

Rebranding the listing segments, but is it real change?

FCA publishes discussion paper on the purpose of the UK listing regime

Following its consultation paper on the purpose of the UK listing regime ([CP21/21](#)) in July 2021, the FCA has now put forward for discussion its vision for a new single listing segment for equity shares of commercial companies ([DP22/2](#)).

The FCA considers its proposals to be a considerable change to the status quo. However, whilst DP 22/2 clearly makes a number of headline-grabbing suggestions - including collapsing the premium and standard listing segments into one segment for equity shares of commercial companies, removing certain historical financial information eligibility requirements and increasing the threshold ratios for class 1 transactions - perhaps the most surprising aspect of DP 22/2 is that, once the dust settles, the new regime may not look too dissimilar from what came before albeit with different branding.

Overview

In CP21/21 the FCA outlined four possible models for the new listing regime. DP 22/2 reveals that the FCA's preferred option is to proceed with a model which creates a **single segment for equity shares in commercial companies**. The segment itself would be split (much like the existing premium and standard listing segments) between companies that would only comply

with mandatory continuing obligation requirements and those that would opt to also adopt supplementary continuing obligations which provide additional investor protections.

Some changes to the existing premium listing requirements are proposed to reduce the burdens on issuers on the new segment. These changes include lowering the historical financial information requirements for a company seeking admission - there may no longer be a need to demonstrate revenue generation or have a "clean" working capital statement - and raising the threshold for when a significant transaction requires a shareholder vote under the significant transaction regime.

One of the complaints about a standard listing is the lack of inclusion in FTSE indices. Under the new regime, index providers will decide which companies fall within the indices and so it still remains to be seen whether a company would have to comply with the supplementary continuing obligations to be included in the key indices.

DP 22/2 also sets out the FCA's plans for the sponsor regime, which may well retain many of its current features. The feedback received appears to have shown overwhelming support for the role of the sponsor and the FCA is proposing that the regime should apply to the single segment.

The FCA is keen to remove inefficiencies in the sponsor role, but is not supporting a material lightening of the burden for a sponsor with regard to its record keeping obligations and is clearly interested in tightening controls on sponsors in relation to conflicts of interest and the fees they receive acting as sponsor.

Purpose of the UK listing regime

Role of the FCA

Some of the models for the UK listing regime originally proposed had suggested that it may be better to allow trading venues and indices together with market discipline to set minimum standards for eligibility for listing. However, none of the respondents supported this view and most felt that the FCA's role should be maintained. As a result, the FCA will continue to set and monitor the listing regime but intends to allow more flexibility within the regime itself.

Single segment for commercial companies

The responses to CP 21/21 revealed a consensus for the need to rebrand the standard listing segment, but the FCA has concluded that there is no practical way of making changes to the existing regime that would address the key reasons for the existing standard listing arrangements being disliked, such as lack of index inclusion and poor perception of issuers that choose this segment instead of the premium listing segment.

As a result, the FCA has opted for a single segment believing that, if the segment is sufficiently flexible, all but a very few specific types of companies can find a home on it.

The basic eligibility requirements for the new single segment are proposed as:

- the publication of a prospectus, including financial disclosure requirements such as

audited accounts, working capital statement and complex financial history;

- a free float of 10%;
- a minimum market capitalisation of £30 million;
- the appointment of a sponsor;
- the ability to comply with mandatory continuing obligations (see below "Continuing obligations"); and
- compliance with the Listing Principles (being the current Listing Principles and Premium Listing Principles).

For companies wishing to comply with additional continuing obligations, it will be possible to adopt supplementary continuing obligations, which are currently proposed to include the controlling shareholder regime and significant transaction regime (although potentially amended), and also the requirement to demonstrate an independent business.

The proposed eligibility criteria mean that the basic requirements for the new segment will be higher than is currently the case for the standard listing segment. Standard listed companies do not currently need (1) a sponsor and (2) to comply with most of the existing premium listing continuing obligations and the Premium Listing Principles.

The eligibility criteria would not, as is currently the case for the premium listing segment, require a three-year revenue track record, three years of historical financial information and a 'clean' working capital statement. The FCA believes that investors would instead decide whether to invest based on the disclosures in the prospectus and additional disclosures are therefore likely to be introduced as part of the prospectus regime review.

The removal of these criteria would make it easier for technology and bioscience companies to obtain the most prestigious listing segment.

Under the current regime, these companies often cannot meet the financial history eligibility requirements of the premium listing segment and do not want to go down the standard listing route. If these rules are brought into force, such companies could apply the supplementary continuing obligations and not be precluded from the top flight.

Continuing obligations

As described above, the FCA is proposing to offer companies the choice of complying with supplementary continuing obligations on top of mandatory obligations that would apply to all issuers in the single segment.

An issuer would decide during its IPO process whether to opt into the supplementary obligations. Whilst the FCA is seeking views on whether issuers could pick and choose from the supplementary obligations, the current intention is to make the choice for issuers binary. If an issuer wanted to change the continuing obligations it complied with, it is envisaged the process would be much like changing listing segments under the current regime.

The FCA has proposed that mandatory continuing obligations should be those that focus on transparency and protecting shareholders where the interest of management or a significant shareholder may differ to that of the shareholders. Supplementary continuing obligations are those existing premium listing obligations that provide enhanced protections for shareholders.

The proposed split is:

Mandatory	
Control of business (retaining the adjusted regime for mineral companies)	Related Party Transactions Issuers of equity shares in standard listing already have to comply with separate requirements in DTR 7.3
Shareholder approval for Cancellation of Listing	Rights issues/Open offers (including 10% discount rule)
Employee Share schemes	Discounted options arrangements
Pre-emption Rights	Externally managed companies
Constitutional Arrangements (one share one vote provisions in various parts of the rules)	Dealing in own securities and treasury shares
<i>Already apply to issuers of equity shares in standard listing</i>	
DTRs	Reverse takeover provisions excluding shareholder vote
MAR	
<i>Comply or explain provisions (in some cases already apply to issuers of equity shares in standard listing)</i>	
UK Corporate Governance Code	Climate-related financial disclosures
Diversity and Inclusion	
Supplementary	
Controlling Shareholder Regime	Independent Business
Significant Transactions (including shareholder vote for reverse takeovers) – additional consideration being undertaken regarding class test thresholds	

Rather surprisingly, given the FCA's previous commentary around the need to reduce the cost and administrative burden for companies in complying with listing requirements, the only proposed change to the continuing obligations that currently apply to premium listed companies is a suggestion that the threshold for Class 1 transactions may be raised.

DP 22/22 makes it clear that the FCA has sympathy with the view that the significant transaction regime is too onerous, citing by way of example one respondent who claimed that the current regime can often put premium listed companies at a competitive disadvantage to international competitors in competitive auction processes because of the acquisition having to be conditional on shareholder approval. Whilst it is not clear what changes will be made, the fact that the FCA quoted one respondent's suggestion that the threshold for triggering a Class 1 transaction should be raised to 33%, perhaps points to the direction of travel.

DP22/22 also makes oblique reference to potentially simplifying the related party transaction regime, but otherwise it seems that the FCA is not proposing a wide-ranging overhaul of the continuing obligations that currently apply to premium listed companies.

Dual class share structures

The FCA is proposing to allow dual class share structures to be within the single segment but may maintain the existing premium listing eligibility requirements that currently apply. See [Another step towards reform](#) for more information on dual class share structures. This may mean that companies with dual class share structures listed on the standard listing segment may have to seek to amend their share capital to remain eligible for the Official List.

Transition to the new regime

The FCA is proposing that there would be transitional arrangements for current

standard listed companies (approximately 30 issuers). Companies that want to step up would be able to do so, but would need to undergo an eligibility assessment with the FCA.

For existing premium listed companies, the FCA is proposing that they would decide which obligations they wanted to adhere to (mandatory or mandatory and supplementary), discuss this with their shareholders and seek shareholder approval for their decision.

Sponsor regime

Sponsors currently have a dual-facing role: providing services to issuers in the premium listing segment and regulatory obligations to the FCA. The FCA is seeking views on whether there are any inefficiencies in the current regime and, if so, what changes should be made.

The feedback to CP 21/21 has shown that the sponsor regime is a valued part of the listing regime, that is beneficial to both companies and investors, but did highlight sponsor record keeping and remuneration as areas the FCA could review to reduce burdens on issuers and better align a sponsor's incentives with the long-term interests of issuers.

Record keeping

The FCA considers sponsor record keeping obligations to be very important and has not yet proposed any changes. Instead it has asked various questions designed to see whether it is possible to reduce some of the obligations without undermining the current benefits to the FCA, listed companies and investors.

Sponsors' fees

The FCA is seeking views on whether more transparency or disclosure of how sponsor's fees are derived would help to clarify the role of a sponsor or avoid conflicts of interest.

For example, sponsor firms providing multiple services to a company could be required to differentiate more clearly between the sponsor and non-sponsor services.

Single segment regime

As the sponsor will play a key role in the new single segment, the FCA is seeking views on whether the sponsor's role should remain the same as at present. The extent to which a sponsor will be needed after an initial listing would depend on whether a company chose just mandatory or mandatory and supplementary continuing obligations.

Other securities and closed-ended funds

The standard listing segment will, it seems, survive following the proposed reform, but solely for listings by SPACs, secondary listings by overseas companies, listings of non-equity shares (e.g. preference shares), depositary receipts and other securities can be currently admitted to the segment.

In CP 21/21, the FCA sought views on whether any elements of the listing regime cause particular burdens to issuers of debt and debt-like securities and whether certain elements of the listing regime could be tailored to improve their effectiveness for other types of securities and, if so, how. No respondent thought that there were any specific issues that needed to be addressed. There was a suggestion that there should be a separate segment for debt, but the FCA feels that any further action on this should be taken in parallel with any reforms to the prospectus regime.

The FCA is also proposing to keep the current regime for closed-ended investment funds under Chapter 15 but without the 'premium' label and is seeking views on whether the current regime is fit for purpose.

Timing

Feedback to this discussion paper is due by 28 July 2022. The FCA will then provide feedback and decide whether to issue a consultation paper or another discussion paper.

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