QUOTED COMPANIES ALLIANCE

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Dear FCA colleagues,

Primary Markets Effectiveness Review: Feedback to DP22/2 and proposed equity listing rule reforms

We welcome the opportunity to respond to your consultation on the Primary Markets Effectiveness Review.

The Quoted Companies Alliance *Primary Markets Expert Group and Secondary Markets Expert Group* have examined the proposals and advised on this response from the viewpoint of public companies, with emphasis on small and mid-sized quoted companies. A list of Expert Group members can be found in Appendix A.

If you would like to discuss our response in more detail, please do not hesitate to contact us.

Yours sincerely,

James Ashton

James Ashton
Chief Executive

Executive Summary

A broadly positive development in increasing the accessibility of listing

The FCA's proposed changes are promising and offer some prospect of increasing the level of access to our public equity markets. In particular, the proposed amendments to the eligibility requirements and increasing the flexibilities to companies are broadly welcome.

Accessibility vs attractiveness

Nevertheless, some key concerns remain about the suitability of these proposals for listed companies, and in particular, the small and mid-cap community and high-growth focused businesses. We believe that whilst the suggested approach may increase accessibility, the current proposals fall short of increasing the attractiveness of our markets. Insufficient attention has been devoted to considering what is the nature of the regime required to attract growth companies to list. The focus of the review should have been on building an attractive capital market rather than expecting substantive change to result from tweaking existing Listing Rules. The QCA previously outlined a vision for a UK Listed Growth Market which we believe would have helped to improve the attractiveness aspect of the UK's equity market infrastructure.

Taking forward the FCA's approach

Despite our observations around the accessibility vs attractiveness debate, we recognise that the FCA's preferred approach is gaining momentum. As highlighted above, we believe that this approach is a broadly positive one in increasing accessibility, and one that market participants should, on the whole, get behind. Therefore, it is imperative that the finer details and requirements of the new segment are appropriate and do not impede attractiveness further.

We would like to highlight that the proposals around the application of the UK Corporate Governance Code, the future of the sponsor regime, dual class share structures (DCSS), and the transition period are all areas of concern for our membership. These issues require addressing if the FCA's reforms are to cement London's place as a global financial centre and secure the future of the UK's capital markets.

Corporate governance

Ensuring that companies on the new ESCC segment are given the flexibility to apply a corporate governance code of their choice is essential if the FCA's restructuring of the Listing regime is to be proportionate for smaller growth companies. A market capitalisation threshold should be introduced that allows for smaller companies to select an alternative corporate governance code that better reflects their size and resources, with larger companies above the threshold required to report against the UK Corporate Governance Code. We believe this threshold should be set at £500 million.

The FCA should provide a list of governance codes which it deems appropriate for companies below the £500 million threshold to include. This should include, for instance, the QCA Corporate Governance Code, which is particularly appropriate for smaller companies. There are also other relevant corporate governance codes for certain types of companies, such as the AIC Corporate Governance Code for investment companies, and various jurisdictional codes for international companies.

Sponsor Regime

Any expansion of the scope of companies the sponsor is required to cover necessitates a cautious approach from the FCA to ensure that sponsors are adequately supported to meet this new demand. It is of paramount importance that the FCA considers expanding the number of advisers eligible for a sponsors' licence, and provides additional guidance for sponsors around the increased diversity of companies within their scope. As an overarching principle, a proportionate approach to the sponsor regime should be adopted that factors in the different size and risk profile of each company.

Dual class share structures

The proposal to increase the sunset clause for DCSS from five years to ten offers greater protection for founders to realise their vision for their company. However, enacting a definite time period nullifies any flexibility for companies and investors to agree a timeframe for DCSS that suits their needs. The FCA should look to revise this proposal and provide companies and investors with the power to decide the appropriate timeframe for their DCSS to fall away.

Some members of the QCA's also have concerns about a potential tightening of the rules compared to those currently afforded on the Standard Listing segment. As currently set out, the proposals are deemed to be sufficiently conservative from an investor viewpoint but not necessarily sufficiently attractive from a founder point of view.

Transition period

It is vital that a transition period of at least three years is implemented as part of the FCA's proposed reforms. This will ensure that those companies who do not move to the new ESCC segment are provided with enough time to identify an alternative market destination, and those that do make the transition have sufficient time to prepare for it.

On a similar note, we are concerned by the low number of companies that the FCA is expecting to transition to the new single segment. A further reduction in the number of companies on our markets will be damaging to the reputation of the UK's markets.

Introduction

A broadly positive development in increasing the accessibility of listing

In the FCA's PMER PS21/22 consultation, we argued for the creation of a new market segment geared towards growth companies that would replace the Standard segment. Our reasons for doing so were to maintain the status of the Premium List as upholding the "gold standard" of regulation, while providing choice for both companies when selecting a market that best meets their stage of growth and resources, and investors when assessing companies to invest in according to their own risk appetite. Furthermore, our reasoning behind this proposal was to create a regime that would enable companies to transition organically between each segment according to its stage of growth and for there to be easily understood transparency for investors as to the standards for each segment.

Central to our vision of a UK Listed Growth Market was our belief that providing companies with choice was vital if we were to reverse the trend of companies leaving London markets, remaining in the hands of private equity and/or listing elsewhere, as well as to inspire the next generation of innovative and high growth companies to list at an earlier stage of their growth.

We were, therefore, disappointed to see that the FCA did not seek to take these proposals forward and create a new, bold, and dynamic market framework that we believed would be more appropriate for the UK's equity market structure as a whole and have a greater impact in terms of attracting companies.

Nonetheless, we consider the FCA's proposal around the creation of a new ESCC category to be a broadly positive one. If implemented correctly, the reforms have the potential to improve the accessibility of the UK's public equity markets. For example, proposed changes to financial information eligibility requirements, independence of business and control of business protection, the controlling shareholder regime, among others, are measures that we endorse.

However, it is the QCA's view that the FCA's proposals are not sufficiently proportionate for small to mid-sized growth companies, and may still risk deterring them from listing. Regulation and governance must be proportionate to the size and resources of smaller growth companies in order to make listing a viable and attractive offering for them. A one-size-fits-all-approach does not work for UK smaller growth businesses and advisers will naturally gravitate away from the ESCC category.

More specifically, we have issues with the proposals around requiring companies on the new ESCC segment to report against the UK Corporate Governance Code, make disclosures consistent with current Listing Rules on TCFD and Diversity and Inclusion (D&I), the expansion of companies that sponsors will need to cover, and changes to dual class share structures.

Furthermore, we are concerned that if the restructuring of the listing regime is enacted without the introduction of a reasonable transition period, it will place certain companies at heightened risk of falling off our markets if they are not given adequate time to prepare for its requirements, or move to another market.

We have noted a decline in activity on the Official List more generally over the past 18 months, some of which is attributable to market conditions, but some of which has been as a direct result of the impact of further change ahead and uncertainty.

Finally, we encourage the FCA to adopt a holistic approach when implementing the package of reforms already proposed to the Listing Rules, Prospectus Rules, and DTR to ensure that regulatory change is successful in meeting its objective.

Corporate governance code application and disclosure requirements

The FCA's proposal to require companies on the new ESCC category to adopt the UK Corporate Governance Code risks stifling the flexibility small to mid-sized companies need to operate and grow. The UK Corporate Governance Code's approach is too onerous for small growth companies, and the 'comply or explain' model does not work in practice. This could prevent many smaller companies from listing.

Across a number of areas, the resource and size constraints of smaller growth businesses render complying with certain requirements under the UK Code challenging. Conversely, explaining why they have not complied may not be sufficient for investors and other market practitioners and thus jeopardises much-needed capital for the company.

Similarly, the proposal to require all companies to make disclosures around TCFD and D&I are disproportionate and not conducive to attracting growth companies.

Whilst we support companies disclosing their material environmental risks, material GHG emissions and adopting elements of TCFD framework in a proportionate manner, we believe that the additional prescription and gold plating of TCFD, inherent in the Listing Rules (Disclosure of climate-related financial information) (No 2) Instrument 2021) requires disproportionate effort for smaller, growth companies.

Moreover, complying with D&I is more straightforward for larger companies, who will typically have larger boards, and therefore find it easier to meet certain diversity targets on the board. In comparison, smaller companies (who may have small boards with as few as four members) struggle to reach this target as a result of there being considerably less refreshment opportunity, meaning that change takes much longer. As such, smaller companies may witness substantial fluctuations in the data they collect where as few as one or two changes in senior positions could have a disproportionate statistical impact.

Furthermore, start-ups and smaller companies at an early stage in their growth and development may have needs for specific technical expertise which could have an effect on the constitution of their board members and senior management. This is a particular challenge given the enormous demand for non-executive directors with experience and expertise in the high-tech areas of the economy and a general shortage or deficit of candidates with STEM skills at all levels. Although, in theory such rules are on a comply or explain basis, in reality this means "comply or else", partially due to the power of the proxy voting agencies and their unwillingness to evaluate explanations favourably. We would prefer that companies reported on the level of diversity throughout the business and how they have sought to support and encourage directors and employees from a range of minority, gender, and socio-economic backgrounds.

Therefore, we propose the introduction of a market capitalisation threshold of £500 million that would exempt smaller companies from adopting the UK Corporate Governance Code and the TCFD and D&I reporting requirements. Instead, companies below the threshold should be allowed to apply a corporate governance code that is more appropriate to their size and ensure that they are not overburdened by the disclosure requirements on TCFD and D&I.

We believe that the FCA should provide a list of corporate governance codes it deems acceptable for companies below a market capitalisation threshold on the new segment to follow.

The QCA Corporate Governance Code is an appropriate, proven and respected approach to corporate governance and that giving companies this code (as well as others) as an option to follow, will ensure that smaller, high growth businesses can optimise their growth and development on the new segment. A transition period should also be introduced stipulating that a company's market capitalisation should need to exceed the market capitalisation threshold for two years before adopting the UK Corporate Governance Code.

The fact that 93 per cent of companies on AIM apply the QCA Code is not only testament to its aforementioned status in supporting smaller companies, but also highlights the lack of appropriateness of the UK Code for smaller, growing companies.

Moreover, it is also important to take into account current corporate governance code adoption and practice on the Standard List segment, which we do not believe has been considered so far.

Below is a breakdown of corporate governance code application by Standard List companies[1]:

- The UK Corporate Governance Code – 89
- No corporate governance code – 81[2]
- The QCA Corporate Governance Code – 71
- ASX Corporate Governance Principles and Recommendations– 7
- AIC Code of Corporate Governance Code – 7
- Alternative corporate governance code – 10[3].

This demonstrates that a majority of companies on the Standard List segment do not currently apply the UK Code, with some choosing the QCA Code, and others not appearing to apply a recognised code at all.

Given these figures, we urge the FCA to reconsider the introduction of a blanket requirement for all companies to apply the UK Corporate Governance Code on the new ESCC and instead request the introduction of an above £500 million market capitalisation threshold for its application and provide a list of codes it deems appropriate, which should, at a minimum, include the QCA Code.

We accept that for investing companies, there may be more appropriate governance codes for them to adopt, as well as dual listed companies who might apply their 'home standards' where there is sufficient equivalence with UK requirements.

Sponsor regime

The sponsor regime is particularly beneficial for the small and mid-cap companies within our ecosystem. Small and mid-cap companies listed on the current Premium Listing segment often do not have the same

[1] Information gathered only for companies with accessible websites.
[2] There is no readily available information on these companies and their corporate governance code practices/adoption.
[3] These include a mix of jurisdictional and regional governance codes.

level of resources or capabilities that allows them to understand and comply with the many intricacies of conducting a listing or completing other transactions.

In addition to the benefits for companies, the sponsor is also beneficial for investors. The sponsor provides additional protections for investors and helps to increase their confidence in the market by reducing the risk of any potential harm that could be caused as a result of market misconduct. While investors often perform their own due diligence and research into a company, the knowledge that the sponsor has also performed this function provides an additional safeguard.

Given the essential role of the sponsor, it is imperative that there are a sufficient number of sponsors operating under the new regime catering to all types of listed company, that there are adequate guidelines in place for sponsors if a broader and more diverse pool of companies are to be covered, and consideration given to continued competence requirements and sponsor licensing arrangements.

The FCA's proposal to create a single ESCC category could result in sponsors covering an extended pool of up to 170 companies. Currently, there are a significant number of market participants that are advisers to Standard List companies who do not have a sponsor licence and yet possess the required competence to support companies on the new ESCC category. We recommend that the FCA consider expanding the number of advisers eligible for a sponsor licence before enlarging the sponsor's role any further. The FCA should consider allowing AIM Nominated Adviser and AQSE Corporate Adviser firms to become sponsors through an accelerated route.

In addition, we are concerned by the level of desire of sponsors towards representing a broader and more diverse range of companies as a result of the FCA's proposed changes to the sponsor regime. Any widening of the scope of companies will result in sponsors assuming greater levels of risk and due diligence in carrying out their role in supporting these companies to list and fulfil ongoing requirements.

We believe the FCA ought to provide additional guidance for sponsors in this area, and adopt a proportionate approach to the sponsor regime that accounts for the size, complexity and risk profile of the relevant companies.

With regard to sponsor confirmation for RPTs, we believe that the existing process of sponsor confirmation is much higher in the case of RPTs and this in part, explains why such transactions are not conducted often. Without a change to, or removal of, the sponsor confirmation, we are uncertain that proposed changes will improve in this area.

We recommend that the FCA consider amending the requirement that sponsors advise the board on the 'fair and reasonable' model, or provide specific guidance for sponsors on how to assess this area in context of the new single ESCC segment.

Finally, the FCA's proposed changes to the sponsor regime around continued competence will likely result in a reduction in the number of transactions that necessitate the appointment of a sponsor. This will render demonstrating continued competence on behalf of sponsor firms more difficult unless a more pragmatic approach is adopted by the FCA to sponsor competence.

We are in favour of amending the requirements around continued competence to make clear that other transactions that do not currently require a sponsor declaration will be considered when assessing competence.

Dual class share structures

While we welcome the FCA's extension of the sunset clause for dual class share structures from five years to ten years, we believe it does not go far enough in offering companies choice when deciding on which share structure best suits their needs. In particular, dual class share structures offer founders safeguards to carry-out their vision for the company when listing. As such, they are essential in attracting companies to list earlier on in their maturity.

Instead of the ten-year sunset period set out by the FCA in this consultation, we propose that the introduction of a sunset clause be left to the discretion of a company following consultation with their investors. The proposal to extend the sunset clause to ten years does offer more protection for founders but not necessarily at a level appropriate for certain companies.

It is our view that if certain investors have concerns about the timeframes involved for dual class share structures, it should be their decision whether to invest in that company. We believe that this will provide both companies and investors with the required choice to make decisions that are best suited to the interests of the company in question and the risk-appetite of the investor.

It should be noted that not all QCA members agree with the introduction of dual class share structures without a mandatory sunset clause.

Specifically, there are concerns around the weighting of votes of the dual class shares and the extent to which this would offer sufficient protection to investors. On the other hand, the current Standard List is substantially more permissive than the current proposals and the restrictions imposed by the ESCC would not accommodate some of the companies who are currently listed there (and who have active investors).

The transition period

We are broadly in agreement with the new structure of the Listing regime proposed by the FCA. However, we are concerned by the prospect of a large number of companies coming off the market as a result of the restructuring of the regime. It is our understanding that the FCA have identified around thirty to forty out of the 167 companies on the existing Standard segment that will move to the new regime. With the number of listed companies falling consistently over the previous twenty years, it is imperative that the FCA mitigates the impact these changes will have in accelerating this trend in the short term, and that it considers alternative destinations for those companies that will not join the new ESCC category.

It is the QCA's view that a transition period of at least three years is implemented alongside the proposed changes to the Listing regime to ensure that companies have adequate time to prepare for the new ESCC segment or consider alternative markets such as AIM or AQSE.

Regulatory Framework

We welcome the additional Engagement Papers which the FCA are consulting on. The proposed re-structuring of the Listing Rules, Prospectus Rules and DTR needs to be carefully considered as a whole, as well as the interaction with UK MAR evolution to deliver a coherent framework not just for the Official List but the wider UK quoted company environment. It is the QCA's view that wherever possible the FCA should be communicating and consulting in a holistic manner on the regulatory framework for UK public markets. This is essential to ensure the successful implementation of regulatory change.

Responses to the questions

Q1: Do you agree with the proposal to remove specific financial information eligibility requirements for a single ESCC category? If not, please explain why and any alternative preferred approach.

Yes – we agree with removing the requirement for companies to have a three-year financial and revenue earning track record in order to be eligible to list. We believe that this will encourage more high-growth, early-stage companies to list, particularly in the technology, e-commerce, science, and healthcare sectors. These companies, especially those in the technology and e-commerce sectors, have the potential for exponential growth. It can often be the case that their growth and development occurs over a short period of time, and they may find it difficult to meet the standards of the Premium Listing segment, such as track record requirements. These are precisely the types of companies that the UK should be aiming to attract and foster and as such, removal of the specific financial information eligibility requirements is a proposal we are supportive of.

Q2: Do you agree with a proposal to explore a modified approach to the independence of business and control of business provisions for a single ECSS category, with a view to enhancing flexibility, alongside ensuring clear categories for funds and other investment vehicles?

Yes – we agree with this proposal and consider that the independence of business and control of business provisions should be disclosed by companies, and it is for investors to make a decision on the basis of the information disclosed.

Q3: Do you have views on what rule or guidance changes may be helpful, and whether certain disclosures could also be enhanced to support investors and market integrity, or any alternative approaches we should consider?

It is the QCA's view that there should be sufficient disclosure requirements to enable investors to arrive at a decision. However, in order to respond to this question in full, we would like to view and digest what form the proposed new Listing and Prospectus rules will take, and welcome the opportunity to do so when the second consultation is released in the Autumn.

However, we would stress that there needs to be an appropriate level of disclosure to allow investors to come to a decision.

Q4: Do you agree with our proposed approach to dual class share structures for the single ESCC category and the proposed parameters? If you disagree, please explain why and provide any alternative proposals.

In general, we agree with the use of dual class share structures, while appreciating that there are some additional risks for minority investors. In order to encourage entrepreneurship in the UK's markets, and in particular amongst companies in new industries, permitting dual class share structures will help to grant greater access for companies to public equity markets earlier in their maturity. Dual class share structures allow founders, who are particularly sensitive to the threat of takeover or removal as a director, to retain control, implement their vision and deliver the next phase of their business strategies. This has the potential to produce the benefit of facilitating the long-term health of the company because it limits the pressures exercised by the market and investors who may favour short-termism. Investors can still influence the ability of companies to pursue the types of projects that lead to long-term corporate sustainability and economic growth in favour of short-term profits.

It is the QCA's position that, if there is appropriate company disclosure regarding the application of dual class share structures, investors should decide on whether they want to invest in a company that applies them. While we acknowledge that this may add to the risk profile of a company, it should be for investors to decide whether to assume the risk of investing in a company that utilises dual class share structures.

Moreover, rather than the proposed ten-year sunset clause, we propose the introduction of a requirement for companies to establish the time frame for which they intend to exercise dual class share structures and for this to be clearly justified. Instead of implementing a regulatory requirement for the sunset period, we propose that companies should engage with their investors on the appropriate timeframe for moving away from such a share structure and that this period should be stated at the time of adoption of said share structure.

Implementing the sunset period for ten years is arbitrary. Setting an arbitrary timeframe voids the ability of some companies, following consultation with their investors, to opt for a longer sunset clause in order to properly carry-out their vision.

It is important to note that some QCA members raised concerns about the content of DCSS voting rights. In particular, that while changes in this area suggest the implementation of greater shareholder safeguards than on the existing Standard List segment, the FCA must carefully consider the future composition of DCSS.

For example, it is important that the FCA achieves an appropriate balance. In this light, the risk of granting excessive voting power to the holders of preferential shares, the circumstances in which the votes can be used, and the desire to attract exciting, high growth founder led companies to list in the UK, needs to be considered. There is a trade-off between risk and potential reward; and attracting entrepreneurs to the market while protecting minority shareholders rights.

On the one hand, the current proposals for DCSS on the new ESCC segment would appear to offer sufficient protections to investors. On the other hand, it is unclear whether they are sufficiently permissive to attract founders of high growth businesses to list.

This encapsulates the fundamental problem of applying a single set of criteria for large, mature companies, and their smaller, higher growth, counterparts: regulation risks being unsuitable for either, particularly when considering the investment choices of 'growth-focused' investors vs. those investors focused on more stringent governance metrics.

One possible solution suggested by some QCA members to this issue would be to allow flexibility and proportionality in the use of DCSS through the implementation of a market capitalisation threshold for smaller businesses on the new ESCC segment which would provide greater clarity and choice to both companies and investors.

Q5: Do you agree with our proposed approach to the controlling shareholder regime for a single ESCC category? Do you have any views on the suitability of alternative approaches to the one proposed?

Yes – we agree with the proposed approach for the controlling shareholder regime and consider that the principles proposed are appropriate. In particular, the removal of a shareholder vote on related party transactions is an appropriate proposal. From our experience, this system has functioned well on AIM.

However, we are concerned by the proposal to replace relationship agreements with a 'comply or explain' disclosure requirement as we believe the existing approach works well.

Q6: Do you agree that our proposals as regards controlling shareholders align with our need to act, as far as is reasonably possible, in a way which is compatible with our strategic objective of ensuring markets work well and advances our market integrity and consumer protection objectives? If you don't agree, how do you believe these should be balanced differently?

Please refer to our comments in Question 5 for our position on this question. As discussed in our response to Question 5, it is our view that relationship agreements are an appropriate mechanism regarding controlling shareholders and should be retained.

Q7: Do you agree with the proposed approach to significant transactions for a single ESCC category? If not, please explain why and any alternative proposals.

Overall, we agree with the proposal of not requiring shareholder approval for significant transactions as we believe the FCA should establish a balance between management being able to conduct deals in a timely manner alongside the need for shareholder approval.

However, in certain instances, caution should be applied. For example, equity issuances over 50 per cent should be treated differently, and protections in company law should be sufficient for this.

Q8: Do you consider that additional disclosure could be considered to further support transparency to shareholders on significant transactions and, if so, what (e.g., considering current circulars)?

Yes – in some respects, and where proportionate and appropriate to do so, we view more disclosure as better. For instance, if there is no requirement for shareholder approval for significant transactions, additional disclosure would be beneficial for investors. Regarding circulars, companies can include most of what is contained in the circular as a disclosure and this is a situation where FCA guidance and clarity regarding UK Market Abuse Regulation (UK MAR) interpretation would be of assistance to companies, as there is currently, in effect, a multi-layered approach to disclosure in announcements of any transaction.

We believe the FCA should take into account cases where there is an acquisition or disposal and no circular is in place, as this would require due consideration as to what information is being provided to a company's shareholders. However, we recommend that this does not take the form of another requirement around historic financial information (HFI).

Q9: Should we consider further mechanisms prior to a significant transaction being formally completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed commercial company equity issuers in place of shareholder approval? What should those mechanisms be and why?

No – we do not agree with the FCA's proposed suggestion of introducing a mandatory period of delay between exchange and completion as this will be difficult for companies to comply with. Furthermore, it adds to the level of risk of a company and encourages confusion while not resulting in any meaningful increase in investors' influence.

We would alternatively encourage the FCA to provide greater clarity and potentially safe harbours within UK MAR to permit consultation with key shareholders. Currently, this is only permissible where gathering support for a shareholder vote which would be negated in the proposed regime.

Q10: Should the sponsor's advisory role in assessing whether a potentially significant transaction meets the proposed disclosure threshold be mandatory or optional, and what are your reasons? Do you agree with our proposal that sponsors have more discretion to modify the class tests, including substituting the tests with alternative measures, without seeking formal FCA agreement to the modifications? If you disagree, please provide your reasons and alternative proposals.

We recognise that the removal of class 1 circulars will make conducting a transaction quicker and more straightforward.

Notwithstanding that, adding the sponsor to the disclosure process risks complicating the process, and would potentially undermine the intended purpose of reducing cost and time by removing class 1 circulars.

Therefore, we consider that companies ought to have the responsibility to determine the role of the sponsor in this area and the sponsor role should not be mandatory.

Ultimately, the QCA believes that smaller listed companies benefit from sponsor interaction as a matter of ongoing advice, while the ESCC, as proposed, only requires sponsor interaction at the point of entering into a transaction which may require announcement under the revised thresholds. This still risks there being times when a company does not correctly identify when it needs to consult, and so does not, which may lead to a breach of the Listing Rules.

To guard against this, we believe that the obligation to consult needs to be drafted very broadly. However, we are cognisant that without the broader changes to the sponsor regime we discuss in our response below, many companies may find the requirement to identify a sponsor and agree commercial basis for consultation in itself is a complication to transactions, particularly as we advocate a broad scope for consultation to ensure there is no inadvertent breach by companies of the Listing Rules.

Flexibility for sponsor around the class tests would be welcome and the QCA supports this so long as there is a transparent framework to ensure consistency of approach from sponsors.

Q11: Should we consider expanding the sponsor's role further on any aspects of significant transactions?

We have concerns in relation to the potential expansion of the sponsor's role on any further aspects of significant transactions and believe this needs to be carefully considered. Our main concern relates to the potential for this to cause capacity issues for sponsors.

Under the current proposals for the single ESCC category, sponsors will have to cover an extended scope of up to 170 additional companies. Whilst we recognise this number will likely be lower as not all these companies will move to the single ESCC category, we do not believe it is clear there are enough sponsors who will be willing to cover the extended scope of companies. Expanding the sponsor's role further, therefore, could exacerbate resource and capacity restraints/limitations and potentially reduce the quality of the role that sponsors are able to perform.

The FCA must give consideration to expanding the number of advisers that should be eligible for a sponsor licence prior to expanding the sponsor's role further. There are currently a number of market participants who act as advisers to Standard List companies who do not necessarily have a sponsor licence and the FCA should consider the competence of these advisers and their ability to support companies on the single ESCC category.

Q12: Do you agree with the proposed approach to RPTs for a single ESCC category, which is based on a mandatory announcement at and above the 5% threshold, supported by the 'fair and reasonable' assurance model which includes the sponsor's confirmation as described above? If not, please explain why and any alternative proposals in the context of a single ESCC category.

We agree with the proposed approach to RPTs for a single ESCC category being dealt with by way of disclosure, so long as they are not dealing with material dilution events of the independent shareholders. This change would broadly mirror what has been adopted on AIM which has worked well. However, we stress that it is important the FCA do not make this more expensive by setting out clearly the definition of an RPT. The FCA should seek to issue some guidance notes on this matter.

However, we note the FCA's comments with regard to the low level of RPT's on the Premium List and the onerous nature of these rules for companies. We would also comment that the nature of the sponsor confirmation is much higher in the case of RPTs and this is in our view also a reason why such transactions are not undertaken often.

Without the removal or modification of the sponsor confirmation, it is not obvious to the QCA that the situation will improve. Therefore, we recommend that the FCA consider amending the requirement of the sponsor to have advised the board on the 'fair and reasonable' assurance model, or alternatively, provide specific guidance for sponsors on how to assess this in the context of the ESCC.

Q13: Do you consider that additional disclosure requirements could be considered to further support transparency to shareholders on RPTs, and should we consider requiring certain mechanisms prior to a deal being completed (for example, a mandatory period of delay between exchange and completion) to support shareholder engagement with listed companies to replace the requirement for independent shareholder approval?

We would advise against requiring a mandatory period of delay as this makes the process more challenging, and ultimately, it will be the company and board that agree to it.

Q14: Should it be mandatory for a listed company in the single ESCC category to obtain guidance from a sponsor on the application of the LR, DTR and MAR whenever it is proposing to enter into a related party transaction (irrespective of the size of the transaction), or should it be at the company's discretion?

Yes – we agree that it should be mandatory for a company listed on the single ESCC category to obtain guidance from a sponsor on the application of the LR, DTR and MAR whenever it is proposing to enter into a related party transaction. If this were left to companies' discretion it would generate a significant amount of confusion.

Q15: Should it be mandatory for the sponsor to consult with the FCA and agree any modifications to the class tests and classification of a proposed RPT, or should the sponsor have more discretion? Please explain your reasons.

In principle, we agree with the proposal to make it mandatory for the sponsor to consult with the FCA and agree class tests and classification of a proposed RPT. We suggest that, if there are modifications, then the proposal above is a sensible one. However, there needs to be transparency and we would suggest the introduction of some form of framework where the FCA is clear with sponsors regarding where discretion applies. Moreover, there needs to be a quick consultation process in cases where this is necessary.

Q16: Are there any broader, alternative mechanisms that existing shareholders or prospective investors would want to see in place of, or made use of, in order to strengthen shareholder protection in relation to RPTs in the event that these changes are made to our LR? If so, would these be matters for inclusion in our LR or are they found, for example, in legislation or market practice?

Issues around dilution are already covered under the Companies Act 2006. However, we are concerned about certain risks around dual class share structures and different types of voting rights. For example, we query whether there are significant protections covered by company law to protect a shareholder from dilution by a holder of another set of shares that has twenty times the voting rights. Such risks may also occur on shareholder votes covering significant business disposals.

Q17: Do you agree with the proposed approach to cancellation of listing for the single ESCC category, and do you have any views on other possible changes to the existing cancellation process?

Yes – we agree with the proposed approach to maintaining the current processes for the cancellation of listing for the single ESCC category.

Q18: Do you think that the notice period proposed for the single ESCC category for de-listing should be extended (taking the approach of other jurisdictions) and if so to what? What would the benefits be?

Yes – twenty days is the right amount for the notice period.

Q19: Do you consider the policy for cancellation of listing by the FCA after a long suspension should be revisited? If so, how?

As a guiding principle, we would opt to ensure companies stay listed, particularly as this provides more protections for investors. However, in certain instances, mandatory cancellations may be appropriate. For example, failure to publish annual accounts for over a year may warrant mandatory cancellation.

However, if a company is trying to do a deal and is suspended pending a review for a sustained period, this should not result in a mandatory cancellation.

A possible suggestion would be for a shareholder vote to take place to see whether a company wishes to stay on the market or not. We believe that it would be appropriate for the FCA to revisit this, particularly in light of Paragraph 5.4 which demonstrates this area should be approached on a case-by-case basis.

Q20: Do you agree with retaining shareholder approval provisions on discounted share issuance and on share buy-backs, as currently required by the premium LR, as part of a single ESCC category, or would these be problematic for certain issuers?

Yes – we are in favour of retaining shareholder approval provisions on discounted share issuance and on share buy-backs, as currently required by the Premium LR, as part of a single ESCC category.

However, we would question what happens in cases of discounted issuance. For example, this will depend on what percentage level a deeply discounted share offer is being defined at. Depending on this, it may adversely affect small to mid-sized quoted companies, particularly when having to acquire shareholder approval before fundraising. We believe that the FCA needs to consider this point further, and in particular how this might impact small to mid-sized quoted companies where a higher discount would be appropriate, for example, setting this at 20 per cent discount.

We believe that for companies below a certain market capitalisation, larger discounts are more common and often driven by lack of investor demand. In this instance, we would recommend a market capitalisation threshold below which companies can raise equity at a substantial discount of more than 50% if that is what is needed, and this is the point at which the market cycle is at. Currently, there are large discounts being applied to equity issuance across the markets in the UK and across a range of market capitalisations.

Q21: Do you agree with our proposed approach to reporting against the UK Corporate Governance Code for companies listed in the single ESCC category, and are there any other mechanisms the FCA could consider to promote corporate governance standards?

No – we do not agree with the proposed approach to reporting against the UK Corporate Governance Code (the UK Code) for companies listed in the single ESCC category.

In the consultation document, the FCA correctly highlights potential barriers or frictions for overseas companies that also follow codes set in their own jurisdictions. However, it fails to also recognise the potential issues that applying the existing Premium Listing provisions relating to the UK Code to smaller companies within the new category could create. The prescriptive and "comply or explain" approach that the UK Code offers is inappropriate for many smaller listed businesses. It has the potential to be a barrier to listing for certain companies, as well as limiting the flexibilities that companies have to operate, and can reduce their potential for growth.

In order for companies, and in particular smaller companies, to grow and develop on the new category, they should have the opportunity to apply a corporate governance code that is suitable for their stage of development and growth objectives. In this light, other recognised corporate governance codes, such as the QCA Corporate Governance Code, which is a practical, outcome-oriented approach to corporate governance for smaller quoted companies, will be more appropriate.

The FCA should consider implementing a market capitalisation threshold of £500 million that would allow smaller companies listed on the single ESCC category below this threshold to apply a corporate governance code that is more suitable for their needs. The FCA could provide a list of codes that it considers appropriate for companies within this threshold to apply. This should include, for instance, the QCA Corporate Governance Code, which is particularly appropriate for smaller companies. There are also other relevant corporate governance codes for certain types of companies, such as the AIC Corporate Governance Code for investment companies, and various jurisdictional codes for international companies.

For example, the QCA Corporate Governance Code is applied by 71 companies on the Standard List, while two thirds of companies on the Standard List apply an alternative corporate governance code to the UK Corporate Governance Code or do not use one at all[4].

Furthermore, the FCA must also consider the proposed update of the UK Corporate Governance Code, which is currently being consulted on. If implemented, the current proposals are likely to add further burdens and costs to companies, which might be disproportionate for smaller companies on the market.

[4] For a breakdown of these figures, please see page 6 of this document.

Q22: Do you have any views on the proposed application of reporting requirements under LR 9.8 (i.e., premium LR requirements) as the basis for the single ESCC category?

Yes – we have concerns regarding the proposed application of reporting requirements under LR 9.8 as the basis for the single ESCC category.

Overall, the QCA welcomed the introduction of recent reporting requirements on disclosures around diversity and inclusion and the recommendations of the Taskforce for Climate-related Financial Disclosures (TCFD) insofar that they are appropriate for larger companies. However, the requirements adopt a one-size-fits-all approach that is inappropriate and inflicts a disproportionate burden on many smaller companies. These requirements may put certain companies off seeking a listing on the single ESCC category, or mean that companies are treated unfavourably for their inability to comply with certain requirements.

Similar to that proposed above in our answer to Question 21 regarding the UK Code, the FCA should consider a market capitalisation threshold of £500 million that would exempt these smaller companies on the single ESCC category from making the disclosures.

Q23: Do you agree with our proposed changes to the LR principles? If not, please explain why and provide details of any alternative suggested approach.

Yes – we agree with the proposed changes as long as clarifications are provided.

Q24: We are considering applying the principles as eligibility criteria, to clarify expected standards and reflect the fact that in practice these requirements need to be complied with at the point of listing. Please provide details if you foresee any issues with this approach.

Our sole concern with this area is ensuring that the FCA adopts a consistent approach when applying the principles. We suggest the FCA provides clarity in their approach to this area.

Q25: Do you agree with our proposed changes to strengthen cooperation and information gathering provisions as outlined in this section? If not, please explain why and any alternative suggested approach to addressing the issue identified.

Yes – we agree with this proposed change.

Q26: In relation to our proposal to ask issuers to provide contact details of their key persons, do you think this should include details of the CEO, CFO and COO? Do you have any other suggestions as to other key roles that we should consider? Also, are there circumstances where it would be appropriate for an issuer to nominate a third party (such as an FCA authorised advisor), as a key person and, if so, why?

Yes – we agree that those contact details should be provided for the issuer and that this could also be extended to the non-executive chair, but not to an FCA authorised advisor.

Q27: Are there specific considerations we need to take into account for different issuer or security types, in relation to our proposals in this section, that we should take into account as we develop our proposals further?

Currently, we have no concrete views on this area. We would urge the FCA to consider small to mid-sized quoted companies when developing its proposals and will respond with our thoughts once the proposals have been outlined in more detail.

Q28: Do respondents have any concerns about the availability of sponsor services as a result of the proposed changes to the listing regime and the sponsor role?

Yes – we have concerns about the availability of sponsor services as a result of the proposed changes to the listing regime and the sponsor role. We have highlighted some of these concerns in our answer to Question 11 above.

Furthermore, we are also concerned that the FCA must address their sponsor licensing arrangements. Many sponsor firms that provide services for smaller quoted companies have issues with not having enough sponsor transactions. While extending the sponsor regime to a wider scope of companies under the single segment is welcome, unless the FCA give this point careful consideration, there is not going to be the necessary number of sponsors who find this work commercially viable and are able to maintain a sponsor license.

Q29: We welcome views from sponsors on whether they would be able to adapt or willing to provide services to a potentially wider and more diverse range of issuers? We particularly welcome any information or data on the implementation and ongoing costs sponsors may incur as a result of our proposals.

Whilst we are not a sponsor, we have sponsors as members and would like to provide comments on their behalf.

Our members have raised concerns in relation to not wishing to represent a potentially wider and more diverse range of companies. There are cost and reputational risks involved for firms in performing the role of sponsor. Sponsors will have to factor in taking onboard heightened levels of complexity, risk, and additional work on due diligence to be able to satisfy themselves that certain companies are eligible to list or able to comply with ongoing requirements. If firms are to continue to provide these services for a wider and more diverse range of companies, the FCA will need to provide additional guidance.

The FCA will also need to adopt a more proportionate approach to the sponsor regime that reflects the size, complexity, and risk profile of the companies in question.

Q30: Do sponsors have any concerns about performing the sponsor role and providing sponsor assurances within the model proposed? Please provide details.

Yes – please refer to our answers to Question 28 and Question 29 above.

Q31: Do you have any concerns that sponsors will be able to demonstrate continued competence under our proposed approach? What matters should the FCA take into account when assessing sponsor competence?

Yes – the proposals around the single ESCC category are very likely to reduce the number of transactions that require the appointment of a sponsor. This means it will become harder for sponsor firms to be able to demonstrate their continued competence under the FCA's current rules. This is especially the case for smaller companies, where their transactions and thus need to appoint a sponsor will be less frequent.

Therefore, we would welcome the FCA's potential proposal to amend this requirement to make it clear that other transactions that do not require a sponsor declaration will be taken into consideration when assessing competence. We believe that this should not only cover those firms advising ESCC companies, but also those on other markets such as AIM and AQSE, where corporate finance advisers are generally more adept at understanding the core issues facing smaller growth companies.

Q32: We welcome views on proposed restructure of the listing regime set out above. In particular, do you agree with our preliminary proposals for dealing with issuers that are not issuers of equity share in commercial companies?

Broadly, we believe that the proposed structure of the listing regime makes sense, and mostly agree with the preliminary proposals for dealing with issuers that are not issuers of equity shares in commercial companies. That being said, we do note that there are still a significant number of different categories, which may cause some confusion if they are not clearly defined.

However, our main concern regarding the structure of the listing regime relates to the number of companies which may come off the market. We understand that the FCA has identified that approximately thirty to forty of the 167 companies currently listed on the Standard Listing segment will transition to the new regime, with potentially a significant number of companies moving off the market altogether. Given the current de-equitisation crisis which has seen the number of public companies fall significantly over the last twenty years, this is deeply concerning. The FCA must consider this and where these companies will likely go before implementing the proposed changes to the listing regime.

Q33: Have we identified the impacts on different issuer types and sufficiently delineated between them? If you have alternative suggestions that we should consider, please provide details.

Overall, we believe that the impacts on different company types have been sufficiently considered. However, as highlighted in our answer to Question 33 above, our main concern is in relation to the potentially high number of companies that could come off the market.

Q34: We welcome views and suggestions on our proposed approach as outlined above and in Annex 4, for updating the LR sourcebook.

We would welcome the FCA placing this information in one place.

Q35: If you have views on what transitional arrangements maybe required, please provide details.

Appropriate arrangements that don't discriminate against companies already on the market is important. Transition needs to be sufficiently long in order to give companies enough time to prepare.

We believe that appropriate processes need to be implemented to ensure that transitional arrangements do not discriminate against companies that are already on the market. Any transition period needs to be sufficiently long enough in order to give companies enough time to prepare – it could take companies up several years to transition, whether to AIM or another market.

Q36: How long do you think issuers may need to prepare for and implement the various changes proposed in this consultation? For example, how long would commercial company issuers of standard listed equity shares need to prepare to ensure they could meet additional obligations proposed under the ESCC listing category, such as those relating to significant transactions and related party transactions (discussed in Chapter 5). Please also provide reasons.

We urge the FCA to consider implementing a transition period of at least three years for companies to decide, prepare, and comply, or move to a different market.

Q37: Have we identified the areas where cost to issuers, advisors or sponsors may be increased as a result of our ESCC single segment proposals? If not, please explain the additional costs that we should consider in our CBA.

Yes – broadly, we consider that the FCA has identified the potential costs to companies, advisers and sponsors that may be incurred as a result of the ESCC single segment proposals. However, while these have been noted, they have not been quantified. We recognise that this is inherently difficult to do and will vary on a company-by-company (or adviser-by-adviser/sponsor-by-sponsor) basis, but the actual costs placed on these different market participants is not clear and some estimate should be made.

Moreover, it should also be noted that the costs for existing Standard Listed companies around applying the existing Premium Listing provisions relating to the UK Code are likely to be considerable.

One of the main themes in the UK markets right now is the cost of listing and the costs of being listed, so we are broadly unsupportive of costs increasing for companies which we already believe is prohibitive for many in the UK.

There will certainly be increased costs for advisers who will struggle to pass this onto companies, and for investors, and urge caution against applying a narrow sponsor network of current sponsors. We suggest the inclusion of other already functioning roles such as AQSE Corporate Advisers, AIM Nominated Advisers and AIM Nominated Brokers as a pool of corporate finance knowledge that is also able to best comment on costs and costs to issuers, and their tolerances of increased costs, if at all.

Q38: Please provide estimates for familiarisation costs and implementation costs for the different policy elements of the proposed new ESCC category, if possible.

We have no comments.

Q39: To assist us to quantify the costs of our proposals, please provide data or additional information to explain the additional costs that might arise to issuers, advisors or sponsors.

We have no comments.

Q40: Are there any other considerations we should take into account?

We have no comments.

Q41: Have identified the areas where cost to issuers or sponsors may be increased as a result of our overarching proposals? If not, please explain the additional costs that we should consider in our CBA.

We have no comments.

Q42: Please provide estimates for familiarisation costs and implementation costs for the proposed new overarching provisions, if possible.

We have no comments.

Q43: To assist us to quantify the costs of our proposals, please provide data or additional information to explain the additional costs to issuers, advisors or sponsors.

We have no comments.

Q44: Are there any other considerations we should take into account?

We have no comments.

Q45: Have we identified the areas where our proposals may impose additional costs on investors? If not, please explain the additional costs that we should consider in our CBA.

Yes – broadly, we consider that the FCA has identified the areas where there may be additional costs for investors. However, as highlighted in our answer to Question 37 above, they should be quantified before being taken forward.

Q46: To assist us to quantify the costs of our proposals, please provide data or additional information to explain the additional costs to or other impacts on investors.

We have no comments.

Q47: We do not know how index providers will react to our proposals, but we invite feedback on estimated impacts and costs associated with any re-balancing of indices that may arise.

We have no comments.

Q48: Have we correctly identified the costs to parties in relation to indexation as a consequence or follow-on from our proposals? To assist us to quantify these costs or any other costs we should consider, please provide data or additional information to explain the additional costs or other impacts.

We have no comments.

Q49: Do you agree with the benefits of our proposals that we have identified above? If not, please explain why.

On the whole, we consider that the FCA has correctly identified the potential benefits of the proposed single segment for ECSS.

However, it is not clear the extent to which these benefits will be realised. Furthermore, and while we agree that accessibility has been improved in some respects, this will not necessarily translate to companies being better incentivised to seek a listing in the UK. As we have highlighted in our previous responses to the Primary Markets Effectiveness Review (CP21/21 and DP22/2), companies will not generally be inspired to join a market because of how they relate to a rulebook.

In a similar vein, it is not clear why there would be increased accessibility to capital on UK regulated markets as a result of the proposed changes. Simply amending the rulebook to which companies must follow does not mean there will be increased levels of capital available for the companies.

Q50: Are there any additional benefits that we should consider in our CBA?

No – however, we would urge the FCA to consider the potential negative impacts of the proposed changes (beyond the costs already highlighted). For instance, it does not appear that the FCA has considered the potential structural issues and practical implications of companies, and in particular those currently listed on the Standard List, coming off the market altogether. This must be addressed by the FCA before taking forward any of the proposals.

Q51: What do you consider to be the most important factors in deciding where to list (for example, regulation, valuations, depth of capital markets, comparable peers, investor / analyst expertise, taxation, director remuneration requirements, indexation, location of main operations). Please rank your factors in order of importance.

We have identified the following factors as key in the decision-making process behind a company's desire to list:

- Availability of capital – enabling investment in their business' development and strategy for growth and expansion purposes;
- Levels of liquidity – providing liquidity for investors and employees who hold shares in the business;
- Valuation – setting a more accurate value for the company's shares;
- Governance – to enhance good practice and adopt greater governance structures;
- Lifecycle/size – the company is at a certain size or stage of growth where a public listing seems a natural progression;
- Prestige – boosting the validity of the business due stock market quote improving reputation and increasing its recognition;
- Ownership structure – provide an opportunity for divestment for controlling shareholders who may want to diversify their portfolios;
- Sectorial competition – to compete with other companies in the same industry with a listing and positive market valuation;
- Director remuneration – the level of remuneration allowed and the ability of the company to attract and retain the best talent; and
- Borrowing – the potential that an IPO will lead to short-term credit interest rate reductions and increases in the number of banks willing to lend.
- Proportionate regulation – appropriate to a company's size and maturity.

Q52: Do you have any suggestions as to how we might quantify the benefits of our proposals? And can you provide any evidence of the cost savings to issuers that might arise from our proposals to no longer obtain shareholder approval for certain significant transactions and RPTs?

We have no comments.

Appendix A

The Quoted Companies Alliance *Primary Market Expert Group*

Samantha Harrison (Chair)	Grant Thornton UK LLP
Azhic Basirov (Deputy Chair)	Global Alliance Partners Financial Limited
Colin Aaronson	Grant Thornton UK LLP
Stuart Andrews	Zeus Capital
Mark Brady	Spark Advisory Partners Limited
Andrew Buchanan	Peel Hunt LLP
David Coffman	Novum Securities Limited
Richard Crawley	Liberum Capital Ltd
Dru Danford	Liberum Capital Ltd
David Foreman	Zeus Capital
Chris Hardie	W.H. Ireland Group PLC
Stephen Keys	Cenkos Securities PLC
Nick McCarthy	Shoosmiths LLP
Katy Mitchell	W.H. Ireland PLC
Hayley Mullens	Radnor Capital Partners Limited
Nick Naylor	Allenby Capital
Jeremy Osler	Cenkos Securities PLC
Niall Pearson	Hybridan LLP
Mark Percy	Shore Capital Group Ltd
Oliver Pilkington	Shoosmiths LLP
George Sellar	Peel Hunt LLP
Paul Shackleton	Peel Hunt LLP
James Spinney	Strand Hanson
Stewart Wallace	Stifel

The Quoted Companies Alliance *Secondary Markets Expert Group*

Mark Tubby (Chair)	finnCap PLC
Amber Wood (Deputy Chair)	Cenkos Securities Plc
Jasper Berry	W.H. Ireland
Andrew Collins	Charles Russell Speechlys LLP
Sunil Dhall	Peel Hunt LLP
Nick Dilworth	Winterflood Securities Ltd
Fraser Elms	Herald Investment Management Ltd
William Garner	Charles Russell Speechlys
Jon Gerty	Peel Hunt LLP

Mitchell Gibb	Stifel
Keith Hiscock	Hardman & Co.
Claire Noyce	Hybridan LLP
Jeremy Phillips	CMS
Katie Potts	Herald Investment Management
Simon Rafferty	Winterflood Securities Ltd
James Stapleton	Winterflood Securities Ltd
Stephen Streater	Blackbird PLC
Peter Swabey	Corporate Governance Institute