UK Finance-AFME response to FCA CP23/31

March 2024

Submitted via email to Helen Boyd (FCA), Adam Wreglesworth (FCA), and cp23-31@fca.org.uk

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 CP23/31: *Primary Markets Effectiveness Review: Feedback to CP23/10 and detailed proposals for 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 and attractiveness of the UK's primary markets. A modernised and innovative regulatory regime, which upholds robust and proportionate standards, is fundamental to ensuring that the UK continues to be a market of choice for investors and issuers, both domestic and international.

UK Finance and AFME members welcome the FCA's desire to achieve a balance between flexibility and accessibility for issuers, as well as to ensure appropriate safeguards to preserve market integrity and support investors' decision-making both at IPO and once listed. Our members are therefore strongly supportive of the overarching framework that the FCA intends to put in place through implementing the proposals in CP23/31. Our response to this consultation is largely focussed on recommending targeted adjustments to ensure that the operation of the new regime in practice reflects the policy objectives which sit behind it.

As a result of the steps the FCA is taking, we note that there will be fewer circumstances in which an issuer will be required to appoint a sponsor. For example, CP23/31 helpfully proposes removing the requirement for a sponsor on significant transactions, and also opens up the debate on whether a sponsor should be required on secondary capital raisings. This direction of travel is encouraging, but we continue to hold the view (as expressed in Chapter 10 of the UK Finance-AFME response to CP23/10) that additional improvements to the sponsor regime should be progressed. Further reforms will help to ensure that the sponsor regime is optimised to serve current and future issuers within the new single segment framework, and support the FCA's objectives and broader ambitions for UK competitiveness. UK Finance and AFME are developing a separate submission outlining our views in more detail and setting out a series of policy recommendations, which will be shared with the FCA in due course.

We further note the extended timetable which the FCA has provided for comments on the additional tranche 2 draft instrument material and the consequential changes instrument. Whilst the response below includes some commentary on the tranche 2 rules, we will follow-up with any additional feedback by the 2 April deadline.

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

Kind regards,

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Director, Primary Markets & Corporate Finance

UK Finance

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AFME

Approach to current standard listing categories

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

Members agree with and support the proposals for the transition category. We recognise that the move to the commercial companies category would be a step-up in regulation for existing standard listed issuers which not all such issuers will be willing or able to take. The absence of a time period in which issuers must transition to another category is welcome and addresses the risk that some current standard listed issuers may otherwise be forced to move their listing elsewhere. Likewise, Members support the self-limiting lifespan of the category that does not involve a set point in time at which the category will be closed (although, we note the plan to consider closure in the future, following consultation, depending on how its population evolves).

However, Members have highlighted the possibility that, over time, the issuers remaining in the transition category could encounter profile/reputational issues. Given this possibility, it would be helpful for the FCA to remain mindful of these potential difficulties and support issuers remaining in the transition category by maintaining an open dialogue and engaging on matters as they arise.

In light of this, Members are concerned that the approach taken to reverse takeovers could contribute to the notion that the transition category is not fully functioning. Given the category is not open to new applicants, we agree that the rules should not permit an issuer in the transition category to undertake a reverse takeover of a target in a different category and reapply to be listed (as an enlarged entity) in the transition category. However, we do not think the same justification applies if the target of the reverse takeover is also listed in the transition category and believe the credibility of the transition category could be adversely affected unless this restriction is removed.

In addition, careful consideration of how the category is named and the profile it is given could also minimise the extent to which it may be seen as a category only for problematic or sub-quality issuers. Given the approach the FCA is taking to the transition out of, and closure of, the category, Members query whether the name “legacy standard category” or simply “legacy category” might be a more accurate reflection of how the category will operate than “transition”, which implies a temporary shorter-term arrangement.

Members further note the change of nomenclature from the ESCC segment to ESCC category. We support this shift as it emphasises the flexibility and accessibility of the proposed UK regime which accommodates a diverse range of issuers under tailored rules and on an equal footing.

Members also support the FCA shortening the category’s name, where appropriate, to the “commercial companies category” - in the same way that the “equity shares (international commercial companies secondary listing) category” is referred to as the “secondary listing category”. The “commercial companies category” may be a more effective label (as well as being easier to say) going forwards.

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

Members support the proposals for a secondary listing category and agree that creating a separate category, rather than drafting exceptions to the rules of the commercial companies category, will preserve the clarity of the UK listing structure. Members agree that it is appropriate to carry across the eligibility requirements and continuing obligations from LR 14 (including LR 14.2.4R) to the secondary listing category. Current standard listed issuers that are mapped to the secondary listing category and investors in these issuers, are familiar with the rules that have worked well for, and been attractive to, this section of the market.

While Members understand that the FCA may be aiming to prevent applicants from artificially avoiding the rules of the commercial companies category, we believe that the risk of the secondary listing category being used as an alternative route to access the UK market is low. The commercial companies category and the secondary listing category will have different investor demographics, and companies wishing to access the

deepest pool of capital and to be eligible for FTSE inclusion will still opt to list in the commercial companies category. In addition, as the secondary listing category is structured as a separate category, the differences (including the increase in inherent risk) between the secondary listing category and the commercial companies category will be clear to investors.

Given this, Members view the majority of the additional eligibility requirements (aside from applicants having an overseas listing) as unnecessarily restrictive. The secondary listing category should be open to an applicant that has its main listing of equity shares on an overseas regulated, regularly operating, recognised and open public market subject to oversight by a regulator that is a signatory to the IOSCO Multilateral Memorandum of Understanding. In deciding what constitutes a main listing, we believe that the FCA should approach this from the standpoint of investors and what they would reasonably view as an issuer's main listing, taking into consideration factors including the issuer's relative liquidity position and the remaining criteria set out in paragraph 13.20 (which would no longer operate as eligibility criteria). This would provide a safeguard (over and above refusing a listing on the basis of investor detriment) without inadvertently barring issuers which do not pose an unacceptable risk.

Similarly, given the change in tone in relation to the relative position of the commercial companies category (noted in our answer to Q28 above and which is supported by Members), we believe the inaccessibility of the secondary listing category to UK incorporated companies needs to be reassessed. Members do not feel (for the reasons set out the second paragraph of this answer) that opening up the secondary listing category to UK incorporated companies with a "primary" listing overseas would damage the integrity of the UK market or lead to the circumvention of the commercial companies category but, instead, would be more consistent with the themes of flexibility and accessibility that will characterise the UK listing environment. Nor should it be assumed that a secondary listing would only attract low trading volumes. For example, CRH plc, an Irish company that has been listed on the LSE and NYSE for over a decade (and until 2023, also the Irish Stock Exchange), moved its primary listing to NYSE in September 2023, following which trading volumes in the UK have remained at around a quarter of total trading volumes, only slightly less than the average over the previous decade (which ranged between 28% and 38%).

Separately, we note that the current LR 14.3.27R – LR 14.3.37G have been copied across into the proposed rules for secondary listings category. In order to ensure that the secondary listing category remains as attractive as possible for new intended applicants, Members query whether it is appropriate to include these rules without modification to take account of the challenges that may be faced by some secondary listed issuers operating primarily under different standards in their "primary" jurisdiction (we are aware this is less relevant for existing standard listed issuers to whom these rules currently apply in any case).

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

Please see our response above.

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

Members support the approach towards the shell companies category. The elevation of LR 5.6.18AG (3) and (4) to eligibility criteria extends key investor protection and makes the standard expected of companies in the shell companies category clearer.

Members do however note that, even though only LR 5.6.18AG(2) and (3) have been proposed as eligibility requirements, SPACs will in practice also generally satisfy the other features in LR 5.6.18AG (4)-(8). This means that when considering whether the presumption of suspension applies, the only remaining differential would, in reality, be size. An alternative approach might be to extend the eligibility criteria which would remove the need for the provisions around presumption of suspension.

In relation to redemption rights in SPACs, applying certain conditions such as the need for a shareholder to have voted against an acquisition in order to exercise the right to redeem, would mean that the function of the provisions would be more keenly focussed on investor protection. Currently there is a risk that redemption rights could be used to generate profit by more sophisticated investors which, as the FCA recognises, has the potential to cause a number of issues. However, Members support the FCA's current approach of paying close attention to the issue and being prepared to place restrictions on the use of redemption rights if it becomes necessary for the UK market.

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

Whilst Members understand the proposal for companies in the commercial companies and transition categories to transfer to the shell companies category if they become eligible, we query how the mechanics set out in UKLR 21.5.18R will work in practice.

On becoming a shell company (as defined in UKLR 13.1.3R) the relevant issuer would have to reform its constitution (in order to be eligible for the shell category category) to avoid the possibility that the FCA may cancel its listing. However, in order to change its constitution the issuer will need to pass a special resolution which could be blocked by a shareholder(s) with a 25% holding. If the issuer remains eligible for the commercial companies or transition category, Members believe it would be counter-productive, for an issuer and its investors, for its listing to be cancelled.

More generally, if an issuer is eligible for more than one category, Members believe that it should be able to choose the one in which to list/or remain listed.

Eligibility requirements

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

Members support the FCA's proposed approach to eligibility requirements for the commercial companies category. We do however emphasise the importance of clarity on the interplay between these requirements and both the new Public Offers and Admissions to Trading Regime and the sponsor regime. In order to understand the impact of the listing regime proposals on the UK market, it is important that we understand how all three regimes will interact.

For example, with regards to the proposed development of the public offer regime, Members query whether the FCA is intending to retain the concept of a working capital statement that is binary in nature (i.e. it has to be "clean" or "qualified") or will the proposed removal of the requirement for a clean working capital statement allow for more qualitative working capital disclosure? Retaining a requirement for a binary working capital statement will mean that the diligence work to reach the necessary conclusions (whether clean or qualified) will be preserved within the UK regulatory architecture. The same is true in relation to keeping an explicit reference to the working capital statement in the sponsor's declaration (see below).

If more qualitative disclosure were to be permitted, an applicant could describe and explain its material cash requirements and material trends in its capital resources including any material risks to short or medium term working capital. This approach would be in line with the disclosure based philosophy of these reforms and would also mitigate the friction caused by misaligned rules and market practice around working capital statements. For example, the differences between the accounting work (i) surrounding a working capital statement, and (ii) required to give the "going concern" confirmation and the viability statement in an annual report are unhelpful. There is also a lack of precision in some of the working capital guidance, such as the concept of a reasonable worst-case scenario and how that is determined. These factors conspire to make the working capital process unappealing to potential applicants who would not face the same issues in other international listing venues. Without addressing these points, the positive impact of the proposed Listing Rule reforms on the competitiveness of the UK regime may be significantly diluted by the residual requirements of the related regimes.

Similarly, we firmly believe that the sponsor declaration must be limited to matters of eligibility and therefore needs to reflect the eligibility requirements of the commercial companies category set out in CP23/31. Given that there is no eligibility requirement for a working capital statement, there should be no reference to it in the sponsor declaration. On a similar note, the sponsor-driven work required in respect of financial position and prospects procedures makes the UK an outlier and puts the UK at a competitive disadvantage. It is vital that further clarity is given, as a priority, to the sponsor declaration and what work the FCA expects the sponsor to undertake to support it. UK Finance and AFME are preparing a separate, more detailed submission on the sponsor regime, which will be shared with the FCA in due course.

Members also note that, in the absence of the 75% track record being provided as part of the eligibility exercise, there will be greater recourse to the complex financial history rules. These rules are not straightforward and a revisiting and clarification of these rules, and/or the FCA's approach to them, will have an impact on the success (in terms of simplification and competitiveness) of the proposed Listing Rule reforms. Members believe this work needs to begin now, ideally in conjunction with a professional accounting body, ahead of the anticipated timetable for consultation on the Public Offers and Admissions to Trading Regime.

We would also expect this to be an area of challenge for sponsors going forward (in particular if the investor detriment declaration remains within the sponsor declaration). Again, it is vital that we have clarity on what is expected of sponsors here to ensure that the sponsor regime does not act as a brake on the intended benefits of the reforms.

Listing Principles

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

Members are supportive of this change and note that these principles have been treated as rules by the UK market in any event.

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

Members agree with the single set of Listing Principles.

Q38: Do you agree with our proposed guidance to support the Listing Principles, regarding the importance of the role of directors and on the arrangements for accessibility?

Members highlight that the guidance is drafted in general terms, stating that "reasonable steps" must be taken to ensure that effective governance systems are in place and that directors deal with the FCA in an open and cooperative manner. Further guidance, perhaps in a technical note setting out what would, in the FCA's view, constitute reasonable steps in each case, would be welcome.

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

Members support the FCA's proposal and agree that the board is best placed to provide these confirmations. This proposal also underscores our position in relation to the sponsor declaration, that the board of an applicant is in the best and most well-informed position to make this confirmation. Members agree that a sponsor can add value by ensuring the board understands the relevant obligations and follows a proper process in reaching its views, but we believe that the sponsor declaration in its current form, adds no substantive, incremental benefit to the company or its investors (and comes at a significant cost).

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

Members support the FCA's proposal.

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

Members support the FCA's proposal.

Controlling shareholders and independence of business

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

Members are broadly supportive of the FCA's proposals.

Members do however highlight that this is another area where some additional, user-friendly guidance would be helpful, given that some of the factors set out in UKLR 5.3.3G (for example exercising "improper influence") are relatively abstract and subjective. Their precise meaning would depend on how they are interpreted by the FCA which has the potential to create uncertainty for both issuers and controlling shareholders. To increase clarity, the publication of FCA guidance (perhaps in a technical note which could follow the publication of the final rules) giving a number of examples of behaviour that would either cause concern or be judged as unproblematic by the FCA, would be welcome.

While Members agree that a relationship agreement will often be the best and most appropriate option for an issuer to demonstrate independence from a controlling shareholder, the FCA may wish to draft the rules with sufficient flexibility to allow an issuer to achieve the same end through different means. For example, the FCA could draft the necessary language into its articles or a tailored comply-or-explain regime where companies can either (i) opt out of the requirement for a relationship agreement in favour of making specific disclosures in relation to the alternative arrangements it has in place, with an explanation of how this enables independence from a controlling shareholder or even (ii) opt out of the independence requirements altogether provided disclosure is made with clear explanations of that fact and why the issuer believes it is appropriate.

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

Members support the FCA's proposed approach to independence and control of business. We believe that it will promote the UK market as a home for a diverse range of companies.

However, Members would welcome clarity on how the FCA will approach the question of the independent business requirement in light of the ongoing sponsor obligations relating to investor detriment. This will inform the judgment of the sponsor community, especially given the more diverse range of listing applicants that will require a sponsor should they come to the UK. Practical guidance (which could sit in a technical note), including non-exhaustive lists of structural features that the FCA would be minded to allow (or disallow) on the commercial companies category, would be welcome and would help sponsors and advisers to assist prospective issuers.

We note that paragraph 5.8 of CP23/31 (which relates to UKLR 5.1.1R) states that the FCA could refuse a listing application for the commercial companies category if there is another listing category for the relevant type of entity. It is possible, given the relaxation of the independence (and other) rules in the commercial companies category, that an issuer may satisfy the eligibility criteria for more than one category, for example the commercial companies category and the closed end investment fund category. If an issuer qualifies for both categories, Members are of the opinion that commercial companies can take many different forms and the market should be flexible enough to enable an issuer to choose in which category it wishes to list. As a safeguarding measure, the FCA would still be able to refuse a listing where it considers there may be investor detriment.

Class Transactions

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

Members are supportive of the proposed approach. The current rules place UK premium listed issuers at a significant competitive disadvantage when compared with unlisted entities or issuers listed on other venues. Members have experience of premium listed issuers losing competitive auctions or, in some cases, not entering into processes at all, due to their position as a result of the obligations under the Listing Rules. This is also evidenced by market data: over the last decade, US listed companies have entered into over 10 times more acquisitions between US$1bn and US$5bn than their UK listed counterparts. Whilst some of this difference will be attributable to the relative size of US and UK listed companies, the number of US listed companies is only just over three times greater than the number of UK listed companies, suggesting that UK listed companies have been more constrained in making acquisitions. Members welcome the new approach, although alert the FCA to the risk that the new rules could also, unintentionally, jeopardise the competitive position of UK listed issuers (see our response to Q8 below).

Separately, Members note the change (in the proposed UKLRs) to the features of the class test that applies to indemnities. There is a concern that moving to a test of 1% of an issuer's market capitalisation sets a low threshold for indemnities to qualify as Class 1 transactions and Members query whether this is the correct test and threshold to apply.

As a point of clarification, we understand from paragraph 6.73 (re the removal of the requirement to appoint a sponsor to provide guidance on UKLR, DTR or MAR where the transaction may be a significant transaction) that a sponsor will not need to be appointed for a preliminary assessment of whether something is a significant transaction under the class tests. Confirmation of this point would be welcome.

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

Members strongly support refinements to the regime that place high quality disclosure to the market at their focus. We believe that investors would find the information included in the proposed enhanced disclosure rules valuable.

However, as currently drafted, there is a material risk that these changes will make it more difficult to reach the point where a transaction can be announced, which runs counter to the FCA's aim of improving the competitive position of UK listed issuers. Gathering the necessary information and ensuring that it is of a quality (especially in the case of the required financial information) that an issuer's board is comfortable to disclose will take time that does not, typically, exist in a transaction timetable. Placing UK listed issuers under this obligation in a competitive auction situation, when private bidders and bidders listed outside the UK are not subject to the same requirement, would make the UK less, rather than more, competitive and attractive.

Members accept that under the current proposals, if the specified financial information that must be included in the announcement is "not available", an issuer can make the alternative disclosure set out in UKLR 7 Annex 2 Part 2, 2.2(4) and 2.3(5) (explanation re valuation and the board statement that the consideration is fair). Our understanding from discussions is that "not available" means that the financial information does not exist in the required form and implies no obligation to undertake work or cost to either create the information or otherwise rework available data. Members welcome and support this flexible approach. However, without some reworking of the proposals in relation to the timing of disclosure, Members are concerned that, due to timing constraints and concerns over the quality of available information, this alternative position may become over-used. In turn, this could result in the language becoming standard boilerplate in announcements which is not valuable to investors or the market.

An alternative approach, which would not involve such a competitive disadvantage for a UK listed bidder, but would support high quality disclosure to the market, would be to keep the content of the announcement in line with the current Class 2 announcement and allow the enhanced disclosure to follow within a reasonable period

of time. To truly achieve the improvement in the competitive position of UK listed bidders, the length of this period of time would need to be flexible depending on the context of each transaction and, given the removal of the requirement for shareholder approval, Members believe that the disclosure could in some circumstances be made after completion has taken place. However, we would not anticipate an issuer's board taking more time than would be reasonably necessary in each case, given the possibility of negative sentiment among investors and the market if there were to be undue delay.

We believe this approach delivers a more attractive market for UK listed issuers while maintaining a rigorous approach to transparency that will benefit investors. It is also a move towards the position that is well understood in the US market, and would be broadly analogous to the proposed requirements in relation to the reverse takeover notification set out in UKLR 7.5.1R.

Members are keen to understand in more detail the requirement in UKLR 7 Annex 2, Part 1, 1.1R(8) (the statement re the effect on the group's earnings, assets and liabilities). For example, it is currently unclear whether it would be sufficient to state that the transaction is "revenue enhancing" (without detail or quantification) or whether more granular detail (or a prescribed format) would be required. We understand from discussions that there is likely to be flexibility for issuers here. As the announcement will not be reviewed by the FCA, the board should decide how much detail to publish to the market.

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

In relation to the proposed rules on aggregation, Members note that UKLR 7.2.12R states that where the aggregated transactions exceed the 25% threshold, the requirements in UKLR 7.3 (significant transactions) will apply to the aggregated transactions as a whole. This contrasts with the current situation under LR 10.2.10R where only the most recent transaction will be subject to shareholder approval.

Members query the reason for this change in approach. We are concerned that preparing the necessary information for disclosure on numerous, previous transactions on a "look-through" basis (as required by UKLR 7.3.9R) at the point of announcement of a later aggregated transaction will make the proposed new position more burdensome and process-driven than under the current rules. It is unclear whether financial information obtained at the time of a previous, aggregated transaction would be relevant at the point of disclosure or whether new information would need to be obtained. In either case, this requirement is likely to lead issuers to gather a level of information on all transactions (whether Class 1 or not) in order to mitigate the effects of the aggregation provisions, should these become relevant later. If left unaddressed, this situation is likely to negate any gain in competitive advantage for a UK listed company brought about through the removal of the need for a shareholder vote.

A more workable requirement would be to follow a similar approach to that set out in UKLR 8.2.7R(2)(b)(ii) re related party transactions, where the notification must contain certain key details of the aggregated transactions but does not require a fair and reasonable statement to be made in relation to the transactions as a whole.

Members generally support the proposed 'ordinary course of business' guidance and believe that it provides helpful clarity. However, Members note the potential interplay between UKLR 7.1.8R(4) (capital expenditure to add scale) and UKLR 7.1.9R(1) (mergers and acquisitions with/of other businesses). Given that capital expenditure to add scale to the existing business may be achieved via a merger with or acquisition of another business, UKLR 7.1.9R(1) may negate some of the benefit of UKLR 7.1.8R(4). We propose that the rules be redrafted to make it explicit that capital expenditure to add scale may be achieved via asset or share acquisitions and to make UKLR 7.1.9R(1) subject to UKLR 7.1.8R(4).

Members also believe that it would be helpful to make UKLR 7.1.9R (2) and (3) more specific. The words "substantial" and "significant" provide only limited clarity on the order of magnitude that would take a transaction outside the scope of the ordinary course exemption. However, following discussions with the FCA we

understand that a flexible, “case-by-case” approach will be taken in relation to this provision and that the issuer should be guided by its own reasonable judgment as to whether a change is “substantial” or “significant” in relation to business.

Generally, a technical note which illustrates the new rules and contains specific examples which, in the absence of any other factors, would/would not be transactions in the ordinary course, would also be welcome.

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

Members are generally supportive of this approach. We would however welcome additional information on what guidance under SUP 9 the FCA envisages as requiring the involvement of a sponsor. Given the process required to undertake a sponsor service, it seems disproportionate to mandate the appointment of a sponsor if what is required is, for example, answers to questions surrounding the application of the rules in practice. In that instance it would seem appropriate for the FCA to communicate directly with the relevant issuer.

Related party transactions

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

Members support the proposed approach towards the related party transaction regime.

Furthermore, Members would strongly support consideration being given to clarifying the rules around aggregation of shareholdings for the purposes of the related party definition – in particular whether separate funds within the umbrella of a single investor group should or should not be aggregated for these purposes.

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

Members are generally supportive of the proposals, however the FCA should also note our response to Q11 in this context.

As a drafting point, Members draw the FCA's attention to UKLR 4.2.1R(6) (and certain other provisions of UKLR 4.2.1R). As drafted, the issuer must appoint a sponsor where the issuer (we believe it should say "sponsor") is required by UKLR 8.2.1R(3) to provide an issuer with a fair and reasonable confirmation.

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

Members support these proposed changes.

Dual class share structures

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

Members generally agree with the proposals and welcome the more permissive approach taken by the FCA.

However, we note that institutional investors remain barred from holding weighed voting rights. As a result of this, companies with institutional investors in their dual class share structures will be ineligible for the commercial companies category. While we understand the desire from buy-side stakeholders to put some parameters around eligibility, we believe the mischief this requirement is intended to avoid (as we understand it) can be mitigated in a more flexible way; helping to ensure the FCA remains consistent in applying the disclosure-based approach that underpins the new single segment listing regime. Such an approach would also have the benefit of allowing into the category certain structures that existing listed companies have in place currently (and which investors do not seem to have found problematic).

More specifically, if the buy-side is concerned about the length of time for which weighted voting rights could be held by institutional investors, an alternative approach would be to impose a prescribed sunset provision only in relation to shareholdings by these investors. In other words, eligibility would be available to structures under which institutional shareholders hold weighted voting rights, provided that the weighted voting, in the case of these institutions, does not last longer than a specified period (for example, five years).

Members also note the issues that may arise in the context of co-founders and family-owned companies, which are not addressed by the proposed rules. We would welcome changes which make provision for the transfer (including by inheritance) of weighted voting rights to other fellow holders in the dual class share structure and/or for the weighted voting rights to remain within a specified group (defined at the time a structure is put in place).

Implementation and in-flight transactions

Members are generally supportive of the approach to implementation and in-flight transactions. However, we would welcome more practical detail on when the market could access the final rulebook in full to allow considered and complete advice to be given to issuers and applicants. A two week implementation time period may not permit that in all circumstances.

Members would also welcome clarity on whether the FCA would regard sponsor assistance with the initial mapping process as a sponsor service under the current LR 8.

Sponsor Regime

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

Members welcome the proposal to require the appointment of a sponsor on fewer occasions after an IPO. However, consistent with our feedback in this document and as set out, in greater detail, in the UK Finance-AFME position paper on the sponsor regime (that will be delivered separately to FCA in due course), we feel strongly that the FCA should go further to re-assess the requirements of the sponsor role to prevent it being a brake on the reforms proposed in CP23/31.

Reverse Takeovers

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

Members are generally supportive of the proposed approach to reverse takeovers, though do however query UKLR 7.2.13R in relation to aggregation. The fact that, once the reverse takeover threshold has been reached on aggregation, UKLR 7.5 must be followed for the aggregated transactions as a whole (save for shareholder approval), raises the same issues as outlined in our answer to Q9. We believe a more workable approach would be to require the process in UKLR 7.5 to be followed for the latest transaction only, with key details of the previous transactions being included in the circular to shareholders, thereby mitigating unnecessary friction and complexity in the rules.

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

Members broadly support the proposed approach. However, as set out in our response to Q8, we believe that the content of the notification should be kept in line with the current Class 2 announcement, given especially that a circular and, very likely, a prospectus will follow on a reverse takeover.

Responses to further CP 23/31 questions

UKLR Sourcebook

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

Members agree with the proposed approach.

Transactions undertaken by companies facing financial difficulty

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

Members agree with the proposed approach.

Further share issuances

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

Members agree with the proposed approach.

Q20: Do you agree that an issuer in the commercial companies category should be required to appoint a sponsor in connection with its further share issuance prospectus and related application for listing?

Members do not agree with this proposal. We instead support recommendation nine of the UK Secondary Capital Raising Review – namely that a sponsor firm should not need to be appointed in relation to a secondary raising, as an issuer will have experience in complying with its ongoing obligations as a listed company.

Share Buybacks

Q21: Do you agree with our approach to share buy-backs for the commercial companies category and the amendments proposed versus current premium listing requirements? If not, please explain and suggest any alternative approach.

Members agree with the proposed approach.

Employee share schemes, long-term incentive plans and discounted options arrangements

Q22: Do you have any comments on our proposals? Do you have any views on requiring shareholder approval to grant to a director or employee options, warrants or other similar rights to subscribe for shares in the commercial companies category?

No comments

Requirements for other circulars

Q23: Do you have any comments on our proposals with regard to requirements for other circulars? If you disagree, please explain why, and include suggestions for alternative approaches.

No comments

Annual reporting and governance

Q24: Do you agree with our overall approach to annual disclosures and reporting requirements for the commercial companies, category broadly based on current premium listing requirements, including on corporate governance (see Appendix 1, UKLR 6)? If not, please explain why.

Members agree with the proposed approach.

Q25: Would formal guidance clarifying the use of 'explain' when reporting against the UK CGC be necessary.

Members would welcome formal guidance to illustrate where "explain" is acceptable.

Sovereign controlled companies

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

Members agree with the proposed approach.

Closed-ended investment funds

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

Members agree with the proposed approach.

However, we note one point in relation to significant transactions and related party transactions. Given that the current approach will be carried forward to the new regime for closed-ended investment funds – including the need to appoint a sponsor – Members query whether existing LR 8.2.2R and LR 8.2.3R (re the appointment of sponsor to provide guidance re the application of the rules) should be retained or whether the position under the new regime would be that a sponsor is no longer required to provide guidance on the application of the rules and this would therefore no longer be a sponsor service.

Key person contacts

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

Members agree with the proposed approach.

Arrangements for service of documents

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

Members agree with the proposed approach.

Transfers between listing categories

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

Members agree with the proposed approach.

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