

New UK Financial Conduct Authority Delisting Requirements

Changes to FCA Listing Rules increase requirements for delisting a premium listed company with a controlling shareholder.

On 1 May 2014, the UK's Financial Conduct Authority (FCA) announced changes to Listing Rule 5, which come into force on 16 May 2014. The changes affect premium listed companies with a controlling shareholder — meaning a shareholder who, together with their concert parties, controls 30 per cent or more of the company's voting rights.

The new rules require a company with a controlling shareholder wishing to cancel its premium listing to obtain the approval of both (i) a simple majority of the votes attaching to the shares of the independent shareholders voting on the resolution, and (ii) at least 75 per cent of the votes attaching to the shares of all of those shareholders voting on the resolution. This enhanced requirement recognises that cancelling a listing removes significant rights of participation in the governance of a company from shareholders, and is intended to ensure that minority shareholders in a company with a controlling shareholder are given a proper say in that decision.

Takeover related regime

In the case of a cancellation of a premium listing proposed within the context of a takeover offer, if an offeror is interested in 50 per cent or less of the voting rights before announcing its firm intention to offer, then the existing regime continues to apply. The existing regime requires that the offeror has — by virtue of its shareholdings and acceptances of the takeover offer — acquired or agreed to acquire issued share capital carrying 75 per cent of the target company's voting rights, and states its intention to effect a delisting in the offer documentation.

If the offeror is interested in more than 50 per cent of the target company's voting rights before announcing its firm intention, then in addition to the requirements above, the offeror also must obtain acceptances of its takeover offer (or otherwise hold, acquire or agree to acquire shares) from independent shareholders holding a majority of the voting rights held by the independent shareholders. However, if such an offeror has acquired or agreed to acquire more than 80 per cent of the target company's voting rights, no further approval or acceptances from independent shareholders will be required. This compensates for the fact that by the point that acceptances are above 80 per cent, the resultant free float will be significantly below the generally applied 25 per cent of issued share capital minimum for a premium listed company.

No changes apply in the case of a takeover or restructuring effected by a scheme of arrangement. The FCA has concluded that the statutory framework provides adequate protection for minority shareholders, given that a scheme requires the court's sanction, and the approval of a majority in number representing

75 per cent in value of the shareholders of each class (with a controlling shareholder likely being treated as a separate class for these purposes).

The rules for transferring a listing from the premium to the standard segment will also be aligned with the rules for cancelling a premium listing, to prevent parties from circumventing the new rules.

Wider reform of minority shareholder protections in controlled companies

The changes to the delisting requirements are part of a package of reforms to the premium listing regime, designed to strengthen minority shareholder rights and protections, and set a high corporate governance standard for premium listed companies.

Premium listed companies with a controlling shareholder will also need to ensure that their constitution provides for the election or re-election of independent directors to be approved both by the shareholders as a whole (as at present), and by a new separate vote of the independent shareholders as a separate class. Should the result of the votes fail to achieve the necessary majorities, and the company wishes to propose the director's appointment, the resolution must be put to shareholders for a second time, at least 90 but not more than 120 days after the original vote. On this second vote, the appointment of the independent director requires the approval of a simple majority of all shareholders only. The company will also need to give more detailed information about any independent director standing for election or re-election.

For the first time the rules make it mandatory for premium listed companies to implement a relationship agreement with any controlling shareholder, to ensure that the company is able to operate independently of that shareholder. There is however no need to enter into relationship agreements with multiple controlling shareholders if one such shareholder has demonstrated, and has agreed to, procure compliance of the others.

There are transitional arrangements for premium listed companies to comply with the independent director and relationship agreement provisions, depending on whether they currently or subsequently have a controlling shareholder.

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