Capital Markets Alert

Skadden

05 / 05 / 23

UK Listing Rules Reform Proposals — The Dawn of a Lighter Touch Regime in London?

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

Danny Tricot
Partner / London
44.20.7519.7071
danny.tricot@skadden.com

Adam M. Howard
Counsel / London
44.20.7519.7091
adam.howard@skadden.com

Justin Lau
Associate / London
44.20.7519.7029
justin.lau@skadden.com

One Manhattan West
New York, NY 10001
212.735.3000

22 Bishopsgate
London EC2N 4BQ
44.20.7519.7000

Key Takeaways

- Responding to a 15-year decline in the number of UK-listed companies and a challenging period for UK IPO activity, the UK Financial Conduct Authority (FCA) has proposed reforms that are the most significant in over a generation and will result in a less onerous regulatory regime for premium listed issuers.
- While the FCA's proposals for a new combined listing segment for equity shares in commercial companies will significantly reduce the regulatory burden for premium listed issuers, the proposed amendments will, in some instances, increase the current regulatory requirements for standard listed issuers. However, the impact of the proposed reforms should not be unduly burdensome.
- In many cases, the proposed changes will align the UK listing regime with other regimes by removing a collection of long-standing super equivalent investor safeguards not typically seen in other jurisdictions.

Introduction

As part of the wider review of the UK's capital markets regulatory landscape, the FCA published Consultation Paper CP23/10, which sets out reforms for companies with listed shares on the Main Market of the London Stock Exchange. The proposals set out in CP23/10 address issues raised in the Hill Review and, in some instances, expand beyond those proposals. These reforms are part of a programme of reforms aimed at overhauling UK capital markets in order to promote innovation and make London a more attractive listing venue while still maintaining high standards of market integrity and investor protection.

The FCA intends to publish a final consultation paper in autumn 2023 detailing the final proposed rule changes.

Key Proposals and Considerations

The FCA intends to replace standard and premium listing share categories with a combined listing segment for equity shares in commercial companies (ESCCs). The appendix sets out how the FCA proposes to apply (or in some cases remove) existing listing principles, eligibility criteria and initial and continuing obligations for issuers in the new combined listing segment for ESCCs.

Overall, the creation of a combined listing segment for ESCCs and shift toward a more disclosure-based approach will result in a significantly lighter-touch regime for premium listed companies while only marginally increasing the regulatory burden for standard listed issuers. These changes will align the UK's regulatory framework more closely with those of other jurisdictions, including the U.S., which follow a more disclosure-based approach for listed companies.

Sponsor Regime Reform

While the sponsor regime in the UK will undergo significant reform in reducing the role of sponsors post IPO, the sponsor regime will be applicable to all issuers listed in the combined listing segment. A sponsor declaration will still be required for an IPO, but the sponsor's role post IPO will be mainly limited to giving the required opinions when an issuer undertakes a related party transaction and, in certain circumstances, assisting the issuer with significant transactions where the issuer's board deems it appropriate.

Significant Transactions

The FCA's proposals remove the requirement for a sponsor declaration, an FCA-approved shareholder circular and shareholder approval for significant transactions. Instead, issuers will be required to make an announcement to the market with prescribed content requirements (similar to the current Class 2 transaction requirements). The rules governing significant transactions will apply to all issuers on the combined listing segment, but this should not create an increased burden for standard listed companies because they are already required to disclose significant transactions pursuant to their obligations under the UK Market Abuse Regulation.

The relaxation of the significant transactions regime will make it easier for UK issuers to participate in M&A transactions and compete with financial sponsors on the buy-side, particularly in auction processes. Without the requirement to produce an FCA-approved circular or seek shareholder approval, UK issuers will be able to pursue and execute transactions with more certainty and at a greater speed.

Related Party Transactions

Issuers on the combined listing segment will be subject to the rules governing related party transactions (RPT). While the RPT regime will also be deregulated for premium listed issuers to eliminate the requirements for independent shareholder approval and an FCA-approved circular, the FCA's proposals will still require a sponsor to provide a fairness opinion.

Eligibility Criteria

The elimination of the requirement for new equity issuers to have a three-year track record, financial statements that represent 75% of their business and a clean working capital statement will increase the pool of companies that are able to list on the London Stock Exchange's Main Market. This will be of particular importance to young companies in the technology sector and those with a non-conventional corporate structure.

Delisting

All issuers on the combined listing segment (as opposed to just premium listed issuers) will be required to post an FCA-approved circular and to obtain shareholder approval (75% majority plus, in certain circumstances, a majority of independent shareholders where the issuer has a controlling shareholder) in order to cancel a listing. This will give investors in standard listed issuers significantly more protection against the consequential loss of transparency and liquidity that delisting entails.

Corporate Governance

The FCA is proposing that all issuers on the combined listing segment be required to adhere to the UK Corporate Governance Code on a "comply or explain" basis. This is unlikely to impact standard listed issuers, which, in accordance with typical market practice, adopt many of the principles of the UK Corporate Governance Code on a comply-or-explain-basis.

Dual Class Share Structures

A time limit on dual class share structures (increased from five years to 10 years) and transfer restrictions on shares with weighted voting rights both remain, but the amendments eliminate a maximum limit on weighted voting rights ratios and on the matters subject to the exercise of weighted voting rights. This change makes the ability to have a dual class share structure more meaningful. This development is significant given the S&P's recent rule changes permitting the inclusion in S&P indices of companies with dual classes of shares.

FTSE Index

How FTSE Russell will change its indexation rules given these proposed reforms to the listing regime remains to be seen.

GDRs and Debt Securities

The FCA has not proposed any changes regarding global depositary receipt (GDR) issuers, which will continue to be subject to the existing regulatory regime. In addition, the FCA is not proposing any material changes to the listing rules for non-equity securities such as bonds or for the majority of other standard listed instruments (*e.g.*, open-ended investment companies and depositary receipts).

Transitional Arrangements

To facilitate the creation of the combined listing segment and to maintain market integrity during implementation of the proposed changes, the FCA proposed arrangements to:

- Enable existing issuers to transfer from the current standard and premium listing categories to the new combined ESCC listing segment.
- Allow issuers that will be affected by these proposals sufficient time to prepare and implement the necessary changes.

Conclusion

While the FCA's proposals are far-reaching, market participants and the FCA recognise the need to accompany these reforms with a broader package of reforms aimed at increasing London's attractiveness as a capital markets and financial services hub. These additional reforms include closing valuation gaps for UK-listed companies (particularly companies with U.S.-listed peers); increasing liquidity in UK capital markets; expanding the breadth of the UK investor base, in particular raising pension fund participation in UK equity markets; reforming rules regarding research; revisiting stamp duty on share transfers; and changing UK investor attitudes toward executive remuneration.

Appendix: FCA Proposed Requirements Within Single Listing Segment[1]

Key Listing Rules	Standard Listing Requirements	Premium Listing Requirements	Requirements Under Proposals for New Single Listing Segment
General			
Listing principles	Two principles apply	Additional principles apply	Combined and enhanced principles apply
Sponsor regime	Does not apply	Applies	Applies – subject to changes to significant transaction and related party transaction rules
Eligibiity			
Minimum market capitalisation	£30 million	£30 million	£30 million
Historical financial information on 75% of business covering three years	Not required	Required	Not required
Three-year revenue track record	Not required	Required	Not required
Clean working capital statement	Not required	Required	Not required

Continued on page 4

[1] This table is sourced from Table 1: Simple overview of single equity category proposal on pages 11-14 of CP23/10.

Appendix: FCA Proposed Requirements Within Single Listing Segment *(continued)*

Key Listing Rules	Standard Listing Requirements	Premium Listing Requirements	Requirements Under Proposals for New Single Listing Segment
Free float	10%	10%	10%
Independence	Not required	Required	- Amended rules or guidance will reduce uncertainty for "franchise"-type companies and strategic investment companies — with an intention to include those companies in the new commercial company category - Existing prospectus disclosure should continue to identify any relevant risks to independence or control of business
Control of business	Not required	Required	
Initial/Ongoing Obligations			
Controlling shareholder regime	Does not apply	Applies	- Comply-or-explain and disclosure-based approach to controlling shareholder agreements indicating where these agreements are in place - Retained requirements upon election of independent board members
Dual class share structures/ weighted voting rights	No restrictions	Permitted but subject to the following restrictions: - Takeover deterrent or use to prevent director removal - Five-year sunset clause - 20:1 cap on voting ratio - Restrictions on transfer	Generally permitted subject to the following restrictions: - 10-year sunset clause - Shares with enhanced voting rights can only be held by a director, and are subject to transfer restrictions

Continued on page 5

Appendix: FCA Proposed Requirements Within Single Listing Segment *(continued)*			
Key Listing Rules	**Standard Listing Requirements**	**Premium Listing Requirements**	**Requirements Under Proposals for New Single Listing Segment**
Task Force on Climate-Related Financial Disclosures (TCFD) and UK diversity and inclusion disclosures	Required (on a comply-or-explain basis)	Required (on a comply-or-explain basis)	Required (on a comply-or-explain basis)
Continuing Obligations			
UK corporate governance code disclosure	An issuer must disclose if it is subject to or opts to follow **any** code	Required (on a comply-or-explain basis)	Required (on a comply-or-explain basis) - The proposals are seeking input to revise how the explanation option applies to issuers following a non-UK corporate governance code
Related party transaction rules	At value ≥ 5%: - An issuer must announce key details and further information to enable the market to assess whether the terms of the transaction are fair and reasonable - The issuer's board (excluding conflicted directors), must approve the transaction	At ≥ 0.25% value: - The issuer's board must obtain an opinion from a sponsor confirming the transaction to be fair and reasonable - The issuer must announce brief details upon entering into the transaction At ≥ 5% value: - The issuer must secure independent shareholder approval after distributing an FCA-approved circular prior to voting - The circular must include the board's statement considering the transaction fair and reasonable, as confirmed by a sponsor	At ≥ 5% value: - The issuer must disclose key details of the transaction - The board must both issue a statement considering the transaction fair and reasonable and disclose sponsor confirmation - The board (excluding conflicted directors) must approve the transaction - No shareholder vote or shareholder circular is required The FCA is seeking views on the merits of any further disclosure enhancements

Continued on page 6

Appendix: FCA Proposed Requirements Within Single Listing Segment *(continued)*			
Key Listing Rules	**Standard Listing Requirements**	**Premium Listing Requirements**	**Requirements Under Proposals for New Single Listing Segment**
Significant transaction rules	None apply	At ≥ 5% value (Class 2): - The issuer must release a prescribed announcement of key transaction details upon entering the transaction At ≥ 25% value (Class 1): - The issuer must secure shareholder approval after distributing an FCA-approved circular prior to voting	At ≥ 25% value (class test rules are being reviewed): - The issuer must release a prescribed announcement of key transaction details - No shareholder vote or shareholder circular is required The FCA is seeking views on the merits of any further disclosure enhancements
Shareholder vote on reverse takeovers	Not required	A reverse takeover is subject to shareholder approval and information requirements similar to those for a Class 1 significant transaction	A reverse takeover is subject to shareholder approval and information requirements similar to those for a Class 1 significant transaction (as amended pursuant to the proposals)
Shareholder vote to delist	Not required	Required (75% approval) and controlling shareholder regime applies	Required and controlling shareholder regime applies
Shareholder vote on discounted share offers	Not required	Required	Required

Capital Markets Alert
Contacts

New York

Ryan J. Dzierniejko
Partner
212.735.3712
ryan.dzierniejko@skadden.com

Gregory A. Fernicola
Partner
212.735.2918
gregory.fernicola@skadden.com

David J. Goldschmidt
Partner
212.735.3574
david.goldschmidt@skadden.com

Michael J. Hong
Partner
212.735.2227 / 416.777.4700
michael.hong@skadden.com

Laura A. Kaufmann Belkhayat
Partner
212.735.2439
laura.kaufmann@skadden.com

Michael J. Schwartz
Partner
212.735.3694
michael.schwartz@skadden.com

Joseph Vebman
Partner
212.735.3719
yossi.vebman@skadden.com

Dwight S. Yoo
Partner / New York
212.735.2573
dwight.yoo@skadden.com

Michael J. Zeidel
Partner
212.735.3259
michael.zeidel@skadden.com

Los Angeles

Michelle Gasaway
Partner
213.687.5122
michelle.gasaway@skadden.com

Palo Alto

Thomas J. Ivey
Partner
650.470.4522
thomas.ivey@skadden.com

Gregg A. Noel
Partner
650.470.4540
gregg.noel@skadden.com

Washington, D.C.

Brian V. Breheny
Partner
202.371.7180
brian.breheny@skadden.com

Raquel Fox
Partner
202.371.7050
raquel.fox@skadden.com

Andrew J. Brady
Of Counsel
202.371.7513
andrew.brady@skadden.com

Caroline S. Kim
Counsel
202.371.7555
caroline.kim@skadden.com

Frankfurt

Stephan Hutter
Partner
49.69.74220.170
stephan.hutter@skadden.com

Hong Kong

Shu Du
Partner
852.3740.4858
shu.du@skadden.com

Jonathan B. Stone
Partner
852.3740.4703
jonathan.stone@skadden.com

London

James A. McDonald
Partner
44.20.7519.7183
james.mcdonald@skadden.com

Danny Tricot
Partner
44.20.7519.7071
danny.tricot@skadden.com

Pranav L. Trivedi
Partner
44.20.7519.7026
pranav.trivedi@skadden.com

Adam M. Howard
Counsel
44.20.7519.7091
adam.howard@skadden.com

São Paulo

Filipe B. Areno
Partner
55.11.3708.1848
filipe.areno@skadden.com

J. Mathias von Bernuth
Partner
55.11.3708.1840
mathias.vonbernuth@skadden.com

Shanghai

Haiping Li
Partner
86.21.6193.8210
haiping.li@skadden.com

Yuting Wu
Partner
86.21.6193.8225
yuting.wu@skadden.com

Singapore

Rajeev P. Duggal
Partner
65.6434.2980
rajeev.duggal@skadden.com

Sydney

Adrian J. S. Deitz
Partner
61.4294.44311
adrian.deitz@skadden.com

Tokyo

Kenji Taneda
Partner
81.3.3568.2640
kenji.taneda@skadden.com

Knowledge strategy lawyer **Sharon Jenman** contributed to this article.