UK Finance-AFME response to FCA CP23/10

Sent to: Helen Boyd (FCA) and Adam Wreglesworth (FCA)

Dear Helen and Adam,

We enclose the collective responses of the member firms of UK Finance and the Association for Financial Markets in Europe ("AFME") to CP23/10 Primary Markets Effectiveness Review: Feedback to DP 22/2 and proposed equity listing rule reforms, produced with advisory support from Linklaters LLP.

We are grateful for this opportunity to share our views and recommendations for improving the effectiveness of the UK's primary markets. The UK's regulatory regime is a significant pillar of the broader public policy debate surrounding the future of our capital markets and we welcome the significant, positive progress made by the FCA to date in advancing the recommendations of the UK Listings Review.

A modernised and innovative regulatory regime, which upholds robust and proportionate standards, is fundamental to ensuring the UK continues to be a market of choice for investors and issuers, both domestic and international.

We are pleased that the FCA is approaching this latest package of reforms with ambition and openness, and we look forward to continuing to work with you on these proposals in the months ahead.

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

Kind regards,

Julie Shacklady

Director, Primary Markets

UK Finance

Gary Simmons

Managing Director, High Yield & Equity Capital Markets

AFME

Contents

1. Introduction 3
2. Executive Summary 4
3. The ESCC Segment and Other Listing Categories 6
4. Transition 9
5. Financial Track Record and Working Capital Statement 11
6. Listing Principles 13
7. Controlling Shareholders and Independence 14
8. Dual Class Share Structures 16
9. Class 1 and Related Party Transactions 19
10. The Sponsor Regime 24
11. Consultation Questions 30

1. Introduction

Support for a disclosure-based regime

The members of UK Finance and AFME ("**Members**") are supportive of the view that the move to a more streamlined regime, with more emphasis on disclosure and less on regulation, will facilitate a closer connection between issuers and investors and reduce "friction" in the way equity capital is raised in the public markets.

We believe the proposals will create a more agile listing environment open to a broader range of issuers by focussing on the key information and safeguards that investors value, thereby helping to deepen the pool of capital in the UK market.

Our approach to CP23/10

Since Lord Hill's first call for evidence and more particularly since the publication of CP 23/10, Members have been meeting regularly to discuss the proposals and their collective feedback is set out in this document. We note that Members are highly supportive of the majority of the proposals made and believe that, subject to some further consideration and refinement as set out in this response, their implementation will go a long way towards achieving the FCA's stated goals. Unless stated otherwise, the views put forward in this document are the collective views of our memberships that participated in this consultation, and we encourage the FCA to view and give weight to them as such.

In addition, in preparing this response we have focussed on what we consider to be the key areas of the proposals that require amendment in order to be fully effective. Where we have not responded, or not responded in detail, on a particular question or topic, this should not be read as a lack of support. Where our Members disagree with a proposal or believe it requires amendment, this has been stated.

Our response is set out thematically rather than as directed answers to the questions in CP 23/10. We have cross-referenced the relevant questions in each thematic section and have included a table of questions and where they are addressed on page 30.

Consistent and recurring themes

Several key themes arise consistently in our response:

(i) Overall, we are supportive of the drive for increased flexibility and wider market access and of the move to a more disclosure-based (and less regulation-based) regime;

(ii) Care should be taken to ensure that the drive for the simplicity of the single segment is balanced against the desirability of allowing access to as wide a universe of issuers as possible. This is particularly relevant when considering (a) rules which will apply for the first time to current standard-listed issuers; and (b) overseas issuers;

(iii) It is vital that adjacent regulatory regimes are adapted in parallel, alongside the Primary Markets Effectiveness reforms, to ensure that a single, coherent and consistent regime is created – this includes the ongoing proposals for the new public offers and admissions to trading regime, the sponsor regime, applicable corporate governance regimes and corporate law;

(iv) In particular, the sponsor regime needs to be adapted in parallel to avoid it becoming a brake on the drive for increased market access – most of our members do not believe that the optimum results from these reforms will be achieved if sponsors are required, for all issuers, to perform the same work with the same liability profile as is currently the case for the premium segment, although views differ and a small number of members believe sponsor oversight is important in the absence of any alternative similar oversight; and

(v) In all cases, changes to rules and requirements should be supported wherever possible by user-friendly and practical guidance as to how the FCA will implement and enforce the new regime. The increased flexibility intended by the regime should be strengthened by ensuring clarity, consistency and predictability as to regulatory outcomes. Non-exhaustive lists of structural features that the FCA would be minded to allow (or disallow) under revised eligibility requirements, for example, would be welcome.

We will pick up on each of these points in greater detail as we address (thematically) the questions raised in CP 23/10.

2. Executive Summary

A single segment regime

Members support the proposal to replace the existing standard and premium segments with a new single segment for equity shares in commercial companies ("**ESCC**"). We are in favour of simplifying the current regime and having a single segment which would be home to as diverse a range of different issuers as possible. However, recognising that it would not be workable to accommodate absolutely all issuers on the ESCC segment, Members also support the concept of further listing categories where necessary, with the proviso that the number of these extra categories remains limited and each category has clearly defined eligibility criteria.

Transitional provisions

If the rules of the ESCC segment are brought in as proposed, there will be a number of currently standard listed issuers who will be ineligible for inclusion. Members urge the FCA to carefully consider the rules regarding dual class shares structures and controlling shareholders in particular to ensure that as few issuers as possible are put in this position.

However, Members recognise that it is inevitable that some existing issuers will need to transition into the updated regime over time, following the implementation of the new rules, and it is vital that there are clear provisions in place to ensure that these issuers can still be credibly accommodated in the UK. It is with this in mind that we propose refining the catch-all "other shares" category proposed in CP 23/10 to create a specific "Transitional/Legacy" category which would allow issuers, ineligible for the ESCC segment at the point the rules come into effect, to remain listed in the UK but move up into the ESCC segment when they are able to satisfy the eligibility criteria. Whilst we do not propose that there should be a specific time limit on this segment, this category would only be open to those with a standard listing when the rules come into effect so it will be self-limiting and will not become a de facto second segment.

A disclosure-based regime

Members are strongly supportive of a more disclosure-based regime which will give investors a greater opportunity to set their own parameters and risk appetite (although note that some Members highlight the importance of ensuring that relevant rules are in place to support appropriate disclosure). We believe this will go a long way to maximising the attractiveness of the UK for both issuers and investors, thereby increasing its competitive edge.

Having made this bold proposal we would caution the FCA against deviating from the philosophy underpinning this approach in relation to dual-class share structures in particular, where it could make a critical difference to the choice of listing venue for the high-growth, innovative issuers the UK is keen to attract and retain. We propose an approach which requires issuers to clearly disclose the features of dual-class share structures, but does not include the prescriptive requirements set out in CP 23/10, coupled with a limited number of reserved matters (for examples delisting and reverse takeovers) where the "one-share-one-vote" principle should be retained.

Related Party Transactions

Despite Members' support for the great majority of the FCA's proposals, the related party transactions regime is one area where we would advise caution given that the current framework does, in the case of more substantial transactions, provide an important shareholder protection. Members views differ on how best to preserve this protection but there is consensus that the current Chapter 11 rules capture too great a number of transactions that do not pose a genuine risk to shareholder value.

The sponsor regime

Proposing bold reform in many areas of the Listing Rules whilst leaving the sponsor role largely unchanged risks misaligning the two regimes and unintentionally inhibiting (or diluting the potential benefits of) many of the reforms being proposed. For example, opening up the market to a more diverse range of issuers will

ultimately have little impact if, due to the workload for issuers and sponsors and liability risk for sponsors under an unchanged sponsor regime, these new issuers are dissuaded from listing in the UK or sponsors are unwilling to take on these new issuers as clients.

Members also highlight the expansion of the regime into areas where a sponsor is not best placed to make the required assurances to the FCA, a problem which is only likely to increase due to concern over specialist topics such as ESG and AI becoming ever more relevant.

Most of our Members therefore propose that the sponsor regime is significantly pared back to focus on the areas where sponsors genuinely add value and which capitalise on their expertise regarding the UK market, its rules and how those rules are applied.

3. The ESCC Segment and Other Listing Categories

Single segment

We support the proposal for the current Premium and Standard segments to become, to a large extent, a single segment which in our view will create a strong, more streamlined UK Listing Regime. Members especially welcome the removal of the previous proposal for a regime that allowed issuers to "opt-in" to supplementary continuing obligations. As per our previous responses, we believe the "opt-in" model would have compromised the intended benefits of a single segment regime by preserving a de facto two-segment system and losing the simplicity that Members believe to be a key benefit of the proposed reforms.

Our Members are of the firm view that if the collapsing of the standard and premium segments is to be effective in reforming the attractiveness of the UK for global issuers, this new single segment should aim to offer significant flexibility to prospective issuers with a wider range of business models and corporate structures than is available on the premium segment currently.

Other Listing Categories

As noted above, Members are of the opinion that the proposed new listing category for equity shares in commercial companies (ESCC segment) should be open to as many different types of issuers as possible. However, we recognise that some issuers may sit more comfortably in different listing categories with bespoke rules and the regime will, as a result, still need to retain a number of other categories as well as the ESCC segment.

However, Members would caution against allowing an over-proliferation of different categories which would cut across the drive for simplification and may too easily shift the balance away from including as many issuers as possible in the ESCC – a key principle of the new regime and one which we strongly support. Instead, and as detailed in our response, such additional categories should be clearly defined for use in specific circumstances, with the expectation being for the majority of issuers to list on the ESCC.

With those key principles in mind, Members envisage a structure with the following segments/categories:

(i) **ESCC segment:** As discussed above, this would include as diverse a range of issuers as possible, including, in particular, sovereign-controlled companies with a carve out from the related party transaction regime (should the regime be retained – see further in section 9);

(ii) **Transitional/Legacy** (see section 4 below);

(iii) **Secondary listings** (see below);

(iv) **Investment companies, funds, SPACs and cash shells** (**prior to conclusion of a business combination):** These may be sub-divided as necessary (see further comments below);

(v) **Non-equity shares and miscellaneous:** We anticipate this would include non-equity shares and miscellaneous securities such as warrants and options; and

(vi) **Depositary receipts:** Members have varying views as to where depositary receipts are best accommodated. Options include the ESCC segment, the secondary listing category or a dedicated category (see below**).**

It is important that the structural features and other eligibility criteria that apply to each category (other than equity shares) are set out as clearly as possible and that alongside the rules, practical guidance is provided as to the sorts of structures the FCA would expect to be eligible for each category.

Secondary listings

Members are of the view that issuers with an overseas nexus may in some cases warrant separate categorisation to address the challenges that these issuers may face with the proposed rules of the ESCC segment, in particular the need to take a comply-or-explain approach to the UK Corporate Governance Code, the requirement for the engagement or support of a sponsor in various circumstances and potentially the application of a related party regime. These may deter some overseas issuers seeking (or indeed retaining) a UK listing. As an example, this has the potential to jeopardise some currently successful innovative developments that are growing in popularity in the UK, for example the use of Stock Connect. We are also aware of some companies currently listed in the US who may consider the UK as a secondary home in Europe if the regime were flexible enough.

There is a fine balance to be struck between providing an appropriate home for these issuers and preserving the integrity of the single segment structure these reforms aim to create. We note the indication in section 7.16 of CP 23/10 that overseas issuers with a secondary listing on the standard segment could be included in an "other shares" listing category. Members are of the view that, while the FCA is right to consider the particular requirements of these issuers, a catch-all category (see our further comments under "Transition" below) that attempts to provide an attractive environment for overseas/dual-listed issuers whilst also sheltering those with a finite future on the UK market, is not the right approach and believe that a separate listing category is the better way forward.

Members believe that overseas issuers[1] seeking, in effect, a secondary listing in the UK should be offered the option to be accommodated in a separate category (potentially identified specifically as a "secondary listing" category) that can be tailored accordingly - for example issuers with a full listing on a designated market (with details to be discussed as to what counts as a designated market for these purposes) could be eligible for this dual-listed category provided they are in compliance with the applicable and relevant rules of their home regime. This preserves the flexibility of the UK to be an attractive venue for dual-listed issuers and provides a safeguard against the perception that the rules of the ESCC segment are being diluted or circumvented.

Depository receipts

Members agree with the views of the FCA, set out in section 7.19 of CP 23/10, that depositary receipts ("**DRs**") are an important route to a UK listing which should be maintained as part of the new rules.

However, Members have differing views in relation to how best to accommodate this regime. We see the issues to be addressed as follows and would welcome further engagement with the FCA on this topic:

(i) If DR issuers are included in the single segment, which would help preserve the simplicity of the structure of the UK market under the proposed rules, there is concern that the extra obligations of the ESCC segment, in particular the requirement for a sponsor, may have a deterrent effect on what has historically been a successful part of the UK market.

(ii) An answer to (i) might be to allow DR issuers to enter the ESCC segment if they choose but also to permit inclusion on the secondary listing segment. However, this is not necessarily a "clean" solution as some DR issuers do not have a "home" listing overseas, which would mean expanding the proposed secondary listing category to cater for overseas issuers without a primary listing elsewhere, which may then cut across the integrity of the rules of the ESCC segment and the perceived quality of the UK market.

(iii) DR issuers could, as proposed in CP 23/10, be accommodated in a separate segment but this would contribute to a multiplication of different segments.

Investment companies, funds, SPACs and cash shells

As noted above, we recognise that some issuers, for their own sake and that of their investors, require rules tailored to their fundamentally different purposes and operations. Investment funds illustrate this point, their

[1] By this we mean companies with significant operations overseas rather than UK companies with a holdco located overseas.

core activities being the allocation of risk in seeking investment returns, rather than running an operating business. Similarly cash shell companies and SPACs prior to concluding a business combination also have sufficiently different profiles from commercial companies to warrant a separate listing category with bespoke rules. Members will need to review these rules before forming a final view.

4. Transition

Eligibility for the single segment

It is important to keep in mind that there are some existing issuers (including some high-profile issuers) listed currently on the standard segment who would not, under the reformed rules as proposed, be eligible for inclusion in the new single segment or, even if eligible, may struggle to find a sponsor to support their transition. There is a danger that for such issuers, including those from sectors the UK is keen to attract and retain, the new single segment regime would actually offer less flexibility rather than more and the possible outcome is that they would have to delist and move their listing to another jurisdiction.

To avoid this, we urge the FCA to consider the impact of some of the proposed criteria for the single segment, notably the parameters around eligibility on dual class shares structures, some of the provisions around controlling shareholders and compliance with the RPT regime, if retained. Overseas issuers may also find it difficult to take a “comply or explain” approach to the UK Corporate Governance Code (especially if proposed changes to the Code are brought in which would include number of provisions that are very UK-specific) and more guidance and flexibility around this issue would be welcome.

Members are of the view that the new single segment should be a permanent home for as diverse a range of issuers as possible in the form in which they wish to be listed, as opposed to forcing them to either conform to more rigid standards, to de-list or to be left out of what will be the main market segment.

Transition of Premium-listed issuers

Given that premium listed issuers currently comply with a higher standard of regulation, Members are of the view that issuers with an existing premium listing should be able to transfer to the ESCC segment automatically, without the need for a shareholder vote or any sponsor declaration.

Transitional Provisions

Whilst we urge the FCA to design a new single segment that is as broad a home as possible such that those currently on the standard segment can readily transfer to the single segment in their current form, we accept that in certain cases this will not be possible and that some existing issuers on the standard segment may need to transition into the updated regime over a post implementation period. Where such a transition is required, it is vital that there are clear provisions in place to promote an orderly transfer in the market and enable issuers to clearly understand:

(i) what is required of them;

(ii) by when is it required;

(iii) what is the mechanism of implementation of those requirements; and

(iv) who monitors and confirms the successful implementation of those requirements.

Members note that detailed provisions on this topic are to come in the autumn consultation, but we take this opportunity to consider the “Other Shares” category referred to in section 7.15 of CP 23/10. Members note that as currently described, this category serves as a catch-all for:

(i) standard listed issuers who are ineligible for the new single segment;

(ii) non-equity shares; and

(iii) secondary listings .

As discussed in section 3 above, Members envisage a UK market under the new rules comprising the ESCC segment and four additional listing categories, each responding to a need for different, bespoke rules and the specific securities to be accommodated. This structure does not include the “other shares” category as described in CP 23/10 because Members believe that a more nuanced approach to transitional arrangements

would allow for more precision and would also provide an opportunity to take a more enabling approach to the move to a single segment market.

An alternative approach

Members propose dividing the "Other Shares" category into three separate categories that are structured according to their own respective purposes:

(i) ***Transitional/Legacy****:* This category would provide for those issuers with an existing standing listing who are ineligible for (or otherwise unable to transition to) the ESCC segment when the proposed new rules come into effect, perhaps due to their internal arrangements, the fact that they are unable to secure the services of a sponsor or an unwillingness to comply the RPT regime, if retained. As and when issuers are able to meet the requirements of the ESCC segment they would be able to move out of this listing category and up into the ESCC segment. This category would only be open to issuers with a standard listing at the time the new rules come into effect. This prevents the development of a de facto standard segment and ensures a self-limiting lifespan (even if no specific time limit is set for the existence of the segment).

(ii) **Overseas/Secondary Listing:** As discussed in section 3 above.

(iii) **Non-equity shares and miscellaneous:** As set out in section 3 above this would include non-equity shares and miscellaneous securities such as warrants and options.

As set out in section 3 above, these categories would form part of the full structure of segments/categories, along-side the ESCC segment and the other categories deemed necessary.

Sponsors

The transitional provisions must also take account of the current sponsor community. As a result of the premium and standard structure of the UK market, existing sponsor firms are focussed on issuers with larger market capitalisations which meet the eligibility criteria for admission to the premium segment of the market. There are very few firms which cater to the opposite end of the market and have experience in providing services to issuers with much smaller market capitalisations, and less robust internal processes and track records, which exist on the standard segment.

If the support of a sponsor is made a pre-requisite for entering the ESCC segment, Members highlight the likelihood is that many sponsor firms currently active in the market will be unwilling or unable to take on these smaller issuers as clients, given the potentially larger workload and liability involved compared with the fees typically charged for the service, leaving them unable to access the new single segment. Even if a sponsor were not to be required for an issuer to move to the ESCC segment, once there, issuers may need the support of a sponsor, for example, if they plan a significant related party transaction.

The sponsor market needs to be given time to adapt to the new regulatory environment. If there is demand for sponsor support from smaller issuers, provided that the requirements of the sponsor regime do not act as a deterrent (see our comments in the Sponsor Regime section) then it is likely that a market of sponsor firms will develop to provide these services if the relevant services are not able to be covered by the existing sponsor community, but such adaptation is likely to take time. These new firms will not only need to be established but also complete the sponsor approval process. The proposed Transitional/Legacy category (described above) will also give the necessary time for these market developments to take place so smaller issuers are not left behind.

Related consultation questions

Q32: We welcome views on proposed restructure of the listing regime set out above. In particular, do you agree with our preliminary proposals for dealing with issuers that are not issuers of equity share in commercial companies?

Q33: Have we identified the impacts on different issuer types and sufficiently delineated between them? If you have alternative suggestions that we should consider, please provide details.

5. Financial Track Record and Working Capital Statement

Financial Track Record

Members welcome the proposal to remove the eligibility requirements for the three-year representative revenue-earning track record and for three years of audited financial information representing at least 75% of the issuer's business. These requirements have proved to be a disproportionate barrier to listing in the UK in particular in the context of pre-revenue tech and bioscience companies and acquisitive industry consolidators, among others.

Overlap with the public offers and admissions to trading regime reforms

As the FCA recognises in CP 23/10, this proposal overlaps with the current on-going reform of the public offers and admissions to trading regime and we believe it is vital that both regimes are addressed in parallel. If the prospectus disclosure requirements relating to a company's financial history do not take account of the new flexibilities afforded by the proposed reforms to the Listing Rules, this could counter the intended effect of allowing greater flexibility of access for issuers for whom this is a relevant concern.

Sponsors

It will be important to ensure that the rules and guidance in relation to sponsor requirements are adapted to enable sponsors to act for the wider range of issuers contemplated by the new regime without imposing undue or disproportionate work and risk on sponsors, which may in turn act against the drive to widen market access that is the intention of these reforms (see section 10 for Members' detailed comments).

Working capital

Members are supportive of the removal of the requirement for a clean working capital statement, which will provide greater flexibility for companies with different business models.

Sponsors

Again, it is important that the sponsor regime is refined in parallel with the CP 23/10 changes. Most of our Members are of the view that the sponsor's working capital confirmation should be removed since if this remains an eligibility requirement, there is a risk that despite this rule change, much of the existing work that goes into providing a clean working capital statement, including the process of commissioning and reviewing a reporting accountant's working capital report, will in practice be continued in order to satisfy this sponsor requirement.

This is the view of the significant majority. However, some Members have indicated that they may be comfortable keeping some form of confirmation, depending on the approach adopted towards the working capital statement.

Alternative disclosure-based approach

Given the general movement towards a disclosure-based system, an alternative approach would be to require specific working capital disclosure, rather than a mandatory form of working capital statement (albeit clean or qualified) as an eligibility requirement. Retaining the requirement for a mandatory form of working capital statement, while allowing that statement to be qualified, may well mean, in practice, that the additional work undertaken to support the working capital statement under the existing regime is still undertaken to support the qualified statement. If no set statement is required, alternative disclosure could take the form, as it does in the United States, of a description of an applicant's material cash requirements and material trends in its capital resources including any material risks to short or medium term working capital.

Members also recognise the interplay between this issue and the accounting work required to give the "going concern" confirmation and the viability statement as part of the annual reporting process. Members note the efforts to align the going concern and working capital approach during the pandemic, but highlight some remaining specific points required for working capital that are over and above any work an issuer must do as part of the audit process, such as the requirement for debt facilities with maturities greater than 12 months (and potentially longer). Members also note the lack of precision in some of the guidance on working capital, such as the concept of a reasonable worst-case scenario and how that is determined, which also introduces an element of judgment from the directors and the sponsor under current requirements, which is different to the sensitivities that might be applied in a going concern exercise or even a reverse stress test. Members believe that there is scope to further align these different rules and this opportunity should not be missed.

Guidance

Whether a mandatory form of working capital statement is required, or a disclosure-based approach is adopted, there will be a need for clear guidance from the FCA as to what is required from the issuer and the role of the sponsor (if any).

Related consultation question

Q1: Do you agree with the proposal to remove specific financial information eligibility requirements for a single ESCC category? If not, please explain why and any alternative preferred approach?

6. Listing Principles

Members agree with the proposal for a single set of Listing Principles, as this is consistent with the concept of the single segment.

Directors

As trailed in CP 23/10, there needs to be further clarity around the proposed role of directors and what an enhanced role in relation to compliance with the Listing Principles would look like. Members also highlight that this proposal should take account of those duties to which directors are already subject under corporate law and applicable corporate governance regimes – where possible, the rules should aim for consistency (across company law, corporate governance rules and listing rules) and avoid duplication.

Sponsors

These changes would also impact sponsors. With a more diverse range of issuers eligible to list on the single segment, clarity over the role of the sponsor in relation to Listing Principle 1 (establishing and maintaining adequate procedures, systems, and controls to enable it to comply with its obligations), for example, will be required to allow the relevant sponsor declarations (if any, see section 10 below) to be given without undue and disproportionate levels of work and risk for the sponsor firm.

Eligibility Criteria

In respect of the suggestion that the Listing Principles be applied as eligibility criteria, Members would need to see the proposed drafting of these updated principles before being able to give an informed view. However, by way of an initial assessment, it is unclear what the benefit would be of incorporating the listing principles as eligibility criteria.

In the view of Members, the principles are distinct from the eligibility criteria and, by definition, are not interchangeable. The eligibility criteria are those prerequisites that an issuer must satisfy in order to be permitted to list in the UK, whereas the listing principles are the rules that govern how that issuer operates within the regime once listed. The principles are (in our view) deliberately drafted as “continuing obligations”, often as a general standard expected on an ongoing basis (for example, Listing Principle 2 to deal with the FCA in an open and cooperative manner), as opposed to objective criteria. We therefore believe there is a risk that if such principles are applied as eligibility criteria, there would be a lack of objectivity in asserting compliance and in the ability to evidence compliance due to the prospective issuer not yet operating within the regime in respect of which the principles apply. This risks creating uncertainty for prospective issuers and their advisers, and difficulty for the FCA, when seeking to ensure that the eligibility criteria are met and could leave eligibility decisions open to wider challenge.

We would appreciate further guidance from the FCA on its proposal in this respect and the reasons for it. Consistent with a recurring theme in this consultation response, where new requirements are imposed (or where principles are to be implemented as eligibility requirements), we believe it is vital that clear and practical guidance is provided for all market participants to give a degree of certainty as to how the regime will be applied in practice.

Related consultation questions

Q23: Do you agree with our proposed changes to the LR principles? If not, please explain why and provide details of any alternative suggested approach.

Q24: We are considering applying the principles as eligibility criteria, to clarify expected standards and reflect the fact that in practice these requirements need to be complied with at the point of listing. Please provide details if you foresee any issues with this approach.

7. Controlling Shareholders and Independence

Controlling shareholders

Members welcome the proposal to change the current mandatory provisions regarding controlling shareholders in LR 6.5 to a “comply or explain” approach and, in particular, believe that appropriate disclosure would be as beneficial to the integrity of the market as the currently mandatory provisions of a controlling shareholder/relationship agreement.

However, we note that the requirements for an issuer with a controlling shareholder on the new single segment are more onerous than those of the existing standard segment. The ‘one-size-fits-all’ requirements for specific risk factors and standardised warning language, for example where an issuer does not have a controlling shareholder/relationship agreement in place, do not take account of the other safeguards and corporate governance structures that an issuer might have in place, including in particular the related party transactions regime. These issues should be a matter for disclosure, in line with the general disclosure-based approach of the new regime, with issuers able to take a tailored, circumstance-specific view of what appropriate disclosure of the risks (and benefits) of their structures would look like. The FCA would also have the authority to exercise its discretion on a case-by-case basis as to whether particular warnings or risk factors are required.

As flagged in section 4 above, there is a risk here of a number of issuers currently on the standard list being ineligible or unable to transition to the single segment – while we have suggested that a “Transitional/Legacy” segment shall be made available for such cases, we urge the FCA to keep the number of companies being put in this position to a minimum by avoiding mandatory regulation and keeping true to the disclosure-based philosophy of the ESCC segment to the maximum extent possible.

Independence

Members agree with and support the relaxation of the independence and operational control requirements in LR 6.4. These can cause difficulties for issuers that nonetheless operate substantive businesses and prevent the UK market from being open to more diverse business models. It is the view of Members that the single segment should be open to issuers with any corporate structure which allows the operation of a substantive business (unless they are eligible for inclusion in the one of the other listing categories put forward in CP 23/10). We also recognise that this will overlap with the controlling shareholders regime.

We would ask the FCA to provide, alongside the new rules, practical and detailed guidance on the sorts of structures that would now be acceptable, and those which would remain problematic.

Sponsors

If the change suggested above is to be meaningful in practice, thought has to be given to how the reform interacts with the sponsor regime. If sponsors are required to make the existing declarations to the FCA on the listing of an issuer that no longer has to comply with the independence requirements, this might act as a brake on the drive for greater access as sponsors may require assurances to enable them to make the required declarations. Please see section 10 below for further details.

Related consultation questions

Q5: Do you agree with our proposed approach to the controlling shareholder regime for a single ESCC category? Do you have any views on the suitability of alternative approaches to the one proposed?

Q6: Do you agree that our proposals as regards controlling shareholders align with our need to act, as far as is reasonably possible, in a way which is compatible with our strategic objective of ensuring markets work well and advances our market integrity and consumer protection objectives? If you don't agree, how do you believe these should be balanced differently?

Q2: Do you agree with a proposal to explore a modified approach to the independence of business and control of business provisions for a single ECSS category, with a view to enhancing flexibility, alongside ensuring clear categories for funds and other investment vehicles?

Q3: Do you have views on what rule or guidance changes may be helpful, and whether certain disclosures could also be enhanced to support investors and market integrity, or any alternative approaches we should consider?

8. Dual Class Share Structures

Members agree with the FCA's view expressed in CP 23/10 that the issue of dual class share structures ("**DCSSs**") is a critical area to get right to improve the attractiveness of a UK listing. In discussions that Members have held with prospective issuers, particularly but not exclusively those from the technology sector, flexibility in this area has often been a make-or-break question when considering whether to list in the UK or elsewhere. Members also welcome the citation of US market data in CP 23/10 that highlights average 3-year buy-and-hold returns are better for companies with DCSSs across 1980 – 2022.

In the view of Members, the December 2021 changes introduced on the premium listing segment in respect of certain DCSSs being permitted were a positive step. However, in order to maximise the attractiveness of the UK as a home for future issuers looking to put control structures in place, the UK regime needs to go further in permitting a broader range of structures and allowing the market to decide what it will, and will not, support.

Concerns over proposed rule-based approach

Although Members note that the proposal in CP 23/10 is a move towards a more flexible regime than the current rules, there remain restrictions that will, in our view and based on the conversations that Members have had with prospective issuers, result in some important companies discounting the UK as a potential listing venue in favour of more flexible regimes. We consider that the following restrictions will be particularly problematic in this regard:

(i) 10-year sunset period: while the proposed 10-year sunset period is clearly an improvement on the five-year period currently permitted on the premium segment, we believe that it will deter founders of high-growth businesses from listing in the UK, as 10 years may not be sufficient time to bring about ambitious plans to create the next Google or Facebook. Is it really the case that the market would accept a 10-year DCSS but needs regulation to protect against an 11-year (or a 20-year) one? We would strongly suggest that the regime should in this respect remain true to its disclosure-based philosophy and allow investors, properly informed through disclosure, to decide what sunset periods they will and will not accept rather than setting a regulatory maximum; and

(ii) limitation on ownership of enhanced voting shares to directors only: we believe that there will be situations which warrant a less prescriptive approach (see for example the Porsche and Wise structures noted below). Again, properly informed investors should be able to determine what structures they will and will not support.

Competition from other markets

In terms of the competitive landscape, we note that there are no restrictions on the types of DCSSs permitted in the US on NYSE or NASDAQ[2] (we note the minimal requirements dealing with free float) or on Euronext Amsterdam (the exchanges most often cited as competitors to London for IPOs of UK and international businesses).

We also note that in other markets structures have developed which have the same effect and serve a similar purpose to DCSSs. For example, the largest European IPO of 2022, that of Porsche in Germany, comprised an offering of non-voting[3] preference shares, with all of the unlisted voting shares in the company retained by

---

[2] While CP 23/10 states that in the US there may be specific requirements at State level where companies are incorporated, this is not the case for companies incorporated in Delaware, where a majority of US listed businesses are incorporated.

[3] The preference shares are non-voting save in respect of preference dividends and the integrity of the preference share class (for example, cancellation and further issues of preference shares).

the Porsche and Piëch families and Volkswagen AG[4]. The rationale for the FCA's proposal to adopt a more restrictive approach than international peers on a key issue such as DCSSs is unclear to Members.

Existing standard listed issuers

Further, we are concerned by the London Stock Exchange survey that showed that 14 issuers currently listed on the standard segment would be ineligible for inclusion in the new single segment due to their DCSS arrangements. This includes high growth fintech companies such as Wise, whose enhanced voting shares are held not only by the founder or directors but are also widely held among shareholders who supported the company's growth ahead of its IPO. The structure does also incorporate safeguards to prevent over-concentration of control – the founder's voting rights are capped at (i) 49.9% while he is the CEO and (ii) 34.9% when he no longer holds that position.

In the example of Wise, the issuer developed a highly innovative and bespoke structure to suit its specific needs, and this structure was broadly welcomed and accepted by the market. In our view such innovation should be welcomed and encouraged, and neither we nor the FCA should feel it necessary to prescribe what share structures future issuers might and might not want to implement in order to support their specific journey to market. Instead the DCSS regime should be designed so as impose as few prerequisites as possible on the design and mechanics of these structures, which would allow issuers to truly innovate and (as set out below) ultimately rely on the market to give a verdict on the appropriateness of their chosen structure. In our view it would send the wrong message to the global market if the UK listing regime were to be reformed in such a way that forces a number of its most innovative existing issuers to either delist or amend their share capital structure to a narrower application.

An alternative market-led approach with reserved one-share-one-vote matters

We believe that a more permissive approach to DCSSs (one which requires issuers to clearly disclose arrangements relating to DCSSs but does not include the prescriptive requirements set out in the consultation paper) would make the UK market attractive to a wider selection of prospective issuers, and provide investors with the opportunity to invest in a broader range of high-growth companies.

Notwithstanding this approach, Members consider that there are a limited number of core shareholder protections where the "one-share-one-vote" principle (i.e. voting power aligned with economic ownership) should be retained. These are shareholder votes on: (i) issuances of shares at a discount greater than 10% (as set out in CP 23/10); (ii) de-listing; (iii) reverse takeovers and (iv) to the extent they are retained, related party transactions where the related party holds dual class voting shares. Issuers would of course be free to add further protections into this list as a matter of their own constitutional arrangements – the market would decide and dictate practice.

As the FCA recognises in CP 23/10, investors have an active role in deciding which DCSSs are acceptable and Members believe that the market will develop adequate practice more effectively without rules which may not address their priorities in any event. This approach, which has worked in other jurisdictions (notably in the US), also has the benefit of being flexible over time. Arrangements which put off investors today may, for various reasons, become acceptable in time and the market would have the agility to adapt in real time, rather than waiting for rules to catch-up.

Indexation

Linked to the point above, FTSE Russell and other index providers will need to form a view as to whether they will admit all issuers with a DCSS or only those that meet certain criteria (which the index providers themselves would be free to prescribe).

---

[4] Similarly, Europe's largest company by market capitalisation, LMVH, which is listed on Euronext Paris, has a dual class share structure.

FTSE Russell and S&P Dow Jones Indices ("**S&P DJI**") have already shown that they are supportive of DCSSs. Following consultation in 2017, prompted by an increase in US listed issuers with dual class share structures in place, FTSE Russell decided to allow issuers with DCSSs on its global indices, provided that at least 5% of voting rights are held by unrestricted public shareholders. While S&P DJI initially denied eligibility for issuers with a DCSS, this changed in April 2023 when it announced that following a periodic review to "ensure that its indices remain timely and relevant" it had determined that all companies with multiple share class structures would be considered eligible for addition to the S&P Composite 1500 and its component indices (which includes the benchmark S&P 500) provided they meet all other eligibility criteria.

While it is clearly possible to have different eligibility criteria applied for listing eligibility and index eligibility, Members believe it would be preferable to have consistency between the two and would welcome engagement with FTSE Russell on this issue at an early stage.

Related consultation question

Q4: Do you agree with our proposed approach to dual class share structures for the single ESCC category and the proposed parameters? If you disagree, please explain why and provide any alternative proposals.

9. Class 1 and Related Party Transactions

Class 1 transactions

Removal of shareholder vote

Most of our Members support the proposed amendments to the significant transactions regime, including in particular the removal of the requirement for a shareholder vote on Class 1 transactions. This proposed change will reduce burdens on, and costs to, issuers undertaking significant transactions and enable them to be more competitive in M&A auction processes where they are currently disadvantaged as compared to existing standard listed issuers, private companies, funds and overseas issuers.

Members believe that it is, ultimately, the role of the board of directors of a company to make decisions with respect to M&A and note that issuers will often wall-cross and consult with key shareholders to gauge their views on potential transactions, preserving valuable investor engagement. Members note that this is typically only done for a very limited period when any transaction is close to being finalised and subject to well-established market practice under the Market Abuse Regulation. Members further believe that this approach (which is consistent with that followed in other major markets) is appropriate and that implementing any further or alternative mechanisms (raised as a discussion point in CP 23/10) prior to a significant transaction being completed (for example, a mandatory period of delay between exchange and completion) is not only unnecessary but also would have the potential to introduce ambiguity and additional conditionality into the terms of M&A transactions. This will make UK-listed companies less competitive in M&A situations and make a UK listing less attractive for acquisitive companies.

Members further consider that the disclosure requirements for a Class 2 transaction under the current Listing Rules are appropriate, for the reasons explained in CP 23/10.

An alternative view

There is an alternative view in relation to the removal of the shareholder vote and some Members believe that a vote on Class 1 transactions would still be valued by some investors, although these Members would support a significantly higher threshold before a shareholder vote is required, to ensure that only transactions that are actually transformative are captured by the rules.

Removal of the profits test

We welcome the removal of the profits test from the wider class tests. It often does not reflect the profit measures most commonly used by investors, which can vary depending on the nature of the issuer and, as the FCA recognises, it regularly produces anomalous results which, even if they do not ultimately lead to classification as Class 1 transactions, generate costs and delay to resolve.

Uncertainty for issuers and sponsors

Members are concerned, however, that there is a lack of clarity in the proposals in CP 23/10 with respect to the role that is expected to be played by sponsors. For example, we learn from the third bullet point under paragraph 5.13 of CP 23/10 that the FCA is not planning to carry over the private declaration from the sponsor to the FCA under LR 8.4.12R(1) "in its current form" but it does not give any detail as to the form in which we can expect it to be carried across to the new regime, if at all. Similarly, while "some of the sponsor confirmations in the declaration may no longer be relevant" CP 23/10 does not give any guidance on what the FCA will continue to regard as relevant and required.

In the view of Members, it is critical for the successful implementation of any new regime that there is clarity in this respect. If the new rules do not include specific requirements but nonetheless create an expectation that issuers and their sponsors will continue to do the work required to make sponsor declarations (in some form) as they do under current rules, there is a significant risk that market practice will develop which could be as

burdensome, costly and ultimately obstructive to completing significant M&A transactions as the current Class 1 rules. In addition, it would be more difficult to carry out sponsor due diligence in this environment because there would not be rules to support the necessary requests for information from issuers and assistance from other advisers and experts.

Sponsors

Taking all of this into account, Members are of the view that, in the main, the involvement of a sponsor in a Class 1 transaction (especially in relation to working capital) leads to increased costs for limited tangible benefit. Where sponsor declarations are supported by information and comfort from accountants or legal counsel, these advisers may be better placed than an intermediating sponsor to provide any required assurances. Furthermore, the assurances currently provided by a sponsor in a Class 1 transaction may be considered unnecessary given that the new regime places greater reliance on market disclosure, including that made on an on-going basis in an issuer's annual report, for example. Please see section 10 below for further details.

However, there are differing views as to, ultimately, what this means for the sponsor role on a Class 1 transaction. The different options noted by Members are as follows:

(i) a sponsor should not have a role on a Class 1 transaction due to the disproportionate costs involved:

(ii) there would be a role for a sponsor but only in relation to classifying the transaction and advising on the application of the FCA's rules, although some Members are of the view that this role does not need to be carried out by a sponsor, specifically (which would involve engaging a sponsor and the cost and comfort requirements that would go along with the appointment); and

(iii) sponsors should continue to have a similar role to that in place under the current regime but with streamlined declarations (similar to those we propose in section 10 in relation to a new applicant) and only above the threshold where a shareholder vote is required (if a need for a vote is retained).

We would be happy to discuss these options further with the FCA.

Related consultation questions

Q7: Do you agree with the proposed approach to significant transactions for a single ESCC category? If not, please explain why and any alternative proposals.

Q8: Do you consider that additional disclosure could be considered to further support transparency to shareholders on significant transactions and, if so, what (e.g., considering current circulars)?

Q9: Should we consider further mechanisms prior to a significant transaction being formally completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed commercial company equity issuers in place of shareholder approval? What should those mechanisms be and why?

Q10: Should the sponsor's advisory role in assessing whether a potentially significant transaction meets the proposed disclosure threshold be mandatory or optional, and what are your reasons? Do you agree with our proposal that sponsors have more discretion to modify the class tests, including substituting the tests with alternative measures, without seeking formal FCA agreement to the modifications? If you disagree, please provide your reasons and alternative proposals.

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

Related Party Transactions

Retention of shareholder circular and vote

While Members support the sentiment of freeing the UK market from the burden of unnecessary regulation, we believe that the current related party framework does, in the case of more substantial transactions, constitute a valuable element of the UK regime. While Members agree that the regime provides important shareholder protection against value leakage, they have not yet reached a consensus on the best way to preserve this protection without putting disproportionate burden on issuers and making the UK market less competitive than its peers.

Different options discussed include:

(i) moving to an entirely disclosure-based regime;

(ii) in common with other jurisdictions, requiring that related party transactions (over a *de minimis* level) are reviewed and approved by a body of independent directors before such transactions go ahead, with disclosure to the market in addition; and

(iii) retaining the shareholder circular and vote requirements of the current regime, albeit with thresholds raised to more material levels.

Fair and reasonable opinion

Members are of the view that a directors' fair and reasonable opinion (to the extent that they would be relevant to the new regime) should only be required for a related party transaction that is above a *de minimis* level but below the threshold that would require a shareholder vote (where it would be unnecessary given that shareholders would be enabled to assess the proposed transactions for themselves).

Some Members are also of the view that there should be no requirement for a sponsor to provide any written confirmation or recommendation as to a related party transaction being fair and reasonable, whether or not shareholder approval is required.

Reform of related party transaction rules

Aside from the question of how best to regulate related party transactions, Members agree that the thresholds and definitions in the current regime need to be reformed (to the extent that they would be relevant to the new regime) to prevent transactions, which do not represent any real threat to shareholder value, being captured by the rules.

Threshold for larger related party transactions

Members consider that the thresholds set out in the current Chapter 11 regime are set at too low a level and thereby impose a disproportionate burden on issuers in the case of less material transactions, which can make such transactions unattractive or impracticable even where they are in the interests of the issuer and its shareholders. As such, Members believe that it would be appropriate to raise the *de minimis* threshold from 0.25% to 1% and the shareholder approval threshold from 5% to 10% to remove the excessive burden imposed in these cases, while still providing enhanced protection for shareholders in the most substantial scenarios.

Other potential rule reforms to consider

Similarly, Members also point out that certain other features of the regime lead to an imbalance between the friction created by the rules and the risk to shareholder value that the rules are intended to mitigate.

Definition of "related party": Members are of the view that the definition of "related party" under LR 11.1.4R is too wide and can include those who do not pose a real risk of undue influence over the issuer.

Members believe the definition could be improved by refocussing the substantial shareholder and director/shadow director limbs of the definition by specifying that:

(i) a "substantial shareholder" means any person who holds 25% of the voting rights in the issuer or any of its significant subsidiaries, rather than the current threshold of 10%.

(ii) a "director/shadow director" is a director or shadow director of either the issuer or a significant subsidiary of it.

A "significant subsidiary" would be one that on the application of the class tests (minus the profits test) accounts for 10% of the issuer's group.

These changes to the definition would capture more accurately those parties who are genuinely in a position to exercise undue influence over an issuer and would make the regime more proportionate. The insignificant subsidiary exemption could also be deleted if this approach is adopted.

Transactions in the ordinary course of business: The lack of clear guidance around which transactions are or are not to be regarded as being within the ordinary course of an issuer's business makes compliance with the related party regime more difficult. For example, whilst Members agree that the size of a proposed transaction is a relevant factor to take into consideration, the lack of clarity over the point at which a transaction strays outside the ordinary course of an issuer's business is problematic. In addition, the FCA's focus on the incidence of similar transactions by the issuer can lead to an overly protectionist approach – simply because a transaction is not of a type concluded frequently by an issuer does not mean, in and of itself, that it is not in the best interests of the issuer or that the transaction is so unusual that it could not have been in the contemplation of shareholders. We would welcome further engagement with the FCA on this topic and, in the meantime, we suggest for consideration whether a more appropriate test would be along the lines of whether a reasonable investor would consider the transaction in question to be the sort of transaction that the issuer could reasonably be expected to enter into.

Members consider that shifting the parameters around which transactions are to be regarded as outside of the ordinary course of business and providing clear guidance to this effect, including examples, would make the concept of ordinary course a far more helpful indicator of which transactions could be a cause for concern. These comments apply equally to the Class 1 rules.

Changes to existing agreements: LR 11.1.9G means that any variation of an existing agreement with a related party will be subject to the full related party regime, notwithstanding that either: (i) the counterparty was not a related party at the time the agreement was concluded; or (ii) the agreement will have already been subject to the related party transaction rules. Members are of the view that unless the variation would be regarded by a reasonable investor as fundamentally changing the nature of the agreement or the applicable obligations of the issuer, it is disproportionate that such variations should fall under the related party transaction regime.

The DTR 7.3 regime

Given these reforms provide an important opportunity to streamline the rules, Members would support the removal of the separate related party regime under DTR 7.3. Two regimes existing side by side will add complexity that is not necessary from a shareholder protection perspective.

Related consultation questions

Q12: Do you agree with the proposed approach to RPTs for a single ESCC category, which is based on a mandatory announcement at and above the 5% threshold, supported by the 'fair and reasonable' assurance model which includes the sponsor's confirmation as described above? If not, please explain why and any alternative proposals in the context of a single ESCC category.

Q13: Do you consider that additional disclosure requirements could be considered to further support transparency to shareholders on RPTs, and should we consider requiring certain mechanisms prior to a deal being completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed companies to replace the requirement for independent shareholder approval?

Q14: Should it be mandatory for a listed company in the single ESCC category to obtain guidance from a sponsor on the application of the LR, DTR and MAR whenever it is proposing to enter into a related party transaction (irrespective of the size of the transaction), or should it be at the company's discretion?

Q15: Should it be mandatory for the sponsor to consult with the FCA and agree any modifications to the class tests and classification of a proposed RPT, or should the sponsor have more discretion? Please explain your reasons.

Q16: Are there any broader, alternative mechanisms that existing shareholders or prospective investors would want to see in place of, or made use of, in order to strengthen shareholder protection in relation to RPTs in the event that these changes are made to our LR? If so, would these be matters for inclusion in our LR or are they found, for example, in legislation or market practice?

10. The Sponsor Regime

A brake on greater market access and the need for substantial reform

Consistent with our feedback throughout this response, Members are of the view that embracing fundamental reform of the UK's listing regime whilst leaving the sponsor role unchanged is untenable and that misaligning the two regimes risks putting a brake on the greater flexibility, market access and competitive edge of the UK market that the FCA is seeking to achieve.

Our Members have experienced first-hand how the ever-increasing demands on sponsors in the UK under the current listing regime's requirements have resulted in this aspect of the regime becoming increasingly burdensome to current and prospective issuers (for example, in terms of cost, timing and documentation), and ever more out of step with market needs, both from an issuer and investor perspective (evidenced by the fact that investors are very active in jurisdictions with no sponsor regime). In particular our Members are of the view that the sponsor regime has become unduly process-driven, with the burden of the processes and procedures required of sponsor firms now far outstripping the value they bring to the wider market. Further, the sponsor regime has expanded over the years into areas where sponsor firms are very far from being the best equipped market participants to provide the intended assurances – for example, sponsors are not accounting or ESG experts and yet are increasingly being required to take significant levels of responsibility for these matters, which in turn requires them to seek more diligence and back-to-back assurance than any issuer, board or investor would themselves ordinarily require.

As such, we are of the view that the positive reforms being proposed by the FCA would not reach their full potential without a significant reduction in, and realignment of, the role that sponsors play in the UK.

As well as the risk of acting as a deterrent to issuers, most of our Members think that there is a risk that if the sponsor regime were to be maintained without major reform a significant proportion of diverse, innovative, high-growth global issuers that the UK is seeking to attract could inadvertently be excluded from the market due to sponsors' potential unwillingness to take them on as clients given their limited familiarity with the business models of such issuers and the misalignment between sponsor workload and liability and the fees typically charged. Such outcomes would be highly undesirable and inconsistent with the ethos that is underpinning these broader reforms.

An alternative view

The views set out in this section are those of most of our Members. There is an alternative view among a small number of our Members that, while the sponsor regime could certainly benefit from reform (in particular to make it less process driven, more cost-effective and more focussed on the value the sponsor can itself bring) it will remain an important check and balance in the UK listing regime. These Members point to the part a sponsor plays in coordinating the back-to-back comfort process, overseeing issuers' work and providing at least a degree of reassurance to investors and the FCA. We look forward to discussing the full range of Members' views with you in due course.

Friction and cost

In our view the current sponsor regime has evolved in such a way as to result in an unnecessary time and cost burden on issuers, with little commensurate benefit for investors or the market as a whole which results in the sponsor regime itself being a disincentive for prospective issuers to list in the UK. In addition, a number of Members have had informal discussions with the buyside both in the UK and other markets and it appears, from those conversations, that the UK sponsor regime is not seen as an investor protection that sets the UK apart, as demonstrated by the continued success of offerings on exchanges in the US, Euronext and Deutsche Boerse, none of which have a sponsor regime or anything similar. In the view of most of our Members, to a large extent, the regime as currently implemented is not valued by investors, is viewed as an unnecessary burden by many issuers and is onerous, costly and time-consuming for sponsor firms (with the risk of current sponsor firms becoming increasingly reluctant to take on the sponsor role, especially in relation to the more diverse range of issuers the UK is hoping to attract).

At its core, the thesis behind the sponsor regime rests on the view that it is value-additive for an issuer to have a sponsor give a number of confirmations to the FCA rather than have those confirmations given by the issuer itself. Most of our Members believe that is not the best approach, as well as being at odds with the approach taken by almost every other leading stock exchange in the world (Hong Kong (which borrowed heavily from the UK) Milan and Saudi Arabia each with their own version of a sponsor regime, are the exceptions). Most of our Members are of the view that the more logical approach is to ask those who are in the business of the relevant issuer on a fulltime basis and who are ultimately responsible for operating the company for the benefit of its shareholders to confirm the company's position (with, of course, the appropriate professional advice to support them), rather than to require an external sponsor (who does not operate as a professional accountant, auditor, ESG consultant or other expert and is not professionally qualified in any such capacities) to do this investigative work instead from a standing start.

Potential deterrent to future issuers

In addition to the arguments above, most of our Members think that, if the sponsor regime remains as it applies today in the context of the proposed reforms, it may act as a deterrent to future issuers from looking seriously at the UK as a listing venue which will hinder efforts to attract a diverse range of issuers to list and raise capital in the UK thereby reducing the investment opportunities for investors on UK markets. We identify the following issues in particular:

(i) **Timing**: in addition to the cost constraint noted above, the time required for sponsors to get to a position to give the required confirmations acts as a disincentive to list in the UK vs. elsewhere, especially in volatile markets where IPO windows can be very brief. Similar concerns apply once listed, especially for those highly acquisitive issuers whose business model depends on a significant amount of material M&A.

(ii) **Disconnect between regime and investor demand:** some issuers may be put off by the perceived gold plating that is demanded by the regime rather than by investors themselves. For instance, in Europe the working capital statement, and in the US its equivalent section in the Management Discussion and Analysis, is given based on normal due diligence and standards of care for company or directors' views without the extra workload stemming from a sponsor regime,

(iii) **Sponsor discretion:** given the current expectations of and liability framework placed on sponsors, there is a risk that, in a much expanded and diversified UK regime, a section of the market (particularly those innovative, high-growth issuers of the kind the UK is seeking to attract) may be unable to find sponsors willing to take them on as clients given their limited market experience and the potential sponsor liability. Sponsors may determine that the proposed amendments to the sponsor regime would result in a greater amount of sponsor work and may therefore choose to take on only those clients that will not increase their potential liability risk, as opposed to servicing the market as a whole.

(iv) **Cost**: the way that market practice has developed, with the sponsor in the middle of the back-to-back comfort nexus, may increase costs for issuers as sponsors require a level of comfort to comply with their obligations that issuers may not always need or that repeats what the issuer does anyway in the ordinary course.

Future issues will exacerbate current problems

With a view to the future, we believe that without significant reform the current limitations of the sponsor regime noted above will likely only grow as the market navigates increasingly novel and complex issues such as the regulation of artificial intelligence and ESG disclosure. Consistent with how the sponsor market has developed to date, in our view there is a risk that, when faced with these new challenges, the FCA instinctively will turn to sponsors to provide them with a level of comfort in such areas, notwithstanding that sponsors are not specialised experts in assessing such risks. Suggestions that sponsors will simply need to "up-skill" to manage these issues are not practical and ignore the dampening effect this would have on the market as sponsors would be forced to take on the cost of enlarging their teams with appropriately skilled personnel and issuers would take on the costs of sponsors assembling ever larger comfort packages, with correspondingly increased lead-in times. The future will only bring more of these issues into play and the increased costs (the significant majority of which would be borne by issuers), time and work may inevitably act as a further deterrent to listing in the UK.

A more focussed sponsor regime

Given the ambitious programme of reform the FCA is putting forward, it is critical that the sponsor regime is reassessed through this same prism of looking to make the UK a truly world-leading, flexible and innovative market that is the natural home for future global issuers.

In view of the issues we have detailed above and the fact that many of our competitor markets, which currently out-perform the UK in terms of volumes of IPOs, do not have a sponsor role, most of our Members think that the appropriate action is to pare back significantly the sponsor regime as it is today, save for a few limited circumstances, given that the eligibility of an issuer and the quality of its disclosure should be the responsibility of the issuer's directors and senior management, who should be required to receive specialist advice on those areas in which they require it from dedicated experts in the relevant fields, such as, for example, auditors, accountants, ESG consultants etc. This would align the UK with the significant majority of its competitors and allow information to be assessed and provided more efficiently by those most qualified to do so, without the costly drag effect of sponsor involvement.

An alternative approach

In addressing the current issues with the sponsor regime we have outlined above, we believe it is important to go back to first principles and consider where the sponsor regime can add real value for the benefit of the market as a whole. Sponsors are experts in the UK market, its rules and how these rules are applied, and their likely effect on listed companies and new applicants for listing. By keeping a sponsor regime which focuses on and is limited to this area of expertise, we believe the sponsor role can become a valuable one which assists rather than hinders market access.

When will a sponsor be required

Members are of the view that a sponsor will only be required in the following scenarios (which Members view as an exhaustive list):

(i) the transfer to the ESCC segment by an existing standard listed issuer;

(ii) an application by a new applicant for listing on the ESCC segment;

(iii) a reverse takeover by an existing issuer listed on the ESCC segment or in another listing category where the transaction would involve transferring to the ESCC segment;

(iv) potentially, a related party transaction by an issuer with a listing on the ESCC segment (see section 9 above); and

(v) potentially, a class 1 transaction by an issuer with a listing on the ESCC segment (see section 9 above).

New Applicant

In relation to a new listing, we believe there is a strong argument for there to be a sponsor requirement (with certain modifications to the current regime) that justifies the time and cost involvement of a sponsor. When an issuer comes to market, they are entering a regime of which they (and their management) likely have no prior experience, and we agree that the FCA and new applicants benefit from assistance from market professionals in ensuring that such companies understand the matrix of regulations and continuing obligations to which they will become subject.

We are therefore of the view that a "listing sponsor" role should be maintained whereby a sponsor must be appointed by a prospective issuer seeking to list in the UK, with the key focus of their role (to be reflected in the sponsor requirements and declarations) to be assisting that prospective issuer in assessing whether or not it meets the eligibility criteria for listing, in explaining the rules and requirements it will be required to follow once listed (including the procedures it should put in place), and advising it to seek the advice of other professionals to guide it in preparing for this change (for example, legal, accounting and ESG advice). The sponsor would not be responsible for ensuring the commission or determining the scope or content of reports from any other advisors or experts.

However, Members are cognisant that the FCA and investors may expect the issuer to obtain a certain level of support in relation to its obligations, from its reporting accountants in particular, for example reports on financial position and prospects procedures ("FPPP") and working capital (if the requirement for a working capital statement is retained). These reports are produced under the current regime as back-to-back comfort for the sponsor declaration and, in relation to the FPPP report, to assist with enabling compliance with disclosures under the Market Abuse Regulation and other continuing obligations. The most streamlined way to ensure the issuer arranges this comfort is to include a requirement in the new rules that these reports are commissioned from the reporting accountant by a new applicant. This topic also overlaps with the rules on prospectus content.

A simplified sponsor declaration for new applicants

All Members believe that existing sponsor declarations should therefore be significantly reduced given the focus would ultimately be on the board of that company to confirm its eligibility and readiness to meet its upcoming requirements and to seek suitable advice from appropriate experts in different fields when doing so. We suggest that a simplified declaration be introduced whereby the sponsor confirms to the FCA that the continuing obligations (and future regulatory framework) that will apply to the company once listed have been explained to its directors and that a proper process has been followed and due enquiries made (with illustrative examples provided of the process followed and enquiries made) to assist it with preparing appropriate systems and controls in respect of such future compliance. Instead of opining on the conclusions reached by the directors of the issuer, the declaration would focus more on the process undertaken and the guidance received. In our view this is a more appropriate use of a sponsor as ultimately sponsors are there to assist and guide, as opposed to decide and/or certify the conclusions reached. We would be happy to discuss the specifics of such a confirmation with the FCA, but most of our Members suggest that a declaration along the following lines would give an appropriate degree of assurance in relation to the redefined role described above:

- *we have acted with due care and skill in relation to the provision of sponsor services;*
- *we have taken reasonable steps to satisfy ourselves that the directors of the applicant are aware of their responsibilities and obligations under the listing rules, the disclosure requirements and the transparency rules;*
- *we are satisfied that we have provided guidance to the applicant, as sponsor, and where relevant specialist advice has also been provided to the applicant by other professional advisers in relation to:*
    - *the requirements that will apply to it under (i) the listing rules in relation to its application for application for listing; and (ii) the prospectus rules;*
    - *the obligations on it to establish procedures to help it comply with the listing rules the disclosure requirements and the transparency rules on an ongoing basis;*

    - *the obligation on it to make appropriate enquiries to check that it has disclosed, with sufficient prominence in the prospectus, all matters of which it is aware and that in its reasonable opinion should be taken into account by the FCA when considering the application for listing; and*
- *we have maintained records of the key materials which we have discussed or used with the applicant in providing our guidance and assistance to the applicant in relation to the subject areas of the above confirmations.*

Transfer to the single segment

We note that section 6.15 of CP 23/10 proposes that the sponsor regime would be applied to all existing listed commercial companies that transition to the new ESCC segment. Given that issuers currently listed on the premium segment already comply with the higher standards of that segment, requiring them to do so again in order to transition to the ESCC segment will create unwarranted friction and cost.

By contrast, standard listed issuers will not have been supported by a sponsor when they obtained their listing and in some cases will need to comply with requirements over and above the current standard-listing regime, Members agree that sponsor involvement when these issuers move to the ESCC segment would be beneficial. However, Members are of the view that the sponsor role should be simplified as far as possible and any declaration should be limited to the following:

- *we have acted with due care and skill in relation to the provision of sponsor services;*
- *we have taken reasonable steps to satisfy ourselves that the directors of the applicant are aware of their additional responsibilities and obligations under the listing rules; and*
- *we have maintained records of the key materials which we have discussed or used with the applicant in providing our guidance and assistance to the applicant in relation to the subject areas of the above confirmations.*

Record-keeping

This proposed new sponsor declaration would also provide an opportunity to reset recording-keeping protocols, correcting the disconnect between the FCA's requirements and disproportionate market practice which, for example, can involve a sponsor keeping records of every conversation about working capital with an issuer's accountant over a six-month period or keeping records relating to the review of market standard provisions of documents such as engagement letters.

Record keeping requirements have also extended to matters outside the sponsor regime. Members are of the view that reasonable and proper recording keeping for the proposed declaration would be aligned to normal board or investor committee procedures with, for example, a completed control sheet indicating key advice given and actions taken, in addition to copies of key board materials for the issuer in this area (e.g. training slides, board minutes and internal procedure manuals). We would like to engage with the FCA further on this, but believe that more specific guidance (whilst avoiding an objective list of required record-keeping materials that could risk being perceived as a box-ticking exercise) could be beneficial in ensuring that sponsors appropriately record the advice given to, and decisions taken by, issuer boards, whilst avoiding the excessive record-keeping practice that have developed in the market.

Sponsor Competence

When the future of the sponsor role has been determined, the requirements in terms of approval to act as a sponsor and continuing competence will need to be correspondingly redesigned.

Related consultation questions

Q28: Do respondents have any concerns about the availability of sponsor services as a result of the proposed changes to the listing regime and the sponsor role?

Q29: We welcome views from sponsors on whether they would be able to adapt or willing to provide services to a potentially wider and more diverse range of issuers? We particularly welcome any information or data on the implementation and ongoing costs sponsors may incur as a result of our proposals.

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

Q31: Do you have any concerns that sponsors will be able to demonstrate continued competence under our proposed approach? What matters should the FCA take into account when assessing sponsor competence?

11. Consultation Questions

The table below shows where you can find our responses to the questions we have addressed.

No.	Question	Page reference
Q1	Do you agree with the proposal to remove specific financial information eligibility requirements for a single ESCC category? If not, please explain why and any alternative preferred approach?	11-12
Q2	Do you agree with a proposal to explore a modified approach to the independence of business and control of business provisions for a single ECSS category, with a view to enhancing flexibility, alongside ensuring clear categories for funds and other investment vehicles?	14-15
Q3	Do you have views on what rule or guidance changes may be helpful, and whether certain disclosures could also be enhanced to support investors and market integrity, or any alternative approaches we should consider?	14-15
Q4	Do you agree with our proposed approach to dual class share structures for the single ESCC category and the proposed parameters? If you disagree, please explain why and provide any alternative proposals.	16-18
Q5	Do you agree with our proposed approach to the controlling shareholder regime for a single ESCC category? Do you have any views on the suitability of alternative approaches to the one proposed?	14-15
Q6	Do you agree that our proposals as regards controlling shareholders align with our need to act, as far as is reasonably possible, in a way which is compatible with our strategic objective of ensuring markets work well and advances our market integrity and consumer protection objectives? If you don't agree, how do you believe these should be balanced differently?	14-15
Q7	Do you agree with the proposed approach to significant transactions for a single ESCC category? If not, please explain why and any alternative proposals.	19-20
Q8	Do you consider that additional disclosure could be considered to further support transparency to shareholders on significant transactions and, if so, what (e.g., considering current circulars)?	19-20
Q9	Should we consider further mechanisms prior to a significant transaction being formally completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed commercial company equity issuers in place of shareholder approval? What should those mechanisms be and why?	19-20

No.	Question	Page reference
Q10	Should the sponsor's advisory role in assessing whether a potentially significant transaction meets the proposed disclosure threshold be mandatory or optional, and what are your reasons? Do you agree with our proposal that sponsors have more discretion to modify the class tests, including substituting the tests with alternative measures, without seeking formal FCA agreement to the modifications? If you disagree, please provide your reasons and alternative proposals.	19-20
Q11	Should we consider expanding the sponsor's role further on any aspects of significant transactions?	19-20
Q12	Do you agree with the proposed approach to RPTs for a single ESCC category, which is based on a mandatory announcement at and above the 5% threshold, supported by the 'fair and reasonable' assurance model which includes the sponsor's confirmation as described above? If not, please explain why and any alternative proposals in the context of a single ESCC category.	21-23
Q13	Do you consider that additional disclosure requirements could be considered to further support transparency to shareholders on RPTs, and should we consider requiring certain mechanisms prior to a deal being completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed companies to replace the requirement for independent shareholder approval?	21-23
Q14	Should it be mandatory for a listed company in the single ESCC category to obtain guidance from a sponsor on the application of the LR, DTR and MAR whenever it is proposing to enter into a related party transaction (irrespective of the size of the transaction), or should it be at the company's discretion?	21-23
Q16	Are there any broader, alternative mechanisms that existing shareholders or prospective investors would want to see in place of, or made use of, in order to strengthen shareholder protection in relation to RPTs in the event that these changes are made to our LR? If so, would these be matters for inclusion in our LR or are they found, for example, in legislation or market practice?	21-23
Q23	Do you agree with our proposed changes to the LR principles? If not, please explain why and provide details of any alternative suggested approach.	13
Q24	We are considering applying the principles as eligibility criteria, to clarify expected standards and reflect the fact that in practice these requirements need to be complied with at the point of listing. Please provide details if you foresee any issues with this approach.	13

No.	Question	Page reference
Q28	Do respondents have any concerns about the availability of sponsor services as a result of the proposed changes to the listing regime and the sponsor role?	24-29
Q29	We welcome views from sponsors on whether they would be able to adapt or willing to provide services to a potentially wider and more diverse range of issuers? We particularly welcome any information or data on the implementation and ongoing costs sponsors may incur as a result of our proposals.	24-29
Q30	Do sponsors have any concerns about performing the sponsor role and providing sponsor assurances within the model proposed? Please provide details	24-29
Q31	Do you have any concerns that sponsors will be able to demonstrate continued competence under our proposed approach? What matters should the FCA take into account when assessing sponsor competence?	24-29
Q32	We welcome views on proposed restructure of the listing regime set out above. In particular, do you agree with our preliminary proposals for dealing with issuers that are not issuers of equity share in commercial companies?	6-8
Q33	Have we identified the impacts on different issuer types and sufficiently delineated between them? If you have alternative suggestions that we should consider, please provide details	6-8
Q35	If you have views on what transitional arrangements may be required, please provide details.	9-10

About UK Finance

UK Finance is the collective voice for the banking and finance industry. Representing more than 300 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

Julie Shacklady, Director, Primary Markets, Capital Markets and Wholesale Policy
Julie.Shacklady@ukfinance.org.uk

Avanthi Weerasinghe, Principal, Capital Markets and Wholesale Policy
Avanthi.Weerasinghe@ukfinance.org.uk

Will Clamp-Gray, Manager, Capital Markets and Wholesale Policy
William.Clamp-Gray@ukfinance.org.uk

Ali Campbell, Analyst, Capital Markets and Wholesale Policy
Alastair.Campbell@ukfinance.org.uk

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

Gary Simmons, Managing Director, High Yield and Equity Capital Markets
Gary.Simmons@afme.eu

Oscar Newman, Associate, ECM and High Yield
Oscar.Newman@afme.eu

About Linklaters

LLP Linklaters is a leading international law firm, specialising in innovative, complex work for private and public companies and their owners, private equity houses, investment banks and governments. We offer a full cycle service for our clients, including IPOs, mergers & acquisitions, corporate finance, regulatory work and dispute resolution. We aim to build enduring relationships with our clients and to be their lawyers of choice for their most important mandates. Further information is available at www.linklaters.com

James Wootton, Partner
James.Wootton@linklaters.com

Tom Thorne, Partner
Tom.Thorne@linklaters.com

Lucy Fergusson, Partner
Lucy.Fergusson@linklaters.com

Sarah Debney, Senior Associate (Knowledge), Corporate
Sarah.Debney@linklaters.com

Patrick Fincham, Associate
Patrick.Fincham@linklaters.com