Clients&FriendsMemo

UK Listing Review Publishes Recommendations

5 March 2021

In November 2020, the UK launched a review of its Listing Rules, led by Lord Jonathan Hill, with a specific goal to recommend changes that would improve the UK's competitiveness as a global listing centre, particularly for high growth and "new economy" businesses. On 3 March 2021, the report, containing 15 recommendations, was published.

Among the recommendations is a proposal to remove the structural impediments in the UK listing rules for special purpose acquisition companies ("**SPACs**"), aligning the rules more closely with the rules applicable in the U.S., and to allow companies with dual class share structures to list in the prestigious premium segment of the London Stock Exchange ("**LSE**"), subject to certain fixed safeguards. In order for the recommended changes to take effect, further implementing action is needed, in most cases action by the Financial Conduct Authority (the "**FCA**") and in some cases also legislative change to be initiated by the Treasury. The recommendations have been welcomed by the Chancellor and have a political impetus behind them. The FCA has promised to "carefully consider" the recommendations and, subject to consultation and FCA Board approval, make the relevant rules by late 2021.

The starting point for the review is that although a London listing has historically been considered a kitemark of quality, between 2015 and 2020 London accounted for only 5% of IPOs globally, failing to attract the listings of the private companies nurtured in the UK's strong life sciences and technologies sector, and entirely missing out on the SPAC "boom".

The recommendations in the report include both immediate and longer-term suggestions for improving the competitiveness of the UK markets (as compared to the U.S., Asia and Europe), including:

(i) Relaxing the "suspension of trading" rules on potential acquisition announcements for SPACs: the FCA removing the current rebuttable presumption of suspension of listing on the announcement of a business combination, and developing appropriate rules and guidance (detail of which is not suggested in these recommendations) on:

- the information which SPACs must disclose to the market upon the announcement of acquisition transactions;
- the rights of SPAC investors (i) to vote on acquisitions before completion and (ii) to redeem their initial investment before completion of a transaction; and

- the size of SPAC below which the suspension presumption may continue to apply.

The SPAC market would also, the report posits, benefit from the report's more general recommendation to allow the provision of meaningful forward-looking information, both at the time of listing and afterwards.

(ii) Dual class share structures: allowing the premium listing of dual class share structures (which give directors enhanced voting rights on certain matters), but maintaining "high corporate governance standards" by applying the following conditions:

- a maximum duration of five years;
- a maximum weighted voting ratio of 20:1, which requires the high-vote shareholders to have a minimum economic interest in the company;
- high-vote shareholders shall be directors of the company;
- voting matters shall be limited to ensuring that high-vote shareholders can continue as directors and can block a change of control of the company while the dual class share structure is in force; and
- limitations on transfers of the high-vote shares, which provide that the shares must convert on transfer, subject to limited exceptions including (1) transfers for estate planning purposes; and (2) transfers for charitable purposes.

(iii) Reducing free float requirements: reducing the "free float" threshold (i.e. the percentage of shares that must be in unaffiliated public hands at IPO), which may be considered a hurdle to initial listing from very large private companies, by:

- reducing the absolute free float requirement from 25% to 15%;
- changing the rules on which holders count towards the free-float requirement (including 5% institutional holders so long as they stay below 10%, including non "insider" shareholders, e.g. those without a board seat and excluding locked up shareholder); and
- allowing companies to use liquidity measures other than an absolute free float percentage.

(iv) Improving information requirements by:

- amending liability regime for forward-looking information: adjusting the level of liability associated with prospectuses, thereby allowing companies to publish and stand behind their forward-looking models (subject to additional safeguards if necessary), e.g. by adding a due diligence defense;
- easing the requirement to provide financial information covering 75% of the business: replacing the current requirement to provide financial information covering at least 75% of an issuer's business during the three-year track

record period with a requirement to cover 75% of the business during the most recent financial period; and

- maintaining track-record requirements, but broadening the exception to revenue earning requirement: existing listing rules for scientific research companies provide a route to listing for pre-revenue companies, the recommendation is that other high growth innovative companies be eligible to use this path.

(v) Reviewing unconnected research analysts requirements: current rules require analysts connected to the IPO underwriting syndicate to withhold publication of research for seven days; the recommendation to review this stems from a view that this rule adds extra seven days to the IPO process's public phase.

(vi) Making fundamental changes to the prospectus regime: covering the following areas:

- providing for the prospectus requirements to treat separately (1) admission to a regulated market and (2) offers to the public;
- reconsidering the prospectus exemption thresholds so that documentation is only required where it suits the type and circumstances of the capital issuance;
- using alternative listing documentation where appropriate and possible; and
- considering whether prospectuses, drawn up under other jurisdictions' rules, can be used to meet UK requirements.

(vii) Officially recognising attracting business as an objective, this change in focus for regulation and regulators would include new requirements:

- rebranding the LSE's "standard" listing, by changing the name to the "main" segment and encouraging investor groups to develop guidelines to allow companies in this segment to be index-eligible;
- annual report on the state of the City: the Chancellor presenting an annual report to the Parliament on progress made in improving the UK's attractiveness for the growth companies; and
- charging the FCA to take into account the attractiveness of the UK to do business, this would be considered as part of a separate review (the ongoing Future Regulatory Framework Review), considering giving the FCA a statutory objective of making the UK welcoming, supportive and dynamic as well as safe.

The proposed changes may offer a significant improvement to the existing regulatory framework and, if implemented, will likely make LSE listings more appealing to SPACs, founder-led businesses and fast-growth companies while maintaining essential checks and investor protections. The next stage of the process for most of these recommendations will be for the FCA to begin their own consultations on changes required to the Listing Rules.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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