

## Insights

# UK CORPORATE BRIEFING APRIL 2024

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## SUMMARY

Welcome to the Corporate Briefing, where we review the latest developments in UK corporate law that you need to know about. In this month's issue, we discuss:

### FTSE Russell comments on UK Listing Rule Reform

- In light of the changes proposed to the UK listing regime, FTSE Russell currently anticipate that the new Equity Share (Commercial Companies) and the Closed Ended Investment Fund categories will replace the Premium segment as the eligible index universe for the FTSE UK Index Series.

### FCA transformative proposals for UK Listing Regime – an Update

- Following the FCA's consultation paper in December 2023 with wide reforms to the Listing regime, the FCA has published the remaining draft Listing Rules.

### Update report from the Parker Review

- An update report from the Parker Review on Ethnic Diversity highlights that 79% of FTSE 250 companies have met the target of at least one minority ethnic director on the board, ahead of the December 2024 deadline.

### Pre-emption Group – annual report 2022-2023

- The Pre-emption Group has published its finding of the application by FTSE 350 companies of the new Pre-emption Group Statement of Principles, published in November 2022.

## FTSE RUSSELL COMMENTS ON UK LISTING RULE REFORM

On 15 March 2024, FTSE Russell provided insight on its provisional changes to the FTSE UK Index Series Ground Rules in light of the proposed changes to the UK listing regime. In effect, the Equity

Share Commercial Companies (ESCC) and the Closed Ended Investment Fund categories will replace the Premium segment as the eligible index universe for the FTSE UK Index Series.

Companies listed on the proposed Transition category (existing Standard segment listed companies) and International Secondary Listing category (non-UK incorporated companies with a secondary listing in the UK) will be ineligible for the FTSE UK Index Series.

These proposals are not final and are subject to change, depending on any further developments or changes announced by the FCA. Any changes to the listing regime are expected to take effect early in the second half of 2024 with FTSE Russell confirming that any consequential changes to the index ground rules expected to be implemented shortly thereafter.

It has also been confirmed that if companies satisfy the listing requirements of the ESCC and the Closed Ended Investment Fund categories, they will become eligible for potential inclusion in the FTSE UK Index Series and no additional inclusion requirements relating to the regulatory obligations which would replicate any current Premium listing requirements will apply.

It was noted that the more permissive approach to dual class share structures would need to be considered in the context of index inclusion. The current requirement (which is applied to companies assigned a developed market nationality across all FTSE Russell indices), which specifies that greater than 5% of voting rights must be in public hands, will be retained. Therefore, where a UK company has a share class with enhanced voting rights (which would be permissible under the new regime), the enhanced voting ratio will be used in the minimum voting rights calculation to determine whether a company satisfies the requirement.

One other important consideration that was noted in the context of these changes was the timing for eligibility for index inclusion. Companies listing on the ESCC category - either as a new issue or transferring from the Transition or International Secondary Listing categories - will need to satisfy the 20-day trading requirement on the ESCC category as of the review cut-off date, to be eligible for potential inclusion to the FTSE UK Index Series at the following review. This is consistent with the current requirement for securities listing on the Premium segment now (e.g. transferring from the Standard to the Premium segment). For example, a new issue or a Transition category security which lists on the ESCC category will need to trade unconditionally on or before 06 August 2024 on the ESCC category to be eligible for potential inclusion at the September 2024 index review, subject to satisfying all other inclusion criteria.

## **FCA TRANSFORMATIVE PROPOSALS FOR UK LISTING REGIME – AN UPDATE**

Following the FCA's consultation paper in December 2023 with detailed proposals on the revised Listing regime including a first tranche of the draft Listing Rules, the FCA has now published the [remaining draft Listing Rules](#). These contain draft rules on:

- the sponsor requirements for the closed-ended investment funds and the shell company category; and
- closed-ended investment funds, shell companies, the new international secondary listing category and the transition category.

The consultation has now closed on these rules.

The FCA are also in the process of reviewing and updating the Procedural and Technical Notes and they expect to consult on these in April and June.

At present we are still expecting implementation of the wider Listing reforms in the second half of 2024. The consultation on the changes to the sponsor competency rules closed on 16 February and the FCA plan to implement the revised sponsor rules ahead of the wider Listing Rules reforms so sponsors can continue to support existing and prospective issuers with the revised rules.

## **UPDATE REPORT FROM THE PARKER REVIEW**

An update report from the [Parker Review on Ethnic Diversity](#) highlights that 79% of FTSE 250 companies have met the target of at least one minority ethnic director on the board, ahead of the December 2024 deadline.

Progress for FTSE 100 companies has not changed and remains at 96% of companies doubling from 47 when the target was set in 2017. There has also been an increase in the number of companies with more than one ethnic minority director (186 ethnic minority directors holding 202 director positions in the FTSE 100) confirming that some companies are not following a 'one and done' policy.

### **PROGRESS**

In 2017 the Parker Review recommended that there should be (i) one director from a minority ethnic group on each FTSE 100 board by 2021; and (ii) one on each FTSE 250 board by 2024.

The scope of the review was extended in 2023:

- FTSE 350 companies were asked to set ethnic diversity targets at senior management level and to meet this target by December 2027; and
- consistent with the FTSE Women Leaders Review, 50 of the largest private companies were asked to set ethnicity targets and to meet this target by December 2027 and to set ethnic diversity targets at senior management by December 2024 and to meet this target by December 2027.

There has been good progress over the years together with a growing number of ethnic minority directors in the most senior roles – there are now 12 ethnic minority CEOs in the FTSE 100 (up from 7 in 2022) and 7 Chairs (up from 6 in 2022).

### Companies meeting the target

	FTSE 100	FTSE 250	Private Companies
2023	96%	79%*	22
2022	96%	67%	n/a
2021	89%	55%	n/a
2020	78%	n/a	n/a

\*322 companies responded, all the FTSE 100 and 222 of the FTSE 250. If considering the whole FTSE 250, including the percentage that did not respond, this figure would be 70%.

### Senior management targets

Target	FTSE 100	FTSE 250
0-10%	11	16
11-20%	28	25
>20%	9	8
Total number of companies supplying target data for 2027	48	50

Various institutional investor guidance continues to support the Parker Review targets. The [Glass Lewis 2024 Policy Guidelines](#) will consider recommending against the nomination committee chair in subsequent years in cases where boards of FTSE 250 companies have made insufficient progress against the Parker Review target and have not disclosed any cogent explanation or plan to address the issue.

Similarly, the [ISS Proxy Voting Update and Guidelines for 2024](#) recommend a vote against the chair of the nomination committee if the company has not met the FCA Listing Rules requirements which align with the Parker Review target.

We await the Investment Association Priorities for 2024 which took the following approach to ethnic diversity in 2023:

- Red top FTSE 100 companies that have not met the Parker Review target;
- Amber top FTSE 250 companies that do not disclose either the ethnic diversity of their board or a credible action plan to achieve the Parker Review targets by 2024.

We anticipate that the colour top for FTSE 250 companies may increase to red for 2024 given that this is the year the target should be met.

## **PRE-EMPTION GROUP – ANNUAL REPORT 2022-2023**

The Pre-emption Group (“PEG”) has published [its finding](#) of the application by FTSE 350 companies of the new Pre-emption Group Statement of Principles (“2022 Principles”), published in November 2022. The 2022 Principles allow companies to seek authority to disapply pre-emption rights for up to 20% of their existing issued share capital – 10% for general corporate purposes and a further 10% for use in connection with an acquisition or a specified capital investment. In addition, companies can seek a further authority for up to 2% for making a follow-on offer in relation to either component of the disapplication request.

Generally, PEG is pleased to see widespread support from shareholders for the enhanced disapplication authority, although it does note that shareholder dissent is very slightly higher on capital-related resolutions than it has been in previous years. PEG is aware of a small minority of investors which are voting against all resolutions seeking enhanced disapplication authority due to fundamental disagreement with the new Principles and will monitor the persistence of these views and engage with the relevant stakeholders if necessary.

The report notes that a number of FTSE 350 companies still use the 7.5% limit on disapplication authorities in any rolling three-year period in the resolution wording together with other elements of the 2015 Statement of Principles. Companies should no longer use the 7.5% wording as it is not part of the 2022 Principles and are reminded to should align their requests in accordance with the 2022 Principles, even if they do not seek the full amount of enhanced authority.

Of the 289 FTSE 350 companies which held an AGM between 4 November 2022 and 31 July 2023:

- 53% (153) sought the 10% disapplication authority for general corporate purposes;
- 43.2 (125) sought the previous disapplication authority of 5% for general corporate purposes;
- 65.7% (190) requested authority for a specified capital investment (5% or 10%), in addition to authority for general corporate purposes;
- 24% (69) requested authority for a follow-on offer; and
- 98.3% had all disapplication resolutions passed by shareholders.

## RELATED PRACTICE AREAS

- Corporate

## MEET THE TEAM



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