

To Primary Markets Policy Team

6 July 2023

By email

FCA Listing Authority Advisory Panel (LAAP) and Markets Practitioner Panel (MPP) formal response to CP 23-10 Primary Markets Effectiveness Review

MPP is an independent statutory panel that the FCA is required to establish and maintain under FSMA. It advises the FCA on policy issues, regulatory proposals and other strategic matters that are likely to affect wholesale financial markets. LAAP is an independent statutory*¹ panel that advises the FCA on policy issues which affect issuers of securities, and on policy and regulation proposals from the FCA listing's function.

The FCA Board appoints Panel Members as individuals, not as representatives of any individual firm. They are expected to contribute to the respective panels from the perspective of wholesale and securities markets or the primary market sub-sector in which they are working, drawing on their personal experience and industry sentiment more generally

This joint response reflects views widely held by LAAP and MPP Members and does not necessarily imply unanimity on all areas of feedback.

Executive summary

We strongly support the FCA's proposals to create a genuine single listing segment for equities which is attractive to and balances the needs of investors and issuers – the two key stakeholders in the context of this debate. This model will provide investors with access to the information they need to make investment decisions, and attract and retain companies, particularly those with high-growth potential.

The reforms proposed in the consultation paper are an essential part of the ongoing reforms to the UK capital markets and should help the UK remain relevant as a global listing venue. Once the consultation period has concluded, the new regime should be implemented quickly for new issuers, subject to appropriate grandfathering.

There are a number of areas where we believe particular attention is needed.

For the reforms to be successful, the corporate governance and stewardship regime in the UK also urgently needs to be reviewed and reformed holistically to make it fit for purpose for the coming years. The 'comply or explain' regime has in reality become 'comply or else' and, as such, we believe that it is acting as a constraint on the discretion and efficacy of boards as the delegated managers of issuers. This is ultimately to the detriment of the UK when compared to competitor jurisdictions. An alternative view provided is that the approach of investors and the role of proxy voting agencies requires addressing, rather than the Codes

¹ *The status of LAAP changes to 'statutory' under provisions within the Financial Services and Markets Bill. The takes effect two months following the receipt of Royal Assent.

themselves, and that Boards should perhaps be more willing to accept higher levels of dissent.

It is important to be mindful of this constraint in the context of these reforms, as the comply or explain regime for the UK Corporate Governance Code will apply to all companies listed on the listing category for equity shares in commercial companies (ESCC). This will include overseas issuers for which the current flexibility of the standard listing segment has been key. It will be important to consider grandfathering provisions for existing overseas issuers on the standard listing segment who may be unable to comply with these rules and to give new issuers a genuine option to comply with the corporate governance code of their jurisdiction. The willingness of investors and proxy voting agencies to accept such provisions would be another factor to consider.

We agree with the FCA's principle of ensuring that sponsors play a role where there is most value and, if the regime is to be retained at least in part, that they are appropriately remunerated for that function. In the paper, the FCA indicates that from its perspective this is at the listing gateway. The proposals still contain however a number of requirements post-listing, with a risk that the ongoing administrative costs of performing the sponsor role exceed the fees associated with sponsor-related events and so the number of sponsors reduces over time.

There is little mention of retail investors in CP23/10 which is at odds with the emphasis placed on allowing retail shareholders greater access to secondary offers in the Secondary Capital Raising Review and the new Pre-Emption Group Guidance. We are in favour of the FCA's Listing Rules themselves being amended so that existing retail shareholders are included in a follow-on offer of new securities. In addition, we suggest a mandatory retail tranche of at least 5-10 per cent on IPOs so that equal treatment (*vis-à-vis* institutional investors) is enshrined for retail investors on primary issuances not just secondary issuances.

Two Panel members have expressed concerns in relation to proposals on dual class shares, related party and significant transactions and are of the opinion these require further discussion to demonstrate adequate safeguards are provided to shareholders. Therefore, in our responses to questions on these areas, although we are reflecting majority views, these are not held by all members. Similar concerns have been expressed by other industry respondents and we welcome further debate with the FCA and to try and address areas of outstanding concerns.

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.

Yes.

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?

Yes.

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?

Additional FCA guidance would be helpful. However, we do not believe that disclosure requirements should be extended to beyond levels required by UK MAR.

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.

We generally agree with the FCA's proposal to introduce a more permissive approach to dual class share structures, In actuality, there should not be any restrictions on the form of DCSS that is permitted, as per the current standard listing segment. A disclosure- based approach should be adopted instead, in line with the broader approach of principle outlined in CP23/10. Market dynamics would determine the acceptable parameters of any particular DCSS framework and investors would be able to make their own decisions on the basis of full disclosure. Separately, it will be important to determine when the holder of enhanced voting rights shares will be categorised as a controlling shareholder.

Two members have expressed concerns with the proposals as consulted on and would like to ensure adequate safeguards are in place to protect investors.

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?

Generally, yes.

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?

Generally, yes, two of our members have expressed some concerns and welcome further discussion.

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.

Generally, yes, but as previously outlined, two of our members have expressed some concerns and welcome further discussions.

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)

Generally, no. We consider that the existing UK MAR disclosure obligations, together with subsequent disclosure of information about the relevant transaction in the company's next financial statements, should be sufficient, however two members would like further discussion on adequate safeguards for shareholders.

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?

Generally, no.

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.

In line with how the FCA indicates in the consultation paper that sponsors provide the most value is at the point of listing, accordingly, there would be no need for a sponsor in relation to significant transactions. The sponsor role in any context needs to be clearly defined to benefit the listed company, along with any other expertise that the FCA might deem necessary that an issuer seeks.

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

No.

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.

No. If sponsors are retained at the point of listing only, there would be no need for a sponsor in relation to significant transactions and therefore no relevant threshold for a 'fair and reasonable' assurance model. In any addition, a fair and reasonable opinion could be provided by any financial adviser with suitable expertise, to consider the impact on minority shareholders. The overall approach supports the proposal of a more disclosure-based regime.

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?

Generally, no, however as previously outlined in our Executive Summary, two members have expressed concerns with the proposals as consulted on and would welcome further discussion.

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?

No.

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.

No.

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?

Generally, no, however as previously outlined in our cover letter, two members have expressed concerns with the proposals as consulted on and would like further discussion.

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?

Yes.

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?

No.

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

No.

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?

No.

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?

Yes. We agree with the proposed approach to reporting against the UK Corporate Governance Code, except in the case of international companies. In these cases, it would be more appropriate to allow companies to report against their domestic code if they choose, with the requirement that they indicate if they are doing so. This would provide investors with sufficient information regarding the company and understand the reasoning behind their disclosure approach without placing undue burden on the companies themselves.

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?

No comment on specific requirements. As noted, the ESCC should accommodate international companies.

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.

Please see our response to Q4 with regards to ensuring that the rules permit the proposed regime for dual class share structures.

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.

We do not foresee any issues with this approach.

Q25: Do you agree with our proposed changes to strengthen cooperation and information gathering provisions as outlined in this section? If not,

please explain why and any alternative suggested approach to addressing the issue identified.

No comment.

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?

We generally agree however we question whether all firms will have a standalone COO, and if the details of the CEO and CFO would be adequate

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?

No.

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?

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.

The decision as to whether to provide sponsor services will be a decision that each adviser will need to make based upon their individual circumstances given the cost and liability profile involved.

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

No, as long as there is clarity on the ongoing responsibilities of a sponsor and there is sufficient guidance on the criteria to be applied by them, and their responsibilities being clearly articulated. If retained and in whatever form, the purpose of the Sponsor Regime should be communicated to ensure all stakeholders are clear on the function and the requirements of the sponsor and imposed them, so that is well understood.

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?

No. We support the clarification that when the FCA is assessing competence, they will be likely to consider transactions on which a sponsor has advised on that have not required a sponsor declaration.

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?

Please see our response to Q21. The regime should accommodate the situation of international companies appropriately, in particular with regards to UK Corporate Governance Code.

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

Yes

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

We welcome the simplified approach.

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

As noted in our cover letter, it will be essential to provide for appropriate grandfathering of existing listed companies and for there to be sufficient guidance ahead of the implementation of the regime changes. Perhaps a more lenient timescale should be afforded to existing standard listed issuers of equity shares that are commercial companies transferring to the new ESCC category given that they will be more impacted by the proposals than existing premium listed commercial company issuers.

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.

Where companies are able to comply with the new rules, we would recommend that they are able to join the ESCC as soon as possible, noting the response above that existing companies that are not able to do so should not be removed from the market and hence will need appropriate grandfathering and guidance.

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.

The other proposals are expected to reduce the costs associated for companies rather than increase.

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

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.

We have previously cited the 'hidden costs' for sponsors in fulfilling their current roles and would refer back to those comments in past submissions.

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

No.

Q41: Have we 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.

No comment.

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

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.

No comment.

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

No comments. As noted before, it will be important to consider the impact of the additional costs on sponsors in light of the reduction in the number of firms performing the role.

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.

No comment.

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.

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.

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.

No comment.

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

No comment.

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

No other benefits to add, though we note that it is critically important to ensure the regime keeps flexibility for a range of companies to join the UK's public markets.

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.

No comment

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?

No comment.

We would be very happy to discuss our views with you further if this would be helpful.

Yours sincerely

The FCA's Listing Authority Advisory Panel
The FCA's Markets Practitioner Panel