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Primary Markets Policy Team
Financial Conduct Authority
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By email: cp23-31@fca.org.uk

22 March 2024

Dear Sir / Madam

CP23/31: Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for listing rules reforms. LR 8 proposals

The Chartered Governance Institute UK & Ireland is the professional body for governance and the qualifying and membership body for governance professionals across all sectors. Its purpose under Royal Charter is to lead effective governance and efficient administration of commerce, industry, and public affairs working with regulators and policymakers to champion high standards of governance and providing qualifications, training, and guidance. As a lifelong learning partner, the Institute helps governance professionals achieve their professional goals, providing recognition, community, and the voice of its membership.

One of nine divisions of the global Chartered Governance Institute, which was established over 130 years ago, The Chartered Governance Institute UK & Ireland represents members working and studying in the UK and Ireland and many other countries and regions including the Caribbean, parts of Africa and the Middle East.

As the professional body that qualifies Chartered Secretaries and Chartered Governance Professionals, our members have a uniquely privileged role in companies' governance arrangements. They are therefore well placed to understand the issues raised by this consultation document. In preparing our response we have consulted, amongst others, with our members. However, the views expressed in this response are not necessarily those of any individual members, nor of the companies they represent.

Our views on the questions asked in your consultation paper are set out below.

General comments

This is an important consultation about an important subject, and we share the FCA's desire for the UK Listing Regime to be more accessible, effective, easier to understand and competitive.

There is clear evidence that the UK market is shrinking, and a package of reforms is required that will reinvigorate the attractiveness of the UK to both newly listing companies and new public capital. There are many reasons why companies chose to list in one market over another, some of these relate to factors of market infrastructure but, as you say in the feedback statement (page 6), "Inevitably, the listing regime is not the only element, and perhaps not the primary one, in decisions made about when and where to take companies public. Influencing other factors that drive those choices – including the macroeconomic environment, taxation, depth of capital markets, valuations, research coverage, indexation, and many other aspects besides – will require others to also act where they have the levers to do so."

We would go further. There are certainly voices in the market who seek to emphasise the significance of governance issues at the expense of the more significant issues affecting choice of listing regime, in some cases because it suits their commercial interests to do so. Our view remains that the minutiae of the listing regime is definitely not a primary factor in the choice of listing venue and is, indeed, a minor one. Those other factors that you identify, not to mention others such as those you identified in your consultation paper last May, "founder preferences, home market bias or company-specific considerations, such as the location of operations, customers, or investors" are, in our view far more significant in swaying decisions on whether and where companies choose to list.

Almost none of these lies within the sphere of influence of the listing authority and our view is that the impact of the changes that you are proposing on the central challenge of falling UK listings is, consequently, minor. The challenge for the FCA - and the focus of the debate that we have had amongst members - is how and where to balance the relaxations of rules to encourage more companies to list in the UK market against the potential associated loss of valued investor protections.

We also need to remember changed market conditions. As section 2.7 of the consultation paper notes, over the past 20 years, UK defined benefit schemes have tended to transition away from investments in UK equities to fixed income products – this is often a reflection of the maturity of the scheme, with an aging membership given that there are no new DB schemes, where predictability of income is required.

As you will see from our answers below to your specific questions, we support the efforts of the FCA to ensure consistent and proportionate standards across the UK listing regime but have concerns about some of the proposals on which the FCA is consulting here, particularly those relating to rules around related party transactions and to controlling shareholders. In short, we question whether some of the proposals quite strike the right balance between attracting issuers and attracting investors.

As we said in our response to your earlier consultation, "whilst we agree that 'increased accessibility of listing and capital on UK regulated markets' and the 'potential increase in attractiveness of a UK listing to new applicants' are laudable goals, for some of our members, the pendulum may be swinging too far in the direction of open access to the UK market and too far away from the strong corporate governance that we believe is a significant advantage – indeed a USP - for the UK market. This is a particular concern where the requirements that it is proposed to remove are those which offer important investor protections, for example the requirements for shareholder approval for related party transactions.

Whilst we accept that a relaxation in legal and regulatory requirements does not mean there has to be a diminution in good governance overall, that can be an outcome, and it is one that we wish to avoid. Our view, as the professional body for governance is, quite simply, that achieving an increase in listings in the UK market is not an end in itself. It is desirable, but only if the companies that are attracted to list are desirable too. In our view, those companies which are deterred from a UK listing by UK corporate governance requirements may well be companies that we should not be wanting to list here. They seem to be giving evidence that something is not up to the required standard.

Specific questions asked in the consultation form

Q1: Based on our overall proposals for commercial companies, and taking into account the broader UK regulatory, legal and corporate governance environment, do you believe that we have struck the right balance in designing a proposed regime that enables the conditions for a stronger, more effective and competitive listed market with appropriate measures in place to support market integrity and investor protection. If not, what changes should be made?

No. We believe that the proposals go too far towards weakening the UK corporate governance model and that a shareholder vote on significant and related party transactions should be retained.

Q2: Do you agree with our proposed approach to structuring the UKLR Sourcebook chapters?

Yes. We agree with the proposed restructure of the UKLR Sourcebook chapters.

Q3: Do you agree with our proposed approach to eligibility requirements for commercial companies and the proposed draft provisions in UKLR 5 in Appendix 1?

We generally support the proposed approach to eligibility requirements for commercial companies and the draft provisions in UKLR 5 in Appendix 1.

We believe that removing the three-year financial and revenue earning track record, as well as the unqualified working capital statement, is likely to encourage a wider range of companies to list. We also think that accommodating sovereign-controlled commercial companies within the commercial companies' category with modifications is a pragmatic move. However, it will be crucial to strike the right balance between flexibility and investor protection. Given prospectus regulation requirements, we wonder whether a better solution might be to shorten the period for which a track record is required – for example to two years. Smaller/retail investors will be prejudiced if they cannot do their own enhanced due diligence on new listings and we do not believe that it is sufficient for these investors to have to rely on larger investors' due diligence.

We support the decision not to mandate specific eligibility requirements and continuing obligations related to independence and control of business, except for controlling shareholders. This aligns with reducing regulatory intervention, and a more permissive, disclosure-based regime can enhance market competitiveness.

Q4: Do you agree with our proposed approach to independence and control of business for the commercial companies category eligibility and continuing obligations? If not, please explain why and any alternative approach.

We agree with the proposed approach.

Q5: Do you agree with our proposed approach to requirements relating to controlling shareholders for the commercial companies category eligibility and continuing obligations? If not, please explain why and provide any alternative approach.

We agree with the proposed approach.

Q6: Do you agree with our proposals for allowing DCSS for companies listing shares in the commercial companies category and our approach to matters on which enhanced voting rights can be used? If you disagree, please explain or suggest alternative approaches?

We agree with the proposed approach, which we believe strikes a balance between flexibility for issuers while safeguarding market integrity. We do not share the concerns of some parties about DCSS provided the arrangement is clearly stated and investors know what they are buying.

Q7: Do you agree with our proposed approach towards a significant transactions regime for the commercial companies category? Please provide any alternative views.

We disagree with the proposed approach. We believe that eliminating the need for shareholder approval on significant transactions, as per Listing Rule 10, would diminish shareholder authority.

There are many interests at play when a significant transaction is under consideration; the right transaction can generate transformative value for a company and its shareholders. However, little destroys value more quickly than one that is wrong for the company, and it is all too easy for management to convince themselves of the benefits of a transaction if they are able to do so without effective challenge. There is also the consideration that, in some cases, executive remuneration packages will be affected by the implementation of a transaction, regardless of its subsequent success. A shareholder vote provides an important opportunity for investors to take an independent view of the proposed transaction.

We understand that this may cause a delay in the transaction and that this may impact its commercial terms, but the reality is that most such transactions do progress without an issue. We would attribute this to the awareness of shareholder oversight, although of course there are other views.

The key issue for the FCA is to strike the appropriate balance between the needs of issuers, investors and international competitiveness.

Q8: Do you agree with our proposed enhanced disclosures regime for significant transactions? If you disagree, what changes do you consider we should make and why?

See our response to Q7 above. We favour retention of the status quo.

Q9: Do you agree with changes we are proposing to clarify the scope of significant transactions and simplify our requirements, including our proposed 'ordinary course of business' guidance and revised aggregation rules? If not, please explain the areas you disagree with.

See our response to Q7 above.

Q10: Do you consider that the meaning of 'ordinary course of business' can be evidenced by the existing or proposed accounting treatment of the matters that are the subject of the transaction? Please provide your reasons, if applicable.

We have no view on this question.

Q11: Do you agree with our proposed approach to when companies should be required to appoint a sponsor on significant transactions (i.e., limited to where issuers apply to the FCA to seek individual guidance, waivers or modifications)?

The idea of requiring companies to have a sponsor for significant transactions seems practical. However, this requirement should only be in situations where issuers seek guidance, modifications, or waivers from the FCA. This approach ensures that sponsor involvement is tailored to specific circumstances, which necessitates professional guidance and enhances the effectiveness of the process.

Q12: Do you agree with our approach to transactions undertaken by companies facing financial difficulty for the commercial companies category and the amendments proposed versus current premium listing requirements? If not, please explain and suggest any alternative approach, as relevant.

The proposed approach seems practical. It balances flexibility for financially distressed companies with streamlined processes and ongoing risk assessment for investor protection.

Q13: Do you agree with our proposed approach to reverse takeovers in the commercial companies category, including requiring a sponsor and FCA approval of a circular? If not, please explain what you disagree with and why, if relevant.

Yes. We agree with the proposed approach, although we do not believe that the requirement for a sponsor adds any material benefit.

Q14: Do you agree with our proposed changes to the information to be included in the reverse takeover shareholder circular? Please explain your views and suggest an alternative approach if you disagree.

Yes. We agree with the proposed approach.

Q15: Do you agree with our proposed approach towards a related party transactions regime for the commercial companies category and the specific disclosure proposals for notifications? Please provide any alternative views as relevant.

No. We believe that a shareholder vote on material RPTs is a fundamental shareholder protection which should be retained.

Q16: Do you agree with how we have framed the sponsor role for related party transactions in the commercial companies category?

We do not believe that the role of a sponsor adds any material value and so have no view on this question.

Q17: Do you agree with the other clarifications, ancillary changes and consequential amendments we are proposing for the related party transaction requirements in the UKLR(compared with current premium listing)? If not, please explain any areas you disagree with.

No. We would prefer to see the4 status quo retained for RPTs.

Q18: What are your views on retaining our specific listing rule definition of a related party, versus a definition based on IFRS (or other) accounting standards?

We agree with the proposed approach.

Q19: Do you agree with our proposed approach to matters relating to further share issuances for the commercial companies category? If not, please explain what you disagree with and why.

Yes. We agree with the proposed approach.

Q20: Do you agree that an issuer in the commercial companies category should be required to appoint a sponsor in connection with its further share issuance prospectus and related application for listing?
Yes. Our concern with the role of the sponsor is more around support for continuing obligations where, it has been suggested to us, sponsors do not always have an appropriate understanding of governance issues.

Q21: Do you agree with our approach to share buy-backs for the commercial companies category and the amendments proposed versus current premium listing requirements? If not, please explain and suggest any alternative approach.
Yes. We agree with the proposed approach. It simplifies requirements and improves market efficiency creating a more accessible listing regime. Once implemented, it will create an accessible and competitive listing regime while maintaining high standards of disclosure.

Q22: Do you have any comments on our proposals? Do you have any views on requiring shareholder approval to grant to a director or employee options, warrants or other similar rights to subscribe for shares in the commercial companies category?
We agree with the proposals as presented. In an ideal world, we would prefer that options are only permitted on an all-employee basis, but this is beyond the FCA's gift.

Q23: Do you have any comments on our proposals with regard to requirements for other circulars? If you disagree, please explain why, and include suggestions for alternative approaches.
No. We agree with your proposals.

Q24: Do you agree with our overall approach to annual disclosures and reporting requirements for the commercial companies category, broadly based on current premium listing requirements, including on corporate governance (see Appendix 1, UKLR 6)? If not, please explain why.
Generally, we agree with the proposed approach. However, we do believe that the FCA should not introduce additional reporting requirements over and above those in law and those required by the Financial Reporting Council through the UK Corporate Governance Code. We do not believe the creation of additional reporting requirements to fall within the reasonable purview of the FCA and are concerned at the potential for confusion in the market that another source of reporting regulation may create.

Q25: Would formal guidance clarifying the use of 'explain' when reporting against the UK CGC be necessary?
We believe some guidance on this would be welcomed, but this should be produced by the FRC as the regulator of corporate reporting.

Q26: Do you agree with our proposed approach to incorporating sovereign controlled companies into the commercial companies category, with certain alleviations on matters related to the sovereign controlling shareholder, while not taking forward a bespoke approach to depositary receipts on shares in such issuers? If you disagree, please explain why.

We agree with the proposed approach.

Q27: Do you agree to our proposed approach for the closed-ended investment funds category as part of the new UKLR? If not, please explain why.

We agree with the proposed approach. It reflects a thoughtful consideration of the unique circumstances surrounding closed-ended investment funds while maintaining regulatory coherence.

Q28: Do you agree with our proposals for the transition category? If not, please explain why.

We agree with the proposed approach.

Q29: Do you agree to our proposals for a secondary listing category and the related requirements, including basing rules on current LR 14 with certain additional elements, and the maintained application of DTR 7.2? If not, please explain which aspects you disagree with and why.

We agree with the proposal. The proposed secondary listing category provides an attractive option for global companies, fostering cross-border listings while preserving investor confidence.

Q30: Do the proposed eligibility requirements for the secondary listing category sufficiently identify commercial companies with a 'primary' listing in another jurisdiction and mitigate potential risk that it be used to avoid the commercial companies category? Please suggest improvements to provisions, or additions or alternatives, as relevant.

The proposed eligibility requirements aim to strike a balance, allowing legitimate secondary listings while preventing misuse. They identify commercial companies with primary listings in other jurisdictions, ensuring they meet specific requirements regarding central management, control, and regulatory oversight. This approach mitigates the risk of companies using secondary listings to avoid comprehensive requirements, balancing flexibility for issuers with safeguards to maintain market integrity.

Q31: Do you agree to our proposals for the non-equity shares and non-voting equity shares category? If not, please explain why.

We agree with the proposed category for non-equity shares and non-voting equity shares within the new UK Listing Rules. This acknowledges the uniqueness of these share types, ensuring consistency in eligibility and

obligations while providing companies with access to the UK capital market, catering to diverse share structures and investor preferences.

Q32: Do you agree to our approach for the shell companies category and the detailed drafting in UKLR, including the proposed approach to redemption rights? If not, please explain why and suggest any alternative approach or transitional provisions.

We agree with the proposed approach. The proposed approach recognises the importance of SPACs and shell companies while maintaining regulatory integrity.

Q33: Do you agree with the proposed approach that issuers in commercial companies category and the transition category should transfer to the shell companies category if they become eligible for the shell companies category? Do you foresee any problems with this proposed approach?

We agree with the proposed approach. It enables issuers in the commercial companies and transition categories to transfer to the shell companies' category if eligible, ensuring clarity, consistency, and seamless transitions while balancing flexibility with regulatory oversight.

Q34: Do you agree to our proposal for retaining the remaining standard listing categories and minor drafting amendments proposed? If not, please explain why.

We agree with the proposed approach.

Q35: Do you agree that the current Premium Listing Principles 3 and 4 should be reframed as rules for the commercial companies category and the closed ended investment funds category? If not, explain why.

We agree with the proposed approach. Reframing these principles as rules for the commercial companies category and the closed-ended investment funds category makes sense. It ensures that specific requirements are tailored to each category, promoting transparency and accountability.

Q36: Do you agree with our proposed single set of Listing Principles and supporting guidance, which would be applicable to all listing categories? If not, please explain why.

In principle, we agree with the proposed approach. Having a single set of Listing Principles applicable to all listing categories simplifies the regime. Consistency in principles and supporting guidance will foster investor confidence and streamline compliance.

However, the listing principles and supporting guidance should mirror more closely the standards of the premium segment.

Q37: In relation to the proposed Listing Principles 5 and 6, are there any practical implications for issuers of debt securities that need to be considered?

We have no views on this question.

Q38: Do you agree with our proposed guidance to support the Listing Principles, regarding the importance of the role of directors and on the arrangements for accessibility of information? If not, please explain what you disagree with and why.

We agree with the proposed guidance. Clear expectations enhance governance and facilitate informed decision-making.

Q39: Do you agree with our proposed board confirmation that the applicant has appropriate systems and controls in place to ensure it can comply with its ongoing listing obligations and Listing Principles once admitted? If not, please explain what you disagree with and why.

We agree with the proposed guidance. Adequate systems and controls are essential for ongoing compliance. The proposed board confirmation ensures issuer preparedness.

Q40: Do you agree with our proposal to issue guidance to support Listing Principle 1, to clarify that adequate procedures, systems and controls includes the applicant or issuer being able to explain where information is held and how it can be accessed (regardless of whether the information is held in the UK or elsewhere), and that information should be easily accessible from the UK? If not, please explain why?

We agree with your proposal. It prioritises transparency and accountability by emphasising robust systems and clear articulation of information storage, ensuring investors and regulators can assess control adequacy. Recognising the global nature of business, it ensures accessibility of information held outside the UK, mitigating risks of compliance failures and investor disputes, and enabling informed decision-making.

Q41: Do you agree with our detailed proposals for all applicants and issuers to notify the FCA, and keep up to date, the contact details of 2 executive directors? If not, please explain what you disagree with and why.

We believe that the Company Secretary should be the key point of contact between the FCA and the company, given their responsibility to the board. Contact details of two executive directors should be secondary to this.

Q42: Do you agree with our detailed proposals for all applicants and issuers to provide the FCA, and to keep up to date, a nominated contact and address for service of relevant documents? If not, please explain what you disagree with and why.

We agree with the proposal although, given subsequent changes to the details held at Companies House under the Economic Crime and Corporate Transparency Act 2023, this may now be redundant.

Q43: Do you agree with the proposed approach for the permitted transfers between the new UKLR categories? If not, please explain why.

We agree with the proposed approach. It offers flexibility for issuers by allowing transfers to accommodate changing circumstances, such as SPACs transitioning to commercial companies. It ensures regulatory alignment with listing requirements based on issuer characteristics, preventing them from being tied to unsuitable categories. Issuers can choose the most suitable category, optimising their listing experience and regulatory compliance.

Q44: Do you agree with our proposed approach for dealing with in-flight transfers between listing categories at the time the UKLR is implemented? If not, please explain why.

We agree with the proposed approach. It emphasises seamless transitions to minimise disruption during listing processes, ensuring ongoing IPOs proceed smoothly. It offers adaptability for issuers to adjust their category based on evolving needs, maintaining market continuity and stability while providing consistent rules for investor confidence despite changes in issuer status.

Q45: Do you agree with our proposed modified transfer process for standard listed issuers automatically transferred into the transition category or secondary listing category that may wish to transfer to the commercial companies category (or the shell companies category or the secondary listing category) post implementation?

Yes. The proposal offers flexibility for issuers with modified transfers, accommodating their preferences such as transitioning to the commercial companies category. It ensures regulatory alignment, allowing issuers to operate within the appropriate framework, and promotes market efficiency by minimising disruptions and benefiting both issuers and investors.

Q46: Do you agree with our proposed transitional arrangements and specific transitional provisions for 'mapped' existing issuers and conversion of 'in-flight' applications at the time the UKLR is implemented? If not, please explain why.

We agree with the proposed approach. It includes transitional provisions to help issuers adapt to the new regime, promoting preparedness and allowing existing issuers time to adjust their practices and systems. This gradual implementation minimises disruptions, ensuring market stability and providing continuity while safeguarding investor interests.

Q47: Do you agree with our proposed transitional provisions to allow existing issuers and 'in-flight' applicants sufficient time to prepare for implementation of the proposed provisions that would impact all issuers?

We agree with the proposed approach.

Q48: Do you agree with these impacts at implementation day and our approach to transitional arrangements for post IPO mid-flight transactions (when commenced in premium listing) and related sponsor services?

Yes.

Q49: Is the proposed period of 2 weeks between publication of the final UKLR instrument and those UKLR coming into force reasonable, assuming we proceed broadly as proposed?

We believe that at least a month should be allowed for implementation. We understand the FCA's wish to see the benefits of the new rules as quickly as possible, but are not persuaded that they are such as to override the need for time to bring them into effect.

Q50: Are there wider practical issues or impacts for market participants from the proposed implementation timing that we should consider?

We have no views on this question.

Q51: Do you agree with our proposed approach and clarification around sponsors' role at the listings gateway for the relevant categories?

We believe the sponsor's primary role is to assist a company in becoming listed to support future corporate transactions including reverse takeovers. The sponsor's role should not be to oversee ongoing compliance in matters of corporate governance.

Q52: Do you agree with our approach to the retained sponsor confirmations to the FCA on post-IPO transactions? If not, please explain your preferred alternative approach and the reasons for it.

Yes. This seems a reasonable approach.

Q53: Do you agree with our proposals to clarify the role of sponsors under the UKLR?

Generally yes, but we are concerned about the reliance being placed on sponsors by the regulator where other professional advisers and the company secretary might have greater expertise, for example on governance issues.

Q54: Do you agree with our proposed modifications to the principles for sponsors? If not, please explain why.

We agree with the proposed changes to make the principle for sponsors a standalone principle.

Q55: Do you agree with our proposed changes to sponsor competence requirements?

As already mentioned in Q. 51, we believe the sponsor's primary role is to assist a company in becoming listed. The sponsor's role should not be to oversee compliance in matters of corporate governance.

Q56: Do you agree with our assumptions and findings as set out in this CBA on the relative costs and benefits of the proposals contained in this consultation paper? Please give your reasons.

We have no views on this question.

Q57: Do you hold any information or data that would allow assessing the costs and benefits considered (or those not considered) here? If so, please provide them to us.

We have no views on this question.

Q58: Do you agree with our conclusion that the proposals don't significantly reduce the investment in UK listed companies compared to current levels, but might increase investment if larger number of companies list in the UK? We welcome comment, in particular, if supported with evidence on the likely impact on investment levels.

Not entirely. As indicated above, there is clear evidence that the UK market is shrinking, reflecting the changes in investment strategies of the traditional insurers and pensions funds away from equities into other asset classes, and we agree that the UK Listing Regime needs to be more accessible, effective, easier to understand and competitive.

A package of reforms is required that will reinvigorate the attractiveness of the UK to both newly listing companies and new public capital. The status quo is not an option. The challenge for the FCA - and the focus of the debate that we have had amongst members - is how and where to balance the relaxations of rules to encourage more companies to list in the UK market against the potential associated loss of valued investor protections.

With that in mind, we agree with the proposal to move to a single listing category with consistent and proportionate standards. However, we have concerns about some of the proposals, particularly those relating to rules around related party transactions and to controlling shareholders. In short, we question whether some of the proposals quite strike the right balance between attracting issuers and attracting investors, particularly from the retail market with less resource to undertake their own due diligence on investee companies.

In our view, there is a strong likelihood that a weakening of governance requirements underpinning the UK listing regime will tend to drive away capital as we are led to believe that it is one of the more attractive features of the UK market. There is a good argument that those companies which are deterred from a UK listing by UK corporate governance requirements are, in all probability, likely to be companies that we should not be wanting to list here. For some of our members, the pendulum may be swinging too far in the direction of open access to the UK market and too far away from the strong corporate governance that we believe is a significant advantage – indeed a USP - for the UK market. This is a particular concern where the requirements that it is proposed to

remove are those which offer important investor protections, for example the requirements for shareholder approval for related party transactions.

If you would like to discuss any of the above comments in further detail, please do feel free to contact me.

Yours faithfully,

Peter Swabey

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