UK LISTINGS REGIME REVIEW

UK FINANCE CALL FOR EVIDENCE SUBMISSION

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Linklaters

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Approach to call for evidence

In considering the approach to our response to the call for evidence we have borne in mind a number of what we believe are important overarching considerations:

i. There is a benefit in simplicity and clarity, both in terms of the ability to implement changes and the messaging they support as to the relative attractiveness of London as a listing venue.

ii. While our discussions with members revealed a broad range of areas in which the UK Listing Regime is perceived to have shortcomings, there is a benefit in not trying to fix or improve everything and instead to focus on what the most important areas are from the perspective of what, in the short term, would be most likely to be most influential in decision making around listing in London vs. other venues.

iii. The response is focused solely on changes to the UK Listing regime, and while many of the recommendations may only impact issuer decision-making towards London as their preferred listing venue if accompanied by changes to the eligibility requirements for the FTSE Russell ("FTSE") indices, this submission recognises that changes to index eligibility are a matter for FTSE.

iv. In each case, where a change is proposed which could be viewed as a relaxation, consideration has been given to what, if anything, an appropriate "add-back" might be in order to maintain the premise that the exercise should not result in a lowering of standards for access to a London Premium listing.

v. We believe there are some easy steps that could be taken to improve the profile of a Standard Listing which could be beneficial in improving the image of this route to a London listing amongst issuers. However, the main focus should be to make the Premium List more attractive and bring it up to date. High-quality UK-originated companies should not feel they have to settle for second best if they want to list in London.

vi. There are aspects of the call for evidence on which we have not submitted any suggested changes, including in a number of areas where members see potential for significant improvements to the regime as a whole. Notably in this regard, while we think there are potential improvements to the framework for prospectus disclosure, we do not think this aspect is sufficiently meaningful in decision-making around a choice of London as a listing venue to be a priority focus in the short term.

vii. The same applies to the possibility that one might better streamline opportunities to seek a listing in London alongside a listing on another market and proposals under which UK-based companies could be encouraged to take better advantage of arrangements for producing shelf registration documents. A list of areas such as these where there is support for re-examination of the applicable rules over the longer term is set out in Schedule 1.

viii. The overall list of suggested changes we recommend are nonetheless cumulatively significant and in particular areas this submission suggests changes to items that are core parts of the London listing and governance infrastructure. We recognise this, and also recognise the challenges this presents in bringing all stakeholders into agreement. However, we would note that competitor listing regimes have in the past been faced with similar challenges to those that London currently faces and have undertaken reforms that have resulted in increased IPO volumes in those markets. For example, following the Alibaba listing in the U.S. in 2014, the Hong Kong Stock Exchange updated its listing rules to make the market more attractive. In this context, we think that the current market circumstances along with Brexit give a unique opportunity to seek to revisit some of these significant issues in order to reset the regime for the longer term.

Executive summary

Key recommended changes to the UK Listing Regime

This executive summary sets out the key changes we are recommending in respect of the UK Listing Regime that we believe will serve to make the market more competitive on the international stage whilst retaining the high standards of governance and shareholder protection associated with it.

Free float requirements:

- ✓ Reducing the free float requirement from 25% to 15%, subject to issuers having a free float value equal to or above £75m
- ✓ Increasing threshold for excluding investment managers and other institutional shareholders from free float analysis from 5% to 10%
- ✓ Approaching FTSE to discuss its UK free float eligibility rules in light of these updated Listing Rule requirements
- ✓ Encouraging the FCA to use its existing discretion to waive the free float requirements more broadly and provide guidance on when such waivers will be given

Dual class share structures:

- ✓ Permitting the eligibility of companies with weighted voting rights on the Premium List, subject to certain conditions
- ✓ Such conditions to include: (i) mandatory "sunset" five years post-IPO; (ii) held only by founders/key early-stage persons who are also directors on IPO; and (iii) shares with enhanced rights being unlisted and non-transferable
- ✓ Certain resolutions exempt from enhanced voting rights: (i) constitutional changes; (ii) class right changes; and (iii) appointment /removal of independent non-executive directors
- ✓ Additional governance requirements on issuers with DCS structures, including either a mandatory independent chairman or a majority independent board

Financial track record requirements:

- ✓ For issuers meeting definition of "innovative issuer": (i) three-year financial track record requirement reduced to two years; and (ii) removal of need for pre-IPO revenue
- ✓ Replacing the 75% rule for financial track records generally with a 50% test and the need to satisfy the complex financial history requirements of the Prospectus Regulation
- ✓ To be "innovative" issuers must demonstrate more than one of: (i) business model based on new tech/innovation/disruption; (ii) R&D a significant value driver; (iii) growth attributable to unique features/IP; and (iv) outsized market cap relative to tangible assets. In addition a minimum market cap of £300m must be expected on IPO

Other considerations:

- ✓ Removing the mandatory suspension regime that currently prevents a strong UK SPAC market developing and introducing alternative means for SPACs to ensure there is sufficient information about unlisted targets other than the production and provision of full historic financial information
- ✓ Raising the threshold for Class 1 transactions from 25% under the class tests to 33%, thereby making Premium Listed issuers more competitive in bidding processes
- ✓ Rebranding of the Standard List to the "Main Market List" so as to increase the appeal of the segment as a viable alternative to the Premium List
- ✓ Public communication of the advantages of a London listing as compared to competitor listing venues, including noting the: (i) onerous reporting obligations in certain other markets; (ii) risk of litigation/corporate failures in markets which permit more flexible governance; (iii) challenges of exiting certain markets; and (iv) strong global positioning London occupies in terms of time zone and relative neutrality compared to key competitor markets

Free float requirements

Current regime

In the UK, for an issuer to list on the main market of the London Stock Exchange (the "**LSE**") (both on the Premium and Standard List), 25% of the issuer's shares must be held in "public hands" (Premium Listing; LR 6.14.2R(2), Standard Listing; LR 14.2.2R(3)). When establishing which shares are held in public hands, any person or group of persons acting in the same group who have an interest in 5% or more of the shares of the relevant class will be excluded from that calculation (Premium Listing; LR 6.14.3R(1)(e), Standard Listing; LR 14.2.2R(4)(v)). Whilst previously the definition of those shares held in "public hands" only encompassed shareholders within the European Economic Area, post-transition period this requirement has been excluded meaning that all jurisdictions are captured.

To qualify for FTSE UK indexation, UK Series issuers must be listed on the Premium List (listings on both the Standard List and High Growth Segment are excluded). Further, the FTSE UK Index Series Ground Rules (the "**UK FTSE Rules**") are aligned with the Premium Listing Rules in requiring the issuer to have a minimum free float of 25% (this rises to 50% for non-UK incorporated companies). The UK FTSE Rules also allow for a transitional period whereby a new company can be included in the FTSE UK index with a free float below 25%, provided it is above 5% and it is expected to reach 25% within 12 months of coming to market.

Under Listing Rule 6.14.5(1), the Financial Conduct Authority (the "**FCA**") has the authority to accept lower free float thresholds. Such waivers require there to be mitigating circumstances on the part of the issuer. There is a lack of clarity with regard to what circumstances will qualify at the outset of a listing process for a dispensation, and there is limited precedent of such waivers being sought and granted. The High Growth Segment allows issuers to list with a free float as low as 10% - since its introduction the segment has not been widely used.

Rationale for change

The free float requirement in the UK at its core is a protection guaranteeing sufficient liquidity of the issuer's shares. As a mechanism for achieving this aim, the model is out of line with other leading financial markets. For example, on the New York Stock Exchange there is no free float requirement. Instead, on float a non-U.S. issuer must have: (i) 5,000 shareholders; (ii) 2.5m publicly held shares; and (iii) a $60m market value for those shares. Foreign private issuers can list using the domestic distribution standards with: (i) 400 round lot shareholders; (ii) 1.1m publicly held shares; and (iii) a market value of publicly held shares of $40m. In Hong Kong, whilst there is a free float requirement of 25%, this can be reduced to 15% where the market cap of the issuer is greater than HK$10bn.

We believe that our suggestions serve to manage minimum liquidity more effectively by ensuring that, regardless of free float, there is a sufficient value of shares in issue to allow for a natural market price to form and be maintained. Typical liquidity levels of UK premium listed companies settle at around 0.5% of their free float, which would mean that, with a free float of £75m, c. £375,000 of shares would be traded daily. We consider this to be sufficient for liquidity requirements and is the rationale behind our suggested threshold of the minimum value of free float to be eligible for a reduced free float of 15%. We would note that daily trading at approximately this level will generally result in a higher level of liquidity than that required for FTSE UK index eligibility.[1] We do however recognise the central importance of ensuring sufficient liquidity and would be keen to engage further as to whether additional steps are needed to provide assurance that it will be achieved.

1. Under the FTSE UK eligibility requirements, securities which do not turn over at least 0.025% of their shares in issue based on their monthly median for at least 10 of the 12 months prior to the annual index review, will not be eligible for inclusion until the next annual review. An existing constituent which does not turn over at least 0.015% of its shares in issue based on its monthly median for at least eight of the 12 months prior to the annual index review will be removed and will not be eligible for inclusion until the next annual review.

In our experience the free float requirements in the UK have on occasion served as a significant barrier to entry for issuers, both in respect of pre-IPO shareholders being unwilling to sell such a large proportion, but also the implication it has for dilution and value leakage at IPO. On float, shareholders will often prefer to stay invested to take advantage of post-IPO growth and not want to be forced to sell at the minimum level required to achieve a 25% free float. Note also the inclusion of a typical "greenshoe" option which can (and often does) increase free float by an additional 10-15% of the offer size, exacerbating this dynamic for reluctant selling shareholders.

Instead such issuers are going to competitor markets, such as the U.S., where the listing requirements based on liquidity allow for a listing with a free float suitable for their stage of growth, whilst ensuring that sufficient liquidity is met by meeting the eligibility criteria relating to size, shares in issue and number of shareholders.

Taking into account both the IPO discount and the possibility of a significant day one rise in a favourable market, the mandatory requirement to sell 25% of the Company on day one can act as a significant deterrent for prospective issuers. As shareholders/issuers are required to sell/issue more they are more focused on achieving the highest possible IPO price, which in turn adversely impacts: (i) the ease with which terms can be agreed with investors, giving rise to a greater risk of deals not being completed; and (ii) aftermarket performance, also giving rise to the risk of perceived failure.

The table below summarises UK vs US IPO performance for all IPOs with market capitalisations greater than £50m since 2010.

EXCHANGE NATIONALITY	Avg. % Change Price Offer/1 Day	Avg. % Change Price Offer/1 Month	Avg. % Change Price Offer/1 Year
UK	6.1 %	8.4 %	14.2 %
US	14.4 %	17.7 %	24.0 %

We are cognisant of the role that the free float requirement is considered in some quarters to play in safeguarding governance. Our view is that an updated model that ensures liquidity does not detract from these protections, whilst serving to attract issuers who are deterred from the UK as a listing venue because of the current free float requirements.

It is our view that the recommendations set out below serve to ensure that all applicants who meet these requirements will list with sufficient liquidity, whilst making the UK an attractive listing venue for those issuers who, for a variety of reasons, may not meet existing eligibility requirements for listing with at least 25% of shares held in public hands.

Our recommendations

1. Reduction of free float requirement to 15%

- **Recommendation:** a reduction in the Listing Rule free float requirement from 25% to 15% on both the Standard and Premium List where, on float, the value of the issuer's free float is equal to or above £75m.

  Those issuers who fall outside of these requirements to remain subject to the current 25% free float requirement.

2. Encourage FCA to exercise free float discretion more widely

- **Recommendation:** encourage the FCA to use its discretion under LR 6.14.5(1) to waive the free float requirement when it considers the market will operate properly with a lower percentage. In addition, work with the FCA to provide more definitive guidance on when it will exercise this discretion and on what basis.

3. Increase threshold for shareholders to contribute towards free float

- **Recommendation:** increasing the threshold above which investment managers and other institutional shareholders are excluded from contributing towards the free float calculation from 5% to 10%.[2]

4. FTSE indexation

- **Recommendation:** FTSE to be approached to discuss its free float test and scope for limiting divergence with the Listing Rule test (noting that the 25% free float requirement under the UK FTSE Rules is significantly higher than the 5% minimum voting free float required on its global indices).

2. These changes would bring the free float test for Listing Rule purposes more in line with the FTSE free float rules reflecting the nature of these holdings and their likelihood of contributing to liquidity.

Dual class share structures

Current regime

Under the Premium Listing Principles (which apply to issuers listed on the Premium List), equity securities in the same class must carry an equal number of votes and, if an issuer has more than one share class admitted, the aggregate voting rights in each class should be broadly proportionate to the relevant interest of those classes in the equity of the issuer. As confirmed by the FCA, these Premium Listing Principles are designed to prevent capital structures involving multiple classes of shares with different voting powers which facilitate control being held by a small group of shareholders. It is these requirements that have prevented Premium Listed issuers from being able to implement dual class share ("**DCS**") structures.

Restrictions on DCS structures are not incorporated into the requirements for listing on the Standard List. However, the FTSE UK indexation requirement of a Premium Listing means that issuers with DCS structures in place are excluded from FTSE indexation through being unable to list on the Premium List.

We consider there to be two primary DCS structures that are commonly used in key example markets, namely "golden" shares and broader DCS structures with weighted voting rights ("**WVR**"). Golden share structures give a founder/key person a single share with a veto on certain matters such as takeovers (for example, The Hut Group, S4 Capital). In contrast, WVR structures are held more widely (typically issued to founders and other key pre-IPO shareholders), with the shares having the same rights as the ordinary shares in issue, save for additional voting rights (e.g. 10:1 voting rights as compared with ordinary shares). This is the structure most commonly seen in recent U.S. precedents.

Rationale for change

As illustrated by numerous issuers recently listing with DCS structures in the U.S. (and elsewhere outside the UK), DCS structures are becoming increasingly important for high-growth, innovative, founder-led companies looking to list. Despite exclusion from FTSE eligibility, some issuers in the UK (e.g. The Hut Group, S4 Capital) have successfully listed on the Standard List with DCS structures in place and in doing so demonstrating significant buy-side demand for the securities despite the weighted control.

Competitor listing regimes approach DCS structures with greater flexibility than the UK. For example, the New York Stock Exchange and NASDAQ permit broad listed and unlisted DCS arrangements, offering a range of DCS structures from enhanced voting shares (e.g. Facebook) to classes with no voting rights (e.g. Snap). The Hong Kong Stock Exchange takes a more restrictive approach, whilst still facilitating DCS structures for certain issuers by permitting founders of companies, who are also directors of the issuer, to hold weighted voting rights on a "sunset" basis, subject to carve-outs for fundamental resolutions and a minimum holding (amongst other conditions). The Hong Kong Stock Exchange listing rules include a prescriptive set of requirements that a shareholder must satisfy to be eligible for holding shares under a DCS structure, with the overarching aim being to ensure that only those who have a genuine and significant stake in the business, and who will continue to be involved in the running of that business, are permitted to hold such shares.

We believe that in order for the UK to be a competitive market amongst the increasing number of prospective issuers desiring DCS capital structures, such structures should be permitted on the Premium List, subject to certain checks and balances. Whilst recognising the governance concerns associated with weighted voting rights, we believe that with clear conditions that can be easily understood by the market and mandatory "sunsets", such structures can be introduced to the Premium List, thereby preventing the UK from falling behind other listing jurisdictions whilst maintaining the gold standard of governance associated with it as a listing venue.

In our experience, whilst prospective (often tech, founder-led) issuers recognise the availability of DCS structures on the Standard List, the prestige and liquidity associated with the Premium List (and the possibility of FTSE indexation) means that the Standard List is not considered an attractive option. Instead, when faced with the choice of a UK Standard Listing, without the liquidity or FTSE indexation of the Premium List, against for example the U.S., Hong Kong or European exchanges, with its regimes allowing a range of DCS structures on the primary markets, more often than not issuers are choosing to float outside the UK. The recent IPO of Farfetch is illustrative of this point, where a London-based company chose to list in the U.S., in part to meet its needs in respect of DCS structuring whilst maintaining an image of listing on the most prestigious segment in that market. Further, as shown in the recent IPO of The Hut Group, it can be that founders are keen to prevent unwelcome takeovers of the company by using a DCS structure to preserve independence whilst fulfilling the medium-term business plan including preservation of employment and other considerations.

We believe that the changes we recommend strike an appropriate balance between preserving key governance protections whilst allowing a continuity of control in the hands of founders to be maintained for a transitional period after IPO. These changes are not structured to give power to one group of investors/institutions ahead of any other – instead they address a growing desire amongst both the buy and sell-side to allow founder led and driven companies to come to market, whilst still protecting and preserving that founder vision from short-term market pressures.

Our recommendations

1. Premium Listing Rules modified to allow limited DCS structures

- **Recommendation:** that the Premium Listing Rules be amended to allow DCS structures (both golden shares and WVRs) for a transitional period of five years immediately post-IPO – shares with additional voting rights pursuant to such structures only to be issued to founders and/or key individuals who are directors at IPO.[3]
- Requirements for the beneficiaries of any DCS structure to include:
  - being a director on the issuer's board on IPO, with active strategic involvement in the issuer before and post IPO;
  - a minimum economic interest in the issuer's total issued share capital of 10% on IPO;[4] and
  - limited to individuals who can demonstrate material responsibility for the growth of the business

2. Key restrictions on DCS structures

- **Recommendation:** the inclusion of certain structuring requirements on DCS structures permitted on the Premium List to safeguard governance standards and facilitate an automatic transition to a Premium Listed issuer without a DCS capital structure:
  - **sunset:** mandatory "sunset" period of five years, with any DCS structure automatically falling away on the fifth anniversary of an IPO
  - **non-transferable:** shares with enhanced rights to be unlisted and also non-transferable except in limited circumstances (such circumstances to include transfers to a trustee with no change in beneficial ownership and family members on the death of the holder)
  - **cancellation/conversion on exit:** automatic cancellation/conversion of shares with enhanced rights on the exit of the holder from the board of the issuer (whether by cause or choice)

3. We would suggest using the definition of those eligible similar to what is used in Hong Kong (namely the beneficiary must be, and continue to be, a director and beneficiaries must collectively hold a beneficial ownership of 10% of underlying economic interest in the company) as a base structure, with additional requirements introduced to tie such eligibility to a historic role in the growth of the issuer. We would be happy to engage with you further in refining this definition for a UK context.
4. 10% being the threshold at which regulators consider a shareholder of a regulated business in the UK to be a controller.

- **conversion:** shares with enhanced rights to be capable of conversion into ordinary shares on the election of the holder (and automatically on the occurrence of a purported transfer or exit (unless structured to be cancelled instead))
- **reserved matters:** certain resolutions reserved for holders of ordinary shares only, including constitutional changes, amendments to share class rights and the appointment and removal of independent non-executive directors

3. Additional restrictions on issuers who implement DCS structures on the Premium List

- **Recommendation:** issuers who implement DCS structures on the Premium List must comply with certain "enhanced" requirements to ensure appropriate governance standards are met:
  - **board:** a mandatory independent chairman or a majority independent board on IPO
  - **market cap:** minimum market cap of £300m on float (by reference to offer price)[5]
  - **ordinary shareholder control:** ordinary shareholders must at all times hold at least 10% of the voting power in the issuer (mechanism for automatic conversion of enhanced right shares to ensure this threshold is never breached)
- We acknowledge that additional governance protections may be considered appropriate by other stakeholders in the context of permitting DCS structures. In particular we have considered the potential need to carve out mandatory votes under the Listing Rules (e.g. Class 1 transactions, related party transactions and de-listing). The view of the members is that it may not be necessary to carve these out and there are arguments for trying to give the beneficiaries maximum flexibility without the need for further limitations.

5. £300m is also the minimum market cap for issuers to be eligible to list on the High Growth Segment.

Track record requirements

Current regime

To be admitted to the Premium List, an issuer must be able to demonstrate a proven track record of revenue generation that allows prospective investors to make an informed assessment of the business for which admission is sought, including facilitating a reasonable assessment of what the future prospects of that business might be. In addition, three years of audited accounts covering at least 75% of the issuer's business must be disclosed. There is some sector-specific flexibility in the Listing Rules in respect of these requirements by permitting specialist companies who meet specific criteria to be exempt from the three-year track record period. For example, if a mineral company cannot comply with the three-year requirement because it has been operating for a shorter period, but has published historical financial information since the inception of its business (along with meeting other requirements in respect of the content of historical financial information and its audit), it is permitted to apply for admission with a reduced track record. Similar exemptions apply in respect of scientific research-based companies.

Rationale for change

The current track record requirements present a significant barrier to the listing in the UK of the increasingly common pre-revenue/high-growth issuers that are listing in other markets (primarily the U.S.). Other markets have attracted such issuers by allowing listings without a history of revenue. For example, prospective issuers on NASDAQ can list without any history of revenue, earnings or cash flow, provided a minimum market capitalisation of $160m is met on float, with the issuer's total assets amounting to $80m and shareholders' equity of $55m.

In our experience there is a growing appetite amongst buy-side investors for investment in growth businesses that are at an earlier stage in their development than the Listing Rules currently permit. This investor demand is coupled with an increasing supply of such issuers, with rapid-growth, innovative "disruptors" often reaching the point of IPO in their growth cycle at a stage incompatible with these revenue requirements, resulting in such issuers choosing to list overseas (despite often having a UK nexus). Increasingly companies that are looking to come to market, to a certain extent, match the growth profile of mineral and scientific research-based businesses which have a route to exemption from the three-year track record requirement. It is our view that in order to bring the UK regime in line with competitive international standards, where large, high-profile issuers increasingly fall into the bracket of high-growth disruptors, the financial track record requirements should be updated to make the UK a more attractive destination for such issuers. We believe that flexibility in respect of financial track record requirements should be introduced for "innovative issuers", thereby increasing the attractiveness and feasibility of a UK listing for a growing sector in the market.

In addition and more generally we believe the 75% requirement even for companies that do not fit the description of being "innovative" presents a barrier to listing in London which is not proportionate to the benefit that it provides in giving assurance as to the quality of the company and the completeness of disclosure being made to investors. For example, a number of member firms are currently working on an IPO for a UK-incorporated issuer that has elected to list in Amsterdam over the UK due in large part to the complexity and lead time of presenting their acquisition history in compliance with the 75% requirement. The rule can operate as a blunt instrument making a London premium listing inaccessible to high quality, fast growing companies simply because of the vagaries of pre-acquisition financial information that happens to be available. We would note the safeguard offered by the FCA's authority under the Prospectus Regulation to require issuers with complex financial history to provide additional financial disclosures, and believe with additional guidance on the application of the complex financial history rules a 50% test combined with the need to meet these requirements could prove to be an attractive model.

Our recommendations

1. **Introduction of track record flexibility for "innovative issuers"**

- **Recommendation:** Listing Rules to be updated to give the following flexibility to "innovative issuers" (see recommendation 3 below for eligibility requirements):
  - no requirement to present a revenue-earning track record; and
  - three-year track record requirement reduced to two years.

2. **Replacement of the 75% rule for financial track record**

- **Recommendation:** replace the 75% business coverage financial track record rule with a 50% requirement for all issuers, provided that the financial history requirements of the Prospectus Regulation are met; noting the FCA's authority to require more disclosure through financial information for issuers considered to have a complex financial history/insufficient disclosure.

3. **Introduction of "innovative issuers"**

- **Recommendation:** only issuers who meet the eligibility requirements of "innovative issuers" to benefit from revenue and two-year track record flexibility – "innovative issuers" must demonstrate more than one of the following requirements:[6]
  - growth demonstrated to be attributable to the application of: (i) new technologies; (ii) innovations; and/or (iii) a novel business model, which differentiates the issuer from its competitors;
  - research and development being a significant contributor to its expected value, as well as being a major activity/expense;
  - growth demonstrated to be attributable to unique features and/or intellectual property; and
  - an outsized market capitalisation/intangible asset value relative to its tangible asset value.

4. **Only available to "innovative issuers" of a significant size**

- **Recommendation:** to be eligible for revenue and two-year track record flexibility, "innovative issuers" must have a minimum expected market cap on IPO of £300m (which could be confirmed by reference to previous private funding rounds if appropriate).[7]

6. We have based these criteria on the Hong Kong concept of "innovative companies".
7. £300m is the minimum market cap for issuers to be eligible to list on the High Growth Segment.

Special Purpose Acquisition Companies ("SPACs")

Current regime

SPACs are companies with no trading operations that are listed solely for the purpose of raising capital in order to finance the acquisition of another business or businesses. SPAC structures are often used to implement a reverse takeover of an unlisted target, resulting in the target effectively becoming a listed business without carrying out its own IPO.

SPACs have become an increasingly prominent feature of the equity capital markets in the U.S. in recent years. In 2020 alone, 231 SPAC vehicles raising the US$ equivalent of £75m or more were listed in the United States raising an aggregate total of $81.2bn, whilst no SPAC vehicles raising £75m or more were listed in the UK. In the UK, SPACs can only list on the Standard List as they do not meet, among other things, the financial track record requirements for the Premium List or the diversification of risk requirements for listing as a premium closed-ended investment fund under Listing Rule Chapter 15.

SPACs are attractive structures for investors seeking to achieve an accelerated listing process in combination with an acquisition or series of acquisitions. The key benefits are: (i) increased speed for consummating an equity-financed acquisition as the SPAC has already raised the funds before commencing negotiations; and (ii) increased deal certainty as the risk associated with a separate IPO process for the combined business may be avoided.

Listing Rule 5.6.8 has a key impact on SPAC acquisitions in the UK. This states that where a cash shell company announces a reverse takeover, the FCA will generally suspend trading in shares in the SPAC until completion of the acquisition on the basis there will be insufficient publicly available information about the transaction and the SPAC will be unable to assess its financial position and inform the market.

The Listing Rules do provide for suspension to be avoided where the target is a listed company and either complies with a regulated market disclosure regime or equivalent non-regulated market disclosure regime. For an unlisted target, often the only means to avoid such suspension is the publication by the SPAC of sufficient financial information on the target. Such information may not be readily available in a sufficient form at the time the proposed acquisition becomes public and, as a result, SPACs are often faced with a long period of suspension of trading in order to implement their chosen acquisition.

Rationale for change

Where a trading suspension is required until completion of the SPAC acquisition, investors are prevented from being able to sell their SPAC shares following announcement of the acquisition, diminishing investor flexibility and meaning investors are effectively "locked in" from the time of any announcement until completion, even if they wish to exit (either as a result of evolving views on the acquisition or otherwise).

The general need to suspend trading in UK SPACs on acquisition of unlisted targets has contributed towards a view among certain SPAC sponsors when considering choice of listing venue that the UK is not as accommodating as either the U.S. or Euronext, even if the SPAC may seek to make an acquisition in the UK. There is no equivalent requirement for suspension in the United States or on Euronext and both NASDAQ and the NYSE have amended their rules to permit SPACs to list.

Our recommendation

We believe that removing the suspension assumption under LR 5.6.8 and introducing alternative means for SPACs to ensure there is sufficient information about unlisted targets other than the production and provision of full historic financial information on the target would add flexibility for SPAC investors in the UK, remove a key restriction currently perceived by many as a disadvantage of the UK as a listing venue and help to both encourage a view of London as an attractive venue for SPACs and unlock the SPAC as a source of equity capital for London listed businesses. As a group we would like to engage with the FCA and other stakeholders to agree guidance on the alternative disclosures that should be required of SPACs to ensure sufficient target information is disclosed so as to avoid the perception that the risk of a suspension is reason to choose not to list SPACs in London.

Other considerations

In addition to the specific areas set out in detail above, we have addressed three other key topics that we believe should be addressed in the review of the UK Listing Regime

Rebranding the Standard List

Context: as noted in our responses above, the Standard List of the LSE has a reputation amongst existing and prospective issuers as being a "second best" listing venue for "failed" premium issuers. Whilst clearly there will always be an element of the list being considered below that of the Premium List due to the higher standards required of Premium issuers and FTSE indexation eligibility, we think that through effective messaging its reputation can be bolstered and better position the segment to attract issuers not yet ready to/able to list on the Premium List.

Rationale: whilst the changes we have suggested in our submission serve to adapt the requirements on issuers under the UK Regime, our view is that by simply rebranding the Standard List, over time its reputation in the market can change to an attractive alternative listing venue, thereby appealing to issuers who are not suitable for the Premium List, however who have historically been put off by the perception of the Standard List as second best, in particular international issuers. This will be a significant benefit when discussing with potential issuers the options available for a UK listing vs. European and U.S. exchanges.

Recommendation: we recommend that the Standard List be rebranded to the "Main Market List", with a PR campaign introducing its new image and publicising the venue as an attractive, mainstream alternative to the Premium List, thereby potentially increasing the number of issuers listing on the "Main Market List". In addition, we recommend that as part of this PR campaign, there is broader stakeholder engagement (in particular, with the London Stock Exchange) to ensure there is consistency in messaging and branding of the Standard List.

Publicising the advantages of London compared to alternative listing venues

Context: In our experience, there is often a view amongst prospective issuers that London presents a less attractive listing venue when compared to its key competitor markets in light of it being more restrictive and less flexible. Whilst we have sought to address some of these in our primary recommendations, we believe there are a number of misconceptions in the market that through a marketing campaign can be dispelled.

Rationale: As with rebranding the Standard List, by bolstering the reputation of London as a listing venue against its main competitor, addressing some of the perceived advantages of issuing overseas when compared to the UK, more prospective issuers may choose to come to market in London as opposed to competitor venues.

Recommendation: a market education campaign be implemented serving to highlight the benefit of listing in London over alternative venues, in particular addressing:

- **Reporting obligations:** certain of those markets regularly cited as competitors to London require extensive ongoing reporting/compliance obligations that are generally at least as, if not more, onerous than London.
- **Governance:** whilst alternative listing venues may permit more flexibility around governance when compared to London, these markets can be expected to carry greater risks of governance-related failures and high levels of future litigation with damaging results for investors and issuers alike.
- **De-listing:** the process of de-listing for a UK issuer is generally much less onerous when compared to alternative markets. For example, in the U.S. it is challenging for issuers to suspend ongoing reporting obligations following de-listing, meaning it is difficult for an issuer to leave the U.S. when its circumstances change.

- **Positioning:** the London market has historically been an attractive listing venue for global corporates (and corporates with global operations) given its central position between time zones of key centres of finance (the importance placed on this positioning highlighted by the number of issuers that have a dual UK/Australian listing, thereby straddling two zones (e.g. BHP, Rio Tinto, Clydesdale)). Further, London is widely considered to hold a relatively neutral position in respect of global trade relations as against other key financial centres, with some competitor listing venues historically taking more interventionist approaches with regards to restricting those issuers with a nexus/ownership in regions perceived by that market as adversarial.

Raising the threshold for Class 1 transactions and introducing flexibility on the profits test

Context: under the Listing Rules, transactions of Premium Listed companies are classified by reference to the outcome of four class tests (gross assets, profits, consideration and gross capital). These tests determine the size of, and consequently the requirements of the Listing Rules that apply to, the transaction in question. Where a transaction involves an acquisition or sale of a company or assets amounting to 25% or more on any of the class tests, that transaction will be classified as a Class 1 transaction. The consequences of a Class 1 transaction are that the issuer in question must notify the market of the key terms of the transaction and seek the approval of its shareholders. If such approval is not obtained, the transaction cannot proceed.

Rationale: the requirement to go to shareholders for approval puts UK Premium Listed issuers at a competitive disadvantage in auction processes for assets when competing against issuers subject to regimes with less onerous requirements or private companies. The conditionality of shareholder approval attached to a Class 1 acquisition makes UK bidders less appealing to vendors, and often requires a premium to be paid on the purchase price given the additional risk of a shareholder vote and longer timetable to completion, together with additional disclosure requirements. This competitive disadvantage, coupled with the length of time, cost and process required to seek shareholder approval, means that companies coming to market looking to be highly acquisitive are put off London as a listing venue[8].

We calculate that c. 17% of Class 1 transactions since September 2013 have fallen within 25-34% in respect of triggering the Class 1 threshold. We consider this to be a significant proportion of the Class 1 market. However, what this data does not show is how many other transactions did not proceed because the need for shareholder approval reduced deal certainty, in doing so making a buyer without such conditionality more attractive (e.g. foreign listed companies, domestic private equity). In the experience of our members, not only does this uncertainty make UK companies less competitive on the global stage in a bidding context, it makes it easier for non-UK companies to win bids for UK assets against other competing UK bidders. Our members have had a wide range of experiences working with Premium Listed UK issuers where the Class 1 requirement for a shareholder vote, or even the prospect of the transaction triggering the Class 1 thresholds, has resulted in the issuer either not targeting a prospective transaction or losing out to foreign/ private bidders.

In addition, for those high-growth issuers who are often loss making immediately following IPO or only recently profitable, the application of the profits test results in most transactions being caught, and this can be another factor that can put off such high-growth issuers from the UK market.

8. As the tests include consideration of market capitalisation movements in a company's share price prior to agreeing an acquisition, this can give rise to a need to seek shareholder approval where it had not previously been expected to be required with the consequence that many acquisitions below the 25% level must be prepared for a scenario where they might become Class 1, giving rise to an significantly higher level of impediment to M&A.

Recommendation: we recommend that the Listing Rules be updated to raise the threshold for triggering a Class 1 transaction from 25% to 33%, whilst retaining the key shareholder protection the class tests seek to provide. It is our view that by raising the threshold to 33%, UK Premium Listed issuers will be better able to compete in international auction processes, thereby making the market more attractive to the increasing number of highly acquisitive issuers coming to float.

We also recommend the disapplication of the profits test in the case of issuers which have been loss making since IPO or are only recently profitable. By doing so, high-growth companies that come to market will not be restricted early in their growth cycle post IPO by regularly triggering Class 1 transaction thresholds due to their growth profile, instead being free to continue on their growth trajectory without regularly needing to seek shareholder approval (provided the other class tests are not triggered).

Schedule 1: Considerations not addressed

Through our consultation a number of additional areas were considered and discussed. Whilst we view these as being points that could serve to make the UK more attractive to potential issuers, we chose not to include them in our main submission. These areas are briefly summarised below:

10%-20% non-pre-emptive offers: pursue greater flexibility with the Pre-emption Group for allowing non-pre-emptive share issuances between 10% and 20% (as per the recent Covid-19 relaxations).

IPO process: reduce 5-week public research phase to 3/4 weeks by either: (i) Model 1: unconnected analysts come to a general analysts presentation; or (ii) Model 2: issuer does unconnected analysts presentation on confidential basis to limited group of unconnected analysts 10 days before registration document, removing requirement for 7-day gap before ITF.

Fast-track dual listing: potential to expand current regime to allow for securities listed for 18 months on an alternative exchange (for example, EEA, U.S., Hong Kong, Singapore, Australia etc.) to be fast-track dual-listed in the UK on the basis of a simplified prospectus, provided no associated offering raising greater than 20% of the issuer's share capital.

Post-Brexit MAR guidance: amelioration of market sounding rules, reduction of product governance and other MIFID II burdens, for example on allocation record keeping.

RPT Rules: further extension of where "fair and reasonable" opinion from Sponsor could be sufficient in place of full shareholder approval of related party transaction.

Placing discount: permit discount wider than 10% on placings without shareholder approval under LR9.5.10.

Public Financial Position and Prospects Procedures ("FPPP") reporting: against the backdrop of a perceived advantage of London being the increased assurance a Premium Listing provides to investors in key areas of working capital and systems and controls, there may be value in a form of public reporting on FPPP that results in new applicants giving a "FPPP Statement" (as per working capital) on IPO with a short public report supporting the work done, which might also cover some of the proposals on TCFD reporting.

Buybacks: provision of greater flexibility in terms of safe harbours for buybacks under MAR.

Sponsor diligence requirements: diligence on working capital (until recently out of line with going concern) is costly, time consuming and often results in protracted discussions with the FCA.

Other eligibility requirements: independent business/controlling shareholder rules impose a higher standard when compared to other listing venues and may be helping to dissuade growth businesses from listing on the Premium List.

Complex financial history: consider providing guidance in respect of acquired entities for those issuers that are considered to have complex financial history by the FCA (current requirements can see issuers needing to provide a disclosure level on acquired entities as if that entity were an issuer).

Supplementary prospectuses: provide guidance that a supplementary prospectus should not automatically be required in circumstances where there is a change in the number of shares being offered or a price outside a published range.

M&A prospectus exemptions: guidance on when a prospectus is required in an M&A context to relieve the possible need for a prospectus in the case of certain transactions involving schemes of arrangement, and guidance on content of an exempted document in the context of a public takeover.

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