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BLOG

Switching to or Adding a U.S. Listing — Factors to Consider for London-Listed Companies

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BACKGROUND

For a number of reasons, certain London-listed companies have been considering, and in some cases implementing, U.S. listings, whether as an additional listing or by way of a unilateral move away from London. In addition to increasing access for U.S. investors, some of these reasons relate to a perception of a valuation gap between New York and London in addition to what some perceive to be a wider and more receptive investor base in the U.S.

FACTORS TO CONSIDER

Below we discuss some of the key factors that London-listed companies should consider when contemplating a dual listing or a wholesale move to a US listing.

- **Structure for Additional Listing:** A company seeking to list its shares on an additional exchange faces two options:
    - the establishment of two separate legal entities, functioning economically as one on a contractual basis, each with a primary listing on different exchanges; or
    - the shares of one company are listed both on a primary exchange and a secondary exchange.

The term “dual listing” is often used interchangeably for both situations but due to the additional costs and complexities of maintaining the former, companies increasingly favour the latter (which is also known in the UK as a “secondary listing”), where (subject to eligibility requirements) there is more scope for them to be subject to lesser requirements on the secondary exchange. UK companies currently listed on the LSE’s premium segment and looking to establish a US exchange as their primary exchange would be expected to step down to, and be subject to the lesser requirements of, the LSE’s standard listing segment (or, following the implementation of the proposed new Listing Rules, the ”Secondary Listings” category).

Note that the new "Secondary Listings" category is not open to UK-incorporated companies. To the extent that a UK-incorporated London-listed company listed its shares in the US as its primary listing and wished to retain a secondary listing in London, it would be unable to do so under the proposed new Listing Rules without redomiciling.

Companies looking to retain the LSE as their primary exchange may retain their UK holding company and remain in the premium listing category (or, following the implementation of the proposed new Listing Rules, the "Commercial Companies" category).

- **UK Process**: Delisting from the London Stock Exchange ("LSE") entirely or moving from a premium to a standard listing will require (i) the preparation of a shareholder circular which must be approved by the UK Financial Conduct Authority ("FCA") and (ii) securing the approval of a majority of not less than 75% of the shares voted on the resolution (including the approval of a majority of independent shareholders where a company has a controlling shareholder) at a general meeting. A similar process would be required for delisting from the LSE's Alternative Investment Market ("AIM").
- **U.S. Registration Process:** To register securities in the US, a company must file a registration statement with the US Securities and Exchange Commission ("SEC"). The registration statement can initially be privately submitted to the SEC and, typically after receiving and addressing several rounds of SEC comments, the company will then publicly file the registration statement. Companies must also consider whether they would qualify as a "foreign private issuer" ("FPI") or as a US domestic issuer, with the former permitting a company to take advantage of less stringent corporate governance and periodic reporting requirements. Note that non-US-incorporated companies could still be deemed a US domestic issuer under US securities laws, so it is important for them to conduct an FPI analysis with their legal counsel.
- **FPI:** Generally speaking, there are reduced disclosure requirements for FPIs. For example, there is no requirement for FPIs to file quarterly financial statements and FPIs can elect to report under either International Financial Reporting Standards ("IFRS") or US generally accepted accounting principles ("US GAAP"); FPIs are generally allowed to rely on home country practices in lieu of complying with certain stock exchange governance rules (e.g., an FPI is not required to have to have a majority of independent directors if the rules of its home country do not require it); and FPIs are not required to hold shareholder advisory votes on executive compensation. For FPIs, the registration statement generally must contain a minimum of three years of audited accounts in either IFRS or US GAAP, subject to certain exceptions.
- **Indexation:** US indexation is associated with deeper analyst coverage, more diversified share ownership and greater liquidity and indexation is therefore often a key factor to take into account when issuers are contemplating a US listing. The ability to be part of two indices may be restricted, so a London-listed company in the FTSE 350 may lose its right to participate in FTSE indexation upon a further listing. Secondly, companies must be US domestic issuers (i.e., non FPIs) to be eligible for S&P indexes – careful planning is therefore required to ensure that indexation is not lost entirely. A London listed company in the FTSE 350 wishing to have a secondary listing has two options: (i) move to a standard listing (or, following implementation of the proposed new Listing Rules, a secondary listing) in London and, if eligible, qualify as a US domestic issuer, and then seek indexation by S&P on the basis that the US will be its primary listing, in each case subject to eligibility (requiring the imposition of a US holding company as the issuer onto a non-US group and ceasing eligibility for participation in the FTSE indexation); or (ii) retain its primary listing in London, remain in the FTSE and be listed in the US as a secondary listing (whether as a US domestic issuer or a FPI), with the potential to migrate its primary listing to the US as its US shareholder base grows and become S&P-indexed as a US domestic issuer over such time, subject in each case to satisfying relevant eligibility requirements (including but not limited to having to report under US GAAP). Fully dual-listed companies (see above) may be eligible to feature in both the FTSE and S&P indices.
- **U.S. Holding Company:** In the event that a US holding company is to be used, for example to become a US domestic issuer or to retain a secondary listing under the proposed new Listing Rules, there would need to be a corporate reorganization and this would usually be implemented by way of a scheme of arrangement which requires shareholder approval of a majority in number representing 75% in value. The US holding company would need to issue depository interests to existing shareholders in place of ordinary shares and an FCA-approved prospectus would need to be produced. In addition, the U.K. City Code on Takeovers and Mergers ("Takeover

Code") will cease to apply and the issuer should consider adopting into its constitution appropriate takeover defences.

- **Security Type:** The company will need to elect whether ordinary shares are to be listed (cleared through the Depository Trust Company ("DTC")) or whether it is more appropriate to use American Depositary Shares ("ADSs"). In this case, it would need to deposit shares with a securities depositary for US-listed securities, which would issue American Depositary Receipts ("ADRs") to shareholders.
- **Tax Implications:** Due to the potential stamp duty or stamp duty reserve tax consequences, appropriate clearance and/or relief will likely need to be considered.
- **Continuing Governance and Reporting Obligations**: The US securities law liability regime will start to apply, and, as with UK listings, US-listed companies will be subject to ongoing corporate governance and public reporting obligations (with the rigor of some obligations dependent on the exchange on which the company is listed**).** This will likely include disclosures, periodic financial reporting and general corporate governance requirements and market preferences, including remuneration structures.
- **SOX Compliance:** The US securities law liability regime will also require US-listed companies to comply with the Sarbanes-Oxley Act of 2022 ("SOX"), which aims to increase the reliability of financial reporting and protect investors from corporate fraud. SOX rules require companies to implement internal controls over financial reporting to detect errors and ensure that their financial reporting is accurate. This will consequently increase compliance costs and be demanding of management's time.
- **U.S. Securities Law Liability**: The liability regime of false or misleading disclosure is similar to the UK regime. Whilst it is recognized that the securities litigation environment is more active in the US, this does not appear to have significantly discouraged companies from seeking a US listing.
- **Small Fish, Big Pond:** The enhancement of a company's profile is often quoted as a key driver for moving to a US listing. According to S&P, in 2023, the number of companies listed on NASDAQ and the NYSE collectively was over three times the number of companies listed on the LSE (including AIM), with a total market cap of over five times. Whilst exposure to US investors is important to many, care should be taken to ensure that moving to a US-only listing does not result in becoming lost in a crowd, with lower visibility of results and announcements for analysts and investors. There is also a general consensus that the issuer must have a natural link to the US market to benefit from trading there.

OUR THOUGHTS

Those considering a move to a US listing should carefully consider the basis upon which they are acting. This is particularly pertinent for the directors of UK companies who are bound by the UK company law principle to act in good faith and in the best interests of the company. Consideration must also be given to how the development of the company will be dealt with, such as balancing indexation if applicable, planning for expected shifts from a FPI to a US domestic issuer.

It is noted that the UK government and the FCA are in the process of devising a regulatory response to the challenges proposed by other international exchanges. For example, the 'Hill Review' serves to review UK listing rules, the so-called 'Edinburgh Reforms' is a collection of 30 policy initiatives to bolster and create a more competitive financial services sector, and the so-called 'Mansion House Reforms' focus on incentivising companies and re-positioning London as a key listing destination. Additionally, ideas such as tax breaks, including a British ISA (allowing savers to invest £5,000 per year tax-free into the British stock market), have been floated.

REVISED LISTING RULES

As explored in our previous articles (accessible here and here), a glimpse at real change can be seen through the FCA's attempted overhaul of the UK Listing Rules. For example, it has proposed merging the standard and premium equity listing segments to be one single category for shares in commercial companies, along with the introduction of new listing categories. The proposed introduction of the secondary listing category is particularly noteworthy as (i) it is not available for UK incorporated companies (as the FCA is seeking to prevent the London market being accessed

by UK companies in this way) and (ii) whilst being available for international commercial companies, FTSE Russell has confirmed this category's ineligibility for the FTSE UK Index series.

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