



ALERT
**THE HILL REVIEW: KEY RECOMMENDATIONS TO
REFORM THE UK LISTING REGIME**

MARCH 2021

Weil

THE HILL REVIEW

ON 3 MARCH 2021, THE UK LISTING REVIEW, CHAIRED BY LORD HILL, PUBLISHED ITS REPORT. THE REVIEW WAS LAUNCHED IN NOVEMBER 2020 TO LOOK AT POSSIBLE REFORMS OF THE UK LISTING REGIME. THE REPORT RECOMMENDS SEVERAL CHANGES TO THE CURRENT LISTING REGIME AND A FUNDAMENTAL REVIEW OF THE PROSPECTUS REGIME.

The UK Listing Review was launched by the Chancellor as part of a plan to strengthen the UK's position as a leading global financial centre in the post-Brexit world. The Hill Review's Report focuses on how the UK listing regime could be reformed to encourage more companies to list in the UK. The Report has made its recommendations by effectively cherry-picking certain concepts and regulations from London's international competitors and aiming to combine these with London's traditional strengths.

The majority of the recommendations in the Report can be taken forward by the FCA through amendments to the Listing Rules but others require primary legislation. In a press release issued after the Report was published, the FCA said that it welcomed the Report and stated that it would carefully consider the recommendations, with an aim of updating the Listing Rules by late 2021. We will continue to monitor and participate in developments as the FCA moves to consultation and ultimately rule changes.

This Weil Briefing marks the first in a series of updates on the recommendations made by the Hill Review.

RECOMMENDATIONS

SPACS

The use of special purpose acquisition companies (SPACs) in the US and, increasingly, the Netherlands, as an alternative to an IPO in terms of raising finance and providing access to public markets was a key feature of equity capital markets in 2020. Information provided to the Review showed that 248 SPACs were listed in the US last year, raising the US\$ equivalent of £63.5 billion and this trend shows no signs of abating – see, for example the \$11.75 billion merger between a Churchill Capital Corp SPAC (advised by Weil) and Lucid Motors featuring the largest ever SPAC-related common stock PIPE.

By contrast, the UK's SPAC market is relatively dormant (with only four SPACs being listed in 2020, raising £0.03 billion in aggregate). While there is an argument for less investor appetite in the UK, the key explanation flagged in the Report as to why UK SPAC financing has not emerged at scale relates to the specific Listing Rules that require trading in a SPAC to be suspended when it announces its intended acquisition. The suspension effectively traps investors until a prospectus or AIM admission document is published.

The Report recommends that the Listing Rules are amended to better facilitate SPAC listings by introducing alternative rules and guidance, including as regards:

- the information which SPACs must disclose to the market upon the announcement of a transaction in relation to a target company;
- the rights investors in SPACs must have to vote on acquisitions prior to their completion;
- the rights investors in SPACs must have to redeem their initial investment prior to the completion of a transaction; and
- if necessary, to safeguard market integrity, the size of SPAC below which the suspension presumption may continue to apply.

DUAL CLASS SHARE STRUCTURES (“DCSS”)

The Report recommends that companies with DCSS should be able to list on the premium listing segment of the Main Market in order to attract founder-led companies in tech and other high-growth sectors to list in London. At present only standard listed companies are permitted DCSS.

The Report suggests that DCSS be permitted, subject to certain conditions:

- a maximum duration of five years;
- a maximum weighted voting ratio of 20:1;
- a requirement for holder(s) of the Class B shares to be a director of the company;
- voting matters being limited to ensuring the holder(s) are able to continue as a director and able to block a change of control of the company while the DCSS is in force; and
- limitations on transfer of the B class shares – the shares must convert on transfer (subject to limited exceptions).

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FREE FLOAT REQUIREMENT

The existing free float requirement is often noted as one of the strongest deterrents to a London listing, particularly for high growth and PE backed companies. At present, the Listing Rules require that 25% of a listed company's shares be in public hands for a premium or standard listing. Very few other international exchanges use one single metric to ascertain how much stock of a company needs to float and the Report recommends that:

- the definition of shares in public hands be updated and widened;
- the required free float be reduced from 25% to 15% for all companies in both market segments;
- companies of different market caps should be allowed to use alternative measures to the absolute percentage of 15% to demonstrate sufficient liquidity – the FCA would need to confirm it agrees with the approach taken, but the approval should be confirmatory;
- larger market cap companies should, as an alternative to 15%, be able to demonstrate that they will have a minimum number of shareholders, a minimum number of publicly held shares, a minimum market value of publicly held shares and a minimum share price to support a liquid market; and
- smaller companies should be able to use the same method as that used on AIM.

PROVISION OF INFORMATION

The Report recommends several changes to the Listing Rules to reduce some of the more general challenges faced by companies (particularly those which are high growth and/or have grown through significant acquisitions) seeking to meet the information requirements of the premium listing segment, particularly.

These include:

- facilitating the provision of forward-looking information by issuers in prospectuses by amending the liability regime for issuers and directors. This could involve offering directors a defence to liability where they are able to demonstrate that they had exercised due care, skill and diligence in putting the relevant information together and held an honest belief in its truth. The ability to provide meaningful forward-looking information would be particularly beneficial to SPACs;

- maintaining the general three-year track record requirement for the premium listing segment, but reviewing the revenue earning requirements for scientific research-based companies to potentially broaden their application to a wider range of high growth, innovative companies across a variety of sectors; and
- amending the requirement for historical financial information covering at least 75% of an issuer's business for premium listings so that it is only applicable to the most recent financial period within the three-year track record.

STANDARD LISTING SEGMENT

The Report notes that the standard listing segment is “suffering from an identity and a branding crisis” and needs to be relaunched and rebranded. It should be promoted as a venue for companies of all types to list in London – with the key feature being flexibility.

Such a relaunch and rebrand would require the FCA to make changes to the Listing Rules and the LSE to rebrand the standard listing segment either by changing its name or by simply referring to companies being admitted to the “Official List” by way of a Chapter 6 listing (current premium) or a Chapter 14 listing (current standard).

The Report also suggested that the link between FTSE index inclusion and a premium listing be broken – and investor groups be encouraged to publish industry guidelines that would allow for standard listed companies to be included within leading indices. Most importantly, they would need to consider the needs of passive investors, who would be most affected by changes to the indices.

PROSPECTUS REGIME

The Report comments that the current prospectus regime, which is derived from EU legislation, most significantly the EU Prospectus Regulation (2017/1129), slows down capital raisings, in particular for existing listed issuers. The Report suggests that the prospectus regime needs to be fundamentally reviewed such that, generally, it is tailored to the circumstances of the transaction that is being used to raise capital; and specifically that offers to the public and admission to trading be treated separately, that listed companies be completely exempt from producing a prospectus on a secondary capital raising or subject to much fewer requirements given the extent and regularity of their

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continuing obligations, and that there should be greater recognition of overseas prospectuses to encourage dual/secondary listings.

OTHER RECOMMENDATIONS

The Report made a number of other related recommendations, including:

Annual ‘State of the City’ report – The Chancellor should present an annual report to Parliament on the State of the City, setting out the steps taken, and to be taken, to promote the attractiveness of the UK and its financial markets. The Chancellor committed to producing such report at Budget and the first report could be published in early 2022.

FCA objective – HMT should review the statutory objectives of the FCA and consider amending the FCA’s statutory objectives to include a requirement to take ‘competitiveness’ or ‘growth’ factors into account.

Research on an IPO – The Report recommends that the FCA review the 2018 Conduct of Business rules relating to unconnected research analysts’ access to the issuer’s management team in the IPO process and its consequential impact on the IPO timetable, in order to determine whether its benefits outweigh its costs. Market participants view the rules as, in practice, adding time to the IPO process and therefore increasing execution risk, without the benefit of any increase in research coverage.

Retail investors – The Report notes the need to engage and empower retail investors to foster a stronger equity culture in the UK. HMT and BEIS should consider how technology can be used to improve retail investor involvement in corporate actions and re-establish the Rights Issue Review Group and reconsider its outstanding recommendations in terms of capital raising models used in other jurisdictions.

NEXT STEPS

As noted above, the majority of the recommendations in the Report are for the FCA to take forward in the first instance.

The FCA aims to publish a consultation paper on the changes to the Listing Rules by the summer and, subject to consultation feedback and FCA Board approval, will seek to make the relevant rules by late 2021.

The FCA also noted its support for a fundamental review of the prospectus regime and has said that it will work with the Government and others to develop policy options that would achieve this to an ambitious timetable.

FOR MORE INFORMATION

Our Corporate team is available to discuss any of these issues with you and answer any specific questions you may have. If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below:



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