

MARKET EFFECTIVENESS UPDATE: CHANGES TO THE UK LISTING, PROSPECTUS AND SECONDARY CAPITAL RAISING REGIMES

SPRING 2023

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The [UK Listing Review](#), chaired by Lord Hill and published in March 2021, recommended significant changes to the UK capital markets legal and regulatory landscape in order to drive growth in the financial services sector post-Brexit. A number of Lord Hill's recommendations have been implemented and others are pending, primarily pursuant to the [Edinburgh Reform package](#) and the [UK Secondary Capital Raising Review](#). This briefing summarises the key changes made to the Listing Rules and changes made or pending to the wider listing regime, prospectus regime and secondary capital raising processes, and considers their potential impact.

OVERVIEW

As part of the Government's plan to reform the UK capital markets sector after Brexit and encourage more companies to list on UK markets, certain changes to the UK Listing Rules, including relating to free float, dual class share structures and SPACs, came into force in late 2021¹. As above, the changes were largely driven by the UK Listing Review², chaired by Lord Hill. Lord Hill had also suggested changes be made to the structure of the listing segments in the UK, and specifically that the Standard segment be rebranded and promoted as a venue for companies of all types to list with the key feature being flexibility. Further to that recommendation, the FCA published a Discussion Paper³ in May 2022 proposing that a single listing segment for equity shares issued by commercial companies should replace the current premium and standard listing segments of the FCA's Official List. A follow up discussion paper or consultation is expected later in 2023.

In December 2022, alongside a policy statement⁴ on the "Edinburgh Reforms"⁵ – a package of reforms aimed at driving growth of the UK financial services sector and repealing certain retained EU law including the UK Prospectus Regulation⁶ and the UK Market Abuse Regulation⁷ - changes to the interlinked prospectus regime were confirmed in an illustrative statutory instrument on public offers and admissions to trading (SI)⁸ published under the Financial Services and Markets Bill⁹, which is the cornerstone of the Edinburgh Reform package. The SI confirms the Government's intention to proceed with various proposals consulted on in July 2021 as part of the UK Prospectus Regime Review¹⁰, and also broadly follow the recommendations of Lord Hill in the UK Listing Review. Separate but related, in July 2022, the recommendations of the UK Secondary Capital Raising Review¹¹, led by Mark Austin, were published. The Review was launched in response to a specific recommendation of Lord Hill to look into how secondary capital raisings could be made more efficient in order to further boost the UK as a destination for IPOs. Those recommendations have been accepted in full by the Government and implementation is underway.

CONFIRMED CHANGES TO THE LISTING REGIME

The confirmed changes to the Listing Rules came into force on 3 December 2021 and together with the August 2021 amendments to the Listing Rules affecting special purpose acquisition companies (SPACs)¹², these changes address (i) the recommendations of the UK Listing Review¹³ chaired by Lord Hill and published in March 2021¹⁴, and (ii) the Independent Strategic Review of UK fintech¹⁵ chaired by Ron Kalifa OBE and published in February 2021.

DUAL CLASS SHARE STRUCTURE HISTORIC EXAMPLES

In July 2021, London-based money transfer fintech company Wise announced its direct listing to the standard segment of the Main Market. It was the first significant direct listing in London by a technology company¹⁶ and was significant in the context of the listing and prospectus consultations because Wise featured a dual class share structure and opted for a standard listing. On admission, Wise had two classes of shares, Class A shares and Class B shares. The Class A shares trade on the Main Market, whilst the Class B shares, which carry nine votes per share, were not admitted to listing or trading on any stock exchange and are non-transferable. The Class B shares carry no economic interest or right to dividends.

In September 2020, THG Holdings plc listed on the standard segment of the Main Market with a dual class share structure to enable its founder to hold a "special share" enabling him to deter an unwelcome takeover. Deliveroo plc also listed in London with a dual class share structure, in March 2021, but with a weighted voting rights structure designed to empower, and ensure that majority control resides with, the founder (or his permitted transferees) for so long as he holds the shares and is a director. These listings generated significant attention in the UK and shone a spotlight on the premium listing restrictions, which will have influenced these companies' listing segment decisions. In changing the Listing Rules, Lord Hill and the FCA tried to strike a balance between investor protection and sentiment – flexing the one share, one vote principle to encourage high profile premium listings in London whilst ensuring investor protection and avoiding long term founder entrenchment.

From a US perspective, the change to allow dual class share structures to list on the premium segment was particularly necessary for London to compete in attracting offerings by founder-led or "unicorn" companies, which overwhelmingly favour dual class or multi class voting structures. In 2020, dual class companies constituted approximately 60% of the market capitalisation of US IPOs despite making up only 15% of the total number of IPOs¹⁷. This trend was particularly true for high profile technology companies as evidenced by debut offerings by Airbnb, Lyft, Pinterest and Slack – all of which had dual or multi class shares and listed on either NYSE or Nasdaq.

LOWER FREE FLOAT REQUIREMENT

The FCA reduced the free float requirement, which applies to premium and standard listings, from 25% to 10% to remove a potential barrier to companies choosing to list in London. This requirement applies at the point of listing and as a continuing obligation.

Noting that shareholdings by individual shareholders of 5% or more are not treated as “public” under the Listing Rules (because they are assumed to be strategic holdings that do not provide liquidity), a 10% free float means that a company must have at least three public shareholders at the point of listing.

HIGHER MINIMUM MARKET CAPITALISATION (INCLUDING TRANSITIONAL PROVISIONS)

The FCA increased the minimum market capitalisation (MMC) required for new listings on the premium and standard listing segments from £700,000 to £30 million because it considered that companies with a low market capitalisation were better suited for admission to junior or growth markets such as the LSE Alternative Investment Market (AIM) or the AQSE Growth Market¹⁸, and that the £700,000 minimum was out of date given market growth since its introduction in 1984. In its July 2021 consultation, the FCA had proposed a cap of £50 million but has reduced the threshold following feedback regarding the number of smaller companies considering a UK listing that may have found £50 million too high. The FCA also introduced transitional provisions to allow:

- applicants that made a complete submission for a listing eligibility review on or before 2 December 2021 may continue to be able to formally apply for listing based on the previous MMC of £700,000, provided they do so within 18 months;
- shell companies (including SPACs) already listed at 3 December 2021 will be permitted listing applications following an acquisition to be made based on the previous MMC of £700,000, provided that complete submissions for an eligibility review for listing and a prospectus review are made on or before 1 December 2023. This means a listed shell company will have two years to find an acquisition target and reapply for listing with a £700,000 MMC; and
- companies with existing classes of shares admitted to listing prior to 3 December 2021 and that continue to have at least one class of shares listed, to list additional classes of shares based on an MMC of £700,000.

The FCA believes that raising the minimum market cap to £30 million works alongside its reduced free float requirement to 10% (as above), to set a minimum free float for IPOs and direct listings of £3 million. This provides an additional safeguard to liquidity at IPO or, in the case of a direct listing, the point of introduction to the market.

While the increased minimum market cap applies only to new issuers, smaller listed SPACs need to consider the rule in relation to their re-admission following a de-SPAC acquisition.

PROPOSED CHANGES TO THE LISTING SEGMENTS AND SPONSOR REGIME

As above, the FCA has also consulted on the structure of the premium and standard listing segments of the LSE Main Market in order to understand what issuers and investors value the most in the current regime. Broadly, premium listings are subject to the highest standards of regulation and a premium listing is a prerequisite for inclusion in the FTSE UK Index Series; whilst standard listings are subject to EU-derived minimum standards. Outside Main Markets, which are classified as “regulated markets” under relevant legislation, the UK also hosts a number of “growth markets” which are a sub-category of multi-lateral trading facilities (MTFs), as opposed to regulated markets. MTFs are principally regulated by the exchanges on which they operate, rather than the FCA. The UK’s growth market MTFs include AIM, which is regulated by the LSE; and the AQSE Growth Market (comprised of two segments, Access and Apex) which is regulated by the Aquis Stock Exchange (AQSE).¹⁹

The initial consultation in July 2021 sought views on different models for the structure of the UK listing regime including, at the most extreme end, creating a single segment with standards equivalent to the current standard segment and with additional admission criteria and continuing obligations set by trading venues (and, indirectly, index providers). In May 2022, as above, the FCA published a Discussion Paper in which it proposed that the current premium and standard listing segments of the FCA’s Official List should be replaced by a single listing segment for equity shares issued by commercial companies. All companies listed on the single segment would be subject to one set of ‘mandatory’ continuing obligations, based on the existing premium listing continuing obligations. The standard segment would be retained, although potentially renamed, but would be primarily for overseas companies wanting a secondary listing of shares (or other instruments) in London. The FCA is expected to publish further details on its proposals in mid-2023 and related consultations on the FTSE UK indices are expected to follow.

FINANCIAL TRACK RECORD

The FCA is not amending the current financial track record requirements for premium listings, which require historical financial information covering at least 75% of an issuer’s business for the last three years. Lord Hill had recommended amending the requirement so that it is only applicable to the most recent financial period within the three-year track record period, but the FCA had previously countered that any perceived benefit would be limited because of similar disclosure requirements under the prospectus regime, which requires companies to produce

three years of historic financial information where they have been in existence that long. In the policy statement, the FCA emphasises particular feedback it received regarding examples of high-growth companies who find meeting the current track record requirements difficult (pre-revenue companies such as e-commerce and technology companies, acquisitive companies in the biotech, fintech and pharma sectors and other companies following a 'roll-up' acquisitive strategy) and has said that it accepts the significance of the issue for these types of company and will work to explore changes to its requirements.

Notably, there are current provisions within the Listing Rules that allow certain specialist companies (mineral companies, scientific-research based companies and property companies) to demonstrate their track record using alternative means to revenue generation or some other proxy for revenue generation.

Further, and since 2012, the US has allowed "emerging growth companies" (as defined in Exchange Act Rule 12b-2) to take advantage of relaxed disclosure requirements in offering documents, including the provision of audited financial statements for the most recently completed two fiscal years (rather than three) and less extensive narrative disclosure.

REFORMING THE PROSPECTUS REGIME

Under the current regime, inherited from the EU²⁰ and subject to specific exemptions, public offers and admissions to a regulated market in the UK are separate triggers requiring an FCA-approved prospectus to be published. In line with Lord Hill's recommendations, and as outlined in the illustrative statutory instrument published in December 2022 is already defined on page 2 paragraph 2 as 'SI', published in December 2022²¹, HM Treasury is reforming the prospectus trigger requirements such that that listed companies will not need to publish a prospectus for public offers and the FCA will determine when a prospectus will be required for an admission to trading.

Currently, in order to be approved by the FCA, a UK prospectus must follow prescribed disclosure requirements, also derived from EU legislation, which aim to ensure that it includes all the necessary information which is material to an investor to make an informed investment assessment and decision. Those responsible for drawing up a prospectus are liable should they omit information required to be included or provide untrue or misleading statements in a prospectus.

ADMISSIONS TO TRADING

The Government has confirmed that it will remove the general prohibition on requesting admission to trading on UK regulated markets without first having published an approved prospectus, and give the FCA discretion to determine whether or not a prospectus is required when securities are admitted to trading, including giving it the flexibility to establish rules and conditions equivalent to those which exist under the current regime, or which go further. The Government believes that a prospectus may not be needed in all instances where an admission occurs (such as during a secondary issuance of new securities) and that the FCA is the right body to determine if and when a prospectus

is required, and what it should contain if one is required. The FCA will also have the discretion to recognise prospectuses prepared in accordance with overseas regulation in connection with a secondary listing in the UK.

PUBLIC OFFERS

Prospectuses will not be a feature of the public offerings regime following the reforms. In the new system, there will be a general prohibition on public offerings of securities against which there will be exemptions. A number of the exemptions will be carried forward from the current regime (specifically around "Qualified Investors" and offers to "fewer than 150 persons") but exemptions will be expanded to cover companies with, or applying to have, securities admitted to trading on a UK regulated market or certain "junior markets" (such as AIM, the AQSE Growth Market or other MTFs).

Separately, the definition of "the public" (which is also inherited from the EU regime) will be changed to ensure that fundraisings to existing shareholders in a company are exempt and are not treated as public offers requiring a prospectus. This aims to remove a disincentive against offering shares to a company's own shareholders which exists under the current regime.

The new public offer exemption will mean that all secondary issues, including rights issues, placings and open offers, will fall outside of the public offer prospectus requirement, with the aim of facilitating wider participation in companies, including by retail investors.

With respect to private companies, the Government intends to remove the current requirement for an FCA- approved prospectus on offers to the public over €8 million in size to be published. Instead, securities will be allowed to be offered to the public provided the offer is made through a platform operated by a firm specifically authorised for the purpose. In connection with this, the Government intends to create a new regulated activity covering the operation of an electronic platform for the public offering of securities, such as an equity crowdfunding platform.

ANCILLARY PROVISIONS

The illustrative SI also covers the following regime changes:

- Prospectus content, specifically the Treasury is retaining the overarching EU derived requirement for prospectuses to contain the "necessary information" which is material to an investor making an informed investment decision but giving the FCA discretion to set the rules on detailed disclosure requirements and not having them set out in legislation. The FCA will have discretion to specify the component parts of the document should it wish to, as well as the detail of individual items of content. Similarly, the FCA will have discretion to determine how base prospectuses (which are used to launch issuance programmes for fixed income securities) will work or to establish the procedure for setting a final price in a price range prospectus.

- Liability standards, specifically liability for forward-looking information in a prospectus will be aligned with liability for other listed company published information, so that liability is only incurred when a person knows a statement was untrue or misleading or were reckless as to whether it was, or if they knew an omission was dishonest. In addition, it will no longer be a criminal offence to apply for admission to trading on a UK regulated market without an FCA-approved prospectus.
- Application of prospectus requirements to companies admitted to MTFs, such as AIM. A company doing an IPO on an MTF will be able to include a retail offer without breaching the prohibition on offering shares to the public and no prospectus will be required solely because there will be no offer to the public. As the shares will not be admitted to trading on a UK regulated market, no prospectus will therefore be required.

However, as at present, an admission document will be required in accordance with the relevant MTF operator's rules (e.g. the AIM Rules for Companies). This will not change the current system in which the operators of MTFs establish admission criteria and rules for the facilities they run, subject to FCA rules and oversight.

SECONDARY CAPITAL RAISING REVIEW RECOMMENDATIONS

HM Treasury confirmed acceptance of the various recommendations made by the UK Secondary Capital Raising Review during the summer of 2022. The Review considered feedback from market participants and comparable capital raising structures in other jurisdictions and makes a number of recommendations, some to be implemented immediately and others over the near- to medium-term. These recommendations required or require implementation by the Pre-emption Group (PEG), the Financial Reporting Council (FRC) and FCA, as well as the Department for Business, Energy and Industrial Strategy (BEIS) and HM Treasury. The most significant recommendations include:

- Relaxing pre-emption requirements: to facilitate bigger placings and making permanent a relaxation introduced during COVID-19, the Review recommended that the Pre-emption Group change their Statement of Principles on disapplications of pre-emption rights such that investors will allow companies to issue up to 20% of share capital (10% for any purpose plus 10% for an acquisition or specified capital investment) under annual shareholder dis-applications. A further authority of up to 2% of issued share capital can be sought, but this can only be used for a "follow-on offer". This change has already been implemented via a new Statement of Principles²² and template resolutions published in November 2022.
- Relaxing disclosure requirements, including not requiring a prospectus for most rights issues: the threshold at which a prospectus is required for admission to trading should be raised from the current 20% to 75% in order to eliminate unnecessary duplicative disclosure on most fundraisings. Alongside the proposed amendments to the definition of "offer to the public" – which will exclude offers to existing shareholders from the

definition – as part of the ongoing prospectus regime reform (outlined above), this will mean most secondary capital raises will not need a prospectus, nor require a sponsor or FCA involvement.

- Shortening the timetable for secondary offers: the Review proposes that the notice period for shareholder meetings other than AGMs should be reduced from fourteen to seven clear days, which would reduce the timetable for capital raisings where shareholder approval is required. The period for which an offer must be kept open will also be reduced from ten to seven business days, which will also require an amendment to the Companies Act.
- Removing the requirement to appoint a sponsor, unless required in connection with a significant transaction under the Listing Rules. This would remove the need for the lengthy and costly diligence exercise (including the accountants' comfort package) currently required by sponsors to allow them to give the necessary confirmations to the FCA.
- Increasing the involvement of retail investors in all capital raisings, in particular, through the use of a retail investor platform and/or "follow-on" offers. A follow-on offer should be made to all existing shareholders, other than those involved in the placing; should entitle shareholders to subscribe for shares up to a cap of not more than £30,000 each, at the same or a lower price than the placing; and should be open for a period that is sufficient to allow shareholders to become aware of the offer and reach an investment decision.
- Requiring all shareholders to hold their listed company shares in dematerialised form in order to make all listed company actions more efficient. HM Treasury has published terms of reference²³ for a Digitisation Taskforce to develop a digitalisation framework and final recommendations are due by spring 2024.

NEXT STEPS

The FCA is expected to publish further details on its listing structure proposals later in 2023. The prospectus regime is expected to be among the first tranche of rules to be reformed under the incoming Financial Services and Markets Bill, which is expected to receive Royal Assent in the spring, changes are therefore likely to enter force towards the end of 2023. Certain recommendations of the UK Secondary Capital Raising Review have been implemented and those which require legislative amendment are pending.

ENDNOTES

- 1 Link to FCA Policy Statement (PS21/22), <https://www.fca.org.uk/publication/policy/ps21-22.pdf>
- 2 Link to UK Listing Review, <https://www.gov.uk/government/publications/uk-listings-review>
- 3 Link to FCA Discussion Paper (DP22/2), <https://www.fca.org.uk/publication/discussion/dp22-2.pdf>
- 4 Link to the Policy Statement, <https://www.gov.uk/government/publications/building-a-smarter-financial-services-framework-for-the-uk>
- 5 <https://www.gov.uk/government/collections/financial-services-the-edinburgh-reform>
- 6 The UK Prospectus Regulation, which governs the content, approval and publication of prospectuses, is the retained version of the EU Prospectus Regulation EU 2017/1129 and has applied in the UK since 31 December 2020.
- 7 The UK Market Abuse Regulation, prohibits insider dealing, unlawful disclosure of inside information, and market manipulation is the retained version of the EU Market Abuse Regulation EU 596/2014 and has applied in the UK since 31 December 2020.
- 8 Link to draft Financial Services and Markets Act 2000 (Public Offers and Admissions to Trading) Regulations 2023, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1122741/Draft_SI_Admissions_to_Trading_and_Public_Offer_Regime.pdf
- 9 Link to Financial Services and Markets Bill, <https://publications.parliament.uk/pa/bills/cbill/58-03/0146/220146.pdf>
- 10 Link to UK Prospectus Regime Review Consultation, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/999771/Consultation_on_the_UK_prospectus_regime.pdf
- 11 Link to the UK Secondary Capital Raising Review, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1091566/SCRR_ReportJuly_2022_final_.pdf
- 12 Link to Weil's May 2021 client briefing on the SPACs consultation, <https://www.weil.com/-/media/files/pdfs/2021/spacs-come-to-the-uk-3-may-2021.pdf> and detail about the confirmed rule changes in policy statement (PS21/10), published in August, <https://www.fca.org.uk/publication/policy/ps21-10.pdf>.
- 13 Link to the UK Listing Review, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966133/UK_Listing_Review_3_March.pdf
- 14 Link to Weil's March 2021 client briefing on the Hill Review, https://www.weil.com/-/media/weil-london-thought-leadership/pema/hill_review_key_recommendations_reform_uk_listing_regime.pdf
- 15 Link to the UK Fintech Review, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/978396/KalifaReviewofUKFintech01.pdf
- 16 A direct listing allows a company to be admitted to trading without the traditional route of an offering of shares and raising immediate capital. Existing shareholders are free to sell shares on the stock exchange at market-based prices and since there is no underwritten offering, a direct listing does not require the participation of investment banks acting as underwriters.
- 17 Dual Class IPO Snap Shot 2017-2020 Statistics, Council of Institutional Investors, <https://www.cii.org/files/2020%20IPO%20Update%20Graphs%20.pdf> Note that the quoted figures exclude SPACs and real estate investment trusts (REITs).
- 18 Please refer to the paragraph entitled "Listing segments" below for more information on these growth markets.
- 19 The Aquis Stock Exchange also hosts a Main Market.
- 20 The Prospectus Regulation, which governs the content, approval and publication of prospectuses, is the retained version of the EU Prospectus Regulation EU 2017/1129 and has applied in the UK since 31 December 2020.
- 21 See footnote 3 above.
- 22 Link to PEG's Statement of Principles 2002, https://www.frc.org.uk/getattachment/cd763f78-d306-43bf-99f7-7fb282200c4d/PEG_Statement-of-Principles.pdf
- 23 Link to the Digitisation Taskforce Terms of Reference, https://www.frc.org.uk/getattachment/cd763f78-d306-43bf-99f7-7fb282200c4d/PEG_Statement-of-Principles.pdf

FOR MORE INFORMATION

Our Corporate team is available to discuss any of these issues with you and answer any specific questions you may have. If you would like more information about the topics raised in this briefing, or a copy of our Guide to Premium Listings in London, please speak to your regular contact at Weil or to any of the authors listed below:



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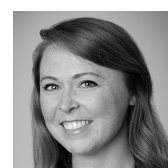
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