


24 July 2024 | Reed Smith In-depth

UK equity capital markets – the FCA’s new UK Listing Rules

Subscribe 

Key takeaways

- The UK Financial Conduct Authority (FCA) has published the **final form** of its new UK Listing Rules. The new rules come into force on 29 July 2024.
- The new rulebook merges the FCA’s current premium and standard listing categories to form a single category for the equity shares of commercial companies admitted to the Official List.
- This is accompanied by a significant reduction in both the admission eligibility criteria and the ongoing obligations applying to the merged category (by comparison with the current premium Listing Rules), with an emphasis instead on disclosure and investor choice.
- The FCA aims to create a more accommodating regulatory environment for a wider range of companies seeking a listing in the UK, particularly high-growth companies.
- In general, the FCA’s final rules follow the draft rules on which it **consulted** earlier in 2024, but with some key changes in the detail, as a result of market feedback
- There are limited transitional arrangements to avoid a cliff edge and to clarify the treatment of ‘in-flight’ transactions.

Authors: **Delphine Currie, James F. Wilkinson, Edmund Tyler**

New category for equity shares of commercial companies

The new equity shares (commercial companies) category will replace the current premium and standard listing categories and include the following key changes (by comparison with the current premium Listing Rules). Key revisions to the draft rules containing these changes are also noted below.

- **Admission criteria.** Companies will still need to have a market capitalisation of at least £30 million and a ‘free float’ (shares not held by insiders) of at least 10 per cent to list on the Official List. However, they will no longer need to have a three-year financial and revenue-earning track record – potentially enabling high-growth companies to obtain a listing at an earlier stage. The new rules will also not require a company to confirm it has at least 12 months’ working capital, although working capital disclosures will still be required in the prospectus. Companies will no longer be subject to the same rules on having an independent business and operational control over their main activities, which may permit a wider range of listed business models and structures. In addition (in a change from the FCA’s draft rules), if a company has a ≥ 30 per cent shareholder, a controlling shareholder agreement will not be required. The company must still be able to demonstrate independence from the controlling shareholder at all times.
- **Dual/multiple class share structures.** The FCA’s **recently-introduced rules** in this area will become considerably more flexible. Individual founding investors and employees, as well as directors, at the time of IPO will be able to hold enhanced voting rights. The new rules do not mandate a maximum time period or voting ratio for these rights. In a change to the draft rules, these rights can also be held by pre-IPO institutional or other corporate investors, such as venture capital or private equity investors, but in this case the rights must last a maximum of 10 years. The enhanced voting rights will be exercisable on most resolutions, other than Listing Rules matters where the FCA considers ordinary shareholders should be entitled to specific protection, such as shareholder approval of employee share schemes and LTIPs, dilutive share issues or certain buybacks, or de-listing. The voting rights will not be transferable except to a person established for the sole benefit of, or solely owned and controlled by, the original holder.
- **Continuing obligations – significant transactions.** An FCA-approved circular and shareholder approval will no longer be required for significant transactions (≥ 25 per cent in size under the class tests – which will no longer include a profits test), other than reverse takeovers. Instead, a company will need to publish a detailed announcement containing prescribed content when entering into a significant transaction outside the ordinary course of business. However, in a change to the draft rules, the company will now be able to split the announcement, with a first announcement containing initial information on signing, and a further announcement as soon as the requisite information becomes available or, in any event, by completion. The rules do not require the announcement(s) to include a working capital

statement, re-stated historical financial information or third-party opinions. In addition, in a further change to the draft rules, while historical financial information will still be required for a disposal, the final rules do not insist on its inclusion for an acquisition. However, the rules contain an overriding obligation to include any further information the company considers relevant, having regard to the purpose of the significant transaction rules. Companies will also need to be mindful of their obligations under the Market Abuse Regulation, and to ensure they do not publish information which is inaccurate or misleading, or which omits important information. The rules require further disclosures in respect of pro forma information, statements about estimated synergies or quantified financial benefits and the sources of financial information, if the company includes this type of content. The initial announcement must state the board's opinion that the transaction is in the best interests of security holders as a whole. A further announcement will be required to confirm completion of the transaction, and that no material changes have occurred affecting the matters announced.

- **Continuing obligations – reverse takeovers.** An FCA-approved circular and shareholder approval, as well as a detailed initial announcement, will still be required for a reverse takeover (≥ 100 per cent in size under the class tests or which results in a fundamental change in the business or a change in board or voting control).
- **Continuing obligations – related party transactions.** An FCA-approved circular and shareholder approval will no longer be required for transactions outside the ordinary course of business with related parties which are ≥ 5 per cent in size under the class tests. However, an announcement containing specified content will still be required for a related party transaction of this size, as well as a fair and reasonable opinion from the company's sponsor. As with a significant transaction announcement, the announcement for a related party transaction must also contain any further information the company considers relevant, having regard to the purpose of the related party rules. It must also comply with the company's general disclosure obligations under the Listing Rules and the Market Abuse Regulation. Under the new rules, a non-director shareholder will only be treated as a 'substantial shareholder', and therefore a related party, if it holds ≥ 20 per cent of the voting rights (instead of ≥ 10 per cent), provided it does not otherwise exercise significant influence over the company.
- **Continuing obligations – other transactions.** The Market Abuse Regulation may require announcement of transactions below the 25 per cent threshold, but the Listing Rules will not prescribe the content. In addition to reverse takeovers, shareholder approval will still be required by the rules for non pre-emptive share issues at a > 10 per cent discount, certain share buy-backs and employee share schemes/LTIPs, or de-listing. UK companies will also remain subject to shareholder approval requirements for certain transactions under the Companies Act.
- **Continuing obligations – controlling shareholders.** Independent shareholder votes on the appointment of independent directors, or for de-listing, will still be required. Additionally (in a change to the draft

rules), where a director considers a resolution proposed by the controlling shareholder is intended to circumvent the Listing Rules, the board must set out the director's opinion in the circular to shareholders.

- **Continuing obligations – corporate governance.** Premium-equivalent corporate governance standards and annual disclosures will apply to the equity shares (commercial companies) category.
- **Existing premium and standard-listed commercial companies.** Commercial companies with premium-listed equity shares will transfer automatically to the new equity shares (commercial companies) category. However, equivalent standard-listed companies will not move automatically to this category, but will instead move to a transition category, which will remain subject to the current standard Listing Rules. Those companies able to satisfy the eligibility criteria and continuing obligations can then elect to move to the new equity shares (commercial companies) category, if and when they wish to do so. This will be a simplified procedure requiring the appointment of a sponsor and an announcement. The transition category will be closed to new applicants (and accordingly, a company in this category that undertakes a reverse takeover will need to apply to re-list in a different category).
- **Sovereign controlled companies.** Equity shares of sovereign controlled companies will also be included in the equity shares (commercial companies) category, subject to derogations based on the approach adopted in the current rules for these companies.

Other listing categories

- **Overseas companies with a secondary listing in the UK.** The rules contain a new category for non-UK companies that wish to maintain a secondary listing in the UK for their equity shares, but not be subject to the full (albeit much reduced) requirements of the new equity shares (commercial companies) category. This largely replicates existing standard listing requirements. Existing overseas companies with a secondary listing on the current standard segment will move automatically to this category. The FCA intends to disapply indefinitely, as a continuing obligation, the current requirement regarding the location of the company's central management and control and elements of the definition of a qualifying home listing for existing companies and in-flight applicants.
- **Closed-ended investment funds.** The new rules retain a separate category for the equity shares of closed-ended investment companies, based on the current rules. 'C shares' carrying voting rights prior to conversion can also be listed in this category. Following industry feedback, the FCA has revised some of its draft rules for this category, such that the key features of its final rules are the retention of shareholder votes on material changes to investment policies and management fee changes, the closer alignment of the rules for significant transactions and related party transactions with those for the equity shares (commercial companies) category (discussed above) and a technical change to the definition of

independent director. Management fee changes will require a related party announcement supported by a sponsor's fair and reasonable opinion at $\geq 0.25\%$, and shareholder votes and related circular requirements for changes of $\geq 5\%$ or above (or uncapped fees).

- **SPACs and other shell companies.** The FCA has created a new category for the equity shares of shell companies (including SPACs) based on its **recently-introduced rules and guidance**. The changes made by the FCA in its final rules are outside the scope of this article, but in broad terms the FCA has reverted to a position which is similar to the rules it currently applies to these companies. However, the FCA has still set time limits within which it expects an initial transaction to be undertaken. Existing SPACs and shell companies will move automatically to this category.
- **Other categories of security.** The new rules include separate categories, based on the current rules, for: open-ended investment companies; non-equity shares and non-voting equity shares; GDRs and other depositary receipts (including those in sovereign-controlled companies); debt and debt-like securities; securitised derivatives; and warrants, options and miscellaneous securities.

Sponsors

- Companies will be required to appoint a sponsor on an initial application for listing, or for a subsequent reverse takeover, in the equity shares (commercial companies), SPAC/shell companies and closed-ended investment funds categories. Companies will also need a sponsor for a secondary fundraising if this requires a prospectus, a related party transaction requiring a fairness opinion, or when seeking guidance, modifications or waivers from the FCA on its rules (including the class tests).

Proposals impacting all issuers

- A revised set of general Listing Principles will apply to all categories and there are new provisions aimed at improving compliance, including a renewed emphasis on companies maintaining appropriate systems, controls and records to ensure compliance. To enable companies to ready themselves for these changes, the FCA will apply a six-month transition period. A new applicant will now also be required to provide a board confirmation to the FCA that the company has taken reasonable steps to establish adequate procedures, systems and controls to enable it to comply with its obligations under the rules. Companies must also provide the FCA with the contact details of two executive directors (or two directors, where the board is wholly non-executive) with whom it can liaise on matters of importance or where an urgent response is required, together with the contact details of a nominated person for the receipt of documents served by the FCA (these are in addition to existing primary contacts required by the FCA from companies in the equity shares (commercial companies) category and certain other categories). A six-month transition period will also apply to this requirement. Procedures and processes will remain for listing applications, cancellations, suspensions and transfers between listing categories,

subject to more minor changes.

FTSE UK Index Series

- FTSE Russell has **announced** that the new equity shares (commercial companies) category will become the eligible index universe for the FTSE UK Index Series, replacing the premium segment. As premium-listed companies will automatically map to the equity shares (commercial companies) category, there will be no immediate impact on the FTSE UK Index Series' composition. Similarly, closed-ended investment funds with a premium listing will also map automatically to the new closed-ended investment fund category and retain index eligibility.

The move away from a more prescriptive rulebook to a disclosure-based regime represents a significant change for London's main market. In its policy statement on the final rules, the FCA acknowledges again that the greater flexibility offered by the new rules brings with it the possibility of more business failures as the price to be paid for deregulation. At the same time, it recognises that there are many factors other than the regulatory environment that influence a company's choice of IPO venue. Nevertheless, the proposed changes may still provide an opportunity for companies considering a London listing for whom the current rules are a barrier.

The FCA intends to monitor the impact of its new rules and has committed to a formal post-implementation review in five years' time. The FCA also plans to consult on new prospectus rules later in the summer of 2024.

In-depth 2024-159

**RELATED INFORMATION:
ENERGY AND NATURAL RESOURCES INDUSTRY LAWYERS
EXPERIENCED ADVISORS FOR ENTERTAINMENT AND MEDIA
PRECISE LEGAL SERVICES FOR FINANCIAL SERVICES**

© 2024 Reed Smith LLP. All rights reserved.

This site is protected by reCAPTCHA and the Google Privacy Policy and Terms of Service apply.