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Locke Lord QuickStudy: FCA's Proposals for Reform of UK Listing ?Regime

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On 3 May 2023 the Financial Conduct Authority (**FCA**) published its consultation paper (CP23/10) setting out a blueprint for significant reforms of the UK listing regime for issuers of shares. The policy proposals are intended to streamline and simplify the UK listing regime and to encourage a more diverse range of companies to list in the UK, especially companies that are at an earlier stage of their development, are highly acquisitive and/or innovative.

The proposed changes are likely to have significant impact on existing listed companies, particularly commercial companies (*i.e.* companies that own and operate a business with assets, employees, actual or prospective revenue generation etc) currently listed in the premium and standard listing segments.

The key proposals include (by comparison to the current premium listing rules):

- the creation of a single listing category for equity shares based on a single set of listing principles and related provisions, removing the distinction between standard and premium listing;
- a modified sponsor regime that would be applied to new issuers applying for a listing of equity shares after a specified date, and to all existing listed issuers that transition to the new single category; *
- 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 'comply or explain' approach in relation to the UK Corporate Governance Code will be retained (and will apply to all companies within the single listing category);*
- the removal of mandatory shareholder approvals and circulars for significant transactions, to be replaced with a prescribed announcement of key transaction details for transactions $\geq 25\%$ of the class thresholds;
- the requirement for shareholder approval and circulars for delisting, reverse takeovers or discounted share offerings will be retained;*
- the removal of mandatory shareholder circulars and votes for related party transactions, to be replaced with a requirement for a fair and reasonable opinion for transactions $\geq 5\%$ of the class thresholds;*
- relaxation of rules requiring listed companies to have in place a shareholder agreement with a controlling shareholder to ensure flexibility by moving to a 'comply or explain' and disclosure-based approach;*
- relaxation of existing rules in relation to dual class share structures; and
- separate listing categories and rules for equity shares issued by investment vehicles, including closed and open-ended investment companies, SPACs and potentially for other types of investment.

* Denotes new requirements for standard list companies

The Bigger Picture

Whilst the proposed reforms are designed to and would considerably reduce the regulatory burden on existing premium listed companies, conversely, they would increase burdens on standard listed companies who are not currently subject to a sponsor regime, a significant transaction regime or the UK Corporate Governance Code.

The consultation paper contains only high-level proposals on the transitional arrangements. Importantly, the FCA is consulting on transitional arrangements for existing standard listed companies including those not able to satisfy the new single segment criteria. It is expected that the Autumn consultation will contain more details of transitional arrangements for existing issuers.

It is also worth viewing these proposals in the context of the proposed reforms of the prospectus regime published in 2021 and 2022, which include:

- Expanding the ability for companies to make a public offer of securities without requiring a prospectus. Essentially, the existing exemptions will continue to apply, with the addition of excluding offers where the securities are admitted to trading on UK markets or offered by means of regulated platforms.?
- Giving the FCA enhanced rule-making responsibilities. Whilst the concept of a prospectus will be retained as an important part of the IPO process, it will be simplified. Further the FCA will be able to specify when a prospectus is required, what a prospectus should contain and address the manner and timing of validation and publication.?

Taken together these proposals are very welcome and, if carried forward, will provide a much needed boost to London's main capital market, simplifying regulation and ease of access to capital as well as providing safeguards to investors in the form of a greater role for sponsors on listing. There are however a number of points (for example the removal of shareholder consent for related party transactions) that are a reaction to recent events that go some way to eroding investor protection in an effort to make the market more competitive and, it should be queried as to how necessary these are.

There are also a number of areas that require further clarification – in particular around secondary listings. The FCA is currently considering whether to include overseas companies with a 'secondary' listing in London (typically listed on the Standard segment) in this new single category. Whilst there is an argument that the rules should apply equally to all applicants, it would likely create a strong disincentive to companies looking to London as a secondary market.

The lack of a sponsor regime on Standard has been one of the main reasons secondary listings have seen such success in the last 10 years as issuers are reluctant to incur the time and cost to 'redo' work that has already been approved by their 'home' market. In order to maintain London's attraction for overseas issuers as a secondary listing venue, it is essential that there is some recognition of the regulatory regime in home markets and an exemption (amongst others) to the requirement for a sponsor on listing.

Going forward it's clear that these proposals have two principal purposes that should be welcomed: (i) to give London a competitive edge through the removal and simplification of regulation; and (ii) raising the bar for entry to

the market to eliminate the smaller issuers who may have seen Standard as a less onerous route to market than AIM.

However, in so doing it is clear that the cost of listing in London is likely to increase (at least for those companies that would have sought a Standard listing) and regulators should be careful to ensure that in so doing this does not create a barrier for overseas companies. It should also be noted that, taken in the round with other proposed reforms, the cost of joining and maintaining a Main Market listing is, likely, to be significantly cheaper with less onerous regulation and easier access to capital with the relaxation of the prospectus regime.

The FCA states that it will engage with index providers as to the effects of the proposals on index inclusion criteria. At the time of writing, FTSE Russell has not commented on the FCA's proposals.

Next Steps

The proposed key changes outlined above are subject to further consultation. The consultation does not contain draft rules but the FCA expects to publish a further consultation containing draft revised listing rules in the Autumn and has stated that it is aiming for "an accelerated timetable", with substantial progress by the end of 2023.

The deadline for responses is 28 June 2023. A copy of the consultation paper is available [here](#).

If you would like to discuss any of the matters raised in this briefing, please contact one of the authors.

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