QUOTED COMPANIES ALLIANCE

Primary Markets Effectiveness Review

The FCA has released its Primary Markets Effectiveness Review consultation. This follows proposals consulted on in Spring 2023. The regulator has retained its approach of adopting a disclosure-based regime alongside the merging of the Premium List and Standard List into a new ESCC (Equity Shares in Commercial Companies) category. The FCA intends for the final rules to be published in the second half of 2024.

Two separate deadlines have been provided:

- Responses to sponsor competence requirement questions must be submitted by **Friday 16 February 2024**.
- Responses to all other questions are to be submitted by **Friday 22 March 2024**.

Below, we provide an overview of the key proposals that have been announced.

Eligibility

- There will be no requirements for historical financial information, revenue track record and clean working capital statements. Prospectuses will continue to require disclosure of up-to a 3-year financial track record and working capital statement.

Eligibility and continuing obligations

- **Control and independence of business:** The eligibility and ongoing rules requiring that a company has an independent business and possesses operational control over its main activities will be removed.
- **Controlling shareholder regime:** The requirement for independence from controlling shareholder through written controlling shareholder agreements will be retained as would certain related voting controls.
- **Dual class share structures:** Issuers will be allowed to have dual/multiple class share structures at admission with enhanced voting rights to be held only by specified persons. However, this will be without mandated time-restricted sunset clauses. Voting restrictions on certain matters will be retained, including dilutive transactions, and the cancellation of a listing.

Continuing obligations

- **Significant transactions:** There will be no prior shareholder vote. However, there will be enhanced market notifications at ≥25%, removal of the profits test and new guidance provided on what is considered ‘ordinary course of business’.
- **Notifications:** An enhanced market notifications regime for transactions at ≥25%. This is to provide important information including financial information.

- **Related party transactions:** The FCA is maintaining a similar approach to CP23/10, with market notification, and sponsor fair and reasonable opinion placed at ≥5%, with board approval needed.
- **Reverse takeovers:** Retaining the requirement of having an FCA approved circular and prior shareholder approval for transactions ≥100% or those that involve a fundamental change in business.
- **Annual reporting:** Comply or explain disclosure against the UK Corporate Governance Code as set out in CP23/10, as well as retaining comply or explain reporting on climate (TCFD) and diversity as proposed in CP23/10, in addition to maintaining most premium listing annual disclosures.

New Transition category

- There will be a transition category based on current rules for standard listed shares which will allow certain existing standard listed commercial companies to remain aligned to standard listing continuing obligations.
- This category will be closed to new applicants and will have no fixed end date.
- Issuers in this category will be able to apply to transfer to the commercial companies category when they wish to do so. A sponsor would be required to be appointed in such instances.
- The FCA may consider removing the transition category in the medium-term as its numbers reduce due to transfers to new listing categories or other types of exit. If the FCA decides to do this, it would be subject to consultation.

Sponsor regime

- Their ongoing role is to be reserved to further issuance listing applications with a prospectus, sponsor fair and reasonable opinions for related party transactions, or instances where issuers need guidance, alterations or waivers to FCA rules.
- The FCA will allow broader criteria to demonstrate sponsor competency and will extend 'lookback' for relevant experience. This will include:
    - extending the time period that a sponsor needs to have submitted a sponsor declaration to the FCA from 3 years to 5 years.
    - recognising that a firm may be able to demonstrate competence through experience providing specified corporate finance advisory services to issuers with securities admitted (or being proposed for admission) to a UK recognised investment exchange. In addition, this would need to have been undertaken at a market capitalisation of at least the amount greater than £30 million (as per the Listing Rules), in the previous 5-years.

The QCA will be responding to this consultation. If you would like provide your views, please get in contact with **Jack Marshall, Head of Policy**, jack.marshall@theqca.com or **Ben Cornwell, Policy Officer**, ben.cornwell@theqca.com.