

## How will the UK listing reforms impact existing issuers?

May 2023



The FCA's latest plans for the UK listing regime aim to attract (or at least not deter) new entrants to the London equity markets. But what will the changes mean for companies which are already listed?

### Introduction

The Financial Conduct Authority's recently published Primary Markets Effectiveness Review consultation ([CP 23/10](#)) aims for a less prescriptive and more disclosure-based approach to listing regulation and investment risk than the current rules. This means investors will be expected to take greater responsibility for due diligence and engagement with companies – both when they first come to market and on an ongoing basis.

In this article we take a closer look at how the proposals will affect the continuing obligations of existing premium listed companies. We also highlight where the FCA is consulting on whether extra measures may be desirable to ensure the right balance between greater flexibility and investor protection.



*These changes we are proposing to the listing regime will mean passing greater investment risk to investors and greater responsibility on to shareholders to hold the companies they own to account.*

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### Single segment

A unified segment for equity shares of commercial companies (ESCC) is proposed instead of the existing premium and standard segments. A single set of listing principles and obligations will apply to ESCC companies. There will be no element of “opting in” to some of the rules as was suggested in the FCA's initial discussion paper last year.

Existing premium listed companies will benefit from some relaxations in the proposed new rules, but in a few areas the rules may become more onerous (in relation to the role of directors in complying with the Listing Principles, for example). Current standard listed companies that move to the new single segment would have to comply with significantly increased obligations.

Investment companies and funds, special purpose acquisition companies (SPACs) and shell companies, and global depositary receipts would not be included in the new ESCC category. There would be separate sets of rules for these types of company alongside new chapters in the rulebook for the various existing categories of debt and other specialist securities.

## Substantial and related party transactions

The longstanding requirement for shareholder approval of Class 1 and related party transactions is set to be abandoned. This also means that companies would not need to produce FCA-approved shareholder circulars for these transactions.

### Class 1 transactions

Dropping the shareholder approval requirement will remove an element of transaction risk which can be a potential impediment for premium listed companies in competitive M&A bidding processes. As the FCA points out, it would mean that investors have less information and less say on major transactions and will be more reliant on the judgement of boards.

The following requirements will continue to apply to significant transactions outside the ordinary course of business:

- The Class tests must be applied and for a Class 1 transaction, an announcement will be required containing the information currently mandated for a Class 2 transaction.
- Shareholder approval will be required for transactions that are classified as reverse takeovers.
- Companies must obtain a sponsor's advice if in any doubt as to the application of any of the Class tests. Sponsors should advise companies on the application of the listing rules and on the company's other obligations but would not have to make any confirmations to the FCA concerning the transaction.
- The Class tests will no longer include the profits test as this often produces anomalous results. Sponsors would have more discretion to apply modifications to the Class tests, without being required to get the FCA's approval.
- No announcement requirements will apply to Class 2 transactions, but remain subject to the general disclosure obligations under MAR.
- Aggregation rules for smaller connected transactions would apply.

### Related Party Transactions

The FCA proposes that the following rules will apply to RPTs that meet the 5% threshold under the revised Class tests:

- Transactions would have to be announced no later than when the terms are agreed.
- Announcements would need to contain details of the transaction and other information required in a Class 2 announcement.
- Boards (excluding any related party or associate director) must confirm that the transaction is "fair and reasonable" so far as the company's shareholders are concerned.
- The company's sponsor must support the board's fair and reasonable opinion and advise companies on their general disclosure obligations relating to the RPT.
- Issuers would be obliged to appoint a sponsor on any transaction that is or may be an RPT and sponsors would have to consult the FCA on any potential modifications in applying the Class tests to RPTs, rather than having the new flexibility that is proposed for substantial transactions (see above).

There would not be any disclosure or sponsor assurance on transactions below the 5% threshold, subject to aggregation rules for smaller transactions with the same related party over a 12-month period.

The related party rules in DTR 7.3, which apply the IFRS definition of related party, will still apply to all companies with securities admitted to regulated markets in the same way as they do now.

The consultation document points out that under the new approach, investors may need to do more to assess the risks of any particular company entering into RPTs, in the light of its governance practices and the identity of major shareholders. It also suggests that investment mandates or indexation criteria may drive market practice and impose further requirements in relation to the governance of RPTs.

### The consultation asks...

**Class 1s:** Are further requirements needed, such as additional disclosure requirements or a mandatory delay period between signing and completion to facilitate shareholder engagement in the absence of a shareholder approval requirement? It should also ask whether the sponsor's role should be expanded on any aspects of significant transactions?

**RPTs:** For greater investor protection, should shareholder approval be retained for larger RPTs at a threshold greater than the current 5%? Alternatively, are there other mechanisms, such as further information requirements or a mandatory delay period between exchange and completion, that could support shareholder engagement or strengthen shareholder protections?

Listing Principles and the role of directors

The FCA intends to rewrite the Listing Principles and Premium Listing Principles which underpin many of the specific listing rules and disclosure obligations. As is the case for the whole package of reforms, the FCA is not providing detailed drafting at this stage, but says that the rewrite of the Principles will include sharpening the focus on the role of directors.

In particular, the FCA plans to clarify the role that directors should play in compliance with the Principles. These include obligations to maintain appropriate systems and controls; to deal with the FCA in an open and cooperative manner; to avoid the creation of a false market; to act with integrity towards holders of securities; and to ensure that directors understand their obligations. This is reflective of the greater importance of the judgement of boards if formal regulation is relaxed

Relationship with controlling shareholders

Premium listed companies which have a shareholder who (with any associates) controls more than 30% of their shares must have a formal relationship agreement to demonstrate that the company has sufficient independence from the controlling shareholder. They must also have constitutional provisions for the election of independent directors to be approved by independent shareholders, subject to the ability of the controlling shareholder to call a further vote after 90 days.

On the new ESCC segment, the FCA proposes to take a “comply or explain” approach to controlling shareholder agreements. It would expect risks relating to the existence of the controlling shareholder to be disclosed both in the prospectus and in the annual report on an ongoing basis.

The FCA proposes to retain its current approach under which it may regard a company as ineligible for listing if the company may be required to grant security over its business in connection with the controlling shareholder’s funding arrangements.

Continuing eligibility/business model

Premium listed companies must currently carry on an independent business as their main activity and have operational control over the business. The FCA proposes to amend these restrictions, which can for example cause difficulties for companies operating a franchise model or making minority investments in other entities, or that frequently operate through joint ventures as is the case in certain sectors such as extractive industries.

While investment funds will be excluded from the ESCC category, it will be open to more diverse business models and more complex corporate structures. However, SPACs and shell companies will be in a separate listing category, and the FCA may develop a separate set of rules for companies that act as strategic investors without meeting the diversification requirements for the funds category.

Enhanced voting rights for founders

In December 2021 the FCA amended the listing rules to permit certain dual class voting structures on the premium segment, with a view to enabling founders of innovative companies to retain greater control after listing. There are no restrictions on enhanced voting shares with a standard listing. For the new ESCC segment, the FCA proposes to take a more liberal approach to enhanced voting rights than the current premium rules. While there would still be restrictions on who may hold the rights and a time limit (increased to 10 years compared with the current 5 years), enhanced voting rights would be able to be exercised on any matters, and not just change of control. There would also be no specified maximum enhanced voting ratio.

The FCA expects voting rights to be a matter for negotiation between a company/its founders, and potential investors ahead of an IPO.

The consultation asks...

**Continuing eligibility:** Are there views on whether there should be more explicit disclosure of risks, a higher level of assurance by sponsors, or other measures, to deal with the risks that might arise from relaxing its rules for companies with more opaque corporate structures or where there is dependency on other relationships?

De-listing

Existing premium listing requirements will continue to apply to ESCC companies wishing to cancel their listing. These include 20 business days’ notice, an FCA-approved shareholder circular and approval by a 75% majority of independent shareholders.

Other shareholder approvals

Other cases where shareholder approvals are required under the listing rules include certain repurchases of own shares, and non-pre-emptive issues of shares at more than a 10% discount to the current share price. The FCA proposes to retain these provisions, which are designed to prevent material dilution of existing shareholders and which it does not consider unduly burdensome. It will also retain the other continuing obligations regarding pre-emption rights.

Annual reporting obligations

The FCA proposes to retain the premium listing requirement for UK companies to report on their application of the UK Corporate Governance Code and compliance with the Code’s provisions on a comply or explain basis. Under the new proposals, overseas companies would also be required to report against the UK Code. Other annual disclosure requirements, such as TCFD-aligned climate reporting, would also be retained.

Regulatory compliance

The FCA proposes to strengthen the listing regime by requiring listed companies to ensure that they have in place appropriate record-keeping and information storage arrangements, so that they can comply with any information requests the regulator may make in the exercise of its supervisory or enforcement powers as regards compliance with listing rules or other disclosure obligations. Information held outside the UK would have to be easily accessible in the UK.

The FCA will require issuers to provide it with contact details of the company’s key personnel, such as the CEO, CFO and COO, alongside company details for service of notices.

Sponsors

The role of sponsors in relation to the premium listing regime would continue in the ESCC category. While they will have a reduced role on substantial and related party transactions if the shareholder approval requirements are removed, sponsors would still have a role on advising on classification and giving a fair and reasonable opinion on RPTs. They would also continue to have a role on new applications and further share issuances where a prospectus is required (although the circumstances in which a prospectus is required are likely to be reduced on implementation of the new prospectus regime. See our briefing [here](#)).



The consultation asks...

**De-listing:** Should de-listing be made more difficult by, for example, setting a longer notice period for cancellations?

**Regulatory compliance:** Should the “key persons” whose contact details it will hold include those specified, and/or others, and would it be appropriate for issuers to nominate an advisor for these purposes?

Transitional provisions

The FCA proposes to enable both premium and standard listed companies to transfer to the new ESCC category without the need for shareholder approvals. Transfer would not be automatic for standard listed companies. It is likely that they would have to confirm (as would new applicants) their ability to comply with their obligations under the listing rules as well as with their other obligations under the Transparency Rules and MAR. Standard listed companies may be permitted to stay listed, at least for a limited time, on an “other shares” category, but the FCA is still considering this. The FCA expects sponsors to be involved in assisting issuers to transfer to the new category.

The FCA expects that there would be a period of time between the final rules being made and their coming into force to allow for adjustment to new requirements. This may need to include time for index providers to make any adjustments to their index inclusion criteria or composition in response to the new rules.

Next steps

All of the new listing regime proposals are subject to consultation. While premium listed companies may broadly welcome a more disclosure-based regime, it is possible that investors will push back against the prospect of losing leverage over corporate transactions as a result of the removal of shareholder approval requirements for Class 1 transactions and RPTs.

One important area of uncertainty concerning the impact of the FCA’s proposals is the fact that the response of index providers, in particular FTSE Russell, to the changes is not known. They could, for example, impose additional requirements on companies wishing to be eligible for the leading index series. The FCA says that it is engaging with index providers but cannot predict their response to the changes at this stage.

Companies may wish to respond to the consultation, to give their views on the proposals, and to provide evidence where possible of any benefits or downsides they see in the changes. This could feed into the cost benefit analysis that the FCA will need to produce when it consults on the final rules. Companies may also want to suggest changes to rules that the FCA is proposing to retain.

The FCA is asking for responses to the consultation by 28 June 2023. It then expects to issue a further consultation document containing draft rules in the Autumn. The FCA has indicated that it expects final rules to be published early in 2024.

Further reading

We give a general overview of the current primary markets reform proposals [here](#) and of the original discussion paper [here](#).

In relation to related reforms please see our publications on:

- the Secondary Capital Raising Review [here](#);
- the proposals for the new public offer and admission to trading regime, [here](#); and
- how the FCA plans to engage with the market on the new public offer and admission to trading regime, [here](#).



*Some index providers currently set inclusion criteria for listed companies linked to the rules for our premium listing segment. Our proposals would therefore mean those providers would need to consider what criteria they or their users consider most appropriate to determine constituents of a given index.*

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The consultation asks...

**Transitional provisions:** What transitional requirements will be required and what period should be allowed, in particular, for standard listed companies moving to the ESCC category to be able to comply with the additional continuing obligations to which they will be subject?

**Next steps:** What are the likely costs of familiarisation and ongoing compliance with the new regime? What are the benefits or savings resulting from the proposed changes?

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