UK FINANCE

FCA PRIMARY MARKETS EFFECTIVENESS REVIEW: DP22/2

UK Finance and AFME response

28 July 2022

UK FINANCE | afme/ Finance for Europe

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UK Finance is the collective voice for the banking and finance industry. Representing more than 250 firms across the industry, it seeks to enhance competitiveness, support customers and facilitate innovation. Our primary role is to help our members ensure that the UK retains its position as a global leader in financial services. To do this, we facilitate industry-wide collaboration, provide data and evidence-backed representation with policy makers and regulators, and promote the actions necessary to protect the financial system. UK Finance's operational activity enhances members' own services in situations where collective industry action adds value. Our members include both large and small firms, national and regional, domestic and international, corporate and mutual, retail and wholesale, physical and virtual, banks and non-banks. Further information is available at **www.ukfinance.org.uk**.

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About AFME

AFME (Association for Financial Markets in Europe) advocates for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. AFME is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. AFME aims to act as a bridge between market participants and policy makers across Europe, drawing on its strong and long-standing relationships, its technical knowledge and fact-based work. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. AFME participates in a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) through the GFMA (Global Financial Markets Association). For more information please visit the AFME website: **www.afme.eu**.

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FCA Primary Markets Effectiveness Review: DP22/2
UK Finance-AFME response

Date: 28 July 2022

Helen Boyd
Head of Markets Policy, FCA

Sent to: **PrimaryMarketsEffectiveness-publications@fca.org.uk**

Dear Helen,

Please find enclosed the collective responses of the member firms of UK Finance and the Association for Financial Markets in Europe ("AFME") to DP22/2: Primary Markets Effectiveness Review: Feedback to the discussion of the purpose of the listing regime and further discussion, produced with advisory support from Linklaters LLP.

We welcome this opportunity to share our views and recommendations for improving the effectiveness of UK primary markets.

Evolving global equity markets present a new set of opportunities, and it is important that the UK is well-placed to take advantage of these. An effective and innovative regulatory regime, which upholds robust and proportionate standards, will be fundamental in ensuring the UK continues to be a market of choice for investors and issuers, both domestic and international.

We are pleased therefore that the FCA is approaching reform with ambition and openness in mind, and we look forward to working with you in the months ahead to support and contribute to this pivotal agenda.

If you have any questions in relation to the information within our submission, please do not hesitate to get in touch.

Kind regards,

Conor Lawlor
Managing Director, Capital Markets and Wholesale,
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1. OUR APPROACH TO DP22/2

Overview

UK Finance and AFME members share the FCA's ambition to make UK primary markets more effective; improving outcomes for investors and issuers, and promoting positive change in support of wider economic objectives. We therefore welcome the intention behind the proposed single listing segment, and believe that there is merit in exploring how such an approach, with appropriate modifications to what has been proposed, could deliver meaningful benefit to the effectiveness of UK equity markets. We therefore recommend in this response that the FCA pursue a model – for a 'UK Primary Listing' – which embraces more fully the notion of a 'single' access point for companies listing in the UK, building upon the FCA's proposed disclosure-based approach to financial information. We believe that a model which is principally disclosure-based would represent a 'truly single' segment. In the absence of moving to such a 'truly single' segment, our members believe that the optimal alternative approach to improving the effectiveness of UK primary markets would be to retain the existing premium and standard segments and adopt a series of targeted improvements.

In our view, the FCA's proposal for a single listing segment, as currently envisioned, is likely to result in the persistence of two distinct tiers based on issuer compliance with mandatory and supplementary continuing obligations. We believe the approach outlined by the FCA would curtail the valuable flexibility currently available to issuers and, contrary to the objectives of the FCA, potentially restrict access to a London main market listing. Furthermore, we are unable to provide a full assessment of the proposed regime in the absence of any understanding of its implications for FTSE indexation, as any such impact will, in our view, be critical to the perceived and actual attractiveness of listing in the UK. These are the primary concerns we have sought to address in proposing our enhanced design for a 'truly single' segment.

Our members recognise that the unique opportunity for reform is finite. It is important to be bold in leveraging this appetite for change now to support the future prominence and prosperity of UK markets, and ensure our regulatory regime can address the challenges and opportunities which lay ahead. Central to this approach should be engagement with the (active) investor community both in the UK and internationally to identify how regulatory reform can support an evolution in the attitudes of investors towards UK equities. We believe that through constructive engagement across the industry, the UK can develop a regulatory approach for equity listing which materially improves the effectiveness of our primary markets.

Outcomes

We note the four key policy outcomes which the FCA is targeting through the changes discussed in DP22/2:

- To ensure the value of being listed is simpler to understand by removing complexity that is not serving a genuine and defined purpose
- To promote broad access to listing for a wider range of companies, while continuing to set clear, simple, and robust minimum ongoing standards for listed companies
- To empower investors to conduct their own decision-making over the suitability of listed issuers to meet their needs through clear, high-quality disclosures
- To allow issuers and investors flexibility to agree where additional shareholder engagement, overseen by the FCA, is appropriate

Our members are firmly supportive of these four outcomes and recognise the importance of assessing the ability to achieve them when designing an effective new structure for the UK's listing regime. In our approach to this discussion paper and consideration of the questions therein, we have sought to identify areas where the proposals outlined may not contribute to these outcomes as intended, and where further refinements might better ensure they can be achieved.

Summary

Section 2 of this response outlines the reasoning behind our view that the single segment as proposed in DP22/2 may not meet the outcomes it has been designed to achieve, nor result in a UK listing regime that better serves the interests of investors and issuers when compared to the current model. Having identified where the FCA's current proposal could fall short of its objectives, we set out in **Section 3** our proposed approach for an enhanced single listing segment, rooted in the flexibility of the existing regime and designed in line with the holistic, disclosure-based approach the FCA has proposed for financial information requirements.

In our view, if an enhanced single segment as set out in Section 3 cannot be taken forward, the FCA should retain and recalibrate the existing standard and premium segments. **Section 4** explores how, if necessary, we believe the FCA should go about this.

Finally, we set out in **Section 5** our views on the evolution of the sponsor regime and record keeping process in line with questions 16-26 in DP22/2. We welcome the opportunity to consider with the FCA how sponsor requirements in the UK can be re-evaluated in line with the wider ambition to enhance the competitiveness of UK markets. We recognise the valuable intent behind the existing sponsor framework and note the importance of the sponsor function in supporting the FCA's supervisory role. As UK Finance and AFME members have recommended in several submissions since the publication of the Hill Review, we continue to believe that recalibrating the UK's sponsor regime (both in terms of when a sponsor is required, and the regulatory obligations involved) will go a long way to creating a more competitive and attractive UK listing environment for both investors and issuers.

Engagement

We note the encouraging level of industry engagement which the FCA has conducted in relation to the Primary Markets Effectiveness Review. We emphasise the importance of continued and extensive conversations across the market to identify what different participants require from regulation, and how these needs can be reflected in the evolution of the UK's listing regime.

UK Finance and AFME members welcome the opportunity to engage with the FCA to discuss the next phase of the Primary Markets Effectiveness Review. We stand ready to facilitate further discussions on the themes and recommendations set out in this response or any other related matters.

2. OUR ASSESSMENT OF THE PROPOSED SINGLE LISTING SEGMENT

(DP Q.1 – Do you think that a single segment regime would meet the outcomes we have described? Are there any changes or enhancements that could be included to enhance the effectiveness of a future regime?)

(DP Q.6 – Do you think the eligibility requirements for the single segment regime described will broaden access to listing to a wider range of companies? Please provide any evidence and examples where possible.)

In assessing the effectiveness of the FCA's proposed single listing segment for equity shares in commercial companies, our members have identified the following broad areas of concern:

- **The need for meaningful change:** The move towards a single listing segment would represent a marked departure from the current dual-segment model. It is therefore important to ensure that any such shift is evidenced and justified through a robust cost-benefit analysis (noting the FCA would be required to undertake such an analysis as part of any formal consultation). Due consideration should be given to the risk of creating significant operational upheaval for market participants, but arriving at an end-state that is neither materially different to the existing regime nor improves investor or issuers outcomes. It is for this reason our members recommend that the FCA goes further in its ambition to consider the enhanced single access regime we outline in Section 3.

- **FTSE Index eligibility:** Our members agree that it is imperative for any change to the structure of the UK listing regime be sensitive to its potential impact on FTSE index eligibility, a key consideration for prospective issuers. We note that, under the FCA's proposed model, if FTSE were to only include issuers who opt-up to the supplementary obligations within their indices, then the single segment would result in more stringent baseline requirements for UK issuers without the added benefit of index inclusion. Furthermore, we do not believe the approach outlined in DP22/2 would mitigate the existence of a perceived quality differential. If FTSE were to require companies to adopt the supplementary obligations in order to be index eligible, then this second tier would be likely to represent the current premium segment, and the mandatory obligations effectively resembling the standard segment. If FTSE indexation was permitted for all companies on the FCA's proposed single segment, it could then be the case that companies are discouraged from, or do not perceive the value in, adopting the supplementary standards. While we understand that this will ultimately be determined by FTSE Russell, we would encourage the FCA to engage closely with FTSE Russell (as it did in the context of recent changes to free float and dual class share structures) to understand how index eligibility would evolve in the context of a single segment. Moreover, we would welcome appropriate updates or clarity from the FCA as to any engagement it may have with FTSE Russell on the implementation of a single listing segment.

- **Reduced flexibility:** The impact of the removal of the existing standard listing segment, and the resultant loss of the flexibility that was available to companies such as Wise, Deliveroo and Oxford Nanopore Technologies, would be significant. We believe there is a risk that even a perception of a potential move towards a more restrictive UK regime could negatively affect issuer and investor decisions being made now. Our members note that the standard segment has been a recent success, attracting a number of high-profile tech companies the likes of which the government and the FCA are keen to draw to the UK (in Section 4 of this response, we include data on the number and size of Premium, Standard, and AIM IPOs). Removing this level of flexibility through the introduction of the FCA's proposed single listing regime risks pushing such companies, and crucially investors, to overseas markets. The growing allocation in investor portfolios to international equities at the expense of UK equities is already evident.

- **Increased complexity:** While the proposed changes are aimed at reducing complexity, they could in fact result in additional complexity in the UK listing regime with several new routes to listing, e.g. different regimes for shares of closed ended investment companies, secondary listings, and grandfathered standard-listed companies. Such complexity would need to be accompanied by real change; which we believe could be achieved through the enhanced single segment we propose in Section 3. We believe that if the single segment (as currently proposed) were to be introduced, issuers and investors would be burdened with additional complexity without material benefit, a result which is not in line with the FCA's objective to ensure that the value of being listed is simpler to understand.

It is for the reasons set out above that UK Finance and AFME members believe the reality of the single segment regime proposed in DP22/2 does not go far enough in achieving the FCA's vision for UK markets – a vision we share. It would represent a less flexible and less attractive framework than that of the current regime and risks reducing the diversity of investment opportunities available in the UK, contrary to the FCA's core objectives.

We have therefore proposed in the following section an alternative approach to an enhanced single segment model. This proposal builds on the FCA's ambition set out in DP22/2, but is designed to address the issues identified above.

3. UK FINANCE-AFME PROPOSAL FOR A 'TRULY SINGLE' LISTING SEGMENT

(DP Q.2 – Do you agree that revenue track record, historical financial information and the requirements for a 'clean' working capital statement can be replaced by disclosure in listing documentation such as prospectuses?)

(DP Q.3 – Under a disclosure-based regime, are there any elements of the listing regime that should be incorporated into future changes to the prospectus regime to ensure that investors receive appropriate information upon which to base their investment decisions?)

(DP Q.7 – Does the suggested division between the mandatory and supplementary continuing obligations provide enough flexibility for issuers, alongside appropriate investor protection?)

(DP Q.8 – Should more be done to ensure there is a genuine choice for issuers to decide whether the supplementary continuing obligations are suited to their business model and strategy?)

Overview

To improve the effectiveness of UK primary markets, UK Finance and AFME recommend that the FCA, alongside industry, develops a 'truly single' listing segment for equity shares in commercial companies based on the approach we have designed and set out below.

We are encouraged by the shift towards a more disclosure-based regime proposed in DP22/2, and we welcome the FCA's recognition of the value in this approach to regulation. In considering how a single listing segment could meaningfully improve the effectiveness of UK primary markets, we recommend that the pragmatic, principles-based approach which the FCA has identified should be embraced more widely in the adoption of a true single listing segment.

In light of the concerns identified in Section 2, our strong recommendation is that the FCA should only take forward a single segment if it is designed in line with the approach we have outlined below.

The key features of our proposal:

- Single access point for companies listing in the UK
- Principally disclosure-based approach
- Flexibility based on the existing standard listing requirements
- Mandatory compliance with adapted related party and significant transaction rules

The key benefits of our proposal

- Greater transparency between issuers and investors

- Retaining valuable flexibility to promote greater access to a UK listing
- Removing the existing perceived quality differential identified by the FCA and Lord Hill
- Upholding robust and proportionate standards of governance and shareholder protection

We welcome further discussion with the FCA on how such a model could work in practice and be developed with input from across the market.

UK Primary Listing – Regulatory approach		
Eligibility	We generally agree with the FCA's proposals regarding eligibility for the single segment as set out in DP22/2. However, the eligibility criteria should allow for flexibility as outlined below.	
Mandatory requirements **(to apply to all issuers)**	**Significant transactions and related party transactions:** On the basis that the threshold for the triggering of significant transaction and related party transaction votes are increased as set out later in this section, we would propose that all issuers are required to comply with such requirements (on the basis that the higher thresholds will make such regimes more manageable and proportionate). **De-listing:** The existing mandatory vote for de-listing currently in place for premium-listed issuers should apply to all issuers. **Pre-emption:** Mandatory compliance with the existing pre-emption regime, subject to the implementation of the relevant pre-emption recommendations made as part of the UK Secondary Capital Raising Review (which are supported by UK Finance and AFME members). Furthermore, we note there should be a separate segment for international companies seeking a secondary listing in the UK where pre-emption would *not* be appropriate.	
Approach to disclosure	We propose that in listing prospectuses, prospective issuers should be required to clearly elect whether they will comply with the optional continuing obligations set out below (on an obligation by obligation basis). If electing not to comply in respect of any of the continuing obligations, there should be strict disclosure obligations that require the issuer to detail the reasons for such non-compliance, the impact on the issuer in question, and the potential impact on investors. Our recommendation would be that such elections occur at listing, with appropriate disclosure in the listing prospectus, and any amendments to such compliance or non-compliance (i.e. changing a position in respect of any of the continuing obligations by either opting in or out of such an obligation) would require 75% shareholder approval post-listing.	
Voluntary compliance (to apply to all issuers)	**One share one vote principle**	An issuer should disclose whether its share structure is in compliance with the one share one vote principle. If not in compliance, issuers should have full flexibility to implement such structures as they see appropriate (meaning there would be no limit on weighted voting rights that can be included, save that one share one vote would apply on mandatory listing rule votes as detailed above).
	Dual class share structures (DCSS)	If an issuer's share structure is not in compliance with the one share one vote principle, it should either: (i) confirm that the structure is in compliance with the targeted form of DCSS currently available to premium-listed issuers (as per FCA PS21/22); or (ii), if not, disclose what the alternative structure is, why it is being put in place, in what circumstances it can be exercised, and what its impact is on existing and prospective shareholders. Weighted voting rights should be carved out of mandatory votes under the listing rules (i.e. such that the votes cannot be used in respect of significant transactions, related party transactions, and de-listing dual majority votes).
	Independence of business	Independence should not be an eligibility condition except in an extreme situation where the FCA and sponsor consider the lack of independence to give rise to a serious risk of investor detriment. Any areas in which there are concerns as to a lack of independence would need to be clearly disclosed, including the potential consequences to investors and including appropriate risk factors.
	Control of the business	Control of the business would not be an eligibility condition provided there is full disclosure, and the issuer is able to satisfy the sponsor and the FCA of its ability to comply with its continuing obligations following listing. Disclosure should focus on how the issuer will be able to comply with its continuing obligations and mitigate any risks to the delivery of its business model notwithstanding that it does not have such control.
	Controlling shareholder regime	An issuer should disclose whether it will comply with the controlling shareholder regime, including having a relationship agreement and dual vote on independent directors and de-listing. For issuers electing to comply, the existing premium segment continuing obligations should apply. For issuers that do not comply, if there is a controlling shareholder in place, disclosure will be needed of measures that are in place to protect shareholders against any abuse of control. For issuers that elect to comply and subsequently choose to no longer comply, approval would be needed by an independent shareholder vote. Many founder-backed or private equity-owned companies will continue to have a controlling shareholder immediately following IPO. However, many more companies have widely-dispersed shareholder registries and no controlling shareholders, and as such their non-compliance should not be read as a shortcoming but rather a simple N/A.
	Listing principles	Amendments should be made to the one share one vote aspects to align with permitted dual class share structure regime.
	Corporate governance code	The UK Corporate Governance Code comply or explain regime should apply to all issuers. In addition, foreign issuers should have the option to comply or explain with their domestic equivalent. We do however note that FTSE requires compliance with the UK CGC (on a comply or explain basis), and therefore recommend that foreign companies should also have the additional flexibility to provide their assessment through a UK lens.
	Climate related and diversity and inclusion disclosures	Comply or explain regime.

Role of the sponsor	Our members would propose reducing the scope of transactions which require a sponsor to be appointed, thereby reducing the burden on issuers and sponsors in a way which preserves a level of appropriate oversight in certain relevant and defined scenarios. In the view of our members, the requirement for a sponsor should be limited to transactions which would be considered as non-routine equity capital raising, specifically: (i) new admissions to listing or listing category transfers; (ii) determining whether a transaction may be a significant or related party transaction; (iii) reverse takeovers; and (iv) equity capital raises / circulars involving a reconstruction or refinancing. These transactions represent those where either the expertise of a sponsor is appropriate because of a need to be guided through the rules, or where an issuer is undergoing a significant transformation which merits the direct involvement of a sponsor to test the conclusions being reached. Other transactions, including where a prospectus is published in connection with a secondary capital raise and Class 1 transactions, should not necessarily require the appointment of a sponsor in our members' view and could be handled through direct interface between the issuer and the FCA where required. We would also encourage the FCA to define the meaning of 'reconstruction' and 'refinancing' in the Listing Rules so that it would be clear when a sponsor is required. **Working capital:** We believe that the current listing rule requirement which requires a sponsor to provide a declaration on the working capital statement provided by the directors of an applicant company should be removed. Please see point (v) under a 'recalibrated premium segment' in Section 4 below for a detailed rationale behind this proposal, which is also noted in our response to Q24. **Secondary issuance**: Our members support the recommendations made in Mark Austin's UK Secondary Capital Raising Review. In particular, that a sponsor firm should not need to be appointed by a company in relation to a secondary fundraising. Furthermore, formal declarations by a sponsor in relation to the position of the company should not need to be made to the FCA, although sponsor declarations on a circular should continue, under the current regime, to be required for certain secondary offers that are linked to a material acquisition for example. **Ordinary course and annual reporting:** Our members would also welcome an approach by the FCA which seeks to limit any further extension of the requirement for sponsors to review (in the absence of specific facts meriting closer scrutiny) matters relating to an issuer's ongoing ordinary course and annual reporting obligations, in particular in areas such as 'ESG' compliance. As we explain in Section 5 of this response, third party experts are better equipped to make any such determinations or certifications.

The nature of disclosure

Under the enhanced single segment we have proposed, issuers should be required to produce a single page summary (i.e. table or matrix) at the front of the prospectus (potentially immediately following the front page summary, before the risk factors) of the voluntary compliance obligations, with a confirmation of whether or not the issuer is proposing to comply with those arrangements from listing, and if not, a cross reference to fulsome disclosure within the prospectus on why it is electing not to and the impact on investors. This summary would provide investors with an accessible and simple-to-understand snapshot of the issuer's proposal, with more detailed disclosure available within the body of the prospectus. In addition, where an issuer elects to 'opt-out' of any of the above continuing obligations, there should be a specific risk factor section that covers the related risks to investors of such non-compliance. We would welcome further detailed engagement with the FCA (and other relevant industry stakeholders) on the practical development of this approach.

FTSE indexation

As we note in Section 2, one of the core concerns which market participants share in relation to the FCA's proposed single segment is the potential for FTSE's interpretation to create a de-facto two tier regime and perpetuate a perceived quality differential, given the persistence of two distinct tiers (mandatory and supplementary). Our members believe the model outlined in this section will better address this concern.

Under the enhanced single listing segment that we have set out above, we envisage that it would be at the discretion of FTSE and its members to determine, either based on certain minimum expectations or on a case by case basis, whether a company is index eligible. However, FTSE should be mandated to explain its rationale behind any additional rules. Subjecting all issuers to the same set of disclosure-based requirements and mandatory requirements would, in principle, enable all issuers within the single segment to be eligible for FTSE index inclusion.

Dual class share structures

(DP Q.5 – Do you agree that we should consider allowing dual class share structures in the single segment? Do you agree that the only form of dual class share structure that should be permitted within a single segment should be the regime recently introduced in PS21/22?)

The FCA highlights the importance of appropriate flexibility for issuers (and investors), as well an ambition to widen access to UK markets. As noted in Section 1, our members believe that these outcomes are central to the successful evolution of UK primary markets.

In applying stricter requirements for companies with dual class share structures (DCSS) across the single segment, we note that some issuers who would view the availability of broader DCSS as crucial to a decision to list in the UK may not be willing or able to comply with these enhanced requirements. Inability to obtain a listing in the UK in such instances could drive issuers towards greater flexibility in other markets such as the US, and in turn have an adverse impact on the competitiveness of UK markets. This is particularly the case for

companies in the target sectors that the government and FCA are seeking to attract to UK, i.e. founder-led high growth businesses. Our members welcomed the outcomes of CP21/21 with regards to DCSS, and the new rules brought forward in PS21/22. The FCA's proposed approach to DCSS on a single segment, as currently outlined, could appear contradictory to the spirit of the changes introduced in December last year.

In particular, we have observed in the UK the growing appetite for issuers to use the flexibility of the Standard List to introduce highly bespoke DCSS that serve their specific goals, and it is this flexibility that many prospective issuers cite as influencing their decision on where to list. We would encourage the FCA to retain this broad flexibility.

It is for the reasons set out above that in considering a design for an enhanced single listing segment, we propose that if an issuer's share structure is not in compliance with the one share one vote principle, it should either: (i) confirm that the structure is in compliance with the targeted form of DCSS currently available to premium-listed issuers (as per FCA PS21/22); or (ii), if not, disclose what the alternative structure is, why it is being put in place, in what circumstances it can be exercised, and what its impact is on existing and prospective shareholders. In addition, and as noted above, we would propose that such structures are excluded from any mandatory votes under the Listing Rules.

Labelling

(DPQ.9 – What sort of labelling would be most helpful to ensure investors are aware of whether an issuer is opted into the supplementary continuing obligations?)

Under the enhanced single listing segment which we have proposed in this section, we believe that issuers should be able to disclose whether they are complying with continuing requirements by way of a brief disclosure table that can be made available on the investor relations section of issuers' website free of charge. Such disclosure should be made in a manner that provides clear and complete transparency to investors about which shareholder protections each issuer will be subject to. Trading venues on which issuers are admitted to trading and market data providers could also include reference to such a disclosure table. We would welcome further detailed engagement with the FCA (and other relevant industry stakeholders) on the practical development of this approach.

Significant transactions

(DP Q.10 – What factors should we take into account when considering the level of the threshold for class 1 transactions within the significant transaction regime? What threshold would be appropriate?)

In the current regime, the threshold of 25 per cent for a significant transaction to be categorised as Class 1 based on the various class tests set out in the Listing Rules puts premium-listed issuers at a competitive disadvantage in auction processes involving non-UK listed bidders and, through the shareholder voting requirement, creates an element of uncertainty in such transactions which further makes the UK unattractive to acquisitive issuers.

Furthermore, data from our members shows that around 17 per cent of the Class 1 transactions they were involved in between September 2013 and July 2021 fell within the 25 per cent to 34 per cent class test range.

Our members are therefore of the view that, regardless of whether a single segment regime is introduced, there would be significant flexibility offered to issuers in raising the threshold to 50 per cent while still offering substantive protection to shareholders.

Regarding the application of the class test rules, our members are also of the view that there is scope for a more 'substance over form' approach and greater flexibility in allowing dispensations particularly from the profits test, for example in respect of disapplying the profits tests for issuers that have, by way of example: been loss making since IPO; have structurally low-profit business models (such as infrastructure companies); or have only recently become profitable.

Related party transactions

In line with the FCA's objective to introduce proportionate, outcomes-focussed standards rather than prescriptive rules, we believe that the related party rules applicable to issuers should have increased thresholds for modified related party transactions.

Our members consider that it would be attractive to a range of issuers, including many founder-led businesses, to widen the range of scenarios for which a fair and reasonable opinion will be sufficient to avoid the need to convene a shareholder meeting and vote on a related party transaction. Raising the existing 5 per cent threshold for triggering a shareholder approval requirement to 10 per cent and raising the de-minimis threshold from 0.25 per cent to 1 per cent, together with appropriate disclosure obligations, would in our members' opinion still give shareholders sufficient visibility and a vote over more material transactions.

In the context of the enhanced single segment we have designed, we propose that all issuers are required to comply with the modified related party transaction requirements on a mandatory basis (given that the higher thresholds we recommend will make such regimes more manageable and proportionate).

Scope

(DP Q.11 – Do you consider the scope of the single segment to be appropriate? Should any additional instruments be eligible to list there? e.g. DRs)

We believe that depositary receipt (DR) structures over equity, which provide holders with substantially the same rights as equity holders, can be treated in the same way as equities and be eligible to be listed within the single segment we are proposing. This should not preclude issuers from electing to list under the existing regime for a DR listing, which we believe serves a valuable purpose and should be retained.

In our members' experience, DR issuers are keen to obtain a London listing owing to the widely recognised advantages of UK markets: global investor reach, deep liquidity, and the quality of the advisory ecosystem. However, we have observed that the inability to obtain a premium listing has driven DR issuers to other listing venues including the US and the EU.

Therefore, DR issuers should be eligible to obtain a listing within the single segment, enabling both DR issuers and investors to benefit. Enhanced eligibility and flexibility for firms is in line with the FCA's objective to promote broader access to listing for a wider range of companies and providing greater investment opportunities for investors on UK market.

In the same way that a separate listing segment would remain for secondary listings by issuers listed on another exchange, we note that a DR segment outside of the enhanced single segment proposed in this response is equally appropriate. An IPO candidate looking to list in London only using a DR format would be able to pursue the enhanced single segment (provided they benchmark themselves accordingly). In addition, a DR issuer already listed elsewhere or concurrently listing elsewhere should have the option to list and simply describe their governance arrangements clearly in the prospectus.

Closed ended investment funds

(DP Q.12 – Do you think the current regime for listing closed ended investment funds is fit for purpose?)

Our members note the existing regime for closed ended investment funds, as set out in Chapter 15 of the Listings Rules, is generally fit for purpose. We would be happy to engage with the FCA should it look to consider this regime in more detail, although we emphasise that this should not be an immediate priority.

Branding of listing segment

(DP Q.13 – Do you agree that 'UK Listing' could be used to describe the possible regime described?)

A move towards a single segment regime would be a notable change in the structure of a key global listing destination. The FCA should therefore consider carefully how any such change might be perceived by issuers and investors, both domestic and international, and how it will market any such change.

In this context, and in light of the broader outcomes which the FCA intends to achieve through its reforms, we recommend that the regulator could consider a term or phrasing which more adequately reflects the UK's position as a globally significant equity market and (appropriately) promotes the unique benefits attributed to listing in the UK. We note that any such branding should not over-exaggerate nor infer assumptions about the quality of an investment.

By way of example, the FCA could consider:

- A 'UK Primary Listing' – adopted for the purposes of our proposal

In addition, we note the potential confusion for both issuers and investors which may arise if the term 'UK listing' were to be adopted, given that this phrasing could reasonably be interpreted to include a flotation on AIM. The term 'UK listing' also risks confusion with debt listings.

Transition to a single segment regime

(DP Q.14 – Are there any other factors that we should take into account when considering the treatment of existing standard listed issuers?)

Under the enhanced single segment which we have proposed, our members believe that indefinite grandfathering should be an option available to existing standard-listed issuers. To support this approach, it will be important to ensure that what will become the 'old' rules and guidance which grandfathered companies would continue to be subject to, remains accessible and is not lost as a result of the development of a new regime.

Once the details of a new single listing are finalised, a suitable eligibility process for grandfathered standard-listed issuers wanting to transition to the new single segment would need to be defined.

4. RETAINING AND REFINING THE EXISTING REGIME

If the enhanced single segment outlined above cannot be realised, we recommend that the FCA retain the existing listing regime and adopt a series of targeted improvements, as opposed to progressing with the two-tier single segment proposed in DP22/2. Our members agree that the suggestions outlined below would be more effective than the FCA's proposal in achieving the stated objectives.

The importance of the standard listing route

The Standard List has recently seen increasing success, especially with Fintech and founder-led companies. As we explain in Section 2, issuers value the flexibility offered by the standard segment. While junior markets such as AIM are available, they do not provide a viable alternative to a standard listing for several reasons. Such junior markets do not have the 'listed status' in the UK and by their very nature are only suitable for smaller companies. Therefore, standard listing provides an attractive route for issuers who are neither suitable for junior markets nor a premium listing.

Moreover, the flexibility offered by the standard segment provides a competitive listing option to issuers when comparing a UK listing with international counterparts. It should be recognised that what the UK calls a standard listing is the only type of listing available in major EU markets such as Amsterdam, Paris, and Frankfurt. The premium listing segment with its requirement for a sponsor and various ongoing obligations requiring shareholder approval for significant transactions and other matters is a feature exclusive to the UK within Europe.

It is critical therefore that the UK retains a route to listing that enables London to compete on a level playing field with other listing venues. We believe that the loss of the standard listing segment, under the proposals in DP22/2, would harm the UK's ability to compete with other global venues and result in both UK and foreign issuers seeking a listing outside the UK, negatively impacting its international competitiveness.

Figure 1 – London IPOs by market segment[1]

London IPOs by market segment, January 2017 - June 2022			
(Excluding REITs, Funds, SPACS, and GDRs. Deals >$5m)	Premium	Standard	AIM
Number of IPOs	44	23	143
Total value raised ($m)	24,317	10,103	8,256
Average IPO size ($m)	553	439	58
Median IPO size ($m)	332	141	34
Average market cap at IPO ($m)	2,008	1,129	147
Median market cap at IPO ($m)	1,116	233	104

1 Source: London Stock Exchange reports as of June 2022. Includes premium, standard and AIM IPOs greater than $5m since 2017. Excludes Funds, SPACs, REITs and GDRs.

Rebranding of the standard listing segment.

As recommended in Lord Hill's Listing Review, we believe that the standard listing segment should be re-branded and promoted more effectively based on the flexibility it offers and which both UK and foreign companies find attractive.

Changing its name from 'standard' to a more appropriate identification would help in removing the current perception that the standard listing segment is inferior to the premium listing segment. The FCA may also consider in this context reinstating the label 'Secondary Listing' in respect of companies listed on another exchange wishing to "plant a flag" in the UK market.

A recalibrated premium segment

There is value in a more proportionate approach to the current eligibility requirements and requirement to obtain shareholder approval for significant transactions and related party transactions. These requirements currently contribute to discouraging potential issuers from obtaining a London listing. Moreover, we believe that depositary receipts (DRs) representing shares in all issuer types (not just sovereign controlled issuers) should be eligible to be listed on the premium listing segment to the extent that such issuer is willing and able to comply with the applicable disclosure standards.

(i) Eligibility criteria

Our members take the view that the eligibility criteria for premium listed issuers should be amended in line with what the FCA has proposed for the single listing segment in DP 22/2.

(ii) Inclusion of depositary receipts within the premium segment

We believe that depositary receipts (DRs) structures over equity which provide holders substantially the same rights as equity holders should be treated in the same way as equities and be eligible to be listed within the premium segment. DR issuers are keen to list in the UK owing to the long-recognised advantages it offers, such as global investor reach, liquidity, and the quality of the advisory ecosystem. However, we have observed that the inability to obtain a premium listing has driven DR issuers to other listing venues including the US and the EU.

We believe that DR issuers should be provided with the opportunity to make a choice between standard and premium listing segments. Extending the scope of the premium listing segment to DRs would benefit potential issuers, as well as investors who may wish to invest in DRs in line with the FCA's objective to promote broader access to listing for a wider range of companies and providing greater investment opportunities for investors on the UK market.

In fact, in 2018 the FCA extended the scope of the premium segment to DRs issued by sovereign controlled issuers, and we strongly believe that DRs of other issuers which provide holders with equivalent rights as equity holders should be eligible for a premium listing. We further note that alongside extending the scope of the premium listing segment to include DRs, it is also important to provide DR issuers with continued access to a standard listing

as they do now, so that issuers who do not wish to adhere to higher standards within the premium listing segment could still benefit from the advantages offered by the UK's trading ecosystem (e.g. in the case of Chinese direct listings).

(iii) Significant Transaction Regime

In the current regime, the threshold of 25 per cent for a significant transaction to be categorised as Class 1 based on the various class tests set out in the Listing Rules puts premium-listed issuers at a competitive disadvantage in auction processes involving non-UK listed bidders and, through the shareholder voting requirement, creates an element of uncertainty in such transactions which further makes the UK unattractive to acquisitive issuers. We note that there would be significant flexibility offered to issuers in raising the threshold to 50 per cent while still offering substantive protection to shareholders.

Alternatively, the FCA could consider, as in some other jurisdictions, the option for shareholders to give advance approval to listed companies to enter into certain major transactions without prior shareholder approval for each individual transaction.

(iv) Related Party Transaction Regime

In line with the FCA's objective to make proportionate standards focussed on outcomes rather than prescriptive rules, we believe that the current related party rules for premium issuers should be amended by increasing the thresholds for modified related party transactions.

Our members consider it would be attractive to a range of issuers, including many founder-led businesses, to widen the range of scenarios for which a fair and reasonable opinion will be sufficient to avoid the need to convene a shareholder meeting and vote on a related party transaction. Raisingthe existing 5 per cent threshold for triggering a shareholder approval requirement to 10 per cent and raising the de-minimis threshold from 0.25 per cent to 1 per cent together with appropriate disclosure obligations, would in our members' opinion still give shareholders sufficient visibility and a vote over more material transactions.

(v) Sponsor Regime

Our members recommend that the current listing rule requirement which requires a sponsor to provide a declaration on the working capital statement provided by the directors of an applicant company be removed. Directors of a company are best placed to opine on the adequacy of its working capital, with additional support provided by the work carried out by accountants and auditors in the context of various listing and prospectus rule requirements (including in particular the going concern analysis required as part of an audit). The current requirement on sponsors to opine on working capital leads to duplication of efforts and increased costs to issuers – both in financial terms due to the need to commission a working capital report and in terms of time input from their finance team – without a commensurate benefit. We would also note that every equity prospectus in the EU is required to include a working capital statement, but the UK is alone in requiring third party (i.e. sponsor) assurance of that statement.

5. THE SPONSOR REGIME AND RECORD KEEPING REQUIREMENTS

We recognise the current opportunity for reform, both for structural changes to the listing regime, but also the opportunity to re-evaluate the role of the sponsor and the sponsor regime.

Our members believe that an important role is played by sponsors and that retaining the sponsor regime is important. Our members are also of the view that there is a uniquely positive value in establishing a proportionate sponsor regime which balances the benefits of offering investors a trusted 'product', subject to the vetting and expertise of appropriately qualified financial institutions, with a regime that is both streamlined and does not, through being disproportionately onerous, result in issuers being deterred or turned away from the UK.

In particular, if the FCA is to require a sponsor for all listed issuers, it is important to understand the expectations placed on sponsors in carrying out their role and that there is no duplication with the role carried out by other advisers such as accountants and corporate brokers.

Record keeping

16. Given the purpose of the record-keeping requirements, are there specific elements of the rules or the FCA's approach that you think could be more proportionate?

We are supportive of the FCA's broader intention to recalibrate current record-keeping requirements and note the benefits for both issuers and investors of streamlined and proportionate rules. This is particularly important should the changes to the listing regime discussed above result in all applicants who seek a listing in the UK requiring a sponsor to list.

While records are an important part of the sponsor decision-making and accountability process, the current guidance and supervisory approach has resulted in a burdensome and often 'defensive' approach to record keeping.

In the view of our members, the aim of records should be to provide an intelligent guide to the FCA as to how material judgments were made by a sponsor and on what basis, rather than to provide an exhaustive description of the transaction to a lay reader designed to mitigate any possible risk of there being perceived 'gaps'.

Sponsor Committee Memorandum: One option the FCA could consider in this context is the ability for firms to use the final Sponsor Committee Memorandum in order to meet record keeping requirements, as opposed to the considerable volume of meeting notes taken over multiple weeks.

FCA-Industry Sponsor Forum: As discussed in a recent UK Finance-AFME meeting with the FCA (21 June), we see significant value in establishing a forum consisting of sponsors and the FCA to develop industry guidance on record keeping. We believe that this would help to formulate a common approach amongst sponsors regarding record keeping practices which is proportionate and is in line with the FCA's expectations.

17. Do you think a reduction in record-keeping requirements could be achieved without undermining the benefits of the sponsor regime to the FCA, listed companies and investors? If yes, please explain how and why.

Yes. Our members believe a reduction in record keeping requirements could be achieved by developing a better understanding across the sponsor community, with support of the FCA, of what is an acceptable approach to record keeping in practice. As noted in our response to Q16, we believe that an industry forum could be set up to formulate industry guidance on acceptable record keeping practices.

18. Is the record keeping guidance in our Technical Note (entitled 'Sponsors: Record Keeping Requirements') helpful or not in seeking to be clearer on the record keeping thresholds and the types of information that should be recorded about material judgements (noting that there will always be differences depending on the individual circumstances of a case)? If not, what would be helpful?

While our members view this technical note as helpful, there is a perception that in practice different approaches are adopted across the market. Therefore, further guidance from the FCA would be helpful to ensure greater consistency while preventing a 'race to the bottom'. We note that this is another topic which would benefit from discussion in the FCA-Industry sponsor forum proposed in response to Q16.

19. Is market practice aligned with the record keeping requirements or is market practice driving disproportionate record-keeping standards and costs? For example, by sponsors not adjusting their record keeping processes to reflect the circumstances of a specific transaction.

We believe that current market practice results in disproportionate record keeping standards and costs. Therefore, the FCA might also consider how rule changes or further guidance could contribute to a more consistent and harmonised approach to record keeping across the market. As noted in response to Q16, we would favour an approach that records the final underpinning of the declarations that the sponsors make to the FCA, as opposed to voluminous meeting notes taken over several weeks relating to the transaction.

20. If you consider there is misalignment between the record keeping requirements and market practice, do you have any suggestions as to what changes could be made to meet the record keeping requirements more efficiently?

Please see answers our answers to Q16, 17, 18, and 19 above.

Conflict of interests and fee structures

21. Would more transparency of how sponsor fees are calculated help issuers and investors to better understand sponsor service and the role of the sponsor?

Typically the sponsor fee, if charged, is disproportionately low for the work involved in the function and for some sponsor transactions there may not be a separately identifiable sponsor fee. In particular, for many IPOs and other equity offerings that require a sponsor,

there is not a separate sponsor fee and sponsors are remunerated indirectly through underwriting-related commissions. In some situations therefore, this has developed into market practice given the lack of understanding many issuers and investors have of the sponsor role, and the incorrect assumption that the sponsor role has an over-arching application across the entirety of a transaction.

We would not recommend any prescriptive requirement to charge a separate sponsor fee or to allocate a specific proportion of the underwriting/other fees as covering the sponsor services since this would in practice be an artificial distinction, and therefore at best not provide any benefit to investors and at worst be misleading. By way of example, we would note that the Hong Kong regulators imposed a requirement on sponsor firms to charge a separate sponsor fee on IPOs from 2013, but we understand that such fee is generally agreed to be offset against underwriting commissions, and therefore the amount of such a sponsor fee, and its existence, is in substance meaningless.

However, we do note that in some cases separate sponsor fees are charged by sponsors, and we would welcome encouragement by the FCA of this practice in recognition of the work involved, and to contribute to issuers' and investors' understanding of the value of the role. Our members note that, in the case of capital markets transactions with prospectuses where sponsor fees are separate from other remunerations, this separate sponsor fee should be disclosed.

Generally, we consider it important that any reform in this area does not make the role of sponsors commercially unattractive, but rather enhances its value for all stakeholders.

22. Would it also help to be able to differentiate more clearly between the sponsor services and non-sponsor services that may be provided by the same provider? How might this clearer differentiation be achieved?

Our members note that sponsor work is generally intertwined with any diligence work otherwise required, and it is only on rare occasions that a sponsor to an underwritten transaction is not also acting as an underwriter. In the context of equity capital markets transactions, we are therefore not of the view that attempting to differentiate between sponsor and non-sponsor services would be instructive or beneficial.

23. What more could be done to better align a sponsor's incentives with the long-term interests of an issuers, and the interests of their investors, to seek to maximise the benefits to be gained from the sponsor regime? Is there more information regarding the performance of a sponsor and the performance of an issuer, at IPO and thereafter, that could be used to demonstrate this?

Our members would advise against any such changes, which could have unintended negative impacts on the benefits of the existing sponsor regime. The current status quo of sponsors being subject to FCA supervision and market forces (i.e. investors can see which sponsor firms are involved on transactions and take that into account when deciding whether to invest on future transactions involving them) is effective and there is no clear rationale to make changes. We further note that the price discovery process in a UK IPO works effectively in practice and is well-understood by investors.

Role of the sponsor regime within the wider reforms

24. Are there any specific modifications to the role of the sponsor that you think would be needed, if the sponsor regime were applied to all issuers of equity shares in commercial companies under a single segment regime? For example, are there risks that may arise from longer periods of time between sponsor engagement with a company and the provision of assurances to the FCA and, if so, how might they be mitigated?

Under the enhanced single segment model we have set out in Section 3, our members propose reducing the scope of transactions which require a sponsor to be appointed, thereby reducing the burden on issuers and sponsors in a way which preserves a level of appropriate oversight in certain relevant and defined scenarios. In particular, the requirement for a sponsor should be limited to transactions which would be considered as non-routine equity capital raising (we set out further details in Section 3).

Under the approach to a 'truly single' listing segment we have proposed, we note that sponsors would be required to assist a wider range of prospective IPO applicants. This is a role we believe the sponsor community can undertake, provided the FCA take forward the refinements to the scope of transactions requiring a sponsor and streamlining of the record keeping process proposed in this response.

FCA-Industry Sponsor Forum: We note that sponsor rules and associated supervisory expectations placed on sponsors, together with industry practices, have accreted over time in response to market or issuer developments. If, as we propose, sponsor firms will be providing sponsor services for an enlarged range of IPO companies, we believe it appropriate to facilitate an exchange of views between the FCA and the sponsor community to ensure sponsors are only providing the key required tasks in support of the required declarations the FCA seeks from sponsor firms. Similar to the FCA-Industry forum we have proposed to discuss record keeping requirements under Q16, we believe that such an approach would help to develop a better understanding of the work expected from a sponsor to satisfy its responsibilities. We set out below a number of issues and suggestions on which we would welcome discussion with the FCA Primary Markets Specialist Supervision team:

- **Long form reports:** While the listing rules do not impose any requirements on sponsors relating to long form reports, the process around provision by accountants of long form reports on Premium List IPOs has evolved to become a significant burden on sponsors and other transaction participants. We note that this work that runs in parallel and overlaps in some areas with other work done in the context of drafting the prospectus. In the interest of ensuring the UK's primary markets regime functions efficiently, our members would welcome guidance from the FCA that clarifies that a long form report is, in itself, not essential for a sponsor to conclude it has satisfied its obligations. Sponsors should be able to determine, on a case-by-case basis, if they consider a long form report to be needed without risk of challenge by the regulator.

- **Working capital declarations:** Our members recommend that the current listing rule requirement which requires a sponsor to provide a declaration on the working capital statement provided by the directors of an applicant company should be removed in the context of the enhanced single segment which we propose in Section 3. We

believe that directors of a company are best-placed to opine on the adequacy of its working capital, alongside the support provided by the work of accountants and auditors in the context of various listing and prospectus requirements (including in particular the going concern analysis required as part of an audit). We note that under the current regime, the requirement for sponsors to undertake such work is duplicative and results in increased costs for issuers, both in financial terms due to the need to commission a working capital report and in terms of operational input from an issuer's finance team – without a commensurate benefit. We further note that every equity prospectus in the EU is required to include a working capital statement, but the UK is alone in requiring third party (i.e. sponsor) assurance of that statement.

- **Ongoing audit reforms:** We consider that the role of the sponsor should be reviewed holistically in the context of the audit review and the work of the FRC and the FCA on going concern and working capital.

UK Finance and AFME members put forward several detailed comments regarding changes to the sponsor regime in our response to CP21/21 (section 1.5). The FCA may find it helpful to consider these comments once again in addition to the views put forward in this paper.

25. Are there circumstances where the role of a sponsor after initial listing could be reduced, without materially impacting the benefits gained from the sponsor regime? If so, please provide details and explain how investor protections would or would not be impacted?

UK Finance and AFME members support the recommendation made in this regard in Mark Austin's UK Secondary Capital Raising Review. In particular:

- A sponsor firm should not need to be appointed by a company in relation to a secondary fundraising.
- Formal declarations by a sponsor in relation to the position of the company should not need to be made to the FCA, although sponsor declarations on a circular should continue, under the current regime, to be required for certain secondary offers that are linked to a material acquisition for example.
- The FCA's approach to working capital statements, when and if required in the future, should be reconsidered and revised to allow greater flexibility of approach and a disclosure-based approach.
- The current overlap between working capital diligence exercises and the work that issuers are required to undertake to give going concern statements and viability statements – and in due course resilience statements – should be addressed.

26. Are there other circumstances in which the sponsor regime should be extended/ applied more widely? For example, to any other issuers of securities currently listed in the standard listing segment.

Our members are not in favour of an extension of the sponsor regime, which is already more onerous than in other jurisdictions without demonstrable benefit to issuers and investors.