Financial Conduct Authority

Consultation Paper CP23/10

Primary Markets Effectiveness Review: Feedback to DP22/2 and proposed equity listing rule reforms

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Primary Markets Effectiveness Review: Feedback to DP22/2 and proposed equity listing rule reforms

To: Primary Markets Policy Team, Financial Conduct Authority.

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1. Introduction

1. We welcome this FCA consultation aiming to make the UK Listing Regime more accessible, effective, easier to understand, competitive and to benefit both issuers and investors.

2. We believe a primary competitive driver of stock markets is having a pipeline of good, long term viable businesses seeking public money at the right time and attractive to investors. Therefore, we agree that changing the listing rules will not necessarily make the UK stock markets more attractive. As a recent FT Alphaville article mentioned "next time a UK float runs into trouble, it's probably best viewed as a vote of confidence on the company rather than its host market"[1].You will also need to be careful not to make changes that result in the removal of things that attract investors.

3. In this context, we agree to the new single listing category of equity shares in commercial companies (ESCCs). We do not agree to some of the proposals. The reasons are given in our answers to specific questions. In most cases they relate to our concerns that the higher standards required for the current premium listing are being excessively and needlessly watered down. However, we agree broadly with the following changes:

    3.1. Modified and simplified eligibility and ongoing rules requiring that a company has an independent business and has operational control over its main activities, to create a more permissive approach to accommodate a range of business models and corporate structures.

    3.2. Modified rules requiring listed companies to conclude a shareholder agreement with a controlling shareholder to ensure flexibility by moving to a comply or explain and disclosure-based approach, again to create a more permissive approach for a wider range of business models and corporate structures.

    3.3. The removal of compulsory shareholder votes and shareholder circulars for significant transactions, but only if there are appropriate safeguards introduced.

    3.4. A single set of Listing Principles and related provisions.

[1] FT Alphaville Ten Years of UK IPOs in nine ugly charts by Bryce Elder 12 June 2023 - https://on.ft.com/45VZLw7

4. We have no comments on what is being retained at this stage and recognising there will be a further consultation on the regime in the autumn.

5. You say in your introduction that “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”. If this is the case, we are supportive so long as the envisaged digitisation reforms enable greater engagement between issuers and their shareholders.

6. You say in your summary “based on what we have heard from stakeholders to date, it does not appear the incremental investor protection premium listing provides compared to other international capital markets is viewed as a significant factor in investment decisions”. We suggest this assumption is not made without further research amongst investors being conducted. We believe that certain premium listing requirements are valued by investors, such as the ones that you are keeping and applying to the proposed single regime. It will also be the case that when investors find out they have lost something they took for granted it may then be viewed as a significant factor in their decisions.

7. We support the focus on transparency where investors will be equipped with the decision-useful information they need. This is crucial for holding companies to account.

8. We support your proposed application of the existing premium listing continuing obligations concerning pre-emption rights to issuers in the new single ESCC category.

9. We would be happy to engage with the FCA Primary Markets Policy Team in helping to clarify individual investor views and perspectives. Please contact Charles Henderson at charles.henderson@uksa.org.uk or Dean Buckner at dean.buckner@uksa.org.uk and Cliff Weight at cliff.weight@sharesoc.org if you wish to take us up on this offer.

2. About UKSA and ShareSoc

10. UKSA and ShareSoc represent the views of individual investors. Between us we have over 23,000 members. In addition to our own members, 6 million people own shares or have investment accounts with platforms in the UK.

11. The Office for National Statistics estimates that at the end of 2018 UK-resident individuals held 13.5% of the UK stock market, up by 1.2% from 2016 and moving away from the historical lows of 10.2% in 2008. In 2020, the Financial Times estimated that 15% of the UK stock market is held by individual shareholders. In addition to this there are many more who have money invested in shares via funds, pensions and savings products such as employee share ownership schemes. See https://www.sharesoc.org/investor-academy/advanced-topics/uk-stock-market-statistics/

UKSA (United Kingdom Shareholders' Association)

12. UKSA was originally formed to provide individual shareholders with a voice, influence and an opportunity to meet like-minded fellow investors. It is structured as a non-profit making company with annual subscriptions. An elected Chairman and Board of Directors (all volunteers and individuals with a wide range of backgrounds and experience) monitor a regional organisation. Each region benefits from oversight by an elected regional Chairman and Committee.

13. There are many agents and intermediaries in financial markets. Unlike them, UKSA represents solely those people who are investing their own money. UKSA and ShareSoc work together to build relations with regulators, politicians and the media to ensure that the voices of individual shareholders and their interests in the long term public good are reflected in the development of law, regulation, and other forms of public policy.

14. We also aim to build relations with regulators, politicians and the media to ensure that the voice of individual shareholders is reflected in the development of law, regulation, and other forms of public policy. See www.uksa.org.uk

ShareSoc (UK Individual Shareholders Society)

15. ShareSoc is a not for profit company. It is dedicated to the support of individual investors (private shareholders as opposed to institutional investors). It aims to make and keep investors better informed to improve their investment skills and protect the value of their investments. It engages with companies, the Government or other institutions if we think individual shareholders are not being treated fairly.

16. ShareSoc actively campaigns to seek redress for private shareholders in cases where they have been the victims of unfair or unscrupulous treatment by companies and / or the financial services industry. See www.sharesoc.org

3. Answers to your numbered questions

Q1: Do you agree with the proposal to remove specific financial information eligibility requirements for a single ESCC category? If not, please explain why and any alternative preferred approach.

17. As you may find with all the responses to this question, we have mixed views on this proposal. Some of us believe that a company without a three-year record should be able to list. It is up to the potential investors in the IPO to decide whether or not they want to buy the shares being offered.

18. Others do not agree with the removal of eligibility rules requiring a three-year financial and revenue earning track record as a condition for listing, and no longer requiring a 'clean' working capital statement. The main reason for this is that there should be appropriate times when commercial companies come to public markets for equity capital. If they have not got a reasonable track record to show their business is commercial or do not have prospects of working capital that shows they are potentially viable in the medium term, such commercial companies are not yet ready for public money. Therefore, we suggest the premium segment requirements are retained for the proposed new single segment.

Q2: Do you agree with a proposal to explore a modified approach to the independence of business and control of business provisions for a single ECSS category, with a view to enhancing flexibility, alongside ensuring clear categories for funds and other investment vehicles?

19. Yes, we agree.

Q3: Do you have views on what rule or guidance changes may be helpful, and whether certain disclosures could also be enhanced to support investors and market integrity, or any alternative approaches we should consider?

20. We are not able to respond with any degree of authority on this question.

Q4: Do you agree with our proposed approach to dual class share structures for the single ESCC category and the proposed parameters? If you disagree, please explain why and provide any alternative proposals.

21. We are not comfortable with dual class share structures as we believe they conflict with shareholder democracy and tend towards unfettered powers of decision making resting with an individual or group of individual shareholders. This in turn leads to potential corruption from not having sufficient challenge to decision making from other shareholders. Dual class shares also do not necessarily recognise the relative value of the financial investment contribution between shareholders. These would be better allocated with a single class of

share with one vote each with the greater contributors, like a founder, receiving greater numbers of shares.

22. As a result, we disagree with the proposed approach. This is a fundamental issue of principle (either all shares have equal votes or they do not) and accordingly we are unable to suggest any alternative proposals.

Q5: Do you agree with our proposed approach to the controlling shareholder regime for a single ESCC category? Do you have any views on the suitability of alternative approaches to the one proposed?

23. Yes, we agree. We have no views on alternative approaches.

Q6: Do you agree that our proposals as regards controlling shareholders align with our need to act, as far as is reasonably possible, in a way which is compatible with our strategic objective of ensuring markets work well and advances our market integrity and consumer protection objectives? If you don't agree, how do you believe these should be balanced differently?

24. Yes, we agree.

Q7: Do you agree with the proposed approach to significant transactions for a single ESCC category? If not, please explain why and any alternative proposals.

25. Yes, we agree.

Q8: Do you consider that additional disclosure could be considered to further support transparency to shareholders on significant transactions and, if so, what (e.g., considering current circulars)?

26. We cannot think of any additional disclosure to be considered.

Q9: Should we consider further mechanisms prior to a significant transaction being formally completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed commercial company equity issuers in place of shareholder approval? What should those mechanisms be and why?

27. We cannot think of anything to suggest other than your example of a mandatory period of delay being required.

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Q10: Should the sponsor's advisory role in assessing whether a potentially significant transaction meets the proposed disclosure threshold be mandatory or optional, and what are your reasons? Do you agree with our proposal that sponsors have more discretion to modify the class tests, including substituting the tests with alternative measures, without seeking formal FCA agreement to the modifications? If you disagree, please provide your reasons and alternative proposals.

28. We consider that the proposals go too far.

29. Paragraph 5.10 eliminates the requirement for a shareholder vote or a detailed shareholder circular in all cases apart from a reverse takeover. We can accept this, given the cost of circulars and the delay involved in a shareholder vote, but only if there are appropriate safeguards introduced.

30. However, the requirements regarding a sponsor that you introduce in paragraph 5.13 first bullet are far too limited. We consider that sponsors should be required to report to the FCA and to shareholders that the sponsor considers the applicable rules have been complied with and the requisite disclosures have been made. Simply relying on the company to "mark its own homework" is no more appropriate in the context of major transactions than would be permitting companies to publish annual results without audit, by relying upon the directors' legal obligations with regard to the approval of accounts.

31. We are unable to answer the second question about sponsors having more discretion to modify the class tests.

Q11: Should we consider expanding the sponsor's role further on any aspects of significant transactions?

32. We see no reason to do so beyond our comments above.

Q12: Do you agree with the proposed approach to RPTs for a single ESCC category, which is based on a mandatory announcement at and above the 5% threshold, supported by the 'fair and reasonable' assurance model which includes the sponsor's confirmation as described above? If not, please explain why and any alternative proposals in the context of a single ESCC category.

33. Based on the information you provide in your consultation document, we agree with the proposed approach to RPTs subject to our comments above.

Q13: Do you consider that additional disclosure requirements could be considered to further support transparency to shareholders on RPTs, and should we consider requiring certain mechanisms prior to a deal being completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed companies to replace the requirement for independent shareholder approval?

34. No, as we believe that other mechanisms such as annual audited financial statement requirements will provide sufficient transparency to shareholders of an issuer's RPTs.

Q14: Should it be mandatory for a listed company in the single ESCC category to obtain guidance from a sponsor on the application of the LR, DTR and MAR whenever it is proposing to enter into a related party transaction (irrespective of the size of the transaction), or should it be at the company's discretion?

35. Not in the case of transactions which are clearly below the 5% threshold. The company should have the requisite knowledge and, if they do not, they can voluntarily ask their sponsor for guidance.

36. In the case of transactions which exceed the 5% threshold, or which are borderline, it should be mandatory to obtain guidance from the sponsor.

Q15: Should it be mandatory for the sponsor to consult with the FCA and agree any modifications to the class tests and classification of a proposed RPT, or should the sponsor have more discretion? Please explain your reasons.

37. On the presumption that before an entity can provide the services of sponsor it must be approved by the FCA, we see no reason for sponsors to be required to consult the FCA. Where an issue is difficult, they can of course choose to consult the FCA voluntarily.

Q16: Are there any broader, alternative mechanisms that existing shareholders or prospective investors would want to see in place of, or made use of, in order to strengthen shareholder protection in relation to RPTs in the event that these changes are made to our LR? If so, would these be matters for inclusion in our LR or are they found, for example, in legislation or market practice?

38. We are unable to suggest any broader, alternative mechanisms.

Q17: Do you agree with the proposed approach to cancellation of listing for the single ESCC category, and do you have any views on other possible changes to the existing cancellation process?

39. Yes, we agree to retaining the requirement for a shareholder vote to cancel listings of shares in the single ESCC category, including the 75% majority requirement (and additional requirements where a controlling shareholder is

involved); this being supported by a circular approved by the FCA and retain the existing notice period of 20 business days following shareholder approval.

Q18: Do you think that the notice period proposed for the single ESCC category for de-listing should be extended (taking the approach of other jurisdictions) and if so to what? What would the benefits be?

40. As stated in our answer to Q17, no, as we think 20 business days' notice should be sufficient.

Q19: Do you consider the policy for cancellation of listing by the FCA after a long suspension should be revisited? If so, how?

41. Yes, but we are unable to suggest how other than potentially exploring this issue in the further consultation in the autumn.

Q20: Do you agree with retaining shareholder approval provisions on discounted share issuance and on share buy-backs, as currently required by the premium LR, as part of a single ESCC category, or would these be problematic for certain issuers?

42. Yes, we agree that shareholders should have a say on discounted share issuance and share buy-backs.

Q21: Do you agree with our proposed approach to reporting against the UK Corporate Governance Code for companies listed in the single ESCC category, and are there any other mechanisms the FCA could consider to promote corporate governance standards?

43. Yes, we agree.

Q22: Do you have any views on the proposed application of reporting requirements under LR 9.8 (i.e., premium LR requirements) as the basis for the single ESCC category?

44. Our views are that premium listing requirements should apply to all companies in the proposed new single ESCC category.

Q23: Do you agree with our proposed changes to the LR principles? If not, please explain why and provide details of any alternative suggested approach.

45. Yes, we agree.

Q24: We are considering applying the principles as eligibility criteria, to clarify expected standards and reflect the fact that in practice these requirements need to be complied with at the point of listing. Please provide details if you foresee any issues with this approach.

46. We support this approach and foresee no issues.

Q25: Do you agree with our proposed changes to strengthen co-operation and information gathering provisions as outlined in this section? If not, please explain why and any alternative suggested approach to addressing the issue identified.

47. Yes, we agree.

Q26: In relation to our proposal to ask issuers to provide contact details of their key persons, do you think this should include details of the CEO, CFO and COO? Do you have any other suggestions as to other key roles that we should consider? Also, are there circumstances where it would be appropriate for an issuer to nominate a third party (such as an FCA authorised advisor), as a key person and, if so, why?

48. Yes, it should include contact details of key persons, including the CEO, CFO and COO. Other key roles would be whoever heads up information technology and digital data and also key non executive roles such as the Chair, SID and Audit Committee Chair.

49. In respect of third parties, this should include the company's sponsor and the responsible partner at the company's external audit firm.

Q27: Are there specific considerations we need to take into account for different issuer or security types, in relation to our proposals in this section, that we should take into account as we develop our proposals further?

50. We are not aware of any considerations.

Q28: Do respondents have any concerns about the availability of sponsor services as a result of the proposed changes to the listing regime and the sponsor role?

51. No.

Q29: We welcome views from sponsors on whether they would be able to adapt or willing to provide services to a potentially wider and more diverse range of issuers? We particularly welcome any information or data on the implementation and ongoing costs sponsors may incur as a result of our proposals.

52. Not applicable to us.

Q30: Do sponsors have any concerns about performing the sponsor role and providing sponsor assurances within the model proposed? Please provide details.

53. Not applicable to us.

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Q31: Do you have any concerns that sponsors will be able to demonstrate continued competence under our proposed approach? What matters should the FCA take into account when assessing sponsor competence?

54. We cannot comment.

Q32: We welcome views on proposed restructure of the listing regime set out above. In particular, do you agree with our preliminary proposals for dealing with issuers that are not issuers of equity share in commercial companies?

55. Our main interest is in equity shares in commercial companies and therefore do not feel able to provide any views on issuers that are not issuers of equity shares.

Q33: Have we identified the impacts on different issuer types and sufficiently delineated between them? If you have alternative suggestions that we should consider, please provide details.

56. We are unable to comment.

Q34: We welcome views and suggestions on our proposed approach as outlined above and in Annex 4, for updating the LR sourcebook.

57. We have nothing to add.

Q35: If you have views on what transitional arrangements may be required, please provide details.

58. We have no views.

Q36: How long do you think issuers may need to prepare for and implement the various changes proposed in this consultation? For example, how long would commercial company issuers of standard listed equity shares need to prepare to ensure they could meet additional obligations proposed under the ESCC listing category, such as those relating to significant transactions and related party transactions (discussed in Chapter 5). Please also provide reasons.

59. The proposed changes do not appear to us to be particularly onerous to standard market issuers and premium market issuers will be already used to the requirements. As a result, we believe that no more than two years will be needed.

Q37: Have we identified the areas where cost to issuers, advisors or sponsors may be increased as a result of our ESCC single segment proposals? If not, please explain the additional costs that we should consider in our CBA.

60. No comment.

Q38: Please provide estimates for familiarisation costs and implementation costs for the different policy elements of the proposed new ESCC category, if possible.

61. No comment.

Q39: To assist us to quantify the costs of our proposals, please provide data or additional information to explain the additional costs that might arise to issuers, advisors or sponsors.

62. No comment.

Q40: Are there any other considerations we should take into account?

63. No comment.

Q41: Have identified the areas where cost to issuers or sponsors may be increased as a result of our overarching proposals? If not, please explain the additional costs that we should consider in our CBA.

64. No comment.

Q42: Please provide estimates for familiarisation costs and implementation costs for the proposed new overarching provisions, if possible.

65. No comment.

Q43: To assist us to quantify the costs of our proposals, please provide data or additional information to explain the additional costs to issuers, advisors or sponsors.

66. No comment.

Q44: Are there any other considerations we should take into account?

67. No comment.

Q45: Have we identified the areas where our proposals may impose additional costs on investors? If not, please explain the additional costs that we should consider in our CBA.

68. Probably yes.

Q46: To assist us to quantify the costs of our proposals, please provide data or additional information to explain the additional costs to or other impacts on investors.

69. No comment.

Q47: We do not know how index providers will react to our proposals, but we invite feedback on estimated impacts and costs associated with any re-balancing of indices that may arise.

70. No comment.

Q48: Have we correctly identified the costs to parties in relation to indexation as a consequence or follow-on from our proposals? To assist us to quantify these costs or any other costs we should consider, please provide data or additional information to explain the additional costs or other impacts.

71. No comment.

Q49: Do you agree with the benefits of our proposals that we have identified above? If not, please explain why.

72. Yes, we agree.

Q50: Are there any additional benefits that we should consider in our CBA?

73. We cannot think of any.

Q51: What do you consider to be the most important factors in deciding where to list (for example, regulation, valuations, depth of capital markets, comparable peers, investor / analyst expertise, taxation, director remuneration requirements, indexation, location of main operations). Please rank your factors in order of importance.

74. The most important factor to consider is whether it is the right time in a company's life to go to the public markets for capital. It is only then that other factors, as listed in your question, need to be considered. We would suggest that the top two of these, in order, should be first whether there is a high probability of supplying the required capital initially and in the future and, second, whether the regulatory requirements for the listing location (and main operations) require suitable levels of governance and transparency.

Q52: Do you have any suggestions as to how we might quantify the benefits of our proposals? And can you provide any evidence of the cost savings to issuers that might arise from our proposals to no longer obtain shareholder approval for certain significant transactions and RPTs?

75. No.