

Inside FCA Podcast: Interview with Mark Austin and Clare Cole on listing reform and primary market effectiveness

OI: Hello and welcome to the Inside FCA podcast. I'm Ozge Ibrahim, and in this episode of the podcast, we'll be talking about the FCA's Primary Market Effectiveness proposals to simplify stock market listing rules. I'll be joined by the FCA's Director of Market Oversight, Clare Cole, and Mark Austin, who chairs the Listing Authority Advisory Panel, a practitioner panel that advises the FCA on primary markets policy and regulation issues.

Hello and welcome, Mark. Why are listings and primary markets important?

MA: Well, we're often asked that, actually, why does it matter that the UK has its own capital markets and that they are doing well? And I think the answer is quite simple. And we've said this a number of times, but we're very, very good at creating companies in this country. We're very good at the innovation side of things. The start-ups, number of start-ups in this country is huge. But if every time that we produce a great company like that, whether it's in tech or life sciences, or whatever, it's green energy, that company then goes and lists overseas, then we're losing them to this country.

And it becomes only a matter of time if they list overseas that management move overseas, then corporation moves with it, and then tax take moves with it, jobs move with it. And so, we think it's important, and I think it is important, that we, as a globally significant country, are able to keep those companies in our own jurisdiction. Because if we want to become a science and a technology superpower, then we need to be able to support companies to go global from the UK. And there's also a sort of national flag-bearer point around it as well, you know, we are in a global foot race. We are an international global capital market. We're in a foot race with many other jurisdictions now. You see it all around the world that other jurisdictions want to develop very dominant, powerful capital markets and listing, become listing jurisdictions. And so, we have to be, we have to be wide eyed, open eyed about that and realise that we should do what we need to do to evolve and make sure that we are keeping pace with them, frankly.

OI: So, there's a competition element there.

MA: There is definitely competition element. Yeah. Absolutely.

OI: And is that one of the reasons this area draws a lot of attention and interest?

MA: I think so, I mean it's obviously very high profile. I do think, sometimes, that London as a financial centre is actually doing better than a lot of people often think. And we can come back to that in a bit maybe, but it's the primary listings, primary market side of it often gets all the attention rather than some derivatives and effects side of things, which a lot of which is still here, but it's a sort of, it's the high profile nature of, you know, companies like Deliveroo deciding to list here or Arm deciding list here or the States that gets attention. But that does have a trickledown effect because it has a trickledown effect on companies deciding to come and list here, then bringing jobs here, tax take. So, it's important for the economy. And I think also the general confidence of the country actually.

OI: And there's been a couple of reviews of the UK listing regime over the last few years. Could you talk about their significance?

MA: So, the reviews started in 2020 with Jonathan Hill's review, when he was asked by the Treasury to look at the listings regime. That was an important review because it was really firing the starting gun on this reform journey in earnest, I would say. I mean, obviously things started, the need for this started a little bit earlier in the, further back in time, because we had a certain referendum in 2016. Which, as I've said before, wasn't the cause of all this, but it was the catalyst for it. And we went from being, while we were in the EU, more often than not, the default financial centre and listing venue, for companies in particular, who didn't want to use New York, to not necessarily being that anymore. And so, it meant that we had to think about how we did keep ourselves relevant, were there things that we could do to modernise. And to be honest with you, there were issues in our capital markets that had been building up for quite a long time.

But while we were the default venue, we didn't have to address them because people came anyway. And also, to be honest with you, we looked at them a lot at the time and thought, they look quite hard. Maybe we'll do that tomorrow. And so, but leaving the EU meant that actually it was an opportunity. I would describe it as an opportunity. It was an opportunity for us, which we've taken, to make ourselves match fit again, to actually address the friction points that had been building up, the hard ones and the easy ones, to try to keep ourselves relevant on the global stage.

And so, Jonathan's review in 2020 was the first step in that. And I have to say, and I've said it many times before, the FCA should be praised highly for moving with speed and alacrity and vision in response to Jonathan's review. They're continuing to do that now. The team here have got this from day one. Jonathan's review came out in March 2021. Much of that has already been implemented. Things like free float got taken from 25% down to 10%. We allowed dual class shares to be a structure that could be used on the UK markets.

And then, after that, there was my review in '21, I was asked by the Chancellor to do one on secondary capital raisings, which reported in 2022. And again, much of that has come, but there's more in train. Then you had Ron Kalifa's fintech review, Edinburgh Reforms with Mansion House Compact, the list goes on. And it's fantastic, to be honest with you. I mean, I tend to characterise it as having a dotted green tick in that box now. Of legal and regulatory reform. You know, we're not quite there yet.

And there was a consultation paper that came out just before Christmas, which is sort of the final stage in that journey, along with the prospectus consultation that will come later this year. But I think by the middle of this year, more or less, we will have addressed the key friction points on the legal and regulatory side, in a way that means that we will bear comparison again with any other jurisdiction, global listing jurisdiction.

OI: What are the friction points that you've mentioned?

MA: So, the friction points, the key ones, I mean, they range across a number of areas. So, I tend to characterise it as falling into sort of legal and regulatory friction points and then market practice friction points. And then also cultural attitudinal friction points.

On the legal and regulatory side. We had, over the last 20 or 30 years, I would say, allowed our listing regime, very logically and sensibly, to become overly back letter, to become overly... we'd allowed ourselves effectively to drive risk out of the capital markets. We had taken the view, I think almost unconsciously, that people should never lose money on the capital markets. So therefore, if we saw a problem, we should put some more rules around it to make sure it never happened again, which is one way to regulate. But it's not a way that allows you then to have any meaningful amount of risk in a capital market. And there needs to be risk in a capital market, not undue levels of it, but legislating by reference to guardrail cases is never a very sensible way to proceed. And I think we'd allowed ourselves to become a little inured to that way of doing things, to be honest with you. And so, we had a regime, that meant that the FCA was looking over the shoulder of issuers and investors more than perhaps they needed to, and more than was the case in other jurisdictions.

And that was a good thing, per se, but it meant that, as I've said before, and we said in Jonathan's review and I said in my review, there's no point having a theoretically perfect market if people don't use it and use other markets. So, you have to strike a balance.

And ultimately, when you're thinking about how to fashion a market, the only people that matter are issuers and investors. I mean, they are the only two constituencies who matter in the capital market.

All the rest of us are hangers-on. And if you talk to issuers, they didn't feel they needed all the protections that were in the old listing regime. Indeed, some of them are actively, active friction points, like, for example, having to have a shareholder vote on a major acquisition. The classic example of that was in auctions for assets, US auctions. It meant that they couldn't move as quickly, UK PLC couldn't move as quickly as companies from other jurisdictions. Often that meant they didn't bid, or they lost the bidding process. That's just one example. But that, so issuers felt that the rules that were put around them on the UK market had become unduly burdensome. And if you talked to investors, they said, 'We don't need them.' You know, 'All we care about is full disclosure. We don't need the FCA imposing shareholder votes on related party transactions or significant acquisitions or disposals. We just want all the disclosure from issuers and then we're big boys and girls, we can make up our own mind about whether we want to invest or not. And if we don't, we won't. But we don't need the FCA doing our job for us.' And that's where we'd allowed ourselves to get, I think, a little too sort of incumbent, if you like, as a listing venue. And that's why I think, you know, the last few years have been a brilliant opportunity for us to actually look with a critical eye at the friction points and work out how we could deal with them.

But that's the friction points on the legal and regulatory side, and we will soon have a, will have gone back to a listing regime that is disclosure based, which is where we used to be, actually. And then on the market practice side of things, the classic one is on remuneration and corporate governance and stewardship. And there's an active debate going on, on that at the moment, and a lot of work going into trying to recalibrate the governance and stewardship regimes as well, which the same process has happened really, which is that they're very well thought through. They're very logical. But they've actually become unduly burdensome and don't actually achieve the aims of good governance and good corporate good stewardship that they want to achieve.

OI: Some of what you're talking about there is culture related isn't it?

MA: It is, yeah.

OI: What do you think needs to happen so that the culture can change? It sounds like that's what you're sort of talking about there and there needs to be a shift.

MA: I think there does and that's, then that's the really hard but. I talked about hearts and minds at the start of this, that requires a cultural shift, as you say. And some of this is quite hard because it's sort of embedded in the British psyche. You know, we're quite good at being bit Eeyorish about things sometimes, denigrating success rather than celebrating it.

As some other jurisdictions do. And I think we do need to move our mindset. If you can summarise it, and this is happening, by the way, we need to move our mindset from one of an incumbent mindset that 'we're the UK, we'll always be all right' you know, we always have been all right; and we will, by the way, to more of an insurgent mindset. As more of an entrepreneurial, insurgent mindset. Recognise that we are in a global footrace with other jurisdictions, and we have to be clear eyed about that and that we need to reform our system to make sure that people want to use it, because there's no point, as I said, having a theoretically perfect system if people choose to use other ones. And so that's, that's the cultural move that needs to happen. And you are seeing that happening. I mean, Nikhil has been talking about it. Nikhil and Sarah talked about it in the forward to the, to CP23/31 just before Christmas about the need to have more risk in our markets, to be more risk taking. And I think you're seeing that across the whole ecosystem, actually. You're seeing people talking about being risk on rather than risk off, which is what we'd sort of let ourselves fall into the trap of being.

OI: And you've just mentioned the CP there, do you think that proposed changes will help make London more attractive to companies?

MA: I do. I do. I mean, I have a day job as well where I talk to putative issuers and to investors, and I've been doing a lot of that recently. And if you go and talk to them about the changes that are coming in and across the piece, not just on legal and regulatory space, but on market practice and driving capital back into UK equities, it's incredibly powerful. I mean, they all go, oh, I hadn't realised that. I hadn't realised the UK had done all this. I knew there was stuff going on, and there's a bit happening over there, and there's a bit happening over there. I didn't know how they fitted together and that was lining at this time and that was lining at that time. And actually, when you put it all together into a holistic, coherent narrative, it becomes incredibly powerful. And I've lost count of the number of conversations I've had with people saying, we should have another look. We need to have another look. And the way I characterise it is that people just want to - people want to use the UK, they just need an excuse to use it. And so, you need to give them that excuse. And, but once they actually understand what we've done and why those friction points that we were talking about have disappeared, then, I'm very optimistic that we will see people come and use our markets again.

The consultation paper that came out before Christmas is really the final piece, or the penultimate piece in the journey, in the jigsaw that Jonathan Hill set out in 2021.

MA: Because in there, Jonathan said, he pointed out that the premium and standard listing segments were unnecessarily cumbersome. Now what was really meant by that was actually we should move to one single listing segment. At the time, we hadn't moved further enough, far enough along the reform journey I don't think, that we could say that in so many words, but it's what was meant.

And so, this consultation paper, the main thing that's in there, is collapsing premium and standard listing segments down into one new commercial company listing segment, which is much better for everybody. It's a simple segment. Premium had become too burdensome. And as we were just talking about some of the rules in there unnecessary from the point of view of both issuers and investors, so that's important.

Taking out shareholder votes on significant transactions, big acquisitions, big disposals and also on related party transactions. Again, was something that had become a friction point that you didn't see in other markets. It stopped companies being able to move at the speed they might otherwise have moved with, actually then enabling them - stopping them growing in the way they might otherwise have been able to grow through acquisitions. And so that's an important point. And really the whole theme of the consultation paper is putting the onus back on to issuers to give full disclosure to investors and then trusting investors to make their own decisions based on that full disclosure, rather than the FCA having to look over their shoulder the whole time and do that for them.

The other significant change is the sponsor regime, where that's going to be kept, at the point of IPO, which I think is good. It helps the FCA, it means the sponsors in the market are the eyes and ears of the FCA and can assess potential applicants for listing for suitability for being on our markets. But importantly, the FCA is making it clear that some of the practices that had grown up around the sponsor regime are unnecessary, because some of the ways that sponsors felt, had intuited that they needed to behave, and internal procedures they needed to have around the regime had made it quite unattractive to be a sponsor. So importantly, the FCA is clarifying that and making that more streamlined, making its intentions much clearer. The sponsor regime will, though, largely be streamlined post listing. So, it'll stay largely the same at the point of IPO, but after IPO, the instances when you'll need a sponsor if you are a listed company will diminish, which I think is a sensible development.

OI: And taking all the proposals into... just thinking about all of them. What do you think should happen next?

MA: Well, I think the key thing is that we make sure, this is obviously a consultation paper. I mean, it's an unusual consultation paper in the sense that the changes have been talked about for quite a long time now. And, actually, there's a previous consultation paper last year, obviously 23/10.

So, I think, the team at the FCA know where they want to land. They were very good at setting that out as the vision when they put this paper out and in the months before it. But I think we need to make sure that we do land where the FCA wants to land in the first half of this year and that the rules come in largely as they are set out in the consultation paper at the start of H2. And then the final piece of the jigsaw, from a sort of pure primary markets point of view, is to then make sure that the prospectus, new prospectus regime and the new powers the FCA will have to make that regime, that that lands also in, well, I think the market again, has a pretty good sense of where that's going to land. And the FCA will be consulting on that in H2 this year and bringing in the new rules in H1 next year. But again, that is something that was originally raised in Jonathan's review in '21. I talked about in my review in '22. The Treasury has already done a consultation on it. The market corroborated the views that were in Hill. So, I think the FCA knows pretty clearly where it wants to land on that which is the right place.

I think the key thing is running the CPs to conclusion and implementing them, this one and the prospectus one. But I think also, critically, we're now at a stage in the reform journey, in the UK, where, you know, we're three and a half years in from when, from the starting gun being fired. We've made a huge amount of progress. And the key thing now is actually we need to make sure that we're telling people, international, UK and international issuers and investors what we've done and how the friction points have been addressed and why we are, or about to be, match fit again as a market.

It's that communication and that narrative. And there are a number of us now who are trying to pull that together into what we call the UK elevator pitch across legal and regulatory reform, market practice, the cultural and attitudinal mindset bit that we've talked about, the deployment of capital and putting it all together into a simple, coherent, powerful and crucially positive narrative that all of us in the market can use to talk positively and concisely and powerfully to UK and international issuers and investors about why they need to take another look at the UK.

OI: Clare Cole explains the background to the FCA's consultation, which proposes significant reforms to improve the framework for listing commercial companies' equity shares.

CC: I think we found ourselves in quite a unique position post-Brexit to have an opportunity to really look holistically at the primary markets regime, and that was building on some of the work that Lord Hill had already done. It's important to remember the listing rules in the UK have not really been reviewed since the 1980s, so we're really becoming quite outdated. And what we wanted to do was look at the regime and really try to simplify it. So, provide a regime that was more accessible, effective and competitive.

We wanted to be able to appeal to a wider range of issuers, something that we've seen a decline of in the recent years, and the number of companies that want to list. So, we're really trying to look at a way that could reduce some of that complexity, bring more issuers back to the UK markets and also provide greater opportunity for investors.

OI: What are the likely impacts of the proposals?

CC: So, the proposals look to change the current two-tier listing regime, which has a premium and a standard listing, into a single listing for commercial companies with equity shares. So, we've moved to a much more proportionate set of eligibility requirements. We've removed shareholder approval in certain circumstances, and we've moved to a much more permissive disclosure based regime. Whereas, historically, we've been quite focussed on decisions around eligibility and the requirement for shareholder approval. We've also made some quite important changes to dual class share structures, which hopefully will build on the work that we already did last year.

In terms of likely impact, I mean, I think what we would hope is that we will see more issuers coming to the UK markets. The reduction in complexity means issuers, hopefully, will find us more competitive with other jurisdictions. And I think one of the key changes is that we're moving to a regime which is far more transparency and disclosure based. But it also means that we're moving to a position where investors will need to be more involved in decisions around the companies that they invest in and, hopefully, the disclosure that we provide will support them in doing that.

OI: And does replacing it with a single listing category for commercial companies represent a weakening of regulation?

CC: I think it represents a different type of regulation. So, one where we move from a permissive based to a risk based. And we've been very clear that we wanted the regime to be one where we put information into the hands of the investors. So, one where there's greater transparency and disclosure. But it was really clear that investors would need to have a role to play in the process.

So, I think what we're saying is that these changes mean greater investor risk and greater responsibility on investors to put, to hold companies to account, but ultimately it also means there's greater opportunities, potentially, for investors, and in a way that perhaps there hasn't been before, because there will be a wider range of different types of issuers on our markets.

OI: And does the consultation differ to previous efforts to change the regime?

CC: It does. This is the first time in almost 40 years where we've actually looked at the regime as a whole. Changes to the listing regime historically had been very much focussed on fixing individual aspects of the regime. What we were able to do with this set of changes was actually step back, look at the regime as a whole and think about where we needed to change the regime to be. Firstly, much more competitive with other jurisdictions but also to really encourage more issuers to our markets.

OI: So, what comes next?

CC: It's a really good question. So, we've taken quite an unusual approach in that because we wanted to get the proposals out as quickly as possible. This consultation includes the most fundamental aspects of the regime changes, but there will be a second consultation very soon which will come out with the final parts of the rulebook, and we're moving quite quickly, so we hope to be able to introduce the final set of new rules towards the summer period. So, this consultation will close at the end of March. The second set of proposals will be out in February with the same closing date, and then, hopefully all being well, and depending on the feedback we receive, the new regime should be in play by the second half of this year.

OI: And is this a job for the FCA alone, or are there other actors, players, involved and, if so, who?

CC: Yeah, it's a really interesting part of this reform and something where we've been really grateful for the fact that a number of city stakeholders have also got behind these proposals, because what we're talking about is trying to change the entire primary markets ecosystem and that is far more than just regulation.

I think we have done our bit to try to encourage, more issuers to come to our market. But ultimately, the decision to list in the UK is much more than just around regulation. It's about taxation, depth of capital valuations, peer companies. And there are a number of different people that I think need to be involved in trying to really bring some life back to UK markets. And what has been really good so far. As I say, we've seen lots of different parts of the industry come together to help us with this. In addition to that, we've had groups that have been set up specifically to look at this like the City Taskforce, Capital Markets Taskforce as well. And, ultimately, I think we recognise that it's far more than just regulation and hopefully this is just the first part.

OI: And you mentioned more issuers coming to the UK market. Why is this important?

CC: What's really interesting about our markets is the knock-on effect it has. So, it's just not about capital markets but encouraging more issuers to list here will bring, I hope, more jobs to the UK. It has a wider impact. We're hoping that the rules will encourage, particularly some of our fantastic high tech companies that we have in the UK, to stay in the UK for longer, bringing more jobs, more opportunities within the UK. So, it's much more than just simply about the listing journey, it also has an impact on that wider economy as well.

OI: And, what else is the FCA doing to strengthen wholesale markets and why is this important?

CC: Well, the work we're doing on primary markets is one part of the reform. So, we have been looking specifically at the listing rules to date. But, at the same time, we've also been reviewing the prospectus regime within the UK. And, importantly, we have been doing a lot of work to improve the quality and content of prospectuses but also to think about a separate regime for public offers and there's a lot more to come in that space and that will be a key part of the next year.

The other area that's really important in this context is the work that we've been doing on something called an intermittent trading venue. It's a new type of venue which will trade shares in private companies in small windows and this is a really important part of the wider financing continuum for issuers. So, hopefully, will be a good stepping stone to public markets in the future.

OI: And finally, what do you think should happen next?

CC: Well, I think the work that we've done on primary markets is a really good starting point to show that we're prepared to be competitive in the UK, that we want to be, want to have a market that works really well for both issuers and investors. But an important part of that, as I mentioned earlier on, is making sure that we get the entire financial ecosystem right. So that means that we need to see issuers coming to our markets. We need to see advisors working with their issuers to encourage them to look at London as an opportunity. But we also need to think about things like access to capital and a willingness to invest in UK listed issuers. At the moment, we're seeing increasing numbers of pension funds, for example, investing abroad and in other jurisdictions. It would be great to see some of that money flow into UK listed issuers as well.

OI: Thank you both for your time and your insight into this complex and evolving area. You can find out more by reading the Primary Market Effectiveness consultation on the FCA website. I'm Ozge Ibrahim, join us again soon on the Inside FCA Podcast.

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