CITY OF LONDON LAW SOCIETY AND LAW SOCIETY RESPONSE: FCA CONSULTATION PAPER 23/31 - PRIMARY MARKETS EFFECTIVENESS REVIEW: FEEDBACK TO CP 23/10 AND DETAILED PROPOSALS FOR LISTING RULES REFORMS

22 MARCH 2024

Introduction

1. The views set out in this response have been prepared by a Joint Working Party of the Company Law Committees of the City of London Law Society (the **CLLS**) and the Law Society of England and Wales (the **Law Society**).

2. The CLLS represents approximately 17,000 City lawyers through individual and corporate membership, including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multijurisdictional legal issues. The CLLS responds to a variety of consultations on issues of importance to its members through its 19 specialist committees.

3. The Law Society is the professional body for solicitors in England and Wales, representing over 170,000 registered legal practitioners. It represents the profession to Parliament, Government and regulatory bodies in both the domestic and European arena and has a public interest in the reform of the law.

4. The Joint Working Party is made up of senior and specialist corporate lawyers from both the CLLS and the Law Society who have a particular focus on issues relating to equity capital markets.

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Questions

Please note that, except where highlighted, the responses below are limited to the Tranche 1 rules and do not incorporate the working group's view of the Tranche 2 rules.

Q1: Based on our overall proposals for commercial companies, and taking into account the broader UK regulatory, legal and corporate governance environment, do you believe that we have struck the right balance in designing a proposed regime that enables the conditions for a stronger, more effective and competitive listed market with appropriate measures in place to support market integrity and investor protection. If not, what changes should be made?

Subject to the comments outlined below, the working group believes that the proposals achieve a reasonable balance, allowing for a more competitive listed market whilst supporting market integrity and investor protection.

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

Yes. A view was expressed, however, that it may be more helpful to position UKLR 20 – Admission to listing: Processes and procedures - nearer the start of the UKLR Sourcebook, in line with the current approach, and to move UKLR 21 - Suspending, cancelling and restoring listing and transfer between listing categories: all securities - to follow UKLR 20. Further, the positioning of the transition category rules (UKLR 22) was considered to be rather incongruous and would seem to fit better immediately before or after UKLR 14 – International commercial companies secondary listing.

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?

Yes, we are broadly in agreement with the proposed approach. Please see our comments on some of these requirements below.

Financial eligibility requirements

We agree with the proposal not to retain the financial information requirements for premium listed companies, i.e. to remove the historical financial information requirements set out in LR 6.2, the revenue earning track record requirements set out in LR 6.3 and the requirement that an applicant has to satisfy the FCA that it has sufficient working capital as set out in LR 6.7.

We note that it is proposed that certain financial information requirements will be retained in the context of a prospectus, and whilst we appreciate that the FCA continues to consult on the new public offers and admissions to trading (POAT) regime, we would recommend that the FCA provides some advance guidance (or “draft” guidance) on the application of the prospectus complex financial history rules. How these rules will be interpreted and applied, in particular the nature and extent of the financial information required to be disclosed at admission, will be a relevant consideration for companies choosing a listing venue. A failure to provide such clarity at the time of publication of the final listing rules may influence the choice of listing venue for potential applicants to the detriment of the UK. Further, it will be important to ensure that the prospectus content requirements for issuers with a complex financial history are appropriately calibrated - for example, to require the disclosure only of financial information on previously acquired companies / businesses that is genuinely needed by investors - such that the prospectus content requirements do not in effect reintroduce eligibility criteria that have been dropped from the Listing Rules. It may be helpful to consider how similar rules are applied in other jurisdictions, in particular the US.

We would also suggest that the FCA reflects on the requirement for a binary working capital statement in a prospectus – whether the benefit of a binary working capital statement justifies the work required to support, and the potential downside consequences of having, a working capital statement. There was discussion at the time of the Covid-19 pandemic of greater alignment between going concern and working capital statements and of the potential usefulness to investors of disclosing the basis of and assumptions underlying working capital statements. The FCA might wish to consider whether it is more beneficial to investors to permit such disclosures rather than retain the requirement for a binary statement. Further, a qualified working capital statement can have serious consequences for a company, potentially reinforcing perceptions that a company is in financial difficulty and unlikely to survive. Permitting a more detailed disclosure of the working capital position of a listed company could avoid any such potential cliff-edge situations. As above, it may be helpful to consider the US equivalent disclosure requirements in this regard.

If the requirement for a working capital statement is to be retained in prospectuses and if a sponsor will still be required to give a specific declaration on the working capital position of a company, this will likely perpetuate the existing practice of reporting accountants producing a working capital commentary report and accompanying working capital comfort letter. Whilst working capital, cash flow and liquidity are no less important for listings in other countries, other competing jurisdictions do not have a similar practice of producing such a report and comfort letter. The additional work undertaken in the UK in this context is a relevant consideration for companies when choosing a listing venue owing to its significant costs; whilst the FCA rules do not expressly mandate such additional work, it is nevertheless a consequence of the rules. In this context, we would encourage the FCA, as part of its planned consultation on detailed guidance, to clarify its supervisory approach and expectations of sponsors through revisions to Technical Notes and to engage with sponsors and the wider advisory community on the benefit of working capital reports, long form reports and FPPP reports and whether alternatives used in other listing jurisdictions, such as board memoranda, would be a cost effective alternative for issuers.

Shares of a third country company

Member firms are supportive of the proposal to clarify the purpose of the requirement relating to shares of a third country company – a rule which is derived from EU law - and would suggest that the rule be reframed such that it is more concise and clear. A suggested alternative which retains the FCA's discretion in this context is as follows: "The FCA may conclude that a company's listing is detrimental to investors' interests where an applicant incorporated in a third country does not have a listing in its country of incorporation or in the country where the majority of its securities are held in circumstances where the FCA considers (after consultation, to the extent practicable, with the regulator in such country) that the absence of such a listing is due to the need to protect investors."

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.

Yes, we welcome the revised approach to the current premium listing eligibility rules around control and independence of business in principle but would reiterate that additional guidance would be helpful. In addition to providing greater certainty to companies considering a London listing, it would support sponsors in assessing the suitability of different business models in the new regime. Our concern is that the modified, disclosure-based approach which places greater responsibility on sponsors in terms of the eligibility assessment could present a challenge for sponsors in determining eligibility in the absence of specific guidance in this context. We query whether it is appropriate to outsource this responsibility to the sponsor without the provision of adequate guidance to support the sponsor in exercising its judgment.

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.

Member firms continue to have mixed views on the merits of retaining the requirement for a controlling shareholder agreement (CSA) - the reasons for which are set out in our response to question 5 in CP 23/10 – Primary Markets Effectiveness Review: Feedback to DP 22/2 and proposed equity listing rule reform. A number of firms take the view that it would be preferable for companies to be given a choice as to whether a CSA is put in place - if requested by investors as part of the early look feedback on an IPO, for example. However, we would note that a good number of member firms, particularly those who advise listed companies with a controlling, or near controlling, shareholder, are supportive of its retention.

If the requirement is to be retained as proposed in CP 23/31 (and UKLR 5.3.4R), the FCA could consider taking the opportunity to revise the guidance currently in LR 6.5.3G (and replicated in draft UKLR 5.3.3G) so that it better aligns with the required undertakings in CSAs set out in LR 6.5.4 R (and replicated in draft UKLR 5.3.4R). As currently drafted, the factors in LR 6.5.3G (and replicated in UKLR 5.3.3G) that "may" indicate lack of control, such as "appears to be able to exercise improper influence," are rather vague and will remain difficult to interpret. As above, revised guidance would support the market and sponsors in assessing eligibility where the IPO candidate has a controlling shareholder.

More significantly, it is unclear how these provisions will be policed and enforced under the UKLRs, given that the UKLR 5.3.3G guidance starts from the premise of continuous compliance. Firstly, even where a CSA exists, an issuer may still theoretically fall foul of the independence requirements in LR 6.5.1R (and largely replicated in UKLR 5.3.1R) where any one of the factors in LR 6.5.3G/UKLR 5.3.3G exists. In practice, factors such as "appears to be able to exercise improper influence" may well evolve over the course of the relationship between the company and its controlling shareholder, making compliance difficult to monitor and enforce on an ongoing basis.

Secondly, we have concerns in relation to the lack of specific sanction under the UKLRs in the case where an issuer fails to put in place a CSA, or where an issuer has a CSA in place and it is subsequently breached by the controlling shareholder. In our view, it is not practical for the remedy to be the listed company suing the controlling shareholder for breach – instead, controlling shareholders should be incentivised to avoid a breach. Under the existing enhanced oversight regime, such a breach has a triggering effect on the related party transaction (RPT) rules, subjecting any transaction with the controlling shareholder, irrespective of size, to the RPT regime. This sanction provides an effective shield for the board in resisting improper behaviour, and therefore provides minority investor protection. However, it is not preserved in CP 23/31 and would in any event fall away with the proposed removal of the requirements for a shareholder vote and circular for all RPTs under the revised regime. The loss of a specific and transparent sanction under the revised regime is seen by many members as a potential disadvantage as compared with the current regime. One option – which is aligned with the overarching aim to make the UK a more attractive place to list whilst protecting investors – would be for the UKLRs, in a similar way to the existing Listing Rules, to mandate that any transaction, irrespective of its size, with a controlling shareholder falls under the revised RPT regime if there is no CSA in place or there is a failure to comply, thereby requiring a fair and reasonable opinion from a sponsor under the UKLRs. Subjecting dealings with a controlling shareholder to heightened scrutiny in this way would provide appropriate reinforcement for the controlling shareholder regime.

Whilst we note that UKLR 6.6.3R permits the FCA to take any action it considers necessary in relation to the underlying breach by the listed company of UKLR 6.2.5R(1) or UKLR 6.2.11R, where a listed company's annual financial report contains a statement of the type referred to in UKLR 6.6.1R(13)(b) or (d), it is not particularly clear what action the FCA might take in this respect. We note the guidance in UKLR 6.2.41G which provides that "where a listed company is unable to comply with a continuing obligation set out in UKLR 6.2, it should consider seeking a cancellation of listing or applying for a transfer of its listing category". This would suggest, however, that, in the case where a CSA has not been put in place, or where there is a failure to comply, an issuer should consider delisting for something which is outside of its control; this is on the basis that transferring to a different listing category does not appear to be a legitimate option for UK issuers listed in the commercial companies category given the transition category is a closed category. We do not think that the FCA should look to cancel the listing of a company solely because of such a breach and would note that cancellation is likely to result in serious detriment to independent shareholders.

We would be interested to discuss with the FCA any other suggestions that are put forward in relation to seeking to secure the independence of companies from their controlling shareholders, if the FCA is considering allowing other measures either in the rules or on an exceptions basis.

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?

Broadly we agree with the proposals. In particular, we agree that there should be no maximum time limit for a DCSS; there should be no limit on the voting ratio; a wider range of individuals, beyond directors, should be allowed to hold the specified voting rights shares (though see our comments below) and no further weighted voting rights shares should be able to be issued after listing.

"Investors"

UKLR 5.4.2(1) specifies that the enhanced voting rights shares can be held by:

> "(a) a *director* of the *applicant*;
>
> (b) a natural person who is an investor in, or shareholder of, the applicant;
>
> (c) an *employee* of the *applicant*; or
>
> (d) a *person* established for the sole benefit of, or solely owned and controlled by, a person specified in (a) to (c) above."

Whilst the words in italics are defined in the Glossary, we note that “investor” is not defined. We assume the principal intention here is that persons should qualify to hold the enhanced voting rights shares if, notwithstanding they do not hold any shares in the issuer, they have provided finance or some form of non-financial contribution or support to the issuer or its business and they remain economically involved with the issuer at IPO. It would, however, be helpful if this term were to be clarified in the guidance.

Institutional investors

Although we welcome the broadening of categories of person to whom enhanced voting rights shares can be issued and note the focus on contribution of some form to the issuer, a view was expressed that the rules exclude pre-IPO private equity and other institutional investors from benefiting from enhanced voting rights. Though others might well be better placed to comment on the need to extend the category of holders to include institutional shareholders and the effect on competitiveness of not doing so, it might be possible to extend the rights to other categories of investor and apply further conditions to those categories that achieve the FCA’s objectives, for example, by applying a sunset provision. Any extension of weighted voting rights to other categories of holder should consider the impact that this may have on governance and stewardship for the listed company post-IPO, in particular given the enhanced role for engagement and stewardship under the new rules.

Transfer provisions

Further, we believe that additional refinement might be required with respect to the proposed transfer provisions to ensure that the regime is sufficiently flexible to accommodate additional scenarios; for example, allowing the voting rights to be transferred as between holders of the enhanced voting rights shares, such as co-founders and family members.

Controlling shareholders

We note that “controlling shareholder” is defined as "*any person who exercises or controls on their own or together with any person with whom they are acting in concert, 30% or more of the votes able to be cast on all or substantially all matters at general meetings of the company*”. It follows that where a company has a DCSS, assuming the enhanced voting rights shares carry sufficient voting rights to enable the holder to cast 30% or more of the votes at a general meeting, such holder will presumably be a controlling shareholder if, broadly, the enhanced voting rights shares can be voted on all, or most, matters that the issuer is required to put to shareholders under its governing law or the UKLR. While individual companies may wish to discuss with the FCA at the eligibility stage of an IPO whether their proposed DCSS arrangement will result in the holder of the enhanced voting rights shares being treated as a controlling shareholder, it would be helpful if the FCA could provide some generic guidance on this point as well as the wider interaction between the rules on DCSS and controlling shareholders including, for example, whether enhanced voting rights can be exercised in relation to the election and re-election of independent directors in the absence of a controlling shareholder; if this were to be the case, our concern is that the independent director election process would be undermined. We therefore believe that there is a degree of detail in respect of the relationship between the controlling shareholder regime and DCSS which might require some further consideration.

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

As set out in our response to CP 23/10, we are broadly in favour of the FCA's proposed approach to significant transactions and, in particular, the removal of the requirement for a shareholder vote, the removal of the profits test and the removal of the requirement to appoint a sponsor, together with the proposed guidance relating to "ordinary course of business". These changes should serve to unburden companies with shares admitted to the ESCC, allowing them to undertake M&A transactions more easily and not be overly disadvantaged in competitive auction processes - although note our suggestions below for some refinements.

As per our previous response, we were in favour of a disclosure regime which had reduced notification requirements for a significant transaction, being broadly the current class 2 requirements, together with the overarching UK MAR obligation. In line with this, we believe that the more extensive disclosure regime proposed in CP 23/31 is excessively onerous for issuers and does not provide obvious benefits for investors. This risks disincentivising proposed applicants from seeking an ESCC listing as well as constraining ESCC issuers in undertaking transactions. Please also see our response to question 8 below.

Break fees

We agree that the significant transaction regime should retain notification requirements for indemnities and issues by major subsidiary undertakings. Member firms expressed differing views, however, in relation to the proposals for break fees. Some member firms are of the view that the same approach should be applied to break fee arrangements as is proposed to be applied to indemnities for consistency, rather than the proposal that there will be no mandatory disclosure requirements for break fees unless they are in connection with a significant transaction. Other member firms consider that to require automatic disclosure of a break fee which exceeds 1% of the value of the issuer would be excessive, noting that where the break fee is sufficiently material, disclosure would be required under UK MAR in any event.

Indemnities

In respect of the information that must be included in an announcement relating to an indemnity, UKLR 7.4.1R(2) provides that the announcement "must comply with the requirements in UKLR 7.3 (Significant transactions) as applicable". It would be helpful if the FCA could provide clarification or guidance on which items of information in UKLR 7.3 are applicable. The same approach should be applied to break fees in the event that they fall within scope of the UKLR 7 notification regime.

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?

As set out above, we are in favour of a disclosure regime which has reduced notification requirements for a significant transaction, being broadly the current class 2 requirements, together with the overarching UK MAR obligation i.e. any additional information required to comply with article 17 of UK MAR.

Our comments on the disclosure requirements in UKLR 7 are set out below.

UKLR 7.3.1R(2)(b) - any other relevant circumstances or information necessary to provide an understanding of, and to enable the shareholders to assess, the terms of the transaction and its impact on the listed company

Whilst we appreciate that the purpose of the overarching obligation in UKLR 7.3.1R(2)(b) is to provide flexibility for issuers, allowing them to exercise their discretion in including any additional disclosures in the context of a particular transaction, we believe that this requirement is ambiguous and unnecessary. Currently, there are two key drivers in terms of disclosure requirements for a circular from a legal perspective – UK MAR and information that is necessary to inform the vote, which applies a different standard from UK MAR. The obligation in UKLR 7.3.1R(2)(b) applies a new test however and risks creating unnecessary uncertainty in relation to what information would fall within the scope of the requirement, over and above the UKLR 7 Annex 2 and MAR disclosure requirements. Further, as it is proposed that the requirement for a vote be removed, our view is that there is no need to create an additional category of disclosure; in this case, UK MAR requirements act as the appropriate "sweeper" and, together with certain specific RNS content requirements and the requirement to ensure that any information notified to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information, should fulfil investor expectations in terms of necessary disclosure.

Annex 2 Part 1

This is broadly the class 2 type information with a few additions. We agree that this list is proportionate and in practice it is information that issuers have easily available.

Annex 2 Part 2 – financial information

Broadly, Part 2 requires two years audited accounts for the target with, in the case of an acquisition, narrative commentary explaining how the financial information will be treated in the issuer’s accounts going forwards. We agree that this is a more proportionate and balanced approach to financial information, seeking to assist investors to understand the financial implications of the transaction in an efficient way, whilst not being unduly onerous for the issuer by requiring the preparation of IFRS accounts of the target applying the company’s accounting policies. We would note that, in the absence of having to prepare IFRS accounts of the target under the issuer’s accounting policies, issuers will have to be mindful, having undertaken a significant transaction, to build in additional time to the preparation of their next set of published accounts to ensure they can prepare the necessary financial statements of the enlarged group in a timely fashion. In addition, there may be instances where, although the financial information might be available for publication, an issuer may consider that there might be risks in publishing it, which could cause the issuer to delay its publication; for example, the issuer may have concerns regarding the quality of the underlying financial information and may, as a result, seek comfort from a third-party, which has both cost and timing implications.

We note that it is proposed that where audited accounts for the target are not available – which is not uncommon, for example, in a carve-out acquisition - the board must provide an explanation of how the value of the consideration has been arrived at and state that it considers the consideration to be fair as far as the security holders of the company are concerned. In our view, the requirement for the board to confirm that the transaction is, in the board’s opinion, in the best interests of security holders as a whole, as per UKLR 7 Annex 1, Part 1, paragraph (16), should be sufficient. We note that the company is in any case required, in accordance with UKLR 7 Annex 2, Part 1, paragraph (8) to include a statement on the effect of the transaction on the group's earnings and assets and liabilities, which should provide some assistance to investors where detailed and audited financial information is not readily available. Further, a company is required under UKLR 7 Annex 2, Part 1, paragraph (2) to provide an explanation of the reasons for entering into the transaction, which will presumably explain the directors' strategy and why the company has paid the consideration it has. As such, we consider the additional proposed statements in UKLR 7 Annex 2, Part 2, paragraph 2.2(4)(b) and (c) and 2.3(5)(b) and (c) to be unnecessary.

The proposed statements in UKLR 7 Annex 2, Part 2, paragraphs 2.2(4)(b) and (c) and paragraphs 2.3(5) (b) and (c) may also have unintended consequences. Where a board is required to provide a statement on the fairness of consideration, it is likely that it would conclude that it requires a third-party opinion in order to support the statement (for example, a bank "fairness" opinion), given the novel nature of the formulation and the fact that there is a genuine liability risk for a statement of this type. This would create an additional source of friction and delay and would run contrary to the overarching aim of removing the need for third-party input. In addition, even with the provision of guidance, uncertainty may remain as to under what circumstances information may not be available, as referenced above. The disclosure may also become formulaic, thereby providing limited benefit to investors. An alternative approach where financial information is not readily available would be for the board simply to state that this is the case.

"Accounting treatment"

Paragraph 2.2(1)(b) (acquiring of an interest in target which will result in a consolidation) and paragraph 2.2(3)(a) (acquisition of an interest in a target that will be accounted for using the equity method) of Annex 2 require the announcement to include "an explanation of the proposed accounting treatment of the target in the listed company's next audited consolidated accounts", as set out above. While we note that the term "accounting treatment" is currently used in LR 13.5.3B(1)(a), it would be helpful if the FCA could clarify what the term is intended to mean in the context of such an announcement.

Information on target extracted from consolidation schedules

In paragraph 2.3(2)(a)(i), (ii) and (iii) of Annex 2 (disposal of interest in target which will result in de-consolidation and two years of audited financial information on target and its subsidiary undertakings is not available), we suggest it could be made clearer that "consolidated" refers to the target and its subsidiary undertakings (and not to the listed group as a whole, as in the opening words of paragraph 2.3(2)(a)).

Annex 2 Part 3 – non-financial information

This list sets out many of the content requirements for class 1 circulars, including material contracts and litigation. We would query what value these specific disclosures provide investors, save where the disclosure of a material contract or litigation amounts to inside information in which case UK MAR will require such disclosures.

We would also question whether the specific requirement to disclose any significant change in the financial position of the issuer and target is necessary. An issuer is subject to UK MAR and therefore any change to the financial position or performance since the issuer's last set of results will need to be disclosed to the market if it amounts to inside information. Further, providing a significant change statement on the target could be difficult for the issuer as there may be no reliable financial information on which to base the statement. Investors may be better served if the issuer were required to provide some disclosure around the current trends in the target's business, which could be added as a disclosure requirement under UKLR 7 Annex 2, Part 1, paragraph (3).

Annex 2 Part 4 – synergy benefits, sources of information and pro forma financial information

We have no comments on these provisions.

Annex 2 Part 5 – additional requirements for transactions by companies in severe financial difficulty or transactions to address the risk of a working capital shortfall

Please see our response to question 12 below.

Specialist companies

We note that the proposed rules do not specify any additional disclosure requirements for specialist companies (i.e. mineral or property companies). In some instances, this information may be more important than financial information. Whilst we do not think the rules should require a property valuation report or mineral expert's report to be prepared, it might be appropriate for guidance to be provided as to key information that investors would typically expect to be disclosed for these types of company - for example, for a mineral company, the information specified in current LR 13.4.7G.

Class 2 announcements

We note that the FCA is proposing to remove the requirement for class 2 announcements. Issuers will be required under UK MAR to disclose some transactions that are not classified as significant transactions and, for these types of announcements, market participants may welcome the retention of the existing class 2 disclosure requirements (or UKLR 7 Annex 2, Part 1 requirements) as guidance as to what may be appropriate disclosure. We would add in this context that the class 2 disclosure requirements are not generally perceived as being overly burdensome for issuers.

Timing of announcement

Whilst we agree that the notification of a significant transaction should be made as soon as possible, the extent of information required to be disclosed, combined with the requirement to provide the totality of the information on announcement, may present significant practical issues for companies. By way of contrast, under the current rules, only certain information is required in the initial announcement, with the remainder following in the circular. We believe that the proposed approach risks undermining the key premise of removing frictions for UK listed companies, particularly in competitive situations, as it may take issuers considerable time to compile the necessary information, causing unnecessary delays to the transaction timetable and with this, increased execution risk.

An alternative and, in our view, more workable model would be for the announcement to be bifurcated, with a streamlined announcement being released as soon as possible after the terms of the transaction are agreed, containing the information specified in Part 1 of Annex 2 (which broadly reflects the current class 2 requirements) together with any additional information needed to comply with article 17 of UK MAR, followed within a certain time period by a further announcement containing supplementary information (for example, a truncated version of the information specified in Parts 2, 3 and 4 of Annex 2). With a staggered approach, which allows sufficient time to compile and disclose the supplementary information, importantly, the overarching aims of alleviating regulatory burdens for issuers whilst maintaining investor protections are not compromised.

Shareholder engagement

As previously noted, we would recommend that DTR 2.5.7G is updated to clarify that an issuer contemplating a major transaction (whether or not it requires shareholder approval) may selectively disclose details of the proposed transaction to major shareholders in order to seek their feedback and support, particularly as there may be increased reliance on alternative shareholder engagement processes under the revised regime.

Supplementary notification

We note there is no time limit on the obligation to make a supplementary notification under UKLR 7.3.11R. As a result, an issuer is in theory perpetually responsible for updating the market as and when it becomes aware of any material changes affecting any matter contained in its significant transaction announcement under UKLR 7.3.1R. By way of contrast, the existing obligation to issue a supplementary circular under LR 10.5.4R ends with the general meeting and the existing obligation to issue a new class 1 circular under LR 10.5.2R ends on completion. In line with this, we believe that the obligation in UKLR 7.3.11R should end on completion of the relevant transaction and, after that time, further reporting should be governed by the usual rules, i.e. UK MAR, annual report content requirements etc.

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.

We are supportive of the proposal to clarify the meaning of "ordinary course of business" and believe this revised approach will be welcomed by market participants. In particular, UKLR 7.1.8R(2) and (3) will mean that certain anomalies under the current rules no longer apply. For example, airline companies will no longer have to class test contracts to purchase aircraft. However, we would suggest that the rules and guidance in UKLR 7.1.8R to UKLR 7.1.10G could be streamlined such that they can be applied more easily by issuers. In particular, because UKLR 7.1.8 is framed as a rule, if a transaction falls into one of the categories in that rule (for example, regular trading activities), it will be treated as within the ordinary course of business. Similarly, because UKLR 7.1.9 is also framed as a rule, if a transaction falls into one of the categories in that rule (for example, acquisition of another business), it will be treated as outside the ordinary course of business. However, UKLR 7.1.10 is framed as guidance, and on the basis that a rule takes precedence over guidance, it is difficult to see how the factors set out in UKLR 7.1.10G can be relevant where a transaction falls into one of the categories in UKLR 7.1.8R or 7.1.9R. By way of example, if a company were to agree to acquire another company or business in an M&A transaction, under the UKLRs, this would be treated as outside the ordinary course of business even if, per the factors in UKLR 7.1.10G, the company regularly enters into M&A deals of a similar size and nature.

We suggest it would be preferable for UKLR 7.1.8R to UKLR 7.1.10G to be re-organised so that all the provisions are framed as guidance and are organised into factors likely to indicate a transaction is in the ordinary course and factors likely to indicate a transaction is not in the ordinary course. This would enable companies to take a more nuanced approach in their analysis of whether a transaction is within the ordinary course of business for them – which we think is consistent with the policy intention.

Please also see our response to question 17 below.

Q10: Do you consider that the meaning of 'ordinary course of business' can be evidenced by the existing or proposed accounting treatment of the matters that are the subject of the transaction? Please provide your reasons, if applicable.

We are supportive of the proposed guidance that accounting treatment should be taken into consideration as one of a number of non-exhaustive factors in reaching a conclusion as to what amounts to the ordinary course of business; we would not advocate a greater linkage. We would also leave it to the accounting profession to comment on whether the application of accounting principles may give rise to answers that reasonably diverge or are inconsistent with the intentions of the new framework.

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

We agree that an ESCC issuer should not have to appoint a sponsor when undertaking a transaction that is or could be a significant transaction and that, consequentially, a sponsor should not have to submit a sponsor declaration in relation to a significant transaction. We also agree that the FCA should continue to be able to require an issuer to appoint a sponsor where there is or may be a breach of the UKLR.

However, we do not agree with the proposal that an issuer should have to appoint a sponsor when it seeks individual guidance under SUP 9 in relation to a significant transaction or requests an FCA waiver or modification of the UKLR requirements for significant transactions, including on the class tests (for the reasons set out below under "Guidance" vs "waiver or modification", we refer to all such requests as "Guidance Requests"). Instead, we think that, subject to the conditions outlined below, the FCA should permit a Guidance Request to be made by (i) the issuer, (ii) a sponsor (if the issuer chooses to appoint one), (iii) a broker that regularly advises the issuer or is advising the issuer on the relevant transaction or (iv) any other party that is advising the issuer on the transaction, including any legal or accounting advisers.

Conditions

In order to ensure that Guidance Requests are made via individuals who are familiar with the commercial context and sufficiently expert in the relevant rules, and hence to ensure that FCA resources are deployed efficiently, we suggest the following conditions might apply:

- The issuer should determine which person(s) or organisation(s) are most appropriate to discuss the issue with the FCA, taking into account their role on the transaction, their knowledge of the specific issue, their expertise in the relevant rules, their relationship with the issuer and such other factors as appear to be relevant.

- If the FCA considers that the person(s) or organisation(s) making the Guidance Request are not sufficiently familiar with the commercial context and/or the relevant rules, it could require the issuer to select a different individual or organisation before formally responding to the Guidance Request. This will incentivise an issuer to ensure it initially selects an appropriate person or organisation.

- Other than in exceptional circumstances, Guidance Requests should have to be made on a named basis only. This should help ensure the FCA does not receive theoretical or "generic" requests for guidance on how a particular rule should be interpreted or applied.

- Guidance Requests could be made verbally or in writing. As now, the FCA would decide whether to respond in writing or verbally.

- As now, the FCA would not be bound by any guidance given if the Guidance Request includes a material inaccuracy or omission.

The FCA might consider publishing guidance in a Technical or Procedural Note, or on its website, about its expectations in relation to Guidance Requests – for example, the types of individuals or organisations it considers appropriate to make such requests and the form in which such requests should be made.

We suggest that the approach set out above should apply to a Guidance Request on any aspect of the Listing Rules, DTRs or UK MAR – not only the rules around significant transactions and related party transactions.

Rationale

We recognise that our approach would likely result in sponsor firms being involved in making fewer requests for guidance. To the extent that sponsors are involved in drafting those requests, their listing regime expertise may reduce over time. However, sponsors will continue to develop and maintain expertise through those transactions on which it will be mandatory to appoint a sponsor; issuers may opt to seek guidance from a sponsor – in a non-sponsor service capacity – particularly where the sponsor is likely to have specialist expertise; and on related party transactions where a fair and reasonable opinion is required, an issuer will need to appoint a sponsor and may therefore be inclined to make any Guidance Request via the sponsor.

We believe it is appropriate to allow Guidance Requests to be made by a wider range of persons/organisations for the reasons set out below:

- Requiring an issuer to appoint a sponsor to make a Guidance Request in relation to a significant or related party transaction may be perceived by issuers as disproportionately onerous and an unnecessary friction. In some cases, it could even deter an issuer from seeking guidance from the FCA at all. Generally it seems better to encourage issuers to seek guidance from the FCA, rather than deter them from doing so.

- In our experience, the majority of Guidance Requests do not require expertise that is possessed exclusively by sponsors. Under the current regime, many Guidance Requests are in practice drafted principally by the company's legal advisers and "fronted" by its sponsor. Similarly, legal advisers often help script any verbal submissions made by sponsors.

- The draft UKLR appear to envisage that Guidance Requests on other rules – i.e. those not relating to significant or related party transactions – will not have to be made via a sponsor.

- In relation to standard listed companies, the FCA currently accepts Guidance Requests and addresses eligibility questions etc. that are made by the issuer's brokers, financial adviser, lawyers or other advisers.

- The Takeover Panel accepts requests for guidance, waivers etc. on aspects of the Takeover Code that are made by financial or legal advisers to the bidder or target. Broadly speaking, the Panel applies the same kinds of conditions as we have suggested above. Similarly, in the US, an issuer's legal counsel has audience rights before the SEC on most topics. A more flexible approach is also adopted in EU jurisdictions in terms of the types of advisers who are able to seek guidance from the relevant regulator.

Overall, we believe the benefits to issuers and the market generally of allowing a wider range of persons/organisations to make Guidance Requests outweigh any potential disadvantages. We would be happy to discuss the issues further with the FCA.

"Guidance" vs "waiver or modification"

We do not think it is sensible to draw a distinction between seeking "guidance" on a rule and seeking a waiver or modification. Although there are of course instances where an issuer simply seeks guidance on how a rule should be interpreted or applied, and instances where it is clear that a particular rule does apply but the issuer wishes the FCA to waive or modify the rule, there can also be instances where an issuer puts forward a case that a particular rule does not apply, or that a particular exemption does apply. Although the latter may be framed as a request for "guidance", if the FCA accepts the case that is made, the result will be equivalent in effect to obtaining a waiver. One example would be a request for "guidance" that a proposed transaction is within the ordinary course of business for an issuer for the purposes of the rules on significant or related party transactions. In addition, it is not uncommon for an issuer to put forward a case that a particular rule does not apply, or that a particular exemption does apply, and also to say that, if the FCA does not accept the case made, the issuer would like to seek a waiver or modification. We therefore think that all such requests should be dealt with in the same way. We do not think it would be sensible, for example, to require requests for a waiver or modification to have to be made via a sponsor, but to allow requests for "guidance" to be made by an issuer itself or by another adviser.

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.

Issues of securities

Under the current Listing Rules, there are two rules covering transactions being undertaken by companies in financial distress: LR 9.5.12R for reconstructions and refinancings and LR 10.8.1R to

10.8.1R for disposals by companies in severe financial difficulty. LR 9.5.12R has always been taken to include issues of securities where there is a shareholder circular, but paragraph 7.2 of CP 23/31 states that there are no specific provisions for reconstructions and refinancings in the draft instrument as the FCA is proposing not to carry over the requirements in current LR 9.5.12R. We assume therefore that the requirements to be met in the case of transactions by companies in severe financial difficulty in Draft UKLR 7 Annex 2, Part 5 will not apply to issues of securities by companies in distress where there is not also a significant transaction, despite the reference to a "reconstruction or refinancing" in paragraph 7.13 of the CP.

Transactions (other than issues of securities) being undertaken by companies in financial difficulty

Given the proposed removal of the requirement for the appointment of a sponsor, an FCA-approved circular and a shareholder vote for significant transactions and the shift to a notification regime under UKLR 7, there would clearly be no need to retain the modified provisions of LR 10.8.1R to LR 10.8.8R.

Our concern is that, the removal of the requirement for a working capital statement and the removal of the need to appoint a sponsor might, as referenced in paragraph 7.12 of the CP, result in companies not identifying on their own accord as being in financial difficulty. Unless the auditor has raised a potential issue as to going concern status, an issuer may not identify itself as being in financial difficulty, particularly if to do so might adversely affect its commercial position and/or bargaining power in seeking to dispose of an asset. If the company is not yet in a position where insolvency law requires it to prioritise the interests of creditors and no concern has been raised by the company's auditors, the directors may understandably believe that they can achieve a disposal within a timeframe and at a level of consideration that will relieve the company's financial difficulty and/or remove the risk of a working capital shortfall without needing to comply with UKLR 7.3.1R(6).

It might therefore be sensible to retain a mechanism which ensures that there is a robust third-party assessment of whether the company is in financial difficulty. This might be the retention of a sponsor in certain circumstances or requiring a modified (i.e. non-binary) form of working capital statement to be contained in the notification, permitting relevant assumptions to be disclosed, in line with the temporary approach adopted in the "FCA's Statement of Policy: listed companies and recapitalisation issuances during the coronavirus crisis" (April 2020) so as to amount to a meaningful disclosure for investors (see also our response to question 3 above). Whilst these alternatives would necessitate a working capital exercise to be undertaken and/or input from a third-party, which we appreciate runs contrary to the policy intention here, it could facilitate important disclosures in this limited circumstance. Relatedly, we would note that the nature of the proposed disclosures for companies in financial difficulty might in any event cause issuers to obtain comfort from third-parties on a voluntary basis in order to support the disclosures.

Issues of securities by companies in financial difficulty if 75% POAT threshold met – unintended consequences

As above, we note that LR 9.5.12R is not being carried forward. In relation to offers of securities by companies in financial difficulties, the effect of this will be to remove the requirement for a circular relating to a securities offering to implement a reconstruction or refinancing to include a working capital statement and be approved by the FCA, as well as the appointment of a sponsor.

Such securities offerings in most cases take the form of a rights issue or, less commonly, a placing and open offer. Primary Market Technical Note 301.2 suggests that in such a case, "the issuer will invariably be in a rescue situation, e.g. it has a pressing need for funds for working capital purposes". These transactions are commonly referred to as "rescue rights issues".

Whether a prospectus is required for a rescue rights issue will of course depend on the threshold set following the FCA's consultation on the POAT regime; however, even if the threshold for a prospectus for further issues is set at 75% as recommended by the UK Secondary Capital Raising Review (UKSCRR), many rescue rights issues would still require a prospectus. Rolls Royce's rights issue in 2020 was undertaken on a 10 for 3 basis. At the extreme, Lonmin undertook a 46 for 1 rights issue in 2015. Kier Group's problematic rights issue in 2018 would, however, have dipped under a 75% threshold at 5 for 7 (71.4%).

A circular will be required to authorise the allotment of the new shares if the rights issue exceeds the directors' annual authority. Currently, shareholders will also in most cases be asked to approve the disapplication of pre-emption rights to assist in dealing with fractional entitlements and exclusion of shareholders in problematic jurisdictions, although it is expected that new companies legislation, following the recommendations of the UKSCRR, will make this unnecessary.

Given that it seems that issues of securities do not fall within UKLR 7.3.1R, the requirements of UKLR 7 Annex 2, Part 5 will not apply to rescue rights issues or similar transactions not also involving a significant transaction. The result of this is that an issue of securities by companies in financial difficulty or facing a working capital shortfall where a prospectus is not required because the amount of the issue falls below the POAT threshold will be subject only to UK MAR and, if a circular is required, section 90A of FSMA. However, a company in a similar situation whose issue of securities falls within the scope of the POAT regime will be required to appoint a sponsor and issue a prospectus – which contains a working capital statement – and will fall within the scope of the prospectus liability regime.

This may result in unintended consequences with companies limiting the quantum of rescue rights issues to avoid the requirements for producing a prospectus and the appointment of a sponsor. For instance, if the POAT threshold were to be set at 75%, Kier Group's 2018 rights issue if it had been conducted in 2025 would not have required a prospectus, a sponsor or working capital disclosure under the UKLRs or the POAT regime, based on the assumed prospectus threshold above. A possible solution might be to extend the requirement for disclosure under UKLR 7 Annex 2, Part 5 to issues of securities by companies in financial difficulties or facing a working capital shortfall. More broadly, the interaction between the proposed regime for transactions undertaken by companies facing financial difficulty and the POAT regime needs careful consideration. Our concerns on this point are significantly reduced if the threshold for a prospectus for further issues under the POAT regime is set at a lower point, such as 30% or 40%.

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.

Yes, we agree, subject to our comments on question 8 regarding UKLR 7.3.1R(2)(b) (which applies to reverse takeover announcements under UKLR 7.5.1R(1)) and on question 14.

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.

Yes, we agree, subject to our comments on question 8 regarding UKLR 7 Annex 2, Part 2, paragraphs 2.2(4)(b) and (c) (which apply to reverse takeover circulars under UKLR 10.4.1R(2)).

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.

Yes, we agree with the proposed approach. In particular, we agree with the proposals to remove the mandatory shareholder vote (and related FCA-approved shareholder circular) for RPTs at the 5% threshold; to not require any specific announcement or a fair and reasonable opinion for RPTs below the 5% threshold; and to not require an issuer to obtain the guidance of a sponsor when it proposes to enter into a transaction that may be a RPT.

Substantial shareholder

Whilst we welcome the proposed change to the definition of “substantial shareholder” in ULKR 8.1.12R to increase the percentage shareholding threshold from 10% to 20%, we would like to highlight some friction in one of the carve-outs to that definition and invite the FCA to provide guidance in the new UKLR.

UKLR 8.1.14(1)R allows issuers to disregard shares held by investment managers etc. – provided that “*no associate of that person interferes by giving direct or indirect instructions, or in any other way, in the exercise of such voting rights (except to the extent any such person confers or collaborates with such an associate which also acts in its capacity as investment manager, collective investment undertaking or long-term insurer)*”.

We do not think this carve-out is clearly drafted and its operation in practice is sometimes determined by feedback given by the FCA on individual transactions rather than any published guidance. We understand the rule to mean that even if one asset manager holds over 20% of an issuer, as long as it does so in its capacity as an investment manager (i.e. owes duties to third-party investors whose shares it is managing) its shares can be disregarded for the purposes of the related party rules – unless it is directed to vote by an associate which is not itself an investment manager etc.

A question which gets raised in this context is whether one single asset manager shareholding can be excluded or whether the carve-out means that for a shareholding of an asset manager which is above 20%, an analysis is required of which funds of the asset manager hold the shares i.e. disaggregating the individual funds (as long as they are each independently managed) such that they are each below 20%.

Further, we understand that the FCA has communicated to some sponsors the due diligence it expects sponsors to undertake on the status of asset manager significant shareholders to conclude that the relevant shareholder falls outside the definition; we think it would be helpful if this could be shared with all market participants.

We would welcome guidance from the FCA on the operation of this UKLR and the FCA's expectations for determining whether a shareholder falls within UKLR 8.1.14(1)R.

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

Yes, we broadly agree but please also see our response to question 11 above.

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.

Broadly we agree, but please see our comments below on some specific points.

- *Substantial shareholder in a subsidiary undertaking*: Including in the scope of the RPT regime a person who is a substantial shareholder in a subsidiary undertaking, rather than in a subsidiary, of the listed company can cause problems in practice. It also requires issuers to carry out more analysis and incur more cost than we believe is warranted, particularly given that the scope could be narrowed - to cover an issuer's subsidiaries – without materially compromising the effectiveness of the RPT regime.

  Primarily this is because it can be difficult to determine whether an entity satisfies the conditions for being a "subsidiary undertaking" in section 1162 Companies Act 2006. For example, even if the listed company holds only a minority of the voting rights in the entity, the entity will be a subsidiary undertaking if the listed company exercises "dominant influence" over it by virtue of a "control contract" or the entity's articles – concepts for which there is little or no case law or FCA guidance. Determining whether this might be the case usually requires a careful analysis of numerous contractual, constitutional and other rights and obligations and of how the entity is managed and controlled in practice – and there is no certainty that the view arrived at is correct.

  The definition of subsidiary undertaking is broader than the definition of subsidiary. Even if there was originally a sound policy reason for applying the RPT regime to subsidiary undertakings, we suggest that the burden of having to identify which entities are subsidiary undertakings in order to comply with the RPT regime is disproportionate to the benefit. We suggest instead that the regime should apply where an entity is a "subsidiary" of the listed company as defined in 1159 Companies Act 2006 - this is a much harder-edged and objective test and is therefore easier to apply.

  In addition, we suggest that a person should be regarded as a related party only if the entity in which such a person is a substantial shareholder (which under UKLR 8 will mean they hold 20% or more of the voting rights) is a subsidiary that is material. Materiality for this purpose could be defined in the same way as in UKLR 7.4.3R (issues of shares by a major subsidiary undertaking) – i.e. only if the relevant entity represents 25% or more of the aggregate of the gross assets or profits (after deducting all charges except taxation) of the group.

- *Guidance on the meaning of "ordinary course of business"*: As above, we welcome the proposal to include additional guidance on the meaning of "ordinary course of business". However, we query whether some transactions that would - rightly, in our view - be out of scope for the purpose of the significant transactions rules on the basis that they would be within the ordinary course of the issuer's business should, nevertheless, be treated as within the scope of the RPT regime given the particular sensitives around RPTs. In particular, we query whether a transaction with a related party that otherwise falls within scope of UKLR 8 should fall outside the regime simply because it is an ongoing commercial arrangement or purchase commonly undertaken as part of the existing business or within the industry sector in which the company operates (per UKLR 8.1.15(2)); capital expenditure to support and maintain the existing business and its infrastructure (per UKLR 8.1.15(3)); or capital expenditure to add scale to the existing business in line with the company's business strategy as previously publicly disclosed (per UKLR 8.1.15(4)).

In this respect, it would be helpful to understand the policy reason for aligning the 'ordinary course of business' definition used for the RPT rules with that used for the significant transactions rules.

Q18: What are your views on retaining our specific listing rule definition of a related party, versus a definition based on IFRS (or other) accounting standards?

Member firms had differing views on the definition of "related party". Some favoured retaining the specific Listing Rule definition of "related party" on the basis that this would make it easier for issuers and their advisers to assess and understand the rules and how they apply to particular situations. If the definition were to be set by reference to IFRS or other accounting standards, accounting expertise is likely to be needed to understand the rules and how they apply to particular situations. These member firms noted that the meaning of "related party" in IAS 24 is complicated and judgement is required. IAS 24 itself provides that when considering each possible related party relationship, the substance of the relationship and not merely the form is important. An issuer's finance team will be expert in this area, but others are less likely to be familiar with the rules and guidance and how they should be applied. It was also noted that it is often members of the issuer's legal team or M&A team who are primarily responsible for putting in place and maintaining systems and controls around transactions, for identifying transactions that may be RPTs under the Listing Rules and for initiating procedures to obtain the relevant corporate approvals and to comply with the Listing Rule requirements. As a result, for some member firms, it would be preferable to retain the current bespoke Listing Rule definition.

Other member firms, however, were of the view that it would be sensible to align the UKLR definition with the UK-adopted IFRS definition. These member firms noted that companies are well used to the UK-adopted IFRS definition because of its use in annual accounts and highlighted the value in relevant issuers being able to apply a consistent definition.

DTR 7.3

Although we note that the related party regime in DTR 7.3 will not apply to ESCC companies, we suggest the FCA should consider whether it makes sense to retain the RPT regime in DTR 7.3 in its current form. Whilst the two RPT regimes are broadly similar, there are important differences in their scope and exemptions, as referenced above. In relation to the requirements that will apply to a RPT under UKLR 8 and DTR 7.3, the principal difference is that under DTR 7.3 no fair and reasonable opinion is required.

Thought could be given to either (i) abandoning the separate RPT regime in DTR 7.3 entirely and instead extending the RPT regime in UKLR 8 to apply to those issuers who are currently required to comply with DTR 7.3 (but who would not otherwise be required to comply with UKLR 8); or (ii) aligning the DTR 7.3 regime more closely with the rules in UKLR 8 so that the two regimes have the same scope, definitions, exemptions and requirements except where there is a clear justification for a difference. We recognise, however, that making substantial changes to DTR 7.3 would have implications for existing standard listed companies and other issuers that are subject to DTR 7.3 - in particular, they would need to make changes to their systems and controls.

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.

We are supportive of the FCA carrying over premium listing shareholder approval requirements concerning pre-emption rights, issuing shares at a discount, the conduct of secondary offerings and certain ancillary matters as outlined in Chapter 10 of CP 23/31.

We would however suggest some changes to the drafting of existing LR 9.5.10R/UKLR 9.4.13R as it is a cause of friction on undocumented placings in particular. Specifically:

- The guidance in UKLR 9.4.14G lends itself to being modernised. When trying to price an accelerated bookbuilt placing, contacting the FCA to discuss the source of the intra-day price adds friction in a time-pressed situation. We would encourage the FCA to instead publish a list of approved sources for intra-day prices such as Bloomberg. Only deviation from those sources would then need to be discussed with the FCA.

- Current LR 9.5.10R/UKLR 9.4.13R does not lend itself to accelerated bookbuilt offerings where there is a backstop price guaranteed by the underwriters. In such an arrangement the underwriters will typically agree with the issuer on the night before launch a backstop price at which they will buy any unsold shares after the bookbuilding process. In recognition of LR 9.5.10R/UKLR 9.4.13R, the backstop price is typically drafted to be a price of X pence per share or (if higher) the price per share representing a 10% discount to the prevailing price at the time of pricing – in other words the drafting is designed to comply with LR 9.5.10R/UKLR 9.4.13R. What is not clear, however, from LR 9.5.10R/UKLR 9.4.13R is whether the backstop price itself which is agreed the night before launch needs to be tested against the Daily Official List price when the agreement is signed the night before launch. The key words are in LR 9.4.13 R(1): "at the time of agreeing the placing". A natural reading is that the placing is only agreed when the final placing price to be paid by investors is established i.e. after the bookbuild so current LR 9.5.10R/UKLR 9.4.13R only applies after the bookbuild and does not apply to the backstop price itself. We think it would be helpful if the FCA could confirm this point to avoid both the backstop price and the final placing price being tested against the 10% discount limit as we believe only the final placing price which is paid by investors is relevant to this investor protection mechanism.

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?

Yes, we agree in principle.

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.

Yes.

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.

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.

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.

Given the overarching aim to make the UK a more attractive place to list whilst maintaining investor protections, we believe that the FCA is missing an opportunity to review the extensive and granular annual reporting requirements contained in LR 9.8.

We note that in response to the DBT's Call for evidence on narrative reporting, the Government withdrew draft reporting regulations that had been laid before Parliament in relation to additional requirements to be imposed upon companies, including an annual resilience statement, distributable profits figure, material fraud statement and triennial audit and assurance policy statement.

We query whether investors really require or value all of the line items currently included in an annual report to satisfy LR 9.8. We note that a number of the detailed requirements pre-date the Companies Act 2006 and Large and Medium-sized Companies and Groups (accounts and reports) Regulations 2008 (as amended since implementation) and have not been fully reviewed since those pieces of legislation came into effect. Further, as far as UK incorporated companies are concerned, the requirements overlap with equivalent or similar requirements in UK law in many places in any event. To aid the FCA's consideration, the table in the Appendix illustrates the significant areas of overlap between the various different reporting provisions imposed upon UK listed companies. We have flagged those in amber which we consider the FCA could drop completely, or at least drop for UK incorporated companies - although we would of course be interested to understand any contrary feedback the FCA may have received from investors/investor bodies. In the interests of transparency, we have flagged in blue where we do not believe the reporting obligation exists elsewhere.

However, we would not want to slow down the pace of change and we appreciate the challenging timetable towards which the FCA is working that might be impacted if a review of the annual reporting requirements were to be undertaken. We do believe, however, that it would be helpful to the market and broader stakeholders if such a review could be trailed on the policy statement accompanying the final UKLRs.

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

The Financial Reporting Council (FRC) already provides guidance on "comply or explain" reporting, for example "Improving the quality of comply or explain reporting" (February 2021), "Review of Corporate Governance Reporting" (November 2023) and the Introduction to the revised UK Corporate Governance Code (January 2024). We expect that it will continue to provide guidance on this as part of its annual review of corporate governance reporting. We would therefore query whether there is a need for the FCA separately to provide formal guidance clarifying the use of "explain" when reporting against the UK CGC. If the FCA were to decide to publish guidance on the use of "explain" it would be important that it does so in consultation with the FRC to ensure the guidance is complementary. From the feedback the FCA received, it seems that the concerns are centred more on the fact that it can be costly to meet the detailed explanation required, particularly for overseas issuers who may follow a different code and for smaller UK issuers for whom another code may be more appropriate. There is also a concern about whether explaining is seen as an acceptable option. We do not think that guidance on the use of "explain" would address these concerns.

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.

Some members of the group agreed with the proposed approach to incorporating sovereign controlled companies into the commercial companies category, together with targeted alleviations on matters related to the sovereign controlling shareholder. These members are of the view that, given the nature of sovereign controlled companies, the appropriate approach, as proposed by the FCA, is to ensure full disclosure of the nature of the relationship and the arrangements between sovereign controlled companies and sovereigns rather than to seek to regulate such relationships through listing regime protections that are more appropriately applied to non-sovereign controlled commercial companies.

However, other members of the group, whilst agreeing with the removal of the separate listing category, suggested that the concept of a sovereign controlled company is a redundant one for the purpose of the revised regime and that it should be abolished, in line with the spirit of simplifying and streamlining the rules. These members argued that it is not clear why transactions with a major shareholder who is a sovereign should be treated differently as compared with any other controlling shareholder in an ESCC issuer, particularly in light of the significant relaxations proposed for the related party regime.

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.

Yes, we agree.

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

Yes, we broadly agree. We note, however, that it is proposed that a company mapped to the transition category which then undertakes a RTO would not be readmitted to the transition category. We think that such a company should not be forced to delist in the event that it does not meet the eligibility requirements of the ESCC category or any other category following the transaction as this would be unduly disadvantageous for some issuers, particularly those with a small market capitalisation.

The view was also expressed that, taking into account the need to accommodate all issuers that currently have a standard listing (who do not otherwise satisfy the eligibility criteria for the secondary listing category), in order to satisfy the policy objective of maintaining the status quo for those issuers, the transition category should not be limited to standard listed issuers where this is their "only or 'primary' equity listing" as set out in CP 23/31. Imposing such a limitation has the effect of creating a "gap" and associated ambiguity in relation to standard listed issuers for whom London is not their sole or primary listing and who do not qualify for the secondary listing category. In line with this, it was suggested that this limitation be removed from the transition category in order to enable it to house all issuers that currently have a standard listing who do not qualify for the secondary listing category.

More broadly, in relation to the FCA's commentary on potentially removing the transition category in the medium-term, our view is that it would only make sense to consider closing this category if the remaining companies would otherwise be eligible to transfer to another listing category. We believe that it may be overly restrictive – and in opposition to broader policy objectives - to force companies to transfer to a different listing category, or alternatively, to delist.

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.

We welcome the simplicity in creating a secondary listing category and support the aim to highlight to market participants that companies in this category are subject to the rules of another jurisdiction and exchange, in addition to the rules of the FCA. However, the working group queried why it is proposed that closed-ended investment funds are excluded from this category, given that there are a number of examples of such entities having secondary listings.

Eligibility requirements

The following points were also noted in relation to the proposed eligibility requirements for the secondary listing category.

IOSCO Multilateral Memorandum of Understanding

In relation to the proposed eligibility requirement that the overseas market on which the applicant's shares are admitted should be subject to oversight by a regulator that is a signatory to the IOSCO Multilateral Memorandum of Understanding (MMoU) and/or the applicant should be subject to direct oversight as an issuer of securities in that jurisdiction by a regulator that is an IOSCO MMoU signatory, our concern is that where no definitive view is expressed on the overseas market/regulator by the FCA, this approach potentially creates a risk from an investor protection perspective.

Relevance of criteria

The working group was also keen to understand whether there was a policy intent underlying the choice of certain of the proposed eligibility requirements, namely the requirement for an applicant not to be a UK incorporated company and the requirement for an applicant's place of central management and control to be in either its country of incorporation or the place of its primary listing. Subject to this, the working group's concern was that these criteria are not relevant to determining whether or not a company has a genuine secondary listing in London – though we consider the purpose of the eligibility requirements for this category should be to identify, and limit the category to, genuine secondary listings - and could result in issuers with genuine secondary listings being excluded from their natural home - the secondary listing category. Further, in some cases, the criteria could act as a disincentive to list in London or compel issuers to make the difficult decision to delist entirely from London (the so-called "flight risk"), which would seem to run contrary to the broader policy objectives of these reforms.

<u>Requirement for applicant not to be a UK incorporated company</u>

It was queried why the country of incorporation of a company is relevant to determining whether or not a company has a genuine secondary listing in London, noting that there are a number of UK companies with existing genuine secondary standard listings.

It was suggested that this approach is contrary to the broader policy objectives of the reforms as it runs a risk of either encouraging affected UK companies to redomicile out of the UK (which may well have implications for the UK tax that they pay) so as to maintain a viable primary listing abroad and a secondary listing in London (forming part of the secondary listing category) or, pushing affected UK companies to delist from London completely, taking into account the time, cost and other implications (for example, tax impact) of redomiciling.

Under the current proposals, the exclusion of UK incorporated companies from the proposed secondary listing category, combined with the exclusion of companies with a secondary listing from the transition category means that the only option for a UK incorporated company with (or that wants to have) a genuine secondary listing in London to maintain its listing in London is in the single segment for commercial companies. There are potential implications of the London listing not being viewed as a secondary listing, as is expected to be the case for issuers in the single segment for commercial companies, including with respect to trading volumes, eligibility for certain indices and analyst coverage. These factors, when coupled with the additional burden of being subject to the UK Corporate Governance Code, may outweigh the benefit of maintaining any listing in London, resulting in a decision to delist from London completely. This "flight risk" is easily mitigated by removing the proposed eligibility requirement that an applicant cannot be a UK incorporated company.

<u>Requirement for applicant's place of central management and control to be in either its country of incorporation or the place of its primary listing</u>

The applicant's place of central management and control is also not considered to be relevant to determining whether or not a company has a genuine secondary listing in London. As set out in CP 23/31, the London market has wide historic international appeal and therefore there are many overseas UK listed companies. CP 23/31 also confirms that many of those overseas companies are incorporated in countries where they are very unlikely to have a primary listing - as those jurisdictions tend to be utilised owing to the flexible company law regimes and/or attractive tax regimes they operate, rather than for having a deep and liquid capital market. As such, the place of incorporation and primary listing location for many UK listed companies will differ. It is also not uncommon for the place of central management and control for many UK listed companies to be driven by tax residency requirements rather than where the company's executive management, core business operations and primary listing are all based. In line with this, it would not be unusual or untoward for a company's place of central management and control, place of incorporation and primary listing to be in three different locations.

We note in this respect that the Transitional Provisions for UKLR 14 modify UKLR 14.3.1R such that UKLR 14.2.4R (place of central management and control) does not apply for existing standard listed issuers and inflight applicants; it will, however, apply going forward for new applicants to the secondary listing category. As above, the view was expressed that this criterion does not seem relevant in determining whether a secondary listing is genuine or not and does not appropriately recognise the nuances that often impact location of incorporation, primary listing and central management.

In the event that this requirement is preserved in the final form rules, it would be helpful if some guidance could be provided on the meaning of "place of central management and control" given that it is not defined in the UKLR. Please see our response to the Tranche 2 rules for further detail.

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 to question 29 above.

Q31: Do you agree to our proposals for the non-equity shares and non-voting equity shares category? If not, please explain why.

Yes, we agree.

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.

Please see our separate submission relating to the shell companies category.

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?

Please see above.

Q34: Do you agree to our proposal for retaining the remaining standard listing categories and minor drafting amendments proposed? If not, please explain why.

Yes.

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.

Yes.

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.

Yes, we agree in principle.

Q37: In relation to the proposed Listing Principles 5 and 6, are there any practical implications for issuers of debt securities that need to be considered?

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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 of information? If not, please explain what you disagree with and why.

Yes, we agree in principle, though please see our response to question 39 below.

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.

We would highlight that there is some concern in relation to this proposal, including what impact this might have on directors' liability as well as the willingness of individuals to become NEDs. Relatedly, we believe that NEDs will need to be appointed earlier in the IPO process if they are to provide the confirmation.

Further, we note the publication of CP 24/2 under which the FCA is proposing to proactively publish more information about its enforcement investigations, including the identity of the subject of the investigation. We intend to respond separately on this.

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?

We appreciate the policy intention behind this proposal, but it would be helpful to understand the type of information being referenced in this case. We would also highlight the importance of ensuring consistency with the approach adopted by the FRC in respect of adequate procedures, systems and controls.

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.

We have no objection to this requirement in principle given the flexibility offered by the approach set out in CP 23/31 which refers to "2 executive directors (or equivalent)". However, we would note that UKLR 1.3.5R(1) only refers to "2 executive directors". This should be revised in line with CP 23/31. It would also be helpful if guidance could be provided as to what "(or equivalent)" means in the case where an issuer only has one executive director, which is not uncommon.

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.

Yes.

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

Yes.

Q44: Do you agree with our proposed approach for dealing with in-flight transfers between listing categories at the time the UKLR is implemented? If not, please explain why.

Yes.

Q45: Do you agree with our proposed modified transfer process for standard listed issuers automatically transferred into the transition category or secondary listing category that may wish to transfer to the commercial companies category (or the shell companies category or the secondary listing category) post implementation?

In relation to the targeted assessment to be undertaken by sponsors in the context of the modified transfer process, we note that a sponsor would have an obligation to confirm, that it has not identified any adverse information that would lead it to conclude that the issuer would not be able comply with the commercial companies category listing requirements. We query whether sponsors would be comfortable providing this confirmation without a broader assessment of eligibility or in the absence of further guidance on the topic.

Q46: Do you agree with our proposed transitional arrangements and specific transitional provisions for 'mapped' existing issuers and conversion of 'in-flight' applications at the time the UKLR is implemented? If not, please explain why.

Yes, we agree in principle but in relation to specific transitional provisions for the shell companies category, please see our separate submission.

Q47: Do you agree with our proposed transitional provisions to allow existing issuers and 'in-flight' applicants sufficient time to prepare for implementation of the proposed provisions that would impact all issuers?

Yes.

Q48: Do you agree with these impacts at implementation day and our approach to transitional arrangements for post IPO mid-flight transactions (when commenced in premium listing) and related sponsor services?

Yes, we agree in principle.

Q49: Is the proposed period of 2 weeks between publication of the final UKLR instrument and those UKLR coming into force reasonable, assuming we proceed broadly as proposed?

Whilst we appreciate the policy intent for the revised rules to take effect as soon as possible, our concern is that an implementation period of two weeks might risk not providing market participants with enough time to review fully and/or clarify the final rules, appreciating that this will of course depend on the extent of the changes in the final form of the rules. Similarly, we think it would be helpful if further clarity could be provided on the overall implementation timeframe to enable market participants to plan ahead to the extent possible.

Q50: Are there wider practical issues or impacts for market participants from the proposed implementation timing that we should consider?

We would note that in the context of discussions with potential overseas issuers who are London IPO candidates, they have highlighted that whilst the UKLR allow shares to be denominated in Euros and USD, the rules of certain index providers provide that only GBP denominated shares are eligible for the UK indices. This is an example of friction elsewhere, outside the remit of the FCA, but illustrates that CP 23/31 should be seen as part of a wider effort to make London a more attractive IPO destination.

Q51: Do you agree with our proposed approach and clarification around sponsors' role at the listings gateway for the relevant categories?

Yes, we agree.

Q52: Do you agree with our approach to the retained sponsor confirmations to the FCA on post-IPO transactions? If not, please explain your preferred alternative approach and the reasons for it.

Yes, we agree, subject to reviewing the form of the confirmations.

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

Yes, we agree.

Q54: Do you agree with our proposed modifications to the principles for sponsors? If not, please explain why.

Whilst the working group appreciates the rationale for the proposal to introduce a standalone principle to act with honesty and integrity, some members noted that this approach might risk creating additional complexity in this area given the overriding duty owed by a sponsor to the FCA.

Q55: Do you agree with our proposed changes to sponsor competence requirements?

Please see our previous submission.

Appendix

Overlap of LR9 ARA disclosure requirements with other UK reporting requirements

The table sets out the disclosures required in the annual report and accounts (ARA) of an UK-incorporated issuer under LR9 and where these requirements overlap with, or cover similar concepts to, disclosure obligations of the issuer arising under other legislation or regulation. It does not cover disclosures that may be made to comply with non-binding guidance or recommendations (for example, proxy voting guidelines).

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
LR 9.8.4R(1)	Interest capitalised	Include a statement of the amount of interest capitalised by the group during the period under review with an indication of the amount and treatment of any related tax relief.	Under IAS 23, borrowing costs that have been capitalised need to be disclosed in the accounts	
LR 9.8.4R(2), LR 9.2.18R and LR 9.2.19G	Published unaudited financial information, profit forecast or estimate	If the company has published unaudited financial information in a class 1 circular or prospectus, or any profit forecast or estimate, it must: • reproduce any unaudited financial information in a class 1 circular or prospectus, or any profit forecast or estimate, • disclose the actual figures for the same period covered by statement/forecast/estimate, • explain any difference of 10% or more.	None identified	NB requirement to produce class 1 circular is being removed. Doesn't apply to pro forma financial information prepared in accordance with the UK PR Regulations or to prelims with unaudited financial information.
LR 9.8.4R(4), LR 9.4.3R, LR 9.4.2R and LR 13.8.11R	Long-term incentive schemes	Provide details of any long-term incentive schemes in which the only participant is a director of the company (or prospective director) and the arrangement was established specifically to facilitate, in unusual circumstances, the recruitment or retention of the relevant individual: a) full text of the scheme or a description of its principal terms;	Large and Medium-sized Companies and Groups (accounts and reports) Regulations 2008 Schedule 8 requires disclosure of performance-related	Disclosure required in the first AR published after the individual become eligible to participate in the scheme.

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
		b) where directors of the company are trustees of the scheme, or have a direct or indirect interest in the trustees, details of such trusteeship or interest; c) state that the provisions (if any) relating to: • the director to whom, or for whom, benefits are provided under the scheme; • limitations on the number or amount of the benefits subject to the scheme; • the maximum entitlement for any one participant; and • the basis for determining the director's entitlement to, and the terms of, benefit to be provided and for the adjustment thereof (if any) in the event of a capitalisation issue, rights issue or open offer, sub-division or consolidation of shares or reduction of capital or any other variation of capital, cannot be altered to the advantage of participants without the prior approval of shareholders in a general meeting (except for minor amendments); d) whether the benefits under the scheme will be pensionable and, if so, why; e) if the scheme is not circulated to shareholders, include a statement that it will be available for inspection; f) the name of the participant; g) the date on which the participant first became eligible to participate in the arrangement;	benefits received/receivable in the financial year and scheme interests awarded during the year (Part 3) and disclosure of performance-related benefits is included in the remuneration policy (Part 4)	

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
		h) an explanation of why the circumstances in which the arrangement was established were unusual; i) the conditions to be satisfied under the terms of the arrangement; and j) the maximum award(s) under the terms of the arrangement or, if there is no maximum, the basis on which awards will be determined.		
LR 9.8.4R(5) & (6)	Waiver of emoluments	Provide details of any arrangements under which a director of the company has waived or agreed to waive any emoluments from the company or any subsidiary undertaking. Where a director has agreed to waive future emoluments, include details of such waiver.	None identified	
LR 9.8.4R(7) & (8)	Allotment of equity securities other than to existing shareholders	In the case of any allotment for cash of equity securities by the company (or any unlisted major subsidiary) otherwise than to the holders of the company's equity shares in proportion to their holdings and which has not been specifically authorised by the company's shareholders, set out: (a) the classes of shares allotted and for each class of shares, the number allotted, their aggregate nominal value and the consideration received by the company for the allotment; (b) the names of the allottees, if less than 6, and if 6 or more, a brief generic description of each new class of equity holder (e.g. holder of loan stock); (c) the market price of the allotted securities on the date on which the terms of the issue were fixed; and (d) the date on which the terms of the issue were fixed.	Some of this is prescribed information for the purposes of a return of allotment filed under Section 555 CA 2006 NB notifications under DTR 5 may also be triggered depending on level of voting interests acquired NB need to announce results of any new issues of shares under LR 9.6.4R(6)	

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
LR 9.8.4R(9)	Participation by parent company in a placing	Where a listed company has listed shares in issue and is a subsidiary undertaking of another company, provide details of the participation by the parent undertaking in any placing made during the period under review.	Could trigger notification under DTR 5 regime if thresholds passed NB need to announce results of any new issues of shares under LR 9.6.4R(6)	
LR 9.8.4R(10)	Contract of significance	Provide details of any contract of significance subsisting during the period under review: (a) to which the company, or one of its subsidiaries, is a party and in which a director of the company is or was materially interested; and (b) between the company, or one of its subsidiaries, and a controlling shareholder.	Related party transactions entered into during financial year to be disclosed in the notes to the accounts under Large and Medium-sized Companies and Groups (accounts and reports) Regulations 2008 Schedule 3, Part 3, paragraph 90 LR 11 applies notification obligations to related party transactions and DTR 7.3 applies notification obligations to material related party transactions	NB definition of related party under Regulations and DTRs is not the same definition as used in LRs but the one set out in UK IAS 24 – including member of key management team or has control or significant influence over the company.
LR 9.8.4R(11)	Contract for provision of service with	Include details of any contract for the provision of services to the company or any of its subsidiaries by a controlling shareholder, subsisting during the period under review, unless:	LR 11 applies notification obligations to related party transactions and DTR 7.3 applies notification obligations to	NB definition of related party under Regulations and DTRs is not the same definition used in LRs but the one set out in UK IAS 24 – including member of key

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
	controlling shareholder	(a) it is a contract for the provision of services which it is the principal business of the shareholder to provide; and (b) it is not a contract of significance.	material related party transactions Related party transactions entered into during financial year to be disclosed in the notes to the accounts under Large and Medium-sized Companies and Groups (accounts and reports) Regulations 2008 Schedule 3, Part 3, paragraph 90	management team or has control or significant influence over the company.
LR 9.8.4R(12) & (13)	Shareholder waiver of dividends	Include details of any arrangement under which a shareholder has waived or agreed to waive any current or future dividends.	None identified	Exemption provided for certain de minimis waivers under LR 9.8.5G.
LR 9.8.4R(14)	Relationship agreement	A statement that: (a) the company has entered into any agreement required under LR 9.2.2ADR(1) (relationship agreement); or (b) where the company has not entered into a relationship agreement i. a statement that the FCA has been notified of that non-compliance; and ii. a brief description of the background to and reasons for failing to enter into the agreement; and (c) that:	None identified though NB the entry into a relationship agreement may be a related party transaction if the agreement contains terms beyond those required by the LRs (FCA PS 14/8)	NB the FCA has the power to request information in relation to compliance with the relationship agreement undertakings or procurement obligations under LR 9.2.2HG and LR 1.3.1R(3).

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
		i. the company has complied with the undertakings in LR 6.5.4R or LR 9.2.2ADR(1) during the period under review; ii. so far as the company is aware, the undertakings in LR 6.5.4R or LR 9.2.2ADR(1) have been complied with during the period under review by the controlling shareholder or any of its associates; and iii. so far as the company is aware, the procurement obligation (as set out in LR 6.5.5R(2)(a) or LR 9.2.2BR(2)(a)) included in any relationship agreement has been complied with during the period under review by a controlling shareholder; or (d) where an undertaking in LR 6.5.4R or LR 9.2.2ADR(1) or procurement obligation included in any relationship agreement entered has not been complied with during the period under review: i. a statement that the FCA has been notified of that non-compliance in accordance with LR 9.2.24R; and ii. a brief description of the background to and reasons for failing to comply with the relevant undertaking or procurement obligation.		
LR 9.8.6R(1)	Directors' notifiable interests	Provide a statement setting out all the interests (in respect of which transactions are notifiable to the company under article 19 of UK MAR) of each director of the company (and connected persons), including: (a) all changes in the interests of each director that have occurred between the end of the period under review and a date not more than one month prior to the date of the notice of the AGM; or (b) if there have been no changes in the period described in paragraph (a), a statement that there have been no changes in the interests of each director.	Notifications made to market during financial year under article of 19 UK MAR	

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
LR 9.8.6R(2)	Interests disclosed under DTR 5	Make a statement showing the interests disclosed to the company in accordance with DTR 5 and include: (a) all interests disclosed to the company in accordance with DTR 5 that have occurred between the end of the period under review and a date not more than one month prior to the date of the notice of the AGM; or (b) if no interests have been disclosed to the company in accordance with DTR 5 in the period described in (a), a statement that no changes have been disclosed to the company.	Notifications made to market during financial year under DTR 5.8.12R	
LR 9.8.6R(3) LR 9.8.10	Going concern & viability statement under Governance Code	Statements on: (a) the appropriateness of adopting the going concern basis of accounting (containing the information set out in Provision 30 of the Code); and (b) the prospects of the company (containing the information set out in Provision 31 of the Code).	"Comply or explain" statements regarding Provisions 30 and 31 of the Code under LR 9.8.6R(6) or LR 9.8.7R DTR 7.2 corporate governance statement	LR 9.8.6R(3) makes compliance with these provisions mandatory ie not a "comply or explain" approach.
LR 9.8.6R(4)	Purchase of own shares	Include a statement setting out: (a) details of any valid shareholders' authority for the purchase by the company of its own shares; (b) the names of the sellers of any shares purchased, or proposed to be purchased, by the company made otherwise than through the market, or by tender to all shareholders; (c) in the case of any purchases made otherwise than through the market or by tender or partial offer to all shareholders, or options or contracts to make such purchases, entered into since the end of the year, information equivalent to that required under Part 2 of Schedule 7 of	Notifications regime in LR12 DTR 5.5 and DTR 5.6 notification requirements in relation to acquisition or disposals of own shares and any resulting changes in total voting rights For buybacks conducted within the safe harbour under article 5 of UK	

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
		the Regulations (disclosure required by a company acquiring its own shares etc.); and (d) the names of the purchasers of any treasury shares sold or proposed to be sold for cash by the company during the period under review, made otherwise than through the market, or in connection with an employee's share scheme, or otherwise than pursuant to an opportunity which (so far as practicable) was made available to all holders of the company's securities (or to all holders of a relevant class of its securities) on the same terms.	MAR (as is usual), notifications to the market of each buyback transaction under article 2(3) of the UK version of Regulation (EU) 2016/1052 Part 18 CA 2006 notification requirements: section 707 notice of purchase of own shares; section 708 notice of cancellation after purchase of own shares; section 728 notice of disposal of treasury shares; section 730 notice of cancellation of treasury shares	
LR 9.8.6R(5) & (6)	Governance Code compliances	Include a statement of how the company has applied the Code Principles. Include a "comply or explain" statement in relation to the provisions of the Code.	DTR 7.2 corporate governance statement	
LR 9.8.6R(8)	TCFD Disclosures	Include a statement setting out: (a) whether the ARA includes disclosures consistent with the TCFD; (b) if some/all these disclosures are somewhere other than in ARA, which ones are included elsewhere, where they are included and why they are included there;	Section 414CB CA 2006 requires TCFD-aligned disclosures to be included in the Non-financial and sustainability information statement in the	Requirements in CA 2006 apply to financial years starting on or after 6 April 2022.

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
		(c) if some/all of the disclosures are not included in the ARA or elsewhere, which ones are not included and why not; (d) the steps being taken to include these missing disclosures in future.	Strategic Report on a mandatory basis	
LR 9.8.6 R(9) - (11)	Board diversity	A statement setting out: (a) whether the company has met the 3 specified targets as at a chosen reference date within financial year; (b) if it hasn't met the targets, which ones and reasons for this; (c) the reference date used or the purposes of (a) and, if different from the date used in previous financial year, why; and (d) any changes to the board that have occurred between the reference date and the date on which the annual report is approved which affects meeting of one/more of the targets. Numerical data in the prescribed format on the ethnic background and the gender identity or sex of the individuals on the listed company's board and in its executive management as at the reference date. An explanation of the company's approach to collecting the data used for the purposes of making these disclosures.	Section 414C(8) CA 2006 – requirement to include in strategic report breakdown of number of persons of each sex who were directors, senior managers and employees. No targets set in CA 2006 DTR 7.2.8AR disclosures in relation to diversity policy and results of the policy	LR requirement applies to financial years beginning on or after 1 April 2022.
LR 9.8.8R(1)	Unexpired term of director's service contract	Include details of the unexpired term of any director's service contract of a director proposed for election or re-election at the forthcoming AGM.	Paragraph 30A, Schedule 8, Large and Medium-sized Regulations: Directors' Remuneration Policy must set out indication of	

Listing Rule	Area of disclosure	Details of LR Disclosure requirement	Overlapping disclosure requirements/ requirements addressing similar concepts	Comments
			duration of directors' service contracts (and Paragraphs 36 and 37 require the disclosure of the policy on the setting of notice periods and on payments for loss of office)	