UK FINANCE

FCA CP21/21: PRIMARY MARKETS EFFECTIVENESS REVIEW

UK Finance response
14 September 2021

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About UK Finance

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

Further information is available at **www.ukfinance.org.uk**.

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About AFME

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

For more information please visit the AFME website: **www.afme.eu**.

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FCA CP21/21: Primary Markets Effectiveness Review

Date: 14 September 2021

Address: Capital Markets Policy, Financial Conduct Authority, 12 Endeavour Square, London E20 1JN.

Sent to: **cp21-21@fca.org.uk**

Dear Sir/Madam

Please find enclosed the collective responses of the member firms of UK Finance and the Association for Financial Markets in Europe ("AFME") to the Financial Conduct Authority's CP21/21: Primary Markets Effectiveness Review, produced with the support of Linklaters LLP.

We welcome the FCA's continued collaboration with the industry with respect to the reform of UK capital markets. We believe these initiatives will help drive regulatory efficiencies, tailor the UK's regime to the unique characteristics of the UK market and contribute to an open, proportionate and competitive UK marketplace.

To provide a full response across the range of matters being consulted on, our responses take the form both of general comments reflecting our members' views in each of the key areas raised by the FCA, as well as answers to the specific questions raised in the FCA's consultation.

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

Kind regards,

Conor Lawlor
Director, Capital Markets and Wholesale, UK Finance

Gary Simmons
Managing Director, High Yield & Equity Capital Markets, AFME

UK FINANCE AND AFME CONSULTATION RESPONSES

1. Listing segments and purpose of UK Listing Regime

1.1. Listing segment models – general comments

1.1.1. Our members' overall recommendation is to maintain the current two-segment model for the UK Listing Regime, comprising:

i. a Premium Listing segment with sponsor role and oversight;

ii. a rebranded Standard segment,

whilst at the same time encouraging the FCA to engage on aspects of the Premium Listing segment which could be further modernised and streamlined to make it attractive to a broad range of high-quality issuers.

1.1.2. Our members believe that departing from this model to create a single, premium-equivalent segment for issuers would risk excluding an important range of issuers who are currently eligible for a Standard listing but may not meet the incremental requirements for a premium-equivalent single segment.

1.1.3. Our members believe that London's ability to compete globally in attracting a range of high-quality issuers and providing a wide spectrum of investment opportunities to investors is best served by maintaining an aspirational Premium Listing segment coupled with a more flexible and rebranded Standard segment.

1.1.4. A number of recent high-profile listings on the Standard segment (including S4 Capital, The Hut Group, Deliveroo and Wise) have demonstrated that the additional flexibility the Standard listing segment offers can provide a positive alternative to the Premium List. Our members consider this positive trend is worth retaining and building upon.

1.1.5. There is a wide range of situations in which we have seen a Standard listing used, including (among others):

i. founder-led issuers seeking governance flexibility by choice, particularly in respect of dual class share structures;

ii. highly acquisitive issuers not yet meeting the Premium List track record or independent business requirements;

iii. issuers with complex related party relationships where the burden of re-structuring arrangements to facilitate post listing compliance with Chapter 11 of the Listing Rules presents a barrier;

iv. global depositary receipt ("GDR") listings by emerging market and other overseas issuers – there is a category of overseas companies with Standard listings in London who either: (i) have obligations and governance requirements in their home markets that are inconsistent with or make it commercially disadvantageous to seek to comply with the Premium List requirements; or (ii) are not eligible for Premium Listing due to the fact their depositary interests cannot be settled through CREST; and;

v. issuers for whom the cost of Premium Listing is prohibitive or who are seeking a listing of convenience.

1.1.6. The above wide range demonstrates the key overall benefit of a Standard listing, being the additional flexibility it offers, and this may be in the context of an issuer who is initially unable to satisfy the Premium List requirements but plans to "step up" in due course (e.g. a SPAC or an issuer with only two years of trading history), an issuer who has chosen to take advantage of additional flexibility around governance arrangements on an ongoing basis or an issuer seeking a minimum-cost listing. We are currently aware of further issuers in addition to the examples provided above who are actively pursuing a Standard listing having chosen this type of listing for the flexibility it offers.

1.1.7. As has been suggested, rebranding both the name and purpose of the Standard listing segment is likely to be an important part of supporting this shifting of the narrative to a more positive alternative to the Premium List that both carries benefits to issuers in its own right and has a clearer rationale for use by potential issuers.

1.1.8. Our members are less supportive of the alternative possible routes set out in the consultation paper:

i. in their view London would lose a key advantage it has over other listing venues if the London listing regime provided only a single "minimum standards" segment and the concept of a "premium" listing segment with higher entry conditions was lost, together with the associated ongoing compliance obligations and governance expectations for issuers. Our members believe a key strength of the Premium List is its ability to represent a "gold standard" providing a level of assurance that issuers have been assessed against a well understood higher standard and are subject to continuing obligations that provide additional investor protection; and

ii. our members' view is that, however it may be rebranded, it is a key benefit of the Standard listing segment that it is flexible and, aside from the limitations imposed by high-level eligibility tests such as transferability of shares, investor detriment and free float, the Standard listing segment remains very broadly available. It would seem artificial and unduly restrictive to seek further segment or limit the Standard segment to particular types of issuer. Our members would also not support seeking to impose additional threshold entry requirements on access to the Standard listing segment.

1.2. Further improvements to the Premium Listing regime – general comments

1.2.1. Our members are of the view that London's Premium List is globally recognised as a mark of quality among the international investment community and are highly supportive of both protecting the integrity and broadening the attraction of the Premium List brand.

1.2.2. Lord Hill noted in his March 2021 review of the UK Listing Regime, however, that a lack of flexibility in some areas is playing a part in turning away some issuers from London. Our members see great potential benefits in modernising and streamlining the requirements of the Premium List in such a way that,

whilst continuing to support its globally "trusted" brand, ensures that these requirements are more broadly attractive to a range of high-quality issuers who might otherwise choose to list elsewhere.

1.2.3. Our members do not consider the creation of further issuer specific sub-categories within the Premium List (e.g. the sovereign owned GDR regime) to be the most effective way to achieve this. They consider instead that a restructuring of those elements of the regime acknowledged to have become disproportionately burdensome, overly complex, duplicative and/or entailing unduly long timescales would be the most effective way to ensure high-quality issuers are not turned away from London.

1.2.4. This general updating might entail, in our members' view, adjustments to the track record requirements, changes to the threshold for Class 1 transactions and certain refinements to the sponsor regime, as set out below.

1.3. Adjustment to track record requirements – general comments

1.3.1. Our members strongly agree with Lord Hill's finding that the current requirement for historical financial information to cover at least 75% of an issuers business for the full three year track record period (over and above complex financial history requirements) is unduly onerous and has been shown to exclude issuers where there is a non-material part of the additional track record requirement which is not available, whether that be because the acquired business was a "carve-out" or otherwise because of a lack of historic information made up to an applicable period end. This requirement is also unduly burdensome where the auditors were a different firm which no longer has any relationship with the issuer.

1.3.2. In our members' experience, a situation where there is a need for supplementary financials or some doubt that they may be needed will entail two or three rounds of submission to the FCA, adding time and uncertainty to the preparation process against the backdrop of, once the FCA has evaluated, potentially not being able to proceed and having to wait until financials are no longer required or a way can be found to have the additional work done. There is also, in our member's view, a particular burden also on issuers who are planning acquisitions ahead of IPO where the data for the expected acquisition may not be available until quite late in the IPO timetable.

1.3.3. These factors, together with the other financial and accounting burdens for a Premium Listing, we believe have a cumulative effect of discouraging a selection of a potential London listings in respect of which time is of the essence for IPO execution or there is a perceived risk of non-compliance with the London requirements. They can also have the effect of steering companies away from London even after they have started the preparation work when the full scale of the requirements become apparent and significant delays are faced. The tends to arise principally in connection with financial and accounting workstreams but can also arise from the restructuring of existing arrangements needed to enable the issuer to comply with its continuing obligations following listing.

1.3.4. In addition, as per Lord Hill's findings, our members would support a broadening of the more flexible approach to a revenue-earning track record currently available to scientific research-based companies under the LRs to a wider range of high-growth, earlier stage and innovative issuers across a variety of sectors. This approach is, in our members' view, also applicable to other types of company who are able to demonstrate maturity and quality by other means than pure revenue.

1.3.5. Many of these businesses undertake multiple rounds of private fund-raising prior to commencing their IPO process which could provide a benchmark for demonstrating, in lieu of the full three years of revenue-earning track record, an ability to attract sophisticated investors, as well as a sufficient scale of proposed capital raise at IPO and potential post-listing market capitalisation. This would help to attract younger or highly acquisitive issuers on a rapid growth trajectory who might otherwise look to list elsewhere.

1.4. Changes to continuing obligations requirements – general comments

1.4.1. Class 1 transaction threshold – the current threshold of 25% for a significant transaction to be categorised as Class 1 based on the various class tests set out in the Listing Rules ("LRs") puts Premium Listing issuers at a competitive disadvantage in auction processes involving non-UK listed bidders and, through the shareholder voting requirement, creates an element of uncertainty in such transactions which further makes the UK unattractive to highly acquisitive issuers. Data from our members shows that around 17% of the Class 1 transactions they were involved in since September 2013 fell within the 25 to 34 per cent class test range. Our members are therefore of the view that there would be significant flexibility offered to issuers in raising this threshold to 33% whilst still offering substantive protection to shareholders; and

1.4.2. Application of the class test rules – our members are of the view that there is scope for a more substance over form approach and greater flexibility in allowing dispensations particularly from the profits test, for example in respect of disapplying the profits tests for issuers that have been loss making since IPO or have only recently become profitable.

1.5. Changes to the sponsor regime – general comments

1.5.1. Our members believe that an important role is played by sponsors and that retaining the sponsor regime is integral to maintaining the Premium List brand among investors.

1.5.2. On a practical level, in the absence of the sponsor regime we would also query who would, on a day-to-day basis, test for suitability and have responsibility for enforcement of the regime. Whilst the FCA could itself play this day-to-day role more closely with issuers on transactions, this would impose a greatly increased burden on the FCA's current processes.

1.5.3. Our members are also of the view that there is a uniquely positive value in establishing a proportionate sponsor regime which balances the benefits of offering investors a trusted "product", subject to the vetting and expertise of appropriately qualified financial institutions, with a regime that is both

streamlined and does not, through being disproportionately onerous, result in issuers being deterred or turned away from London.

1.5.4. Lord Hill noted in his March 2021 review of the UK Listing Regime that a lack of flexibility in some areas is playing a part in turning away some issuers from London. In the opinion of our members, certain aspects of the sponsor regime have also become disproportionate in a way which for certain issuers makes a Premium Listing in London (and the process needed to achieve it) less attractive versus other listing venues. These could, in our members' view, be beneficially rebalanced to reduce the burden whilst preserving the standards that the Premium Listing is known for.

1.5.5. These areas include:

i. working capital / accounting workstreams – whilst our members fully recognise the vital importance of working capital diligence and disclosure, there is a view that the rules currently encourage an approach which is too formulaic and cumbersome. Our members would welcome the opportunity to engage further with the FCA, using their significant transactional experience, on defining further guidance which would further focus the working capital and accounting workstreams and encourage efficiencies, such as in respect of secondary capital raises: (a) where we believe there is scope for reliance on an issuer's existing annual going concern and other accounting work; and (b) we would also welcome a discussion with the FCA around the need for full long-form reports;

ii. sponsor appointment requirements – our members would propose reducing the scope of transactions which require a sponsor to be appointed, thereby reducing the burden on issuers and sponsors but in a way which preserves a level of appropriate oversight in certain relevant and defined scenarios. In the view of our members, sponsor transactions should be effectively limited to: (a) new admissions to listing or listing category transfers; (ii) determining whether a transaction may be a class or related party transaction; (iii) reverse takeovers; and (iii) equity capital raises / circulars involving a reconstruction or refinancing. These transactions represent those where either the expertise of a sponsor is appropriate because of a need to be guided through the rules, or where an issuer is undergoing a significant transformation which merits the direct involvement of a sponsor to test the working capital and other conclusions being reached. Other transactions, including where a prospectus is published in connection with a secondary capital raise and Class 1 transactions, should not necessarily require the appointment of a sponsor in our members' view and could be handled through direct interface between the issuer and the FCA where required;

iii. systems and controls diligence – our members recognise the benefits of systems and controls diligence, but again there is a view that the rules currently encourage an approach which is overly burdensome and too formulaic. Our members would welcome the opportunity to engage further with the FCA on further guidance which would focus this area, including allowing greater reliance on an issuer's ongoing /

annual reporting work and reinforcing among sponsors that there is not an expectation by the FCA that systems and controls diligence will be routinely carried out in detail in the case of pure secondary capital raises (in the absence of a specific reason to). Our members would also welcome an approach by the FCA which seeks to limit any further extension of the requirement for sponsors to review (in the absence of specific facts meriting closer scrutiny) matters relating to the issuer's ongoing ordinary course and annual reporting obligations, in particular in areas such as "ESG" compliance;

iv. FCA dealings – our members would encourage the FCA where possible to open itself further to direct interactions and dialogue with issuers and their advisers (as per the approach often adopted by the Takeover Panel) and not limit its interactions to either the sponsor bank or listing contact only or otherwise limit issuer / adviser interaction primarily to formal submissions and responses. This would provide a helpful ability to engage directly with the FCA on complex issues where specialist legal input is often valuable, as well as indicate a clear intention by the FCA to further foster a perception of London as a listing venue where issuers can work constructively and collaboratively with the regulator;

v. extension of related party fairness opinion – our members consider it would be attractive to a range of issuers, including many founder-led businesses, to widen the range of scenarios for which a fair and reasonable opinion will be sufficient to avoid the need to convene a shareholder meeting and vote on a related party transaction. Raising the existing five per cent threshold for triggering a shareholder approval requirement, together with appropriate disclosure obligations, would in our members' opinion still give shareholders sufficient visibility and a vote over more material transactions. Our members are also of the view that the range of persons able to provide a fair and reasonable opinion should not be limited, as is currently the case, to sponsor firms and that allowing other financial institutions with whom issuers may have relationships provide this opinion would provide helpful additional flexibility;

vi. record keeping – whilst records are an important part of the sponsor decision-making and accountability process, the current guidance and supervisory approach has resulted in an a very burdensome "defensive" approach to record keeping. In the view of our members, the aim of records should be to provide an intelligent guide to the FCA as to why material judgments have been made by a sponsor and on what basis, rather than to provide an exhaustive description of the transaction to a lay-reader designed to mitigate any possible risk of there being perceived "gaps". We would welcome further guidance from the FCA to this effect and, given the amount of significant resource this area takes up, consider that this would yield benefits in giving sponsors the confidence to focus their resources appropriately on material issues and creating records of their judgements around these;

vii. long form report – the process around provision by accountants of long form reports on Premium List IPOs has evolved to become a significant burden on sponsors and other transaction participants that runs in parallel and overlaps in some areas with other work done in the context of drafting the prospectus. By contrast, a practice has also evolved whereby long form reports are not typically done for IPOs on the Standard listing segment. In the interest of encouraging efficiencies, members would welcome guidance from the FCA that clarifies that a long form report is, in itself, not essential for a sponsor to conclude it has satisfied its obligations and sponsors should feel free to determine on a case-by-case basis if they consider one needed without risk of challenge by the FCA;

viii. reliance on third parties – our members would similarly welcome further guidance from the FCA clarifying the appropriateness of the sponsor placing reliance on experts in certain specialist areas, such as in respect of IT systems and controls, which have become an increasingly sophisticated and important part of many issuer's internal functions. This may also become increasingly relevant were there to be a further extension of the requirement for sponsors to review other specialist areas, such as ESG compliance (noting our members' views on that expressed above); and

ix. profit forecasts and forward-looking information – although not purely a sponsor matter, Lord Hill noted in his March 2021 review of the UK Listing Regime that more could be done to encourage London-listed issuers to provide forward-looking information at IPO. Our members consider that the current special disclosure rules around profit forecasts and historic practice of having accountants report on forecasts has contributed to a reluctance for issuers to provide this information on IPO, even though it is of a type that can be very useful to investors when forming their investment decisions. In addition, an inconsistent situation has arisen in some cases where issuers raise significant sums of capital pursuant to private founding rounds prior to IPO on the basis primarily of providing investors with forward-looking information and then do not provide such information on IPO. Whilst our members recognise that change in this area would also be a matter for legislative reform, they are very much of the view that it would be beneficial to explore what can be done to encourage the provision of this information in an appropriate way at IPO.

1.6. Listing segments and purpose of UK Listing Regime – consultation question responses

Q1: Would a single segment for equity shares in commercial companies meet the needs of both issuers and investors?

Our members do not believe so. See above.

Q2: Which elements of the existing listing regime would you consider it most difficult or least desirable for issuers and/ or investors to operate without? Are there any particular elements you would reinstate? i.e. the controlling shareholder regime, or the free float requirements.

See above in respect of suggested streamlining of certain particular areas.

Q3: Would the role of the sponsor be a significant loss? Is their role under any specific element of existing requirements considered significantly beneficial to issuers or investors currently?

Our members support the retention of a sponsor role or something equivalent to a sponsor role provided by experienced market participants that have close access to an issuer. They view the role as valuable to maintain confidence in the Premium Listing product and are doubtful that this role or an equivalent role could be effectively performed by the FCA, trading venues or index providers whilst also ensuring that London continues to offer an attractive super equivalent listing regime.

Q4: What would be the benefit of being admitted to the Official List rather than just admission to a trading venue?

The key benefit, in our members view, is that there is a higher standard which is understood by the market, subject to direct oversight and enforcement by the FCA and can be relied on by stakeholders generally including, for example, trading venues, index providers and investors.

Q5: Should we have a role in approving the admission criteria set by trading venues and/or indices? Could adequate investor protection be maintained if different trading venues compete on admission requirements?

Our members view it as important to maintain the cachet of a listing on the Premium List in London and the higher standards this entails as compared to competitor European listing venues. There are various different models which might seek to ensure that this is maintained, but our members are doubtful it could be maintained without considerable downside risk to the overall standing of London as a listing venue unless there is a continued and extensive role for the FCA and sponsors or equivalent.

Q6: What types of issuers would find it hard to comply with the standards within the existing premium listing segment and why?

See above for our members' views on the range of issuers that are attracted to a Standard listing.

Q7: Do unlisted markets provide a suitable alternative to listed markets? Would a gap emerge for any particular type of issuer? Do you consider there would be any particular benefits or drawbacks to this approach?

Our members believe that London should seek to provide trading venues for a wide range of issuers, commensurate with its standing as a leading global capital market. As such, there is merit in seeking to ensure London provides a home for larger unlisted companies that also want to be traded.

There are, though, certain practical challenges in this area, including the potentially illiquid nature of certain smaller unlisted markets and the risk they could be perceived to lack the credibility, transparency and standards of governance associated with FCA supervised listed markets. AIM is an example of a successful unlisted market but also an illustration of the extent of the regulatory regime and standards of governance and

transparency that are likely to be required to allow other successful unlisted platforms to develop.

Q8: What types of companies or strategies should the 'alternative' segment be aimed at?

See above for a discussion of the types of issuers attracted to the Standard listing segment – the key unifying benefit in our members' view is the flexibility that is provided by the Standard listing segment as opposed to a Premium Listing.

Q9: Do the existing provisions in the standard segment need to be changed to suit these companies, either through relaxation or to provide additional shareholder protections?

See above – in our members view, not if a modernised, streamlined and attractive Premium Listing regime is maintained.

Q10: How important is our role in setting additional admission standards to listing in the 'alternative' segment? Are there any benefits to this role being performed by us rather than a trading venue, or market discipline?

See above. Our members note that New York Stock Exchange and NASDAQ rule changes are filed with and approved by the SEC in the US. We believe this layer of additional oversight by a regulatory organisation enhances market confidence.

Q11: Do you consider the alignment between admission to the index and admission to the 'senior' segment to be important? Should the indices consider setting more objective admission criteria?

Yes, very much so – admission to indices is a key attraction of the Premium List. Where additional reforms can be introduced to the Premium Listing regime, for example permitting certain types of dual class share structures, this will further increase the attractiveness of the Premium List and open up index eligibility to a wider range of high-quality issuers. Please also see our comments below on FTSE Russell's potential index eligibility changes – our members strongly encourage engagement, dialogue and coordination between the FCA and FTSE Russell on any rule changes.

2. Other securities

2.1. Other securities – general comments

2.1.1. In our members' experience, there is a category of overseas issuers who have either obtained a Standard listing or not pursued a listing in London despite the fact they would have been willing and likely able to comply with the Premium List requirements as a result of their securities not technically eligible for settlement through CREST.

2.1.2. Our members do not believe the technical nature of an issuer's securities alone should be enough to prevent a Premium Listing where the other requirements can be satisfied and that this is turning away some overseas issuers from the Premium List.

2.1.3. Our members therefore consider that, in order to extend the Premium List to the broadest range of possible eligible overseas issuers, the FCA should review the need for Premium Listed issuers to have securities settled through CREST.

2.2. Other securities – consultation question responses

Q12: How can the process for listing debt and debt-like securities be improved for issuers without jeopardising investor protection?

Our members have not raised any specific comments.

Q13: Should there be a separate listing segment for debt and debt-like securities?

The various proposed UK listing model alternatives are focused predominantly on equity securities. The debt markets and in particular the wholesale debt markets are a very successful feature of the London capital markets. Any steps taken to revise the regime for equity listing should be considered against what will be a strong commercial imperative not to prejudice the efficient functioning of these markets. It is difficult to express a view on what this means as regards the potential need for a separate debt or debt-like segment until there is greater clarity on the path forward for equity.

Q14: Which particular elements of the listing regime could be tailored to improve their effectiveness for other types of securities? In what way?

See above in respect of the current requirement for Premium List issuers to allow settlement of their securities through CREST – our members do not believe the technical nature of an issuer's securities alone should be enough to prevent a Premium Listing.

3. Removing duplication between admission to the Official List and admission to a trading venue

3.1. Removing duplication – general comments

Our members are broadly satisfied with the existing structure under which admission to a trading venue places reliance, where appropriate, on admission having been granted to the Official List.

3.2. Removing duplication – consultation question responses

Q15: Do issuers consider the process of admitting further issues to both the FCA and the trading venue to be burdensome?

Not in particular – our members would view there as being a benefit in maintaining a proportionate requirement for vetting compliance with a prospectus or equivalent disclosure regime, as well as providing assurance on the valid issue and transferability of further issues securities.

Q16: Would the existing procedures conducted by trading venues to ensure issuers comply with their disclosure obligations (production of a prospectus) need to be enhanced if we were to cease admitting further issues to the Official List? What costs would be associated with these, if any?

See above. Our members would view it as important that there is some vetting. Costs are difficult to estimate. This would be replication of a role already performed by the FCA. The issuer and adviser costs very much depend on whether or not a prospectus is required and the application or otherwise of a sponsor or sponsor equivalent regime.

Q17: Are there any legal, regulatory or tax requirements that are connected with further issues being admitted to the Official List, that could not be maintained by further issues being admitted to a trading venue?

Our members consider it important to ensure that the tax benefits currently associated with listed securities, for example the quoted eurobond exemption from UK withholding tax, continue to be available to issuers in substantially the same way they currently are. In addition, our members believe there are investors who are mandated to invest in listed securities only. In the absence of admission to the Official List, such investors would likely need to perform an individual consideration of the appropriateness of securities traded through the various venues based on the relevant applicable rules.

4. Dual class share structures

4.1. Dual class share structures – general comments

4.1.1. Our members in general agree with the FCA's proposals on allowing dual class share structures ("DCSS") on the Premium List and consider that introducing flexibility around DCSS will increase the attractiveness of the Premium List to the next generation of issuers, who are already demonstrating an interest in these types of structures. Our members agree that a five year "sunset" period and restricting to holding by directors at the time of IPO (and their estate beneficiaries) are appropriate limitations.

4.1.2. The risk our members perceive is that the proposal on scope of voting application, which in the FCA's words "severely" restricts the range of available matters, is not compatible with the flexibility DCSS issuers are seeking in using such structures and, as a result, will not be attractive to many issuers in a Premium List context. Our members would recommend adopting the DCSS model proposed by the FCA but with weighted voting rights able to be cast on all shareholder decisions, save for those where a mandatory vote is currently required by the LRs.

4.1.3. The FCA has acknowledged in the consultation that preserving the vision and influence of a founder or group of early owners in the period post-IPO is important, although our members also recognise that defending a takeover where desired is a key part of this. Nevertheless, our members consider this means there are valid reasons for founders or early-stage owners to have enhanced influence for a five-year period on a range of matters beyond takeovers and director entrenchment, including (among others) pre-emption and dividend policy.

4.1.4. Several recent high-profile IPOs have demonstrated that the DCSS market practice is moving in this direction and that issuers are, if necessary, willing to use the Standard segment in order to implement their desired structure. Allowing a wider scope of application is, in the view of our members, both justified and most likely to attract issuers to make use of DCSS on the Premium List (as opposed to issuers continuing to do so on the Standard segment).

4.1.5. From a governance perspective, there are a range of other protections and safeguards available to shareholders and other stakeholders under both the Premium Listing rules and wider UK listing regime, including the UK Corporate Governance Code. Investors have also implicitly indicated through their support for some recent IPOs featuring a wide scope of DCSS application that they do not necessarily equate DCSS with lower standards of governance and are willing to evaluate issuers on a case-by-case basis.

4.1.6. Our members also recommend that the FCA seeks to put parameters around the overall effect of the DCSS rather than prescribe too restrictively the mechanism by which it functions. This will allow greater flexibility for issuers to decide how it works for them, increasing its appeal. For example, our members consider Premium List DCSS should be permitted with the flexibility to be structured as a "golden share" which automatically gives the holder the number of votes required to pass or block resolutions as an alternative to a fixed ratio of weighted votes (as seen in several recent transactions in the context of takeover deterrence).

4.1.7. As a technical matter, issuers should also have flexibility to structure so that any enhanced voting rights are automatically disapplied under the issuer's constitution after five years from IPO, rather than being required to immediately convert or cancel any such DCSS shares at such time (which may require additional burdensome corporate procedures carrying their own timescale, such as a court-approved reduction of capital).

4.2. Dual class share structures – consultation question responses

Q18: Do you agree with our rationale for introducing DCSS to the premium listing segment? Is there any additional evidence that we should consider?

As discussed above, our members agree in general with the principle and would recommend adopting the model proposed by the FCA, but with weighted voting rights able to be cast on all shareholder decisions, save for those where a mandatory vote is currently required by the LRs.

Q19: Do you foresee any limitations to our proposal if the weighted voting shares are unlisted?

Most structures listed recently using dual class share structures have featured unlisted "B shares" or similar and our members don't see any particular limitations arising from this approach, particularly given the general principle that these shares are typically intended to have very limited scope for transfer.

Q20: Do you consider that a five year sunset period for DCSS in the premium listing segment is the correct length to protect companies from unwanted takeovers? Please provide evidence for your answer.

In our experience, most high-growth IPO companies achieve a scale cross-over point within five years following IPO. As such, a five-year protected period seems appropriate for a founder or group of early-stage owners to implement their strategic vision for the business.

Q21: Do you consider that the mechanism proposed will be effective in providing a deterrent to unwanted takeovers? Please give reasons for your answer and any possible alternatives.

As discussed above, the market has featured "golden share" structures in recent transactions for this purpose and we are aware of other issuers exploring this option, which our members consider should provide an effective deterrent. Weighted voting rights should also be effective in this respect.

Q22: Do you agree with the proposed controls around DCSS in the premium listing segment? Are there any additional controls that would make the regime more effective?

We believe the proposal package as modified by our suggestions above will provide founders and early-stage owners with a reasonable basis to venture into the public markets while guarding investors from inappropriate long-term entrenchment.

5. Minimum market capitalisation – consultation question responses

Q23: Do you agree with our proposal to raise the minimum market capitalisation for companies seeking to list under standard and premium listing to £50m? If not, please state your reasons and indicate what alternative threshold may be more appropriate along with any supporting evidence. We also welcome views on whether we should consider setting out conditions under which we might modify the proposed rule on the new threshold, and if so what criteria stakeholders think we could usefully consider.

Whilst our members support a raising of the minimum market capitalisation threshold in the context of a lower minimum free float, they consider that the proposed level of £50m is too high and may discourage some issuers from pursing a listing in London or push them to use unlisted markets (which they may not consider attractive). Our members would support a raised minimum market capitalisation threshold that is lower than £50m, as well as a condition for modification to this built-in to the rules that allows issuers to list with minimum market capitalisation below the applicable minimum capitalisation level where they also have a free float above a certain percentage.

Q24: Do you consider that the current level of market capitalisation for listed debt remains appropriate? Please give reasons for your answer.

Our members have not raised any specific comments.

6. Minimum number of shares in public hands ("free float") – consultation question response

Q25: Do you agree with our proposal to reduce free float to 10% and to remove current guidance on modifications? Please give your reasons.

Our members welcome the FCA's proposal to lower the minimum permitted Premium List free float to 10%. They also accept that if the minimum free float is reduced to 10% it is acceptable to also remove the current guidance on applying for a modification (and this will benefit the market in making the position clearer and more definitive).

Q26: Would you find information about issuers' free float level useful to inform investment decision-making?

Our members have not raised any specific comments.

7. Track record requirements

7.1. Track record requirements – general comments

7.1.1. The difficulties associated with the current Premium Listing track record requirements are often seen by our members and, in some cases, they have played a part in prospective issuers choosing not to list or to list elsewhere (although examples where this was the sole reason are difficult to point to).

7.1.2. These difficulties manifest themselves in respect of both eligibility, for example an inflexible approach to issuers without a three-year revenue track record, and also process, for example issuers with complex financial histories typically requiring an extra two to three turns of the prospectus with the FCA, as well as an additional pre-eligibility letter which itself will typically require more than one submission.

7.1.3. As discussed in further detail above, our members would be strongly supportive of:

i. an amendment to the requirement for historical financial information covering at least 75% of an issuer's business for Premium listings so that this test is only applicable to the most recent financial period within the three-year track record. This requirement has proved in many cases unduly onerous and has been shown to exclude issuers where there is a non-material part of the additional track record requirement which is not available, whether that be because the acquired business was a "carve-out" or otherwise because of a lack of historic information made up to an applicable period end; and

ii. in addition, as per Lord Hill's findings, a broadening of the more flexible approach to a revenue-earning track record currently available to scientific research-based companies under the LRs to a wider range of high-growth, earlier stage and innovative issuers across a variety of sectors. This approach is, in our members' view, also applicable to other types of company who are able to demonstrate maturity and quality by other means than pure revenue (e.g. the nature and size of pre-IPO private funding rounds).

7.2. Track record requirements – consultation question responses

Q27: Do you agree with our proposal to leave track record requirements as they are now, based on our assessment that this would only affect a small number of stakeholders? If you disagree, please provide further evidence or examples of the wider impact this has on prospective listing applicants and proposed amendments.

Our members disagree with this approach. Whilst it is difficult to point to scenarios where the track record requirements were the sole reason for issuers not proceeding with a Premium Listing, issues around the track record, particularly the 75% requirement, are often seen, impose additional burden on issuers when they arise and have been a contributory factor to several companies not proceeding with a Premium listing.

7.3. Q28: What types of companies struggle to meet the existing requirement in the premium segment for a 3-year revenue track record covering 75% of the business? What alternatives could be considered for these companies?

Please see above.

8. Minor changes to the Listing Rules, Disclosure Guidance and Transparency Rules and the Prospectus Regulation Rules – consultation question response

Q29: Do you foresee any unintended consequences of these changes intended to modernise the Listing Rules, Disclosure Guidance and Transparency Rules and the Prospectus Regulation Rules?

Our members have not identified any particular significant concerns.

9. Other issues – FTSE eligibility

9.1.1. We note that on 22 July 2021 FTSE Russell published its own consultation on whether proposed changes to the UK Listing Regime as a result of the Hill Review and FCA consultation should also result in changes to the eligibility criteria for the FTSE UK Index Series. FTSE Russell is, in particular, seeking input on two areas key to the FCA's current consultation: (i) dual class share structures; and (ii) free float requirements.

9.1.2. As separately flagged by email from us, our member's view is that eligibility for FTSE index inclusion is a highly significant factor for issuers seeking Premium Listing. As such, the impact of the FCA's proposed rule changes to the Premium List is at risk of being limited where corresponding changes are not implemented by FTSE Russell and, as a result, index inclusion is not available to issuers taking advantage of any new rules around free float or dual class share structures.

9.1.3. Given the high degree of overlap, our members would be keen to avoid a situation where the value of any FCA rule changes is subsequently undermined by FTSE eligibility failing to keep pace and would strongly encourage engagement, dialogue and coordination between the FCA and FTSE Russell on any rule changes to the extent possible.