SULLIVAN & CROMWELL LLP

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U.K. Listing Review Recommends Material Reforms to the U.K. Listing Regime

The U.K. Government has Published a Wide-Ranging Review of the U.K. Listing Regime. The Review Recommends a Number of Material Reforms to the U.K.'s Listing Regime to Facilitate Capital-Raising on the London Market with a View to Enhancing the Attractiveness of London as a Potential Listing Venue, in Particular for Growth Companies and SPACs.

SUMMARY

On March 3, 2021, the U.K. government published the report of the U.K. Listing Review, which was led by Lord Hill, formerly the U.K.'s European Commissioner. The recommendations will be subject to public consultation and development of detailed rules by the U.K.'s financial regulator, the Financial Conduct Authority. The recommendations could, if they are effected quickly, make the London Stock Exchange a more attractive listing venue for growth companies, financial sponsors looking to a potential IPO exit for their portfolio companies (and, indeed, anyone looking to IPO their business) and sponsors of SPACs.

The U.K. government's enthusiastic reception of the recommendations gives a first indication of how the U.K. may use its discretion post-Brexit to depart from harmonized European Union securities regulations. In the words of the review: "…*our bottom line is this: it makes no sense to have a theoretically perfect listing regime if in practice users increasingly choose other venues*." The U.K. Listing Review seeks to strike a pragmatic balance between maintaining high regulatory and governance standards and the flexibility to make London an attractive place to list, as the U.K. looks to compete following Brexit.

RECOMMENDATIONS

The U.K. Listing Review's key recommendations include:

(1) reducing the minimum free float eligibility requirement (for both standard and premium listings) from 25% to 15% (and allowing more choices for companies of different sizes to use measures of minimum liquidity other than an absolute free float percentage);

(2) rebranding and repositioning the existing standard listing to make it more attractive to issuers, and encouraging investor groups to allow standard listed issuers to qualify for indexation;

(3) enabling issuers with dual classes of equity securities to qualify for a premium listing for the first time, subject to a time limit and certain eligibility requirements;

(4) facilitating the listing of SPACs in London by changing the rules on trading suspensions (in exchange for requiring SPAC shareholders to be offered the option to redeem their SPAC shares and SPAC acquisitions to be subject to shareholder approval); and

(5) facilitating the provision of forward-looking information by issuers in prospectuses and simplifying certain aspects of the prospectus regime.

The Chancellor of the Exchequer announced the government's intention to consult on the recommendations and the FCA announced that it would launch a consultation by summer 2021 (with a view to making changes to the Listing Rules by late 2021).

IMPLICATIONS FOR SPONSORS OF SPECIAL PURPOSE ACQUISITION COMPANIES

The exponential increase in IPOs of new SPACs on the New York Stock Exchange and NASDAQ has been a feature of the last 12 months. Moreover, a number of European SPACs have floated or announced an intention to float on various exchanges on mainland Europe in recent weeks. The London Stock Exchange has largely not participated in this activity relating to new SPACs.

The U.K. Listing Review comments on this disparity and highlights the role of SPACs in raising capital for fast-growing new economy companies, including tech companies. It notes that the U.K. will lose out on "*home-grown and strategically significant companies*" which choose instead to list via a de-SPAC transaction into the highly liquid New York markets.

One of many reasons why London has been perceived as a relatively unattractive venue for SPAC activity is the requirement under the current Listing Rules for trading in a SPAC's shares to be suspended upon announcement of a de-SPAC transaction, which effectively locks up SPAC shareholders. The U.K. Listing Review recommends that the FCA change the position on suspending trading in SPACs, and instead provide investors in SPACs with the protections customary for U.S. SPAC investors (redemption rights upon closing of the de-SPAC, a shareholder vote in most cases and additional disclosure obligations) to allow trading to continue through the period of the de-SPAC transaction.

While the U.K. Listing Review provides some encouragement for SPAC sponsors considering listing SPACs in London, it contains limited detail on the precise scope of any changes to the Listing Rules and it remains to be seen how fast and how far the FCA will go in adopting these recommendations. In the context of the unprecedented number of new SPACs coming to market, in the absence of any interim provisions, the FCA's target implementation date for the rule changes of "late 2021" is a long time for SPAC sponsors, who will be mindful of the intense competitive landscape they face in raising and deploying capital, to wait for changes to be implemented.

IMPLICATIONS FOR FINANCIAL SPONSORS

A number of the largest recent IPOs on the London Stock Exchange have been listings of private capital-backed portfolio companies.

The recommended reduction in the free float requirement from 25% to 15% and the move away from measuring minimum liquidity eligibility by reference to an absolute percentage is an encouraging step for private capital sponsors (as well as founders) who may consider listing portfolio companies in London as a route to an exit. The existing free float requirement has in some cases required private capital sponsors to sell a considerable stake in the IPO earlier than they may otherwise have wanted to do so. The U.K. Listing Review's recommendation, if implemented by the FCA, will enable sponsors to retain a larger stake until the equity story has been absorbed and priced by the market and to retain additional exposure in growth businesses with attractive capital appreciation prospects following IPO.

In addition, the U.K. Listing Review recommends that the current link between premium listing and eligibility for indexation should be broken. Investor groups are encouraged to publish industry guidelines on areas that they see as particularly important to allow eligibility for indexation. If investor groups adopt this suggestion, the prospect of obtaining the benefits of indexation with a standard listing may also increase the appeal of London for private capital sponsors seeking an exit for their portfolio companies.

IMPLICATIONS FOR GROWTH COMPANIES, INCLUDING TECH COMPANIES

A key focus of the U.K. Listing Review is on facilitating IPOs of growth companies in London.

The existing Listing Rules do not allow founder shares or other dual class structures for premium listed companies: these rules require that all members of a listed share class must be treated equally and, where a listed company has more than one class of securities admitted to premium listing, the aggregate voting rights of the securities in each class should be broadly proportionate to the relative interests of those classes in the equity of the listed company. These principles, taken together with the one share one vote principle which is expected by the FCA and the investor community, have the effect of preventing both (a) the premium listing of two classes of shares of the same company with differential voting rights and (b) the retention of a majority of voting rights on all matters by a closely held unlisted class of shares.

These principles have led some prominent growth companies to seek a standard listing (and thus forego the liquidity advantages of FTSE indexation), including in particular the IPO of The Hut Group in 2020.

The U.K. Listing Review recommends that the Listing Rules be changed for premium listed companies so that companies with a dual class share structure will be eligible for listing in the premium listing segment, subject to compliance with certain conditions. The proposed conditions include: (1) a sunset clause on any super-voting share class of five years; (2) a maximum weighted voting ratio of 20 to 1; (3) a requirement that a holder of any super-voting shares be a director of the issuer; (4) a limitation on the matters on which super-voting shares carry weighted voting rights to only change of control transactions and the appointment of the holder of such shares as a director; and (5) the imposition of transfer restrictions on any super-voting share class. In practice, it is not clear how attractive this compromise position will be for the kind of growth companies that the government is trying to attract; these limitations go substantially beyond what is customary in IPOs of growth companies in the U.S. Moreover, in circumstances where standard listed issuers may be eligible for indexation, the attractions of obtaining a premium listing on these terms may be somewhat reduced.

FORWARD-LOOKING STATEMENTS

One particular feature of de-SPAC transactions in the U.S. has been the ability of SPACs to disclose projections at the time the de-SPAC transaction is announced, which is generally not possible in a U.S. IPO for liability reasons. The U.K. Listing Review recommends making a general change to the liability regime in the U.K. for forward-looking statements in prospectuses, which may include a defense to directors' liability for such statements where they are made with due care, skill and diligence and were honestly believed to be true at the time of publication.

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