

**Insights**

# **FCA PRIMARY MARKET EFFECTIVENESS REVIEW - FINAL CHANGES TO THE LISTING RULES**

3 December 2021

## **SUMMARY**

Following on from the FCA's consultation on the effectiveness of the Primary Market, the FCA has published final rules on, amongst other things, free float and minimum market capitalisation, which come into force on 3 December 2021.

There are a number of transitional provisions which will apply including allowing those companies that have made a completed submission to the FCA for a listing eligibility review by 4pm on 2 December 2021 and certain shell companies to continue to make use of the current minimum market capitalisation threshold of £700,000, as opposed to the new threshold of £30m, for an interim period.

## **Changes to the listing regime**

The FCA are introducing the following changes to the Listing Rules with effect from 3 December 2021:

### **Minimum market capitalisation for premium and standard listings**

The FCA are increasing the minimum market capitalisation (MMC) for listing shares in companies (excluding shares in closed-ended investment funds or open-ended investment companies) from £700,000 to £30m (as opposed to the £50m originally proposed). However, there are transitional provisions to allow:

- Applicants for admission that have made a completed submission to the FCA for an eligibility review for listing by 4pm on 2 December 2021 to apply for a listing based on the current MMC of £700,000. This is provided:
  - the submission for an eligibility review has not been withdrawn or lapsed;

- the application for listing is made on or before 2 June 2023 (i.e. within 18 months from the date the new rules apply); and
  - the overall business proposition has not materially changed between submission and the application for listing.
- Shell companies (including SPACs) that have existing listed shares before 3 December 2021 or have recently cancelled a listing and subsequently re-apply to list shares following a reverse takeover can apply for a listing based on a MMC of £700,000 provided:
    - they have completed submissions to the FCA for an eligibility review for listing and a prospectus review on or before 1 December 2023 (i.e. allowing such companies up to 2 years to find a target and commence the process to list a new entity); and
    - whose submissions for an eligibility review and a prospectus review have not been withdrawn or lapsed.
- Companies with existing classes of shares admitted to listing prior to 3 December 2021 and that continue to have at least one class of shares listed to list additional classes of shares based on an MMC of £700,000, which is not time-limited.

The FCA do not intend the transitional provisions to extend to applicants where there has been a material change to their overall business proposition during the transitional period. If such a change has occurred, it will be treated as a new submission and the transitional arrangements will not apply. This could include, for example, a founder's exit or a significant change in the directors or principal shareholders of a company if they hold a significant influence or the applicant is a shell company; or a material change in the nature of the proposed business (especially for start-up companies).

In addition, where a case subject to the transitional provisions has been lapsed due to no substantive activity for three months, any further submissions will be treated as new cases and not subject to the transitional provisions.

### **Free float for premium and standard listings**

The FCA are amending the Listing Rules to reduce the free float requirement for premium and standard listings (minimum number of shares in public hands) from 25% to 10% and to remove the guidance about modifications linked to the previous free-float limit.

Points to note:

- This is a minimum not a target.

- There should be at least two public shareholders to give meaning to 'shares in public hands'. The rules around persons who have an interest in 5% or more of the shares not qualifying as 'shares in public hands' continue to apply.
- Existing applicants would need to reflect their intention to use a lower free-float level under the new rules in their eligibility submission and listing application. This means they will need to submit an updated Listing Rules eligibility checklist and include the information about the level of free float and number of shareholders in their listing application, in accordance with relevant provisions in LR 3.3.2 R to LR 3.3.4 R.

### **A targeted form of Dual class share structures (DCSS) within the premium listing**

DCSS involves a class of shares that allows a shareholder (or group of shareholders) to retain voting control over a company that is disproportionate to their economic interest in the company. The FCA are introducing a 5 year exception to the rule that restricts votes on matters relevant to premium listing to holders of premium listed shares only to remove the risk of an unwanted takeover in the early stages of a company being listed. This class of shares with weighted voting rights must meet the following conditions:

- a maximum weighted voting ratio of 20:1;
- weighted voted rights only to be available in two limited circumstances:
  - a vote on the removal of the holder as a director, and
  - following a change of control, in relation to a vote on any matter (to operate as a strong deterrent to a takeover); and
- weighted voting rights can only be held by directors of the company (or beneficiaries of such a director's estate).

### **Track record**

The original consultation paper explored the case for making changes to the existing requirements for the financial track of premium-listed companies. The FCA received more compelling evidence to suggest a wider review of this requirement is necessary and therefore they will consider this topic as part of their work next year on the structure of the listing regime.

### **Other minor changes**

The FCA have made other minor changes to the Listing Rules, Disclosure Guidance and Transparency Rules and Prospectus Regulation Rules including further clarity around certain rules and the removal of the need for hard copies to be filed now that electronic copies are provided. These minor changes will come into force on 10 January 2022.

## RELATED CAPABILITIES

- M&A & Corporate Finance
- Securities & Corporate Governance
- UK Public Company

## MEET THE TEAM



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