy the new single segment criteria.

### Other categories of listing

Although the FCA envisages that the ESCC category will be broad enough to contain many different companies, some types of company, eg funds and SPACs will be listed in separate categories, which allow for bespoke rules. While the FCA is alive to the risk that this approach may be perceived as replicating a multi-segment model it emphasises that it must ensure there are listing categories that “sufficiently delineate between issuer types and security types that are substantively different in their nature.”

### Eligibility criteria

The consultation seeks view on dismantling some of the current premium listing eligibility criteria which can be a particular barrier to high-growth, tech and bioscience companies, among others. These are:

- the requirement for a representative three year track record;
- three years' of audited accounts covering at least 75% of the company's business; and
- a clean (unqualified) working capital statement.

Instead of these requirements, the FCA proposes relying on disclosure in the prospectus and notes that this links to its planned work on the reform of the public offer regime and prospectus disclosure requirements. This shifts the focus away from rules and criteria towards empowering investors to decide which companies are investable.

## Eligibility requirements with continuing effect

### *Dual class share structures*

Highlighting this as a “critical area to get right” the FCA proposes a more permissive approach to dual class share structures. Since December 2021, specific dual class share structures giving directors certain control rights for a 5-year period have been allowed on the premium segment. Under the new proposals:

- Weighted voting structures could last for up to 10 years;
- Special rights would be exercisable on all matters and at all times – not just in relation to a change of control or to protect a founder’s position as a director;
- There would be no specified voting ratio or weighting limits; and
- enhanced voting shares could, as now on the premium segment, only be held by directors; they would convert to ordinary shares automatically on the holder ceasing to be a director.

The FCA sees the proposed framework as the “outer boundaries” and expects the market to produce more nuanced arrangements depending on market dynamics and risk appetite.

### *Controlling shareholder agreements*

The controlling shareholder regime is designed to protect minority shareholders where a company has a controlling shareholder. The FCA proposes changing the obligation to have a controlling shareholder (or relationship) agreement, where applicable, to a comply or explain basis. If a company with a controlling shareholder does not have an agreement in place it will need to make specific disclosure in the prospectus and annual financial report, possibly accompanied by a standardised warning.

### *Independence and control of business*

The FCA recognises that the rules in this area can create uncertainty and have required “nuanced judgements” and concessions in the past. It wants the ESCC category to be open to more diverse business models and complex corporate structures and seeks views on balancing simplification with potential risk to investors.

It reminds the market that it will retain the power to refuse an application for listing if it considers that granting it would be detrimental to investors.

## Life after listing – continuing obligations

The FCA’s earlier discussion paper on the listing reforms (published in May 2022) sought views on a two-tier structure of continuing obligations containing a mandatory list of requirements and a separate set of optional “add-ons”, which included the class 1 transaction rules. In response to feedback from the market the FCA has abandoned this approach and proposes a single set of continuing obligations.

The consultation paper focuses on significant and related party transactions. Currently shareholder approval must be obtained to go ahead with class 1 and significant related party transactions. Under the proposals this requirement will be dropped, along with the requirement for the associated shareholder circulars. This would lighten the regulatory load considerably for listed companies and, it is hoped, create a more dynamic corporate environment for UK listed companies. The requirements proposed in relation to each type of transaction are as follows.

### *Class 1 transactions*

Class 1 transactions will require an announcement equivalent to a Class 2 announcement when the transaction is entered into. The same transaction types will continue to be in-scope and listed companies would continue to classify a transaction according to the class tests. However, the FCA proposes removing the profits test, on the basis that it often produces anomalous results. The advice of a sponsor will be required where the company is in any doubt about the correct application of the rules and its obligations, rather than in any event where a proposed transaction may be Class 1.

There will be no requirements for Class 2 transaction under the proposals. Shareholder approval would still be required for reverse takeovers.

### *Related party transactions*

Where a related party transaction meets the 5% threshold on the class tests a listed company under the proposals would need to announce the transaction to the market no later than when the terms of the transaction or arrangement are agreed. Among other things, the announcement must contain a “fair and reasonable” statement by the board which has been backed by a sponsor. Given the potential harm of related party transactions to investors the FCA is proposing to retain the requirement that a listed company should obtain the guidance of a sponsor to assess the application of the relevant rules.

The requirements in relation to smaller related party transactions will be removed.

## The sponsor regime

The FCA proposes that sponsors should be required for single segment issuers, with broadly the same role as they have currently under the premium listing regime. Given the proposed changes to the eligibility requirements, the FCA sees the role of the sponsor as a key protection in the context of IPOs and points out that sponsor may face an additional degree of complexity when undertaking due diligence in relation to a company’s eligibility, given the different structures that will be welcome in the ESCC category.

The proposed reforms will mean that, post IPO sponsors may have a lighter role and this may have a consequential impact on sponsor competence requirements, which currently require a sponsor to have submitted a sponsor declaration to the FCA within the previous 3-year period. The FCA states that when assessing competence it is likely to consider transactions that a sponsor has advised on, which did not require a sponsor declaration.

## Comment

Removing the first hurdle to listing by relaxing eligibility requirements for growth companies, and also those with less conventional business models, to gain access to London listing is unlikely to be controversial. However, London’s premium segment rules on approval of substantial transactions and related party transactions have been key differentiators of the UK listing regime for decades. Their proposed reform recognises the global context, in which most other major markets manage without such requirements. In any event, companies will still have disclosure obligations, under both MAR and specific Listing Rule requirements, relating to such transactions. Sponsors, another important element of the premium listing regime, will also still have a significant role, with issuers required to seek their advice on disclosure and listing rule compliance matters.

Overall, the proposals retain many of the premium listing rules including the sponsor regime, controlling shareholder rules, and requirements for independent shareholder approval of reverse takeovers and cancellations of listing. But, almost all of the rules will be modified, and will generally be less prescriptive. One important unknown – as the FCA admits – is how index providers will react to the proposals. The likelihood is that issuers will need to spend less time talking to the regulator about the rules, but will need to spend more time talking to their investors.

## Next steps

The FCA's consultation paper is [here](#). The deadline for comments is 28 June 2023.

The consultation does not contain draft rules but the FCA expects to publish a further consultation containing draft revised listing rules in the Autumn and is aiming for “an accelerated timetable, with substantial progress by the end of 2023”. The Autumn consultation would contain more details of transitional arrangements for existing issuers.

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