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FCA proposes major changes to the UK listing regime to simplify rules and encourage listings

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The FCA has today published a consultation paper seeking views on major proposed reforms to the UK listing regime, including the creation of a single listing category for shares in commercial companies and modified and simplified eligibility and ongoing rules applicable to listed companies.

Consultation Paper (CP 23/10) follows the publication of Discussion Paper (DP 22/2) (client update) in May 2022, which sought views on several possible reforms to the UK listing regime.

In CP 23/10, the FCA: (i) summarises and responds to the feedback solicited by DP 22/2; and (ii) seeks views on several proposed equity listing rule reforms. The key proposed reforms on which the FCA is seeking views are summarised below.

Single listing category

The FCA proposes to create a new single listing category for equity shares in commercial companies which would replace the current premium and standard segments. The initial and ongoing obligations which currently apply both to the premium and standard segments would remain unchanged (e.g. free float of 10% and a minimum market capitalisation of £30m).

Eligibility requirements

As contemplated by DP 22/2, the following financial-related eligibility requirements which currently apply to companies seeking a premium listing would be removed and would not apply to companies seeking a listing in the new single category:

- a three-year representative revenue earning track record;
- three years of audited historical financial information that represents at least 75% of the issuer's business; and
- a 'clean' or unqualified working capital statement

Initial and continuing obligations

Independent business and control of business

The FCA is proposing to explore a modified form of the existing premium listing rules which require each applicant and listed company to demonstrate that it: (i) carries on an independent business as its main activity; and (ii) exercises operational control over its main business. While a listed company's business would still need to be capable of complying with the FCA's listing, disclosure and transparency requirements, the FCA will consider amending existing rules to be clearer that it is open to diverse business models and, potentially, more complex corporate structures.

Dual class share structures (DCSS)

A more flexible approach to the rules governing DCSS is being proposed. Enhanced voting rights would be able to be exercised on all matters and at all times (save in connection with the issue of new shares at a more than 10% discount) as compared to the limited applicable circumstances which currently apply. The current sunset period of 5 years which applies to enhanced voting rights would be extended to 10 years and there would be no limit on the maximum enhanced voting ratio attaching to enhanced voting rights shares (currently 20:1). The requirement that shares with enhanced voting rights can only be held by directors will remain and it is proposed that all such shares would automatically convert to ordinary listed shares upon the holder ceasing to be a director.

Controlling shareholders

The controlling shareholder regime which currently applies to the premium segment would continue to apply to the single listing category albeit on an amended basis. A comply or explain and disclosure-based approach would apply to controlling shareholder agreements (which are required under the current premium listing rules) and there would be no enhanced oversight of related party transactions for failure to comply with the controlling shareholding regime. The rules regarding the election of independent board members would remain unchanged.

Continuing obligations

Significant transactions

The FCA proposes to:

- remove the requirement for a shareholder vote or circular in connection with significant transactions (except for a reverse takeover);
- require a company to make a transaction announcement only at the current Class 1 threshold of 25%, with no announcement required for any transaction under this threshold; and
- remove the 'profits test' currently used to classify significant transactions and also allow sponsors more discretion to apply appropriate modifications to the class tests without having to submit a request for the FCA to modify such tests.

Notwithstanding the above, the FCA is proposing to retain the requirement for shareholder approval for reverse takeovers, supported by an FCA approved circular with specified content requirements.

Related party transactions (RPTs)

Under the proposed regime, a listed company would not need to obtain independent shareholder approval or produce a shareholder circular in relation to any RPT.

An announcement-only regime would be adopted for larger RPTs (being those at or above the 5% class test threshold). Among other things, the announcement would be required to include a fair and reasonable statement by the board supported by the company's sponsor. The modified RPT requirements for smaller transactions above 0.25% and below 5% would be deleted such that there would be no rules applicable to RPTs below the 5% threshold.

Cancellation of listing

The FCA is proposing to retain the current premium listing requirement for a shareholder vote to cancel listings of shares in the single listing category, including the 75% majority requirement (and additional requirements where a controlling shareholder is involved). It is also proposed that this vote be supported by an FCA approved circular and that the existing notice period of 20 business days following shareholder approval be retained.

Shareholder vote on discounted share offers

It is proposed that the single listing category will retain the premium listing requirements for companies to obtain shareholder approval for share issuances with a discount of more than 10% and share buybacks in certain circumstances.

Next steps

The FCA welcomes feedback on the topics discussed in CP 23/10 by 28 June 2023. As a follow-up to the proposals set out in CP 23/10, the FCA aims to issue a further consultation paper on the proposals and the wider proposed changes to the listing regime in the autumn, which will include a draft instrument setting out the proposed revised listing rules in full.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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