



Governance *in brief* FCA to strengthen the listing rules to enhance protection for minority shareholders

Headlines

- The Financial Conduct Authority (FCA) is strengthening the Listing Rules to protect minority shareholders.
- The new rules would give minority shareholders in premium listed companies additional voting rights and greater influence over key decisions.
- There are implications for premium listed companies with a shareholder controlling 30% or more of the shares alone or in concert.

A package of measures designed to strengthen minority shareholder rights

The FCA has announced a package of measures responding to concerns from the investment community over the governance of premium listed companies that have a controlling shareholder and the rights of minority shareholders. The measures follow a consultation by the FCA's predecessor, the Financial Services Authority, in October 2012 (CP 12/25). Some measures are near-final rules based on the original proposals but have not yet been approved by the FCA Board. However, the policy position on these measures is finalised and new comment on these aspects will not be accepted. There are other measures where, in view of the feedback received, some aspects have been revised. These new proposals are being consulted on and full details can be accessed from www.fca.org.uk.

Near-final rules on which new comment is NOT being sought

Placing a requirement on the interaction between a premium listed company and a controlling shareholder (see new definition below) via a mandatory 'agreement'.

A company with a controlling shareholder will have to have in place a legally binding agreement with that shareholder. Listed companies will only have to ensure the controlling shareholder complies with certain independence provisions.

Providing additional voting power for minority shareholders when electing independent directors where a controlling shareholder is present by requiring that they must be separately approved both by the shareholders as a whole and the independent shareholders as a separate class. Independent directors have a critical role to play in promoting effective corporate governance and the new requirements give minority shareholders a greater voice in their election and to promote greater dialogue between shareholders and companies before the nomination of new directors.

New proposals on which comments are sought

A new definition of “controlling shareholders”

The Listing Rules will be amended to include the following definition of “controlling shareholders” meaning any person who exercises or controls:

- 1) on their own;
- 2) together with any of their associates; and
- 3) 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.

Minority shareholders to be given enhanced oversight if rules on controlling shareholders are not complied with. If the new agreement between the company and the controlling shareholder does not give the minority shareholders adequate protection, then they would gain the right to veto all transactions between the company and controlling shareholder, and act as a powerful deterrent to inappropriate behaviour by the controlling shareholder. Existing premium listed companies affected by these changes will have a period of six months to comply or to move to a standard listing.

Enhancing voting power for the minority shareholders where a company with a controlling shareholder wishes to cancel its premium listing. Cancellation of a listing removes from shareholders significant rights of participation in the governance of a company, including the new minority protections set out above. For this reason, the FCA is asking whether it would be appropriate to require any decision by a premium listed company to step down to a standard listing (or delist altogether) to be supported by not only a vote of 75% of shareholders (as at present) but also by a majority of the independent shareholders.

Following responses to the earlier consultation, the FCA has decided not to change the existing free float requirement although they have clarified those circumstances, where sufficient liquidity exists, in which they would consider allowing it to be modified.

Announcing the proposals David Lawton, the FCA’s director of markets, said:

“Active engagement by all shareholders is essential to make markets work well. By safeguarding minority interests from abuse by controlling shareholders, these changes will promote market integrity and empower minority shareholders to hold the companies they invest in to account.”

Timing

Comments are requested by 5 February 2014. Depending on the results of this further consultation, the FCA intends to implement the full and final package of measures in mid-2014.

Applicability to AIM companies and those with a standard listing

The proposed rules will only apply to companies with a UK premium listing of equity shares, and therefore do not apply to AIM companies and those with a standard listing.

Two minor changes will be made for standard listed companies, requiring that they put in place adequate systems and controls to comply with their obligations under the listing rules and to deal with the FCA in an open and co-operative manner.

Deloitte view

- These proposals may affect more companies than appears at first sight, given that the threshold for a controlling shareholder has been defined as 30%, not 50%.
- The proposed changes may require affected companies to restructure their boards and, in some cases, commercial and funding arrangements with controlling shareholders.
- For companies seeking a premium listing, these proposed changes will further increase the eligibility requirements.

Contacts – we value your feedback:

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