european corporate governance institute

Will Listing Rule Reform Deliver Strong Public Markets for the UK?

Law Working Paper N° 653/2022
July 2022

Brian R. Cheffins
University of Cambridge and ECGI

Bobby V. Reddy
University of Cambridge

ECGI Working Paper Series in Law

Will Listing Rule Reform Deliver Strong Public Markets for the UK?

Working Paper N° 653/2022
July 2022

Brian R. Cheffins
Bobby V. Reddy

Abstract

There is a general consensus that the UK needs strong public markets. To help to ensure that Britain is well-positioned on this front, the Financial Conduct Authority reformed the London Stock Exchange's listing regime in 2021 to foster initial public offerings (IPOs). This paper outlines and evaluates these IPO-related reforms, assessing in so doing their potential to resuscitate the UK's public equity markets. The paper puts the IPO-related reforms into context by considering whether the fostering of strong equity markets is a sensible policy goal and by assessing what law can contribute to this endeavour. With respect to the specific IPO reforms, the paper acknowledges they may increase IPO activity but maintains concerns about strong public markets will continue to exist. This is because the reforms do nothing to address exits from the stock market or concerns about 'over'-regulation of public companies that discourage reliance on equity markets.

Keywords: public companies, initial public offerings, stock exchange regulation, dual class stock, special purpose acquisition companies (SPACs), London Stock Exchange, Financial Conduct Authority

JEL Classifications: G34, G38, K22, M13

Brian R. Cheffins*
S. J. Berwin Professor of Corporate Law
University of Cambridge, Faculty of Law
10 West Road
Cambridge, CB3 9DZ, United Kingdom
phone: +44 1223 330084
e-mail: brc21@cam.ac.uk

Bobby V. Reddy
Assistant Professor
University of Cambridge
10 West Road
Cambridge CB3 9DZ, UK
e-mail: bvr20@cam.ac.uk

*Corresponding Author

Will Listing Rule Reform Deliver Strong Public Markets for the UK?

Brian R. Cheffins *

Bobby V. Reddy **

May 2022

Abstract

There is a general consensus that the UK needs strong public markets. To help to ensure that Britain is well-positioned on this front, the Financial Conduct Authority reformed the London Stock Exchange's listing regime in 2021 to foster initial public offerings (IPOs). This paper outlines and evaluates these IPO-related reforms, assessing in so doing their potential to resuscitate the UK's public equity markets. The paper puts the IPO-related reforms into context by considering whether the fostering of strong equity markets is a sensible policy goal and by assessing what law can contribute to this endeavour. With respect to the specific IPO reforms, the paper acknowledges they may increase IPO activity but maintains concerns about strong public markets will continue to exist. This is because the reforms do nothing to address exits from the stock market or concerns about 'over'-regulation of public companies that discourage reliance on equity markets.

Keywords: Public companies; initial public offerings; stock exchange regulation; dual class stock; special purpose acquisition companies (SPACs); London Stock Exchange; Financial Conduct Authority

JEL codes: G34, G38, K22, M13

---

* Faculty of Law, University of Cambridge.

** Faculty of Law, University of Cambridge.

INTRODUCTION

Amidst claims Britain's stock market has been 'fading away'[1] in 2021 the Chancellor of the Exchequer declared 'Strong public markets are a vital component of the UK economy.'[2] A flurry of reform activity has followed in turn. Lord Hill, in a 2021 review of regulatory arrangements of companies seeking to list their shares for trading on the London Stock Exchange (LSE) the Chancellor commissioned, made various proposals for change, emphasising '(t)he UK needs strong public markets'.[3] Before the year drew to a close, the Financial Conduct Authority (FCA), which is responsible for promulgating the Listing Rules to which companies listed on the LSE must adhere, implemented a series of recommendations based largely on the Hill Review. The most prominent changes make it easier for companies to list with founders retaining outsized voting clout and relax restrictions impinging on the use of special purpose acquisition companies (SPACs) to bring privately held firms into the listed company fold.

There has been praise for the reforms. Nick Bayley, managing director at compliance advisor Kroll and a former senior FCA regulator, has said 'These are the most radical changes to the UK listing rules that the market has seen for decades,' and has lauded the reforms as 'a bold attempt to arrest the seemingly inexorable long-term decline of London as a global listing venue.'[4] The *Economist* has concurred, saying 'after a long time lagging

---

1 'Big Bang to a Whimper' *Economist* (2 October 2021) 9.

2 HM Treasury, 'UK Listings Review: Government Response', 21 April 2021, at https://www.gov.uk/government/publications/uk-listings-review/uk-listings-review-government-response. All URLs were last accessed on 12 April 2022 unless otherwise stated.

3 HM Treasury, *UK Listing Review*, 3 March 2021 (Hill Review) 1.

4 P. Stafford and L. Noonan, 'Shake-up of Listing Rules Takes Effect' *Financial Times* (2 December 2021).

behind its rivals, Britain's stockmarket is moving in the right direction.'[5] The *Financial Times* has also offered praise, characterising the changes as 'useful'.[6]

Is the recent round of reform in fact likely to fortify the UK's stock market in the manner supposed? It may well be the case that the changes will boost initial public offering (IPO) activity to some degree. Nevertheless, consistent with other academic discourse focusing on the IPO angle,[7] we suggest only a modest IPO uptick can be expected, partly because deregulation that has occurred has been qualified in material respects. We also maintain that with respect to the overall vitality of the UK stock market, Listing Rule reforms directed toward IPOs could only ever foster change at the margin because the challenges equity markets in Britain face are multi-faceted. For instance, exits from the LSE occur with such substantial frequency that increases in IPO activity might never amount to more than a case of running to stand still.

This paper will consider first the extent to which the LSE has been in decline, indicating that the evidence is quite compelling. Next, the paper will assess whether the assumption of Lord Hill and the Chancellor of the Exchequer that strong public equity markets are essential is justified. Next, the contribution law can make to foster the development of such markets will be canvassed in general terms. The IPO-related changes the FCA has made will then be summarised. This discussion will set the stage for the paper's

---

[5] Dual Carriageway, 'Britain is Liberalising its Listing Rules to Revive its Battered Bourse' *Economist* (11 December 2021) 27.

[6] 'How to Revive London's Flagging Stock Market', *Financial Times* (8 January 2022), 10.

[7] See, for example B. Reddy, 'Up the Hill and Down Again: Constraining Dual-Class Shares' (2021) 80 CLJ 515; J. Payne and C. Pereira, 'The Future of the UK IPO' (2022) at https://ssrn.com/abstract=4029933; B. Reddy, 'Warning the UK on Special Purpose Acquisition Companies (SPACs): Great for Wall Street but a Nightmare on Main Street' (2022) JCLS at https://doi.org/10.1080/14735970.2022.2036413.

analysis of the extent to which the reforms are likely to be a catalyst for IPOs. A core message is that the impact will be modest at best, partly due to qualifications with changes made that imply a reluctance to forsake an assumption that close regulation of IPOs remains prudent. The paper then draws attention to the fact that the Listing Rule changes fail to tackle deeper-seated factors deterring IPOs -- namely 'over-regulation' of companies already publicly traded and depressed share valuations -- and puts the spotlight on a key non-IPO-related factor that helps to dictate the overall health of the stock market -- exits. Ultimately, then, concerns about the strength of public markets are destined to persist even if the FCA reforms do foster an increase in IPO activity.

THE FACTS

Lord Hill, in the introduction to his March 2021 review of the UK listing regime, maintained 'the figures paint a stark picture.'[8] With respect to data, however, all Lord Hill said was that 'between 2015 and 2020, London accounted for only 5 per cent of IPOs globally. The number of listed companies in the UK has fallen by about 40 per cent from a recent peak in 2008.'[9] The FCA offered some additional detail in a July 2021 consultation paper on primary equity markets reform that presaged the amendments to its Listing Rules later in the year,[10] saying 'that there has been a general decline in the number of companies being admitted to public markets,' and demonstrating the point with a chart indicating that the number of companies listed on the LSE had declined steadily throughout the 21st century.[11]

---

8 n 3 above, 1.

9 *ibid*.

10 FCA, 'Primary Markets Effectiveness Review' CP21/21, July 2021.

11 *ibid*., 6. See also FCA, 'Review of the Effectiveness of Primary Markets: The UK Primary Markets Landscape' DP17/2, February 2017, 43, Figure 1 (annual data, 1999-2016).

The number of publicly traded companies do much to define a stock market's vibrancy but the size of the companies that are publicly traded is also important. These variables can move in a different direction, which complicates an assessment of overall stock market health. For instance, a substantial and thus far uncorrected decline in the number of publicly traded companies in the United States occurring between the mid-1990s and the early 2010s[12] has lent credence to claims the public company's 'time may have passed.'[13] At the same time, the fact that the ratio of the aggregate market capitalisation of publicly traded stocks to US Gross Domestic Product (GDP) has been hitting record highs regularly since 2017 implies the stock market has never been bigger in relation to the American economy.[14] These seemingly conflicting trends can be squared readily -- American companies that are publicly traded today are worth considerably more on average than their stock market forerunners.[15] The UK data, however, provides a more forceful case for time having passed the stock market by.

In the early 1960s, over 4400 companies were listed on the LSE. This total declined to just over 3000 in 1980 (Figure 1). The number of companies listed on the LSE's Main Market has continued to fall steadily since then, dipping to 1124 as of 2021. The total number of publicly traded companies in the UK has not fallen as precipitously due to secondary exchanges the LSE has operated, the Unlisted Securities Market (USM) from 1980

---

12 World Bank, 'Listed Domestic Companies, Total - United States, 1975-2019' at https://data.worldbank.org/indicator/CM.MKT.LDOM.NO?locations=US.

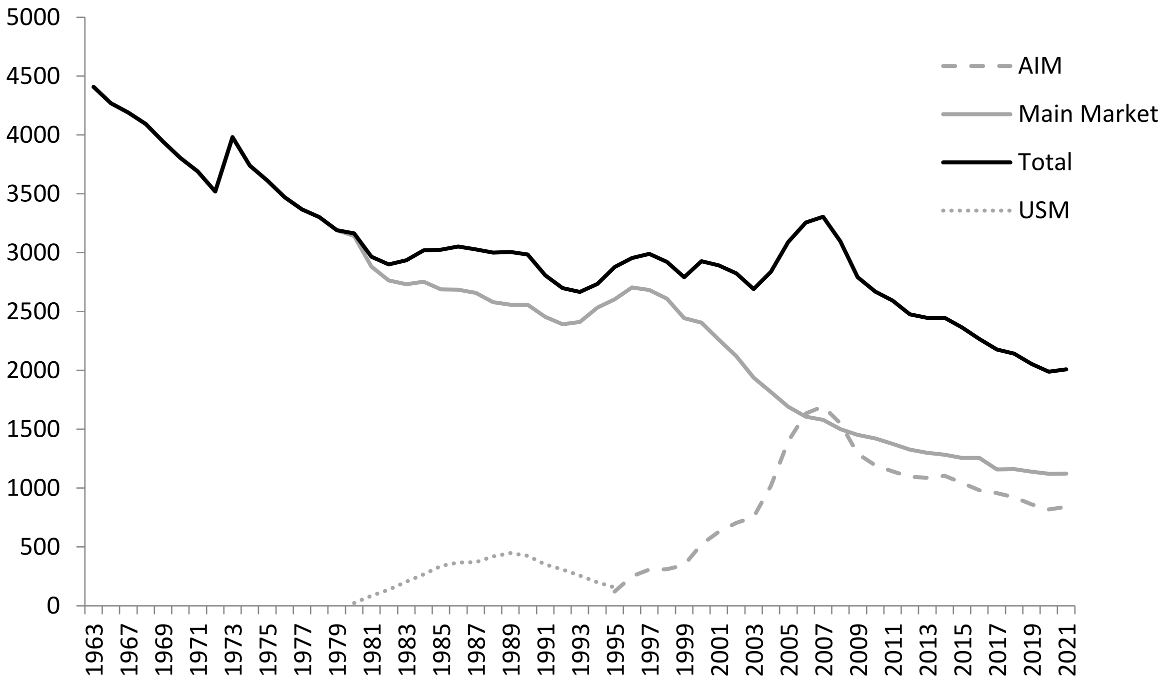
13 G. Davis, *The Vanishing American Corporation: Navigating the Hazards of a New Economy* (Oakland: Berrett Koehler, 2016) 17.

14 World Bank, 'Market Capitalization of Listed Domestic Companies (% of GDP) – United States' at https://data.worldbank.org/indicator/CM.MKT.LCAP.GD.ZS?locations=US ; B. Cheffins, 'Rumours of the Death of the American Public Company are Greatly Exaggerated' (2019) 40(1) Company Lawyer 4, 9-10.

15 Cheffins (2019), *ibid*, 1.

to 1995 and the Alternate Investment Market (AIM) from 1995 onwards. Factoring in these secondary exchanges, the number of companies traded on the LSE largely held steady from 1980 through to the mid-2000s. Other than slight growth in 2021,[16] the total has fallen continuously since, with the number of companies traded on AIM declining in tandem with the long-standing Main Market trend.

Figure 1: # of Companies Traded on the LSE, AIM and the USM 1963-2021



Sources: London Stock Exchange Reports at https://www.londonstockexchange.com/reports?tab=issuers; London Stock Exchange, Fact Book: 1993 (London: London Stock Exchange, 1993); 'All You Ever Need to Know About Footsie' *Daily Mail* (9 March 1994); D. Hellier, 'AIM meets the deadline for its debut; Stock Exchange: New trading systems promise an establishment shake- up' *The Independent* (14 June 1995); Bank of England, 'Quarterly Bulletin', December 1985 at https://www.bankofengland.co.uk/-/media/boe/files/quarterly-bulletin/1985/the-unlisted-securities-market.pdf

16 See Figure 1.

The substantial decline in the number of publicly traded companies in the UK runs contrary to global patterns. The number of listed companies worldwide grew nearly 250 per cent from 17,273 in 1980 to 43,104 in 2006.[17] The total has since fluctuated narrowly between just over 43,000 and just under 46,000, peaking in 2014.

As is the case in the United States, as measured by market value, companies traded on the stock market in the UK have become larger over time as the number of publicly traded companies has declined. The average market capitalisation of a company traded on the LSE increased from £1.117bn in 2010 to £1.649bn in 2018.[18] Nevertheless, unlike in the United States, the size of the companies traded on the LSE has not increased substantially enough to forestall a decline of the stock market, measured by aggregate market capitalisation, relative to the size of the UK economy, over the past 20 years (Figure 2).[19] The market capitalisation of listed companies, rather than AIM companies, has dictated this pattern. As of 2020, the market capitalisation of the LSE's Main Market was £3,204bn as compared to £98.6bn for AIM.[20]

---

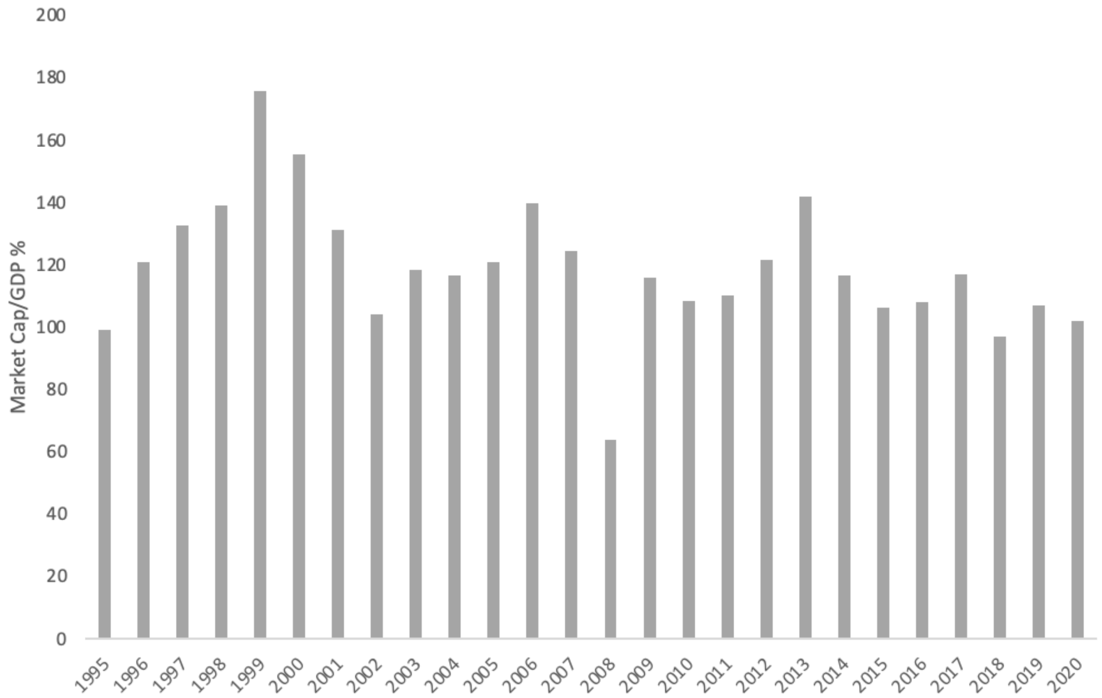
[17] The World Bank, 'Listed Domestic Companies, Total' at https://data.worldbank.org/indicator/CM.MKT.LDOM.NO (providing data up to 2019). For a chart offering a breakdown on the basis of whether companies were listed in the United States, other OECD countries or in an emerging market, see W. Wright, 'What Are Stock Exchanges For and Why Should We Care?' (2019) New Financial/Pension Insurance Corporation, 1, 28.

[18] See Oxera Consulting LLP, *Primary and Secondary Equity Markets in the EU* (Luxembourg: Publications Office of the European Union, 2020) 265, Table A.2.3, 267, Table A.2.4, calculated by dividing the aggregate market capitalisation of the London Stock Exchange for 2010 and 2018 by the number of companies traded on the exchange. Currency converted with average exchange rates for 2010 and 2018 calculated using https://www.exchangerates.org.uk/EUR-GBP-spot-exchange-rates-history-2010.html,.

[19] See also Wright (2019), n 17 above, 8, Fig. 1.

[20] B. Reddy, *Founders without Limits: Dual-Class Stock and the Premium Tier of the London Stock Exchange* (Cambridge: CUP, 2021) 47 f/n 152.

Figure 2: UK Aggregate Stock Market Capitalisation/GDP Ratio, 1995-2020



Sources: World Bank, 1995-2014, CEIC, 2015-20

The UK stock market, in addition to declining relative to the size of the national economy, has retreated relative to stock markets elsewhere. According to the *Economist*, while as of 2006 companies' shares listed in London were worth 10.4 per cent of the global equity market and 36 per cent of Europe's total market value, the equivalent 2021 figures were 3.6 per cent and 22 per cent respectively.[21] The decline in the UK stock market relative to counterparts elsewhere is attributable to a substantial extent to mediocre share price performance. For instance, the FTSE 100 rose 12.7 per cent between the start of 2000 and the end of 2021,[22] compared to 242 per cent for the S&P 500, a roughly equivalent American

21 n 1 above.

22 Derived from FTSE 100, Yahoo! Finance UK at https://uk.finance.yahoo.com/.

blue-chip stock market index.[23] The FTSE 100 has underperformed Germany and Japan's blue-chip indices over the same period as well,[24] and returns the broader FTSE All-Share index has generated have lagged behind peer indices in the rest of the developed world.[25]

A *Telegraph* columnist argued as the FCA finalised Hill Review-inspired changes to the Listing Rules that 'a little perspective is in order' with respect to claims that the UK's 'sluggish stock market' was 'a national embarrassment.'[26] True enough. Nevertheless, the available data does provide multi-faceted evidence of decline. Even the *Telegraph* conceded 'a long, hard look at the listing rules' was warranted.[27] This presumes, though, that a sizeable stock market should be some sort of national policy priority. Should it? We consider this point next.

WHY IS THE STOCK MARKET A POLICY PRIORITY?

Underpinning the Listing Rules reforms recommended and implemented in 2021 is a consensus that a healthy stock market is desirable, with the Hill Review and the Chancellor of the Exchequer both emphasising the need for strong public markets.[28] Still, it cannot be taken for granted that a flourishing stock market should be a public policy priority. John Kay, in a government commissioned 2012 review of UK equity markets, said, 'We do not

---

23 Derived from S&P 500, Yahoo! Finance UK at https://uk.finance.yahoo.com/. See also O. Shah, 'The Income Addiction' *Sunday Times* (16 January 2022) Business, 8; (making the same point comparing January 2010 and January 2022); The Editorial Board (2022), n 71 above (doing the same for January 2015 through to January 2022).

24 E. Onali, 'Has the FTSE 100 Really Performed as Badly This Century as it Appears?' *The Conversation* (4 September 2020) at https://theconversation.com/has-the-ftse-100-really-performed-as-badly-this-century-as-it-appears-145516.

25 A. Whiffin, 'Lex in-depth: Why is the UK Stock Market so Cheap?' *Financial Times* (6 March 2022) at https://www.ft.com/content/2b40824f-69c6-4768-b313-a544fc1a00d7.

26 B. Wright, 'Yes, Listings Have Fallen in the City -- But It Still Punches Above its Weight' *Telegraph* (3 December 2021) Business, 4.

27 *ibid.*

28 nn 2 and 3 above, and accompanying text.

believe there are any arguments of policy for promoting the use of public equity markets as an objective in itself.'[29] Nevertheless, a case in favour of bolstering the stock market can be developed by taking into account constituencies that do stand to benefit -- companies that could potentially be publicly traded, investors, and the economy as a whole. We will consider each in turn, pointing out in so doing that recent trends mean that for a country such as the UK, a robust domestic equity market may not be as essential as might have been the case previously, but can still offer material benefits in various circumstances.

Companies

Owners of privately held companies have various reasons to consider moving to the stock market. A public offering provides a means for the owners to reallocate their wealth beneficially, most obviously by way of diversification, and to sell shares so as to take advantage of buoyant stock market conditions to exit on advantageous terms.[30] For instance, Japanese conglomerate Softbank, which took chip-designer ARM, one of the UK's biggest tech businesses,[31] private in 2016,[32] subsequently made a decision to re-list ARM because of generous stock market valuations of chip companies and because Softbank, with debts

[29] J. Kay, 'UK Equity Markets and Long-Term Decision Making: Final Report', July 2012, 62 at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253454/bis-12-917-kay-review-of-equity-markets-final-report.pdf.

[30] B. Cheffins, *Corporate Ownership and Control: British Business Transformed* (Oxford: OUP, 2008), 64-67, 73-74.

[31] J. Titcomb, 'British Tech Champion Arm to Slash Hundreds of Jobs' *Telegraph* (15 March 2022).

[32] A. Massoudi et al, 'SoftBank to Acquire UK's Arm Holdings for £24.3bn' *Financial Times* (18 July 2016) at https://www.ft.com/content/235b1af4-4c7f-11e6-8172-e39ecd3b86fc.

accumulating, wanted to have cash available to finance myriad start-up companies it was backing.[33]

Sometimes owners of privately held companies are contractually obliged to exit, with 'private equity' being a prominent example. Private equity is synonymous with professional investors who have sizeable (usually majority) stakes in companies that are not traded on the stock market and have committed to exiting within a prescribed time period.[34] Private equity funds that execute buyouts of companies have a fixed duration, often ten years, which means orchestrating exits of acquired firms is a critical element of the private equity business model.[35] An IPO will be one option under consideration but there will be other possibilities, such as a sale to a corporate buyer[36] or to another private equity fund in what is known as a 'secondary' sale.

For operators of companies, another benefit with being publicly traded relates to M&A activity. A company traded on the stock market should be able to use its shares readily as acquisition currency in a way it cannot if it is privately held.[37] The then Department for Business, Innovation & Skills (DBIS), in a 2013 report on the motivations underlying listing

---

33 'While Nvidia Can Lose an Arm, SoftBank Needs to Slim Down', *Wall Street Journal* (9 February 2022) B12; 'Does Masa Have His Trunks On?', *Economist* (12 February 2022) 67; A. Gross and T. Bradshaw, 'SoftBank Chief''s Costly Gamble on "Internet of Things" Backfires at Arm', *Financial Times* (15 February 2022) 11.

34 S. Witney, *Corporate Governance and Responsible Investment in Private Equity* (Cambridge: CUP, 2020), 5.

35 Cheffins, n 30 above, 398-99; P. Hosking, 'Private Equity is an Easy Target for the Critics, But Not Always a Deserving One' *Times* (22 June 2021) 39. See also n 47 above, 57.

36 Wright (2019), n 17 above, 32.

37 U. Celikyurt, M. Sevilir and A. Shivdasani, 'Going Public to Acquire? The Acquisition Motive in IPOs' (2010) 96 *Journal of Financial Economics* 345, 346-48, 362.

decisions of companies, found that amongst surveyed listed businesses being better positioned to carry out acquisitions was the main reason for listing.[38]

An additional potential major advantage to being publicly traded is access to funding otherwise unavailable. Public markets can 'help companies that are in need of capital raise money from investors who have it.'[39] Consider, for instance, a company lacking a history of profitability seeking funding to develop a potentially lucrative but uncertain project. Stock market investors, cognisant of the potential upside shares in thriving companies should offer, may well be prepared to step forward when lenders such as banks would balk.[40]

While moving to the stock market can provide a company with access to funding otherwise unavailable, market trends mean that options other than bank lending have been growing in prominence.[41] Venture capital (VC) is one example. VC investors typically take sizeable minority stakes in mainly early-stage privately held firms, providing risk capital in return for the issuance of shares while providing operational expertise to the relevant businesses.[42] Between 2014 and 2021, annual VC financing in London increased from $0.9bn to $7.7bn.[43]

---

[38] Department for Business, Innovation & Skills, 'Investigation Into the Motivations Behind the Listing Decisions of UK Companies' BIS Research Paper No. 126, August 2013, 33.

[39] W. Wright and T. Blackwell, 'Stock Exchanges Can Reunite Society With Capitalism' *Telegraph* (12 June 2019), Business, 2.

[40] B. Reddy, 'Finding the British Google: Relaxing the Prohibition of Dual-Class Stock From the Premium-Tier of the London Stock Exchange' (2020) 79 CLJ 315, 318.

[41] Regulation hinders an additional option not canvassed here: equity 'crowdfunding' where members of the public can subscribe to equity in privately held companies. See Payne and Pereira, n 7 above, 62.

[42] BVCA, 'Venture Capital Explained' at https://www.bvca.co.uk/Our-Industry/Venture-Capital.

[43] KPMG, 'Venture Pulse Q4 2021' (19 January 2022) 62.

For operators of promising companies, perhaps initially backed by venture capital, that are looking to scale up, an IPO is one financial option available but it is by no means the only one. Private equity can also step in, typically in the form of a buyout that brings a firm under the wing of a private equity fund. 2021 was a record year for mid-market UK private equity activity -- deals worth somewhere between £10 million and £300 million[44] -- and an exceptional year for private equity deals generally.[45]

A by-product of the growth of VC and private equity is that with companies having choices previously unavailable, businesses are staying private for longer and have been able to attain huge valuations without listing publicly.[46] Indeed, 'many of the businesses' the British public now encounters 'are owned, in whole or in part, by a venture capital or private equity fund.'[47] Moreover, VC and private equity seem destined to remain robust alternatives to the stock market, given a supposed recent 'turbocharging of the venture world'[48] and given '(t)he private equity business is awash with cash.'[49]

---

44 BGF, 'What is Mid-Market Private Equity?'8 April 2021 at https://www.bgf.co.uk/insights/bgf-explains-what-is-mid-market-private-equity/.

45 KPMG, 'UK private equity market soars as deal activity sets new record' (3 February 2022) at https://home.kpmg/uk/en/home/media/press-releases/2022/02/uk-private-equity-market-soars-as-deal-activity-sets-new-record.html.

46 E. de Fontenay, 'The Deregulation of Private Capital and the Decline of the Public Company' (2017) 68 Hastings Law Journal 445, 455; S. Kumar, 'Why are High-Growth Companies Staying Private for Longer?' (19 October 2021) *Torre Capital* at https://medium.com/torre-capital/why-are-high-growth-companies-staying-private-for-longer-126486a26e9b.

47 Witney, n 34 above, 1.

48 Leaders, 'Adventure Capitalism' *Economist* (27 November 2021) 15.

49 M. Somerset Webb, 'Do Not Blame Private Equity for Fund Managers Missing Out' *Financial Times* (26 June 2021).

While the funding environment has changed markedly, successful companies ultimately will tend to stay 'private for longer, not forever.'[50] Even in the absence of a private equity-style promise by those running investment funds to sell, for investors in a privately held company at some point monetising their investment will become a priority. An IPO creates a potentially valuable exit mechanism for such investors, and, therefore, in the life-cycle of a company, notwithstanding highly accessible private funding.[51]

While going public is an option that remains on the table for owners of a privately held company throughout its life cycle, if an IPO is a move restricted to large, well-established firms, one may question whether there is a need to resuscitate the LSE. Arguably, having the option to seek an overseas listing on, for example, the New York Stock Exchange (NYSE) or Nasdaq, might fit the bill for British firms of this sort.[52] However, having younger British companies with a bright future forsake London listings may not be in the interests of British investors or the economy more generally.

Investors

Lord Hill said in his 2021 review of the UK listing regime that a strong stock market is important partly 'because increasing opportunities for investors to share in that growth helps spread wealth.'[53] With 56 per cent of shares in publicly traded UK companies being owned

---

50 N. Bullock and Robin Wigglesworth, 'US Seeks Depth in the Listings Pool' *Financial Times* (9 January 2018).

51 Between 2010 to 2016, according to FCA data, in any given year between a quarter and a half of UK IPOs involved private equity-backed companies (FCA DP17/2, n 11 above, 51, Figure 7).

52 For smaller UK companies, a lack of exposure overseas, and a reticence to embrace an unfamiliar regulatory regime could hinder an overseas IPO (n 20 above, 52-53).

53 n 3 above, 1. See also Wright (2019), n 17 above, 9 ('Equity - and particularly public equity markets – helps drive the wider sharing of wealth creation.')

by foreign investors and only 12 per cent by private individuals,[54] the extent to which stock market investment in the UK can democratise the distribution of wealth is open to question. Nevertheless, there are investors who will be disadvantaged if UK-listed companies ultimately fade into obscurity.

During the second half of the 20th century UK-based institutional investors such as pension funds and insurance companies allocated a substantial proportion of assets under management to shares in UK quoted companies and became the dominant owners of such firms.[55] The present-day decline of the UK stock market is of secondary concern, however, to such investors. Since the late 1990s, a combination of market-oriented and regulatory factors have prompted domestic institutional investors to pivot away from UK shares.[56] Currently, just 12 per cent of assets British investors control is invested in the UK stock market.[57]

As and when British investors engage in UK equity investment, despite the growing importance of VC and private equity as a source of finance for privately held firms, it will likely be publicly quoted companies they focus on. Less than 1 per cent of British pension fund and insurer assets are invested in unlisted UK equities.[58] The UK government has been urging a change in approach to boost the supply of 'patient capital' available to growing

---

54 Office of National Statistics, 'Ownership of UK Quoted Shares: 2020' (3 March 2022), https://www.ons.gov.uk/economy/investmentspensionsandtrusts/bulletins/ownershipofukquotedshares/2020 .

55 Cheffins, n 30 above, 344-46, 350-52.

56 *ibid.*, 387-90; P. Davies, 'Shareholders in the United Kingdom' in Jennifer G. Hill and Randall S. Thomas (eds.), *Research Handbook on Shareholder Power* (Cheltenham: Edward Elgar, 2015) 355, 360-61.

57 B. Wright, 'You Can't Fix Our Investment System Simply by Shouting "Buy British"' *Telegraph*, (6 August 2021), 38.

58 *ibid.*

private businesses, partly to underpin a governmental 'levelling up' agenda oriented around reducing economic imbalances within Britain.[59] There is, however, a widespread reluctance on the part of UK asset managers to invest in 'illiquid assets' such as funds private equity and venture capital have on offer, with high fees, regulatory constraints and potentially volatile returns acting as deterrents.[60]

For British investors prepared to focus on publicly traded UK firms, there is considerable potential upside. Asset manager Schroeders elaborated in a 2019 report on public equity markets, saying they 'represent the cheapest and most accessible way that savers can participate in the growth of the corporate sector.'[61] The FCA, in its 2021 Listing Rules consultation paper, emphasised the possibility of investors getting in at the ground floor with IPOs, noting in so doing 'More companies listing at an earlier stage in their life cycle means more opportunities for investors to share in the returns of those companies as they grow.'[62] The Hut Group, characterised as one of the largest UK 'tech' listings ever when it went public on the LSE in 2020,[63] illustrates the point. Early stage pre-IPO investors made returns of fifty times on their initial outlay when the company went public.[64] The company was already sixteen years old when it listed.[65] An earlier IPO would have meant that stock market investors would have shared in a more substantial proportion of this

59 'Into the Valley of Death', *Economist* (8 April 2017), 27; 'Pension Funds Balk at Downing Street's Appeal to Buy British' *Financial Times* (27 September 2021), 2.

60 n 57 above; A. Peters, 'Pension Funds are in the Mix For UK's £20bn "Patient Capital" Drive', *Financial Times* (11 December 2017), FT fm, 10; J. Cumbo, 'Retirement Schemes Urged to Shift Focus From Low Charges' *Financial Times* (28 September 2021), 2.

61 D. Lamont, *What is the Point of the Equity Market?* (London: Schroeders, 2019), 20.

62 n 10 above, 3.

63 n 20 above, 54.

64 P. Evans and S. Chambers, 'Matt Moulding, the Shy Tycoon Who Built a €5bn Hut' *Sunday Times* (30 August 2020) at www.thetimes.co.uk/article/matt-moulding-the-shy-tycoon-who-built-a-5bn-hut-0z23nl92t.

65 The Hut Group Limited, 'Registration Document' (27 August 2020), 26.

considerable upside. If the UK stock market continues to fade away, such opportunities for UK investors to participate in British corporate success will dwindle away precipitously.

The Economy

According to a *Telegraph* columnist, 'Yes, there appears to be a secular decline in public companies. But there is absolutely no evidence that this has affected or will affect the economy one way or another.'[66] The FCA disagrees. In its 2021 consultation paper on primary equity markets reform, job creation and economic growth were cited to explain why it was consulting on change.[67] The FCA is hardly alone. Eilis Ferran, an expert on financial services regulation, has suggested 'it is intuitively persuasive to expect connections between the depth and sophistication of a region's financial markets and its economic prosperity.'[68] With respect to job creation, according to the European Commission, '(r)ecently listed companies often outstrip privately-owned companies in terms of annual growth and workforce increase.'[69]

In the case of the UK, a flourishing stock market can also play a role in fortifying the City of London's status as a global financial centre. As Lord Hill noted in his review of the UK listing regime, public markets for equities are '(a) vital part of the whole financial ecosystem.'[70] The *Economist* elaborated in a 2021 leader regarding Britain's 'fading' stock

---

66 B. Wright, 'Stop Blaming Private Equity for the Demise of the plc' *Telegraph* (2 June 2021), Business, 4.

67 n 10 above, 3.

68 E. Ferran, *Building an EU Securities Market* (Cambridge: CUP, 2004), 12.

69 European Commission, 'Proposal for a Regulation Amending Regulations (EU) No 596/2014 and (EU) 2017/1129 as Regards the Promotion of the use of SME Growth Markets, COM(2018) 331 Final' (2014) 1.

70 n 3 above, 1.

market, saying 'Listed firms exert a pull on other financial activities, and on the accounting and legal services that cater to them.'[71]

Publicly traded companies can potentially boost economic development more broadly. The *Financial Times* has said in this context, 'Trusting the best founders to deliver for their investors in the public markets should unlock more value for the UK economy.'[72] Consider the tech sector. Foreign acquirers buy up successful private UK tech companies with some regularity, a process that typically results in a gradual exodus from Britain of operations, management and talent.[73] Arguably, promising tech firms are more likely to set down strong domestic roots if they join a UK stock market, thereby fortifying the British tech sector and likely the economy more generally.[74] The LSE has not afforded fertile ground in this regard. £14.9bn of VC was invested in tech in the UK in 2020, the third highest total of any country, behind the United States and China.[75] Nevertheless, tech companies comprise only 2 per cent of the FTSE 100 by value, compared with 29 per cent of the S&P 500, led by tech giants Apple, Microsoft, Google parent Alphabet and Amazon.[76]

A dearth of large listed tech companies could be hindering the development of an interconnected and interdependent network of UK tech companies -- a tech ecosystem -- that

---

71 n 1 above, 10, saying also 'The financial-services industry is Britain's most successful, contributing 6% of GDP and about a tenth of tax revenue'. See also The Editorial Board, 'How to Revive London's Flagging Stock Market' *Financial Times* (8 January 2022) 10.

72 B. Hoberman, 'Entrepreneurs Need a Reform of UK Listing Rules' *Financial Times* (12 March 2021) 14.

73 n 20 above, 42-43; A. Gross, 'UK gaming veterans call for investment in British companies' *Financial Times* (28 February 2022) at https://www.ft.com/content/605e06bf-68a6-4646-b777-faf49b35a338.

74 The Editorial Board (2022), n 71 above; 'Oversold Over Here' *Economist* (15 May 2021) 67.

75 Tech Nation, 'The Future UK Tech Built: Tech Nation Report 2021, Investment' at https://technation.io/report2021/#investment.

76 Shah, n 23 above.

spurs innovation and generates substantial collateral benefits for the British economy.[77] Concerns of this nature helped to foster considerable angst in the UK when Softbank, having indicated in 2022 that it was planning to relist ARM, said it was focusing on Nasdaq, an American stock exchange, rather than the LSE.[78] As one high-profile asset manager has said, 'It's a real problem because if you have the remaining large British technology company that could be quoted in London opting not to be, your chances of building an ecosystem, giving people experience and having that presence goes away to quite a large extent.'[79]

With the relationship between the health of the stock market and the wider economy, there remains an elephant in the room -- Brexit. Brexit, by causing the price of sterling to plummet in 2016, directly contributed to Britain's shrinking stock market by fostering acquisitions of publicly traded companies. As a *Sunday Times* columnist observed in 2019, 'A Brexit-inspired collapse in sterling has turned quoted firms into cheap prey for international investors and cash-rich private equity firms.'[80] Softbank's taking private of ARM in 2016 serves as an example. A Brexit induced 30 per cent decline in the value of the

---

77 P. Swabey, 'Why Luring Unicorns to London Could Help the UK Protect its Tech Sector' *Tech Monitor* (2 February 2022) at https://techmonitor.ai/policy/digital-economy/london-stock-exchange-tech-listings-unicorn-ipo. On the nature of an ecosystem in this context, see J. Darko, 'Understanding Tech Ecosystems & How They Support Growth and Innovation' (1 July 2019) at https://medium.com/@joe_darko/understanding-tech-ecosystems-how-they-support-growth-and-innovation-d4e345de20da.

78 J. Thornhill, 'Britain Must Boost its Technological-Financial Complex' *Financial Times* (11 February 2022), 21; J. Mackintosh, 'SoftBank Should Reconsider Tech-Stock Nasdaq Move' *Wall Street Journal* (14 February 2022) B10.

79 H. Agnew et al, 'Arm's Flotation on Nasdaq "A Huge Potential Blow" to London' *Financial Times* (11 February 2022) at https://www.ft.com/content/f99b7980-8f2c-4633-9c9b-1f6f0475daa3..

80 R. Watts, 'Britain for Sale' *Sunday Times* (25 August 2019), Business, 5. On exits, see further 'The Deeper-Seated Issues' below.

pound against the Japanese yen made the chip designer a considerably more attractive target for the Japan-based conglomerate.[81]

The LSE has also become a symbol of Brexit's impact on the wider UK economy. While in the 2000s London was contending with New York as the world's leading financial centre, Brexit reputedly 'robbed the City…of much of its swagger. World-conquering ambition has given way to anxious defensiveness.'[82] With some justification in the case of the LSE -- Amsterdam has now displaced London as 'the main hub to trade shares in Europe.'[83]

For a Government that has bet the house on Brexit, the LSE on the defensive is not a good look. Brexit indeed loomed large with the Hill Review. The opportunity to 'take back control' of, and modernise, the UK's listing regime after withdrawal from the EU[84] were key strategic foundations for the review.[85] An assumption that the strength of UK equity markets is integrally related to Britain's economic position thus clearly underpinned the reforms this paper considers. We will turn to our assessment of these reforms after considering in a general way the contribution the law can make to the development of strong securities markets.

---

81 n 32 above.

82 'Brex and the City', Economist, 24 October 2020, 23.

83 S. Fleming et al, 'The EU vs the City of London: a slow puncture' *Financial Times* (10 January 2022) at https://www.ft.com/content/f83ddf05-e7a1-4c9b-83ad-e82a54c71afa.

84 The EU provides the framework within which Member State listing regimes operate, and the FCA noted that withdrawal from the EU had provided the opportunity to act more 'nimbly' and reform the UK's listing regime (n 10 above, 9).

85 HM Treasury, Call for Evidence – UK Listing Review, 19 November 2020.

LAW AND A STRONG STOCK MARKET

The pro-stock market themes just canvassed do not amount to an ironclad case that fostering public equity markets should be a top political priority. Nevertheless, positive features a healthy stock market can offer suggest that fostering strong securities markets is a perfectly defensible public policy goal. To what extent, however, can law be deployed in practice to promote the development of a robust stock market? The answers to this question are controversial.[86]

A 'law and finance' literature oriented around quantitative comparative analysis of the relationship between national legal institutions on the one hand and financial systems on the other achieved academic prominence in the 1990s and 2000s.[87] A key finding of this literature was that 'law matters', with corporate and securities law being a flagship example. The argument put forward was that, given the challenges information asymmetries, potential managerial agency costs and possible extraction of private benefits of control pose when companies have publicly traded shares, well-developed corporate and securities law does much to explain the existence of strong equities markets.[88] An important normative message follows in turn: countries must have suitable laws in place to have robust financial markets.[89] As law professor Bernard Black argued in a 2000 article, it is 'almost magical' that strong

[86] n 68 above, 27.

[87] On the literature and its popularity, see J. Armour et al, 'How Do Legal Rules Evolve? Evidence from a Cross-Country Comparison of Shareholder, Creditor and Worker Protection' (2009) 58 American Journal of Comparative Law 579, 582-85.

[88] See M. Roe, 'Corporate Law's Limits' (2002) 31 JLS 233, 236-37; L. Enriques, 'Do Corporate Law Judges Matter? Some Evidence from Milan' (2002) 3 EBOR 756, 766-67.

[89] C. Milhaupt and K. Pistor, *Law and Capitalism: What Corporate Crises Reveal about Economic Development Around the World* (Chicago: University of Chicago Press, 2008) 20.

securities markets exist at all, and '(t)his magic does not appear in unregulated markets.'[90] Laws identified as important have included those dealing with voting rights, shareholder remedies offering protection against potentially oppressive conduct by those in control of companies and rules designed to preclude outside investors from being outwitted by better-informed insiders, such as laws mandating corporate disclosure and prohibiting insider dealing.[91]

The theory that '(s)trong legal protection for shareholders appears to be a necessary condition for diffuse equity investment'[92] has been highly influential.[93] It does not provide the last word, however, on law's contribution to the development of strong securities markets. Doubts have been cast, for instance, on the accuracy of the coding of laws relied upon in empirical tests establishing a statistical link between laws protecting investors and strong securities markets.[94]

History also complicates the picture. If law truly determines whether equity markets will flourish, the stock market should languish in a particular country until the law protects investors well. The UK, however, had a well-developed stock market decades before

---

90 B. Black, 'The Core Institutions that Support Strong Securities Markets' (2000) 55 Business Lawyer 1565, 1565.

91 *ibid.*, 1567-68, 1570-73, 1576, 1578, 1583-87; R. La Porta, 'Law and Finance' (1998) 106 Journal of Political Economy 1113, 1126-34; R. La Porta et al., 'What Works in Securities Laws?' (2006) 61 Journal of Finance 1.

92 D. Denis, and J. McConnell, 'International Corporate Governance' (2003) 38 Journal of Financial and Quantitative Analysis 1, 30.

93 C. Holderness, 'Law and Ownership Re-examined' (2016) 5 Critical Finance Review 41, 42.

94 See, for example, H. Spamann, 'The "Antidirector Rights Index" Revisited' (2010) 23 Review of Financial Studies 467.

company and securities law afforded investors substantial assistance.[95] Suitable regulation, then, may be a desirable rather than essential ingredient for flourishing equity markets.

Even conceding that law can provide a helpful backstop with respect to strong securities markets, the nature of the regulatory approach most likely to elicit a flourishing stock market is not self-evident.[96] There are a couple of basic options, oriented around a 'contracting paradigm' and a 'regulatory paradigm.' The latter assumes law should actively correct market failures afflicting securities markets.[97] With the former, law plays a supporting and supplementary role, primarily facilitating efficient contracting through the provision of a market-friendly standardised set of rights and obligations.[98] Rules correspondingly should not be designed to protect investors as such but rather to make it easier for them to analyse and value companies, which should encourage the purchasing of shares.[99]

While protection of investors per se is not part of the contracting paradigm, a market-oriented case can still be made for laws that have this objective. A facilitative set of rules could foster an increase in the number of firms that list their shares, given what should be modest costs involved with going public. There is a risk, however, that equity markets will not prosper over the long haul in a largely *laissez-faire* environment.[100] Investors might pay lower prices for shares when they know their protection is not the top legal priority, meaning the amount of equity issued would be lower than it would be with more rigorous

---

95 Cheffins, n 30 above, 18-19, 33-41.

96 La Porta et al (2006), n 91 above, 2-3.

97 P. Mahoney, 'The Development of Securities Law in the United States' (2009) 47 Journal of Accounting Research 325, 325.

98 *ibid.*; B. Cheffins, 'Dividends as a Substitute for Corporate Law: The Separation of Ownership and Control in the United Kingdom' (2006) 63 Wash & Lee L Rev 1273, 1274.

99 La Porta et al (2006), n 91 above, 2.

100 *ibid.*, 27.

regulation.[101] Moreover, unscrupulous executives and bankers might exploit opportunistically investor trust and ultimately corrosively undermine faith in equity markets.[102] At the same time, though, if the regulatory paradigm dominates unreservedly, investor protection could backfire by imposing costs that discourage promising fledgling companies from offering their shares to the public and prompt firms that are already publicly traded to seek refuge off the stock market.[103] We will consider how effectively the FCA has executed this regulatory balancing act in the IPO context after summarising the key reforms the FCA has made to try to strengthen the UK equity market.

REFORM OF THE UK LISTING REGIME – AN OVERVIEW

After the Hill Review was published in March 2021,[104] the FCA endorsed Lord Hill's efforts[105] and responded by implementing various modifications to its Listing Rules (Table 1), which govern the LSE's Main Market. The LSE's Main Market consists of a premium tier, a standard tier, a fledgling high-growth segment, and a specialist-fund segment restricted to investment funds. The premium tier is by some distance, the most prestigious. Regulatorily 'super-equivalent' rules addressing issues such as disclosure of corporate governance arrangements and shareholder voting on large transactions and related party transactions distinguish the premium tier from its standard counterpart.[106]

---

101 *ibid*., 5.

102 F. Cross and R. Prentice, 'Law and Corporate Finance' (Cheltenham UK: Edward Elgar, 2007), 52, 57.

103 Reddy (2021), n 7 above, 548-49 and 551; Payne and Pereira, n 7 above, 14.

104 n 3 above.

105 n 10 above, 3; FCA, 'Investor protection measures for special purpose acquisition companies: Proposed changes to the Listing Rules' Consultation Paper CP21/10, April 2021, 3.

106 LSEG, 'Companies' at https://www.lseg.com/markets-products-and-services/our-markets/london-stock-exchange/equities-markets/raising-equity-finance/main-market/companies. See also nn 110, 126 and 160-162 below, and accompanying text.

Table 1: Lord Hill Review Recommendations/FCA Implementation

Topic	**Hill Review Recommendation**	**Implementation**
Voting rights attached to shares	Allow companies with outsized voting rights attached to designated share classes to list on the premium tier of the LSE, subject to various conditions.	The FCA has amended the Listing Rules, largely in accordance with the Hill Review's recommendations.
'Rebrand and re-market the standard listing segment' of the Main Market of the LSE	Change the name of the standard listing segment.	The FCA is contemplating changes as part of a holistic review of the dichotomy between the standard and premium tiers.
Free-float requirements	Lower the free float requirement for listing from 25 per cent of outstanding shares to 15 per cent.	Free-float requirements have been reduced to 10 per cent but the minimum market capitalisation for listing has increased from £700,000 to £30 million (not recommended by the Hill Review).
Special purpose acquisition companies (SPACs)	Drop the suspension of trading on the announcement of a potential acquisition by a SPAC.	The FCA displaced the suspension of trading for SPAC acquistions, subject to specified conditions.
Redesign the prospectus regime	Create separate treatment for admission to a regulated market and offers to the public and facilitate the provision of forward-looking information.	HM Treasury has commenced a consultation on changes to the prospectus regime, including liability for forward-looking information.
Track record	Maintain the three-year track record requirement for the premium listing segment.	FCA concurs with the Hill Review.
Empower retail investors	'Consider how technology can be used to improve retail investor involvement in corporate actions'	No action thus far.

Perhaps the headline Hill Review-related reform to the Listing Rules was the relaxation of restrictions on voting rights attached to shares on companies traded on the LSE's premium tier. As a matter of company law, companies are free to put in place a capital structure where some classes of shares enjoy greater voting rights than otherwise identical share classes.[107] The UK's financial community, has, however, long frowned upon such arrangements owing to fears dominant shareholders will use outsized voting clout in a manner detrimental to shareholders generally.[108] A logical source of concern in this context is that beneficiaries of outsized voting rights will not fully feel the adverse financial consequences of self-serving actions that depress shareholder returns.[109]

Reflecting the financial community's misgivings, since 2014 the FCA Listing Rules have banned companies featuring outsized voting rights from the premium tier.[110] Such arrangements have been permissible for companies with shares traded on the standard tier or AIM.[111] These firms, however, have been excluded from well-known stock indexes such as the FTSE 100 and the FTSE 350.[112] This largely precludes passive index tracking funds, which form a significant and growing proportion of the UK asset management industry, from investing in such companies.[113] More generally, the standard tier is perceived of as an also

---

107 P. Davies, S. Worthington and C. Hare, *Gower's Principles of Modern Company Law, 11th ed.* (London: Sweet & Maxwell, 2021) 126-27, 132-33.

108 n 20 above, 75-78.

109 See n 20 above, 189; F. Easterbrook and D. Fischel, 'Voting in Corporate Law' (1983) 26 J. Law Econ. 395, 409.

110 n 20 above, 79.

111 It should be noted, though, that AIM has historically informally discouraged dual-class stock listings (T. Egan at al., 'The Revival of Dual Class Shares', IFLR (Spring 2020) at https://www.iflr.com/article/b1lmx6clj4l38j/the-revival-of-dual-class-shares).

112 n 20 above, 50.

113 In 2020, passive index tracking funds accounted for approximately 34 per cent of all UK assets under management, rising from 21 per cent in 2010 (The Investment Association, 'Investment Management in the UK 2020-2021: The Investment Association Annual Survey' (September 2021) 45). Index inclusion can increase the liquidity of a company's shares and,

ran compared to the premium tier and AIM is known as an exchange for riskier speculative shares, meaning the investor base for companies traded is considerably narrower than for the premium tier.[114]

With approaches that can be adopted by policymakers to foster strong securities markets, the UK's restrictive stance on outsized voting rights has aligned more with a regulatory paradigm rather than a contracting paradigm.[115] Various stock exchanges elsewhere have been more liberal than the UK, including in Singapore, Hong Kong, Tokyo, India, Shanghai and the United States, where outsized voting rights typically take the form of what is known as 'dual-class stock'.[116] The FCA's recent reforms move the UK at least partly toward a contracting paradigm approach with outsized voting rights. Still, likely mindful of continued suspicion among UK-based institutional investors,[117] the FCA's move in favour of a private ordering approach has been merely incremental: premium-listed companies can only deploy 'specified weighted voting rights shares' subject to substantial designated conditions. The most consequential are described later in this paper.[118]

---

accordingly, share value. See D. Lund, 'Nonvoting Shares and Efficient Corporate Governance' (2019) 71 *Stanf. Law Rev.* 687, 711; S. Hirst and K. Kastiel, 'Corporate Governance by Index Exclusion' (2019) 99 *B.U. L. Rev.* 1229, 1253-4.

114 n 20 above, 49; White Page Ltd in association with the London Stock Exchange, 'A Guide to AIM' (2010) 4.

115 n 97 above; B. Sharfman, 'A Private Ordering Defense of a Company's Right to Use Dual Class Share Structures in IPOs' (2018) 63 Vill L Rev 1.

116 n 20 above, 99-110.

117 For example, see P. Stafford and A. Mooney, 'Investors Push Back Against UK Listings Overhaul', *Financial Times* (3 March 2021) at https://www.ft.com/content/8ed0d759-c34f-4f3f-a076-6461093da6a2; The Investor Forum, 'Response to Call for Evidence – UK Listing Review' (5 January 2021) at https://www.investorforum.org.uk/wp-content/uploads/securepdfs/2021/01/UK-Listings-Review-January-2021-002.pdf.

118 See 'Will the UK Listing Regime Reforms Foster Additional Listings?' below. For a more detailed summary of the conditions attached, see Reddy (2021), n 7 above.

If the introduction of weighted voting rights shares to the premium tier was the main event of the recent round of listing reforms, the revisions pertaining to SPACs constitute a significant supporting act. A SPAC is a company that lists on an exchange with the sole purpose of raising funds to identify and complete the acquisition of another company. With an LSE Main Market SPAC, after a target has been acquired the SPAC will de-list and subsequently re-list as an enlarged group. A major prospective benefit for the acquired company will be a move to the stock market without an extensive 'roadshow' or 'book-building' process to market its securities to public shareholders,[119] meaning there will be no need for the sort of underwriter support that small, early-stage companies interested in going public can struggle to secure.[120] Furthermore, if a company would be difficult to price for an IPO, as may well be the case with a growth-oriented company with a brief track record, operators of the putative target may find it reassuring to negotiate with market-savvy professional SPAC sponsors rather than roll the dice with a full IPO process where public shareholders could fail to apprehend the upside.[121]

In 2020 and 2021, the SPAC market surged in the US,[122] with SPACs forming a majority of US IPOs and accounting for nearly half of all IPO proceeds raised.[123] This

---

119 M. Gahng et al, 'SPACs' (2021) 1, 13 at https://ssrn.com/abstract=3775847; Reddy (2022), n 7 above, 5; M. Klausner, 'A Sober Look at SPACs' (2021) ECGI Working Paper 746/2021 1, 46. Some specifically targeted roadshows may, however, be required. On why, see n 181 below, and accompanying text.

120 IPO underwriters tend to prefer to work with larger issuers because of higher fees and a reduced risk of a failed process. Reddy (2022), n 7 above, 6; A. Pavkov, 'Ghouls and Godsends? A Critique of "Reverse Merger" Policy' (2006) 3 Berkeley Bus. Law J. 475, 489.

121 n 3 above, 29; Reddy (2022), n 7 above, 6.

122 In 2020, there were 248 US SPAC IPOs raising IPO proceeds of approximately $83bn, and in 2021, there were a record 613 SPAC IPOs raising $162bn of IPO proceeds. See SPAC Analytics at https://www.spacanalytics.com.

123 *ibid*.

prompted envy on the part of the LSE and the FCA.[124] The UK's SPAC market has long languished,[125] at least partly due to regulatory constraints. Traditionally, with a UK-listed SPAC,[126] when an acquisition it was intending to execute became public knowledge trading in the SPAC's shares had to be suspended, with the rationale being to protect investors in the SPAC lacking sufficient information to form a view concerning the forthcoming acquisition.[127] The resulting inability of shareholders to exit from a SPAC where they had doubts about a proposed acquisition likely hampered the UK SPAC market.[128]

In a nod to the contracting paradigm approach to using law to foster equity markets, the FCA has followed up on the Hill Review by amending the Listing Rules to provide that the standard tier presumption of suspension of trading of shares will be disapplied in the context of a SPAC carrying out an acquisition.[129] Consistent with the regulatory paradigm, however, this benefit is only available so long as a SPAC satisfies specified criteria. The conditions, which are described later in this paper,[130] are akin in some respects to SPAC

[124] For example, see n 10 above, 7, 12 and 27.

[125] Reddy (2022), n 7 above, 3-4.

[126] Since SPACs do not have operating histories, they can only list on the standard tier or AIM (Reddy (2022), n 7 above, 13).

[127] See LR 5.6.8G, discussing 5.1.1R(1), 5.1.2G(3) and 5.1.2G(4). See also FCA, 'Cash Shells and Special Purpose Acquisition Companies (SPACs)' Technical Note TN/420.2, January 2018. In relation to AIM, see LSE, 'AIM Rules for Companies' (1 January 2021) (AIM Rules), Guidance to Rule 14.

[128] J. Symcox, 'Is it Time for London to Finally Welcome SPACs?' *Business Cloud* (29 April 2021) at https://businesscloud.co.uk/is-it-time-for-london-to-finally-welcome-spacs/; Norton Rose Fulbright, 'SPACs: The London Alternative' (October 2020); Cohen & Gresser, 'European SPACs – Following in America's Footsteps?' (7 May 2021).

[129] LR 5.6.8G. As of the time of writing, the corresponding suspension on AIM has not been relaxed.

[130] See 'Will the UK Listing Regime Reforms Foster Additional Listings?' below. For a more detailed summary of the conditions attached, see Reddy (2022), n 7 above, 18-19.

conditions the NYSE[131] and Nasdaq[132] impose, where SPACs have flourished and attracted investors in droves.[133]

Other substantive[134] FCA IPO-related reforms are an increase to the minimum market capitalisation of new standard and premium tier listings from the previous minimum of £700,000 to £30m,[135] and a reduction in the minimum free-float a company must have to list from 25 per cent of the outstanding shares to 10 per cent.[136] The FCA and respondents to its post-Hill Review consultation reasoned the 25 per cent free-float minimum was a barrier to entry to the Main Market,[137] surmising company controllers who were minded to go public but were reluctant to divest the bulk of the equity at IPO would likely migrate to other exchanges with more flexible arrangements.[138]

Consistent with the general thrust of the FCA's IPO-related reforms the FCA's reduction of the minimum free-float requirement aligns with the contracting paradigm of equity market-fostering corporate/securities law. The precluding of Main Market IPOs where market capitalisations fail to meet a £30 million threshold points in the opposite direction.

---

131 See NYSE Listed Company Manual, section 102.06.

132 See The Nasdaq Stock Market LLC Rules, rule IM-5101-2.

133 See n 122 above.

134 The FCA also made 'minor changes' to the Listing Rules unrelated to the Hill Review's core objectives that were intended to modernise document submission processes, to clarify various Listing Rule requirements, and to reduce regulatory duplication. See FCA, 'Primary Market Effectiveness Review: Feedback and final changes to the Listing Rules' Policy Statement PS21/22, December 2021, 31-34.

135 LR 2.2.7(1)R. The minimum market capitalisation for closed-end investment funds and open-ended investment companies remains at £700,000 (LR 2.2.7(1A)R).

136 LRs 5.2.2(2)G, 6.14.2(2)R, 14.2.2(3)R.

137 n 134 above, 24; n 10 above, 44.

138 EU Euronext, Australia, Singapore and Hong Kong have more liberal free-float rules than the LSE's previous 25 per cent requirement, while the NYSE and Nasdaq have no free-float requirements. The American stock exchanges instead impose minimum requirements for the number of shareholders, the number of publicly held shares, and the value of publicly-held shares (n 10 above, 81).

Concerns about liquidity -- the ease and speed with which investors can trade shares at prevailing market prices[139] -- influenced the changes to the minimum market capitalisation rules. Share trading liquidity is thought of as essential for market effectiveness and investors value the feature.[140] The FCA reasoned that restricting access to the listed sector to firms with a market capitalisation of at least £30m would improve matters on this front because illiquidity is more prevalent with smaller companies with modest market capitalisations.[141] The FCA was also mindful that dealing with smaller applicants for listing is a drain on regulatory resources because such firms tend to have weaker professional support and because they will likely struggle ultimately to satisfy relevant Main Market eligibility requirements.[142]

Cutting the size of a company's free-float can potentially impinge on liquidity because fewer shares will be available to trade. The FCA reasoned, however, that any decrease in liquidity associated with a reduction in the minimum free-float from 25 to 10 per cent was likely to be small.[143] Moreover, companies with low free-floats tend to have large liquidity-friendly market capitalisations.[144] Plausibly, then, increasing the market capitalisation requirements for companies gave the FCA greater scope to take a contracting paradigm approach to the free-float rules.

---

139 Securities and Exchange Commission, 'Liquidity (or Marketability), Investor.gov. at https://www.investor.gov/introduction-investing/investing-basics/glossary/liquidity-or-marketability.

140 n 10 above, 43. Investors anticipate higher returns as a trade-off for lower liquidity, so unanticipated illiquidity will be associated with lower stock prices. See W. Silber, 'Discounts on Restricted Stock: The Impact of Illiquidity on Stock Prices' (1991) 47 Financ. Anal. J. 60, 64; Y. Amihud and H. Mendelson, 'Stock and Bond Liquidity and its Effect on Prices and Financial Policies' (2006) 20 Fin. Mkts. Portfolio Mgmt. 19, 22.

141 n 10 above, 69.

142 n 10 above, 40.

143 See nn 203-204 below, and accompanying text.

144 n 10 above, 77 and 81.

WILL THE UK LISTING REGIME REFORMS FOSTER ADDITIONAL LISTINGS?

The Hill Review's principal focus was on reforming the UK's listing regime 'to encourage more of the growth companies of the future to list here in the UK.'[145] We consider here whether each of the main reforms the FCA has introduced in implementing the Hill Review's recommendations are likely to yield new Main Market listings, suggesting in so doing any boost will be modest.

Weighted Voting Rights

In the UK listed company context, permitting 'dual-class stock' as utilised in the US and other jurisdictions[146] would be a change that would align with the contracting paradigm approach to the fostering of equity markets and could be a substantial draw for 'the growth companies' the Hill Review wanted to attract to the LSE Main Market. Such firms frequently plan to adopt business strategies intended to disrupt the industry they operate in, an ambitious undertaking where success may take years. To the extent stock market investors fail to perceive accurately what a visionary growth company is seeking to accomplish, the share price can stagnate.[147] With a one-share, one-vote company, the resulting underperformance could encourage public shareholders to exercise their voting rights in ways that confound the founder's plans. Most drastically, a founder could lose their role leading the company, whether by way of an unwelcome takeover bid[148] or due to public shareholders using their voting power to remove the founder as a director and pressuring the board to terminate the

---

[145] n 3 above, 1.

[146] n 116 above, and accompanying text.

[147] n 20 above, 230.

[148] Takeovers can be effected if, in the case of a takeover offer, shareholders holding a majority of the votes accept the bid (Panel on Takeovers and Mergers, The Takeover Code, Rule 10), or by way of a scheme of arrangement if approval is given by a majority of shareholders in number holding at least seventy-five per cent of the votes attending a court-ordered shareholders' meeting (CA 2006, s.899).

founder's managerial involvement.[149] Dual-class stock that vests a founder with outsized voting power can resolve concerns a founder might have about losing control after having ceded a majority of all outstanding shares.[150] A founder of a private company with substantial growth potential thus might well be prepared to have the company join the stock market when such a move would be unacceptable with a one-share/one-vote regime.

An expanding cohort of 'unicorns' heightens the saliency of voting rights flexibility. The number of privately held UK start-ups with a valuation exceeding the unicorn threshold of $1bn increased from 24 to 39 in 2021.[151] Just over 80 per cent of UK unicorns, which should be ripe for listing, are tech companies,[152] which often seek to make bold changes in the area of tech in which they operate. Given that around a half of US dual-class stock listings since Google's 2004 IPO have been tech companies,[153] relaxing restrictions on the allocation of voting rights in listed companies plausibly will encourage the founders of such firms to list on the LSE.

While in theory authorising companies to deploy outsized voting rights liberally could foster Main Market IPOs in a meaningful way, it seems unlikely that the FCA's vote-related

---

149 On removal from the board, see CA 2006, s.168. Although the board is usually empowered to terminate managers (Companies (Model Articles) Regulations 2008, SI 2008/3229 (Model PLC Articles), article 3), such as the CEO, the shareholders have an indirect influence by being able to threaten incumbent directors with removal.

150 If the founder retains a majority of the votes in the company, they can veto any proposed ordinary resolution (CA 2006, s. 282) or special resolution (CA 2006, s. 283).

151 'India Displaces UK to be 3rd Top Country Hosting Unicorns' *Economic Times* (22 December, 2021) at https://economictimes.indiatimes.com//tech/startups/india-displaces-uk-to-be-3rd-top-country-hosting-unicorns/articleshow/88435495.cms.

152 Data derived from CB Insights, 'The Complete List of Unicorn Companies' (as of November 2021).

153 n 20 above, 246. Strikingly, dual-class firms accounted for 49 per cent, 17 per cent, 22 per cent, and 60 per cent of US IPO market capitalisation of firms valued over $200m in 2017, 2018, 2019 and 2020, respectively (Council of Institutional Investors (CII), 'Dual-Class IPO Snapshot: 2017–2020 Statistics').

reforms will have this effect. Purely as a matter of chronology, London may have 'missed the boat', with a tech IPO surge associated with the start of the COVID pandemic beginning to recede.[154] More fundamentally, the UK's premium tier reforms do not embrace outsized voting rights fully.[155]

Under the revised Listing Rules, specified weighted voting rights shares only operate if there is a potentially unwelcome change of control of the company via a takeover, or a resolution is put forward to remove the holder of those rights from the board.[156] This is considerably less liberal than dual class stock arrangements popular in the United States, where outsized voting governs with all resolutions.[157] For a company with specified weighted voting rights, one-share one-vote could well apply to matters of substantial concern to a founder.[158] Resolutions to replace directors on the board are one example, since unwelcome board turnover could leave the founder (or the founder's nominee) vulnerable to dismissal as CEO by the board.[159] 'Large' transactions, which the Listing Rules require shareholders of premium listed companies to approve, constitute another example.[160] 'Large'

---

[154] C. Pooley, 'Do Not Write Off London's IPO Market as a Lost Cause' Financial Times (23 December 2021) at https://www.ft.com/content/24ae0c8d-2d1e-443f-a6ce-184df1b88908.

[155] LR 9.2.22CR.

[156] LR 9.2.22C(2)R. Only in the event of a potential change of voting control of the company do specified weighted voting rights become exercisable in all circumstances. In this particular context, the holder of such voting rights has a *de facto* takeover veto because a bidder will need the holder's acquiescence to be confident of having full post-bid control of the company (n 10 above, 35).

[157] n 20 above, 15.

[158] On evidence from surveys confirming the point see, for example, Oxera, n 18 above, 118-120; J. Brau and S. Fawcett, 'Evidence on What CFOs Think about the IPO Process: Practice, Theory and Managerial Implications', (2006) 18 J. App. Corp. Fin. 107, 114. For further discussion, see Reddy (2021), n 7 above, 525-533.

[159] See n 149 above.

[160] LR 10.5.1R.

is defined according to a variety of ratio-oriented 'class tests.'[161] One such test focuses on a profits ratio,[162] which means with a specified weighted voting rights scheme in place acquisitive low- or 'pre-profit' high-growth companies could face numerous shareholder votes with uncertain outcomes.[163]

Another condition attached to specified weighted voting rights shares is a 'sunset clause' that means enhanced voting rights can only subsist for up to five years after admission of shares to the premium tier.[164] The rationale is that founders should not have outsized voting clout in perpetuity and that five years is a sufficient time to develop a business without worrying about an unwelcome change of control. Nevertheless, the restriction likely will deter many founders from listing on the premium tier. The period to maturity will vary on a firm-by-firm basis,[165] and founders will likely be apprehensive of losing voting protection with the job partly done. Founders who think of both voting control and a public offering as high priorities thus may well opt to list on an overseas exchange with more relaxed share voting rules than the LSE premium tier, or at least delay listing on the premium tier until considerably later in the firm's life-cycle.[166]

In sum, while the FCA's desire to make listing more attractive has fostered a contracting paradigm-style move with voting rights to bolster the UK equity market, the

---

161 Shareholder approval will be required for any transaction if the percentage ratio for any 'class test' is 25 per cent or more (LR 10.2.2R). On the various class tests see LR 10 Annex 1.

162 On the challenges facing smaller companies requiring shareholder approval to enter into substantial transactions, see D. Smith, 'Middle Market Demands a Better Deal From Investors' *Sunday Times* (17 June 2001), discussing the example of Newport Holdings.

163 Early-stage tech companies are often low- or pre-profit companies. In 2016, 75 per cent of US tech company IPOs involved companies that had yet to make a profit. See HKEX, 'Concept Paper: New Board' (June 2017) 1, 15.

164 LRs 9.2.22A(3)R and 9.2.22A(4)R.

165 n 10 above, 368.

166 For further discussion, see Reddy (2021), n 7 above, 533-538.

regulatory paradigm remains influential. Due to conditions applicable to specified weighted voting rights shares, as compared to outright prohibition of outsized voting rights non-founder shareholders face minimal additional risk: for a period of five years, the holder of weighted voting rights can veto a potentially lucrative takeover bid and the disciplinary impact of the 'market for corporate control' will be attenuated.[167] Such caution, however, means that with respect to voting rights the FCA has probably treaded too gingerly to attract large numbers of new listings.[168]

SPACs

As with weighted voting rights, theoretically FCA Listing Rule reforms relating to SPACs could foster moves to the LSE's Main Market. The FCA's relaxation of the trading suspension requirements that formerly hindered SPACs should make the Main Market a more appealing forum for such firms, which could result in increased listings by the 'growth companies' of such interest to the Hill Review.[169] There have been suggestions that the SPAC reforms lack ambition.[170] This seems harsh; the reforms bring arrangements in the UK considerably closer to those in place in the US, where SPACs have flourished. Still, even if

---

[167] On the disciplinary impact of the takeover-focused 'market for corporate control' see H. Manne, 'Mergers and the Market for Corporate Control' (1965) 73 Journal of Political Economy 110.

[168] See n 4 above (suggesting a five-year sunset clause sends out the wrong message to tech founders and therefore lacks ambition); n 20 above, 62-67; Reddy (2021), n 7 above, 545; L. Enriques, 'The Hill Review and the Long and Winding Road to Premium-Listed Dual Class Share Companies' Oxford Business Law Blog (10 May 2021) at https://www.law.ox.ac.uk/business-law-blog/blog/2021/05/hill-review-and-long-and-winding-road-premium-listed-dual-class-share. The pattern may explain why founder-dominated Deliveroo and Wise listed on the standard tier in 2021 with dual-class structures resembling those of US tech firms even after publication of the Hill Review's weighted voting rights recommendations for the premium tier, which the FCA largely followed. See Deliveroo Holdings plc, 'Prospectus' (March 2021), 1, 3 and 21; Wise plc, 'Prospectus' (July 2021) 1, 31-32 and 187.

[169] n 145 above, and accompanying text.

[170] Payne and Perreira, n 7 above, 24 ('changes…relatively minimal').

SPACs do catch on it is far from clear whether this will boost the UK listed sector meaningfully.

Pre-acquisition SPACs have no operating business and create no profits, meaning their share price is unlikely to change markedly until an acquisition announcement.[171] Moreover, under the revised SPAC-related Listing Rule provisions, a SPAC that has not acquired a target within two years must redeem its shares or remain subject to the trading suspension requirements.[172] Hence, without an acquisition, a Main Market-listed SPAC will likely form just an ephemeral and perfunctory addition to the listed company sector.

Given the nature of SPACs, the acquisitions they carry out are what will dictate whether they make an enduring contribution to the LSE. There is reason for considerable doubt that SPAC acquisitions will substantially revive UK equity markets, despite the FCA's relaxation of the trading suspension requirements. Acquisitions of companies by SPACs have soared in the US in line with SPAC IPOs in recent years,[173] and listings of those companies on US exchanges have duly followed. Matters are not as straightforward in the British context. A UK-listed SPAC that acquires a target company will de-list post-acquisition and then re-list on an exchange as an enlarged entity, but there is no guarantee this will occur on the LSE.

---

[171] M. Lacicevic and M. Vulanovic, 'A Story on SPACs' (2013) 39 Manag. Financ. 384, 400.

[172] See LR 5.6.18AG(3), requiring that a SPAC's gross IPO proceeds must, less specified sums to fund the SPAC's operations, be returned to public investors if an acquisition is not completed within two years. The two-year period may be extended for a further year with shareholder approval. There is also the possibility of a shorter six-month extension without shareholder approval upon the satisfaction of additional conditions.

[173] In 2020, US SPACs completed nearly $80bn of acquisitions. See Goldman Sachs, 'Top of Mind' (28 January 2021) 1, 12.

With a UK-listed SPAC, re-listing on the LSE post-acquisition would seem logical, given the UK investor support already baked-in. Still, this can hardly be taken for granted. The conditions attached to the FCA's relaxation of the trading suspension protocol for SPACs require qualifying SPACs to offer all shareholders the right to redeem their shares in the SPAC pre-acquisition,[174] a state of affairs that mimics the state of play with US SPACs.[175] In the US, institutional investors, particularly hedge funds, view pre-acquisition SPACs primarily as financial instruments that give them a safe, ring-fenced account in which to place excess cash with the potential added bonus of warrants that provide the right to buy additional shares at a potentially advantageous price that can be sold in the market. In the US, SPAC IPO subscribers often redeem or sell their shares prior to the completion of an acquisition.[176] It seems likely the pattern will be replicated in the UK given the regulatory similarities.[177]

With SPAC IPO investors often exiting pre-acquisition, further finance is regularly obtained to fill the gap created by redeeming shareholders. Correspondingly, a SPAC carrying out an acquisition will often issue fresh equity in private placements by way of

---

174 LR 5.6.18AG(2) and LR 5.6.18AG(7).

175 Reddy (2022), n 7 above, 11.

176 Klausner (n 119 above 14, 17); A. Thompson, 'Organization Form and Investment Decisions: The Case of Special Purpose Acquisition Companies' (2010) thesis, Purdue University 1, 25 at https://docs.lib.purdue.edu/dissertations/AAI3453390/; T. Jenkinson and M. Sousa, 'Why SPAC Investors Should Listen to the Market' (2011) 2 J. Appl. Finance 38, 55.

177 For instance, as of the time of writing, the only four SPACs to capitalise on the FCA's new SPAC rules issued units comprising shares and warrants at IPO. See Hambro Perks Acquisition Company Limited, 'Prospectus' (25 November 2021); Hiro Metaverse Acquisitions I S.A., 'Prospectus' (2 February 2022); New Energy One Acquisition Corporation Plc, 'Prospectus' (9 March 2022); Financial Acquisitions Corp 'Prospectus' (7 April 2022). The companies in turn attracted US hedge fund investors which are known to invest habitually in SPACs with a view to redeeming their shares prior to an acquisition. See 'TR-1: Notification of Major Holdings' forms disclosed for each of the four SPACs.

'private investments in public equity' ('PIPE') transactions.[178] These PIPE investors, in conjunction with the SPAC sponsor and the target's management team, will probably determine where the enlarged entity will list post-acquisition.[179] The SPAC listing locale will not be determinative in this context. Indeed, prior to the FCA revising its rules on SPACs, there were numerous examples of UK-based SPACs re-listing on overseas exchanges post-acquisition.[180]

Another reason to doubt whether the FCA's SPAC-related reforms will substantially bolster the Main Market is that for acquired companies the perceived benefits of a SPAC acquisition as compared to traditional IPOs may prove to be largely illusory. Again, extensive pre-acquisition redemptions, as seen in the US, may well become the norm. To the extent this occurs, target companies and SPAC sponsors will probably have to take the time and trouble to carry out at least partial roadshows to attract sufficient PIPE investors to fill the funding gap pre-acquisition redemptions create.[181]

Even if our prediction that the FCA's SPAC reforms are unlikely to increase substantially the number of operating companies listed on the LSE Main Market is too pessimistic, SPACs could pose a long-term risk for the LSE's listed company sector. The revised rules on SPACs stipulating that a SPAC which does not complete an acquisition within two years post-IPO must return funds raised to shareholders preclude sponsors of such firms in this position from benefitting from cash raised.[182] With this sort of downside in

---

178 Klausner (n 119 above 10); Wachtell, Lipton, Rosen & Katz, 'The Resurgence of SPACs: Observations and Considerations' (20 August 2020) 1, 4; n 173 above, 13.

179 Reddy (2022), n 7 above, 39.

180 *ibid.*

181 K. Marvin, 'Why is Marketing a SPAC's Acquisition So Important?' SPACInsider (5 June 2019) at https://spacinsider.com/2019/06/05/spacs-business-combination-marketing/.

182 n 172 above.

place, 'all-or-nothing' SPAC sponsor remuneration structures typically observed in the US that generously give the sponsor of a SPAC that completes an acquisition at least 20 per cent of the post-acquisition equity at a nominal price,[183] could well become common in the UK. The prospect of losing out entirely will in turn strongly motivate sponsors to close a deal within the relevant time frame come what may.

In the US, incentives to get deals done no matter what help to explain why SPAC targets have had lower growth opportunities than traditional IPO firms and why the average post-acquisition performance of SPAC targets has been derisory in recent years.[184] When matters go awry, retail investors in pre-acquisition SPACs often end up with the short end of the stick because they tend not to exit prior to the SPAC acquisition[185] and do not invest on the same advantageous terms as PIPE investors.[186] A replication of these patterns with UK SPACs could damage the LSE's reputation substantially.

With SPACs, in sum, the FCA has acted consistently with the contracting paradigm of equity market-promoting corporate and securities law to bring the UK quite closely in line with arrangements in the US, where SPACs have flourished.[187] More SPAC IPOs might

---

183 n 173 above, 5, 11, 14 and 16; G. Nilsson, 'Incentive Structure of Special Purpose Acquisition Companies' (2018) 19 EBOR 253, 263; Y. Shachmurove and M. Vulanovic, 'Special Purpose Acquisition Company IPOs' in D. Cumming ed., *The Oxford Handbook of IPOs* (Oxford: OUP, 2019) 315; Wachtel, n 178 above, 2.

184 Klausner, n 119 above, 35; L. Dimitrova, 'Perverse incentives of special purpose acquisition companies, the "poor man's private equity funds"' (2017) 63 J. Account. Econ. 99, 110; McKinsey & Company, 'Earning the premium: A recipe for long-term SPAC success' (23 September 2020) 1, 5; J. Kolb and T. Tykvová, 'Going public via Special Purpose Acquisition Companies: Frogs Do Not Turn Into Princes' (2016) 40 J. Corp. Fin. 80, 86.

185 n 176 above, and accompanying text.

186 Reddy (2022), n 7 above, 29-34.

187 Although one could take the view that the FCA did not completely dismiss the regulatory paradigm approach by implementing conditions that are intended to protect investors, it is clear that the FCA has moved to align the LSE with the surging SPAC market

indeed occur as a result of reform, but features of SPACs mean that a substantial increase in their use could, contrary to what the Hill Review and the FCA intended, have an adverse longer-term impact on UK equity markets.

Minimum Free-Float and Market Capitalisation

Theoretically the FCA's reduction of the minimum free-float threshold from 25 to 10 per cent for listed companies could induce Main Market flotations by firms with owners only prepared to put a small proportion of shares in public hands.[188] In practice, however, the change is unlikely to impact many prospective IPOs. Typical pre-reform UK IPO free-float levels were well above the 25 per cent minimum threshold.[189] This was due to market forces, with those organising IPOs being well aware that asset managers who make decisions on whether to buy shares are favourably disposed toward large free-floats.[190]

While the FCA's reduction of the minimum free-float requirement aligns with the contracting paradigm of equity market-fostering corporate/securities law, with a closely related change the FCA simultaneously restricted the scope for companies to list with arrangements their operators prefer in place. The FCA did this by shelving discretion it had to waive the free-float minimum on a case-by-case basis.[191] Since asset managers are prepared to forsake their preference for large free-floats with companies with substantial market capitalisations,[192] the scrapping of the FCA's free-float discretion means the LSE

---

in the US where evidence suggests that those notional investor protection measures create a dynamic that, as discussed, arguably results in adverse market consequences.

188 nn 137-138 and accompanying text.

189 n 134 above, 23; n 10 above, 77.

190 n 134 above, 22. D. Smith, 'Middle Market Demands a Better Deal From Investors' *Sunday Times* (17 June 2001).

191 On examples of waivers, see B. Cheffins, 'The Undermining of UK Corporate Governance (?)' (2013) 33 OJLS 503, 513-14.

192 n 10 above, 77.

could, contrary to the general tenor of the Hill Review, lose out on large, low free-float IPOs. For instance, in 2018, the FCA lobbied – ultimately unsuccessfully -- oil giant Saudi Aramco to choose the LSE for what was on track to be the largest IPO of all time.[193] Such courting would not be an option under the post-Hill Review regime because the FCA could not now sanction an IPO that ultimately proceeded with a free-float of only 1.5 per cent on Saudi Arabia's stock exchange.[194]

More optimistically, the revised free-float requirements could help to foster 'direct' listings, where a company going public forsakes the issuance of new shares to the public and merely lists existing equity with no offering of those shares to the public at a set price.[195] Private companies which already have between 10 and 25 per cent of their shares held by outside investors can now take advantage of the revised rules to use this approach to list on the LSE without having to engage in roadshows and marketing to issue further public shares.[196] Tech companies may especially benefit. While they will often have numerous equity stakes not held by founders due to having engaged in several rounds of VC or private

---

193 'A King-to-Be's Ransom' *Economist* (24 June 2017) 60.

194 n 10 above, 82.

195 London Stock Exchange, 'Direct Listings' at https://www.londonstockexchange.com/raise-finance/equity/direct-listings.

196 Wise was a recent high-profile tech company direct listing on the standard tier that had a sufficiently dispersed share ownership as a private company to satisfy the Main Market's 25 per cent minimum free-float requirement that was in effect at the time. See n. 168 above; N. Megaw, 'Wise valued at nearly £9bn after record London direct listing' *Financial Times* (7 July 2021) at https://www.ft.com/content/811dacb5-a2ed-4208-9b93-41522f3b032b)company .

equity fund-raising as private companies,[197] those stakes will likely be too large to be considered part of the free-float.[198]

However, why stop at reducing the minimum free-float to 10 per cent? Why not deploy the contracting paradigm logic fully and end all restrictions?[199] The FCA did not seek to justify the size of the new 10 per cent threshold, other than pointing out that there were very few IPOs on international markets with lower free-floats.[200] This reasoning is dubious. US stock markets, for example, forsake mandating minimum free-float percentages, relying instead on shareholder numbers or market capitalisation thresholds to screen out companies unsuited for public markets.[201] Moreover, while investors prize liquidity,[202] the FCA has acknowledged that free-float rules do not offer guarantees in this regard,[203] noting in so doing a weak correlation with listed companies between the size of the free-float and liquidity.[204]

---

197 Skadden, 'Proposed Rules May Attract More Companies With Dual-Class Share Structures to London Stock Exchange' (28 September 2021) at https://www.skadden.com/Insights/Publications/2021/09/Quarterly-Insights/Proposed-Rules-May-Attract-More-Companies. In relation to the potential for reduced free-float requirements to attract tech companies, see D. Thomas, 'City Warned EU Will Do London No favours on Financial Services' *Financial Times* (26 January 2021) at https://www.ft.com/content/27b36e65-c825-40f4-85bf-d5ddaa3f6668.

198 The Listing Rules specify that any shares owned by shareholders holding over 5 per cent of a company's shares will not be considered to be within the public's hands, and, therefore, will not be considered as part of any free-float (LRs 6.14.3(1)(e)R and 14.2.2(4)(v)R. Also see n 134 above, 25.

199 See Quoted Company Alliance, 'Response to Call for Evidence – UK Listings [sic] Review' (5 January 2021) 1, 10 and 11 (criticising the new minimum free-float rules as an attempt by the FCA to make market decisions, rather than leaving it to issuers and asset managers to determine the level viable for a proposed issuer based upon its market capitalisation).

200 n 134 above, 25.

201 See n 138 above.

202 n 140 above, and accompanying text.

203 n 134 above, 23.

204 n 10 above, 44, drawing attention as well to evidence the LSE provided indicating no correlation between free-floats and liquidity. While an academic study of the FTSE 100 between 2002 and 2016 did find free-floats and liquidity were correlated (G. El-Nadar,

Though the thrust of the FCA's IPO-related reforms generally fits with the contracting paradigm of equity market-fostering corporate/securities law, the precluding of Main Market IPOs where market capitalisations fail to meet a £30 million threshold points in the opposite direction.[205] In practice, though, the more restrictive rule should not matter much. Between 2017 and 2021, only 28 companies, excluding SPACs and investment funds, listed on the Main Market with market capitalisations below £30 million, with a modest aggregate market capitalisation of £215.2 million.[206] Denying access to the Main Market to such companies should not have a substantial adverse impact on the health of the listed company sector.

A potential caveat is in order: the higher prescribed minimum market capitalisation could have a chilling effect on the deployment of SPACs. Prior to the recent reform of the SPAC rules, SPACs often had very small IPO market capitalisations. Between 2017 and August 2021, when the SPAC reforms became effective, 30 of the 34 SPACs listed on the Main Market had market capitalisations below £30 million.[207] It remains to be seen whether potential organisers of SPAC IPOs will adjust or treat the higher market capitalisation threshold as a regulatory deterrent to the sort of IPO activity the FCA's reforms are intended to foster.

'Stock liquidity and free float: evidence from the UK' (2018) 44 Manag Financ 1227, 1234), the FCA discounted the findings on the basis that the correlation varied considerably according to the liquidity measure used and that the study did not analyse the relationship at lower levels of free-float (n 10 above, 80).

[205] See text accompanying n 139 above.

[206] Derived from data outlined in n 10 above, 40.

[207] Data derived from Practical Law Company, 'SPAC Tracker' as of 10 August 2021 and the prospectuses of SPACs listed during that period. For Main Market SPACs that have already listed with market capitalisations below £30 million, transitional provisions have been implemented enabling them to re-list on the Main Market post-acquisition with market capitalisations less than £30 million (but with at least the previous minimum of £700,000) if those acquisitions are completed and a submission for re-listing made by 1 December 2023. See LR, TR16.

While the FCA's increasing of the minimum market capitalisation threshold was a move in a regulatory paradigm direction, the change does strengthen the argument set out above that the Listing Rules should not dictate minimum free floats.[208] The £30 million market capitalisation threshold should preclude IPOs by small companies where liquidity concerns associated with small free floats will be most acute. For companies on the borderline, asset managers should be fully capable of getting the message across that the cost of capital will be high if liquidity is low.[209]

The FCA Reforms and IPOs – Drawing the Evidence Together

The general tenor with the recent reform of the Listing Rules is to try to bolster IPOs of listed companies with reforms conforming with the assumption that corporate/securities law which provides a market-friendly standardised set of rights and obligations will bolster equity markets. A regulatory orientation has hardly been forsaken, however. The minimum market capitalisation for listed companies has actually been increased, which could discourage IPOs. The revised minimum free-float arrangements for listed companies could help to foster IPOs, but changes here could have been more ambitious. The same verdict applies with liberalising the approach taken with differential voting rights attached to shares. Qualifications that remain in place with now permitted 'specified weighted voting rights' shares seem likely to short-circuit a significant proportion of theoretically possible new Main Market IPOs.

---

[208] With the increase in minimum market capitalisation, the minimum free-float arguably is now perversely higher in absolute terms. Prior to the revision of the rules, a company could list with a free-float of only £175,000, which was 25 per cent of the stipulated minimum market capitalisation of £700,000. Now, in a notionally more liberal free-float environment, the lowest permissible free-float value of £3 million -- 10 per cent of £30 million -- is nearly twenty times higher.

[209] n 190 above, and accompanying text.

While the FCA reforms following on from the Hill Review have been praised,[210] nevertheless a common sentiment is that 'there is more to be done.'[211] Why were the Hill Review and the FCA not more ambitious? In relation to the contracting paradigm as the regulatory route to strong equity markets, more certainly could have been done to deregulate the IPO regime. It is unclear, however, whether this would have yielded the hoped for boost to the listed company sector. Lowering investor protection measures excessively can have an adverse knock-on effect on market confidence and the cost of capital.[212] Consider, for instance, the reforms relating to SPACs. The changes the FCA has orchestrated move the regulatory approach quite close to that in place in the United States, which has recently experienced a SPAC boom. There is a risk, however, that liberalisation could draw to the LSE's main market sub-par companies that would cast doubt on the veracity of its IPO market and perhaps even tarnish the reputation of the market as a whole.[213]

While it is understandable that the FCA did not engage in a wholesale conversion to a contracting paradigm of corporate and securities law in the IPO context, the fact that those operating companies that are feasible candidates for an LSE IPO have other 'going public' options could well mean that the cautious approach to reform ensures the irrelevance of change. As the Hill Review itself noted, 'it makes no sense to have a theoretically perfect listing regime if in practice users increasingly choose other venues'.[214] Even with the

---

210 nn 4-6 above, and accompanying text.

211 D. Thomas and P. Stafford, 'Start-up Leaders Call for IPO Reforms' *Financial Times* (7 February 2022), 11. See also Payne and Perreira, n 7 above ('the reforms are…relatively limited'); G. Wearden, 'Can London Stock Market Shake Off Dinosaur Image to Boldly Go?' *Guardian* (4 January 2022) ('London needs to move 'faster and harder still" to lure growth companies').

212 nn 101-102 above, and accompanying text.

213 nn 182-186 above, and accompanying text.

214 n 3 above, 2.

reforms in place, UK-based companies with a choice about where to go public might forsake the LSE because its Main Market's IPO regime remains more restrictive than those in place elsewhere. For instance, other major exchanges continue to offer companies going public more scope to use weighted voting rights, and those that have not taken the fully permissive dual-class stock approach that prevails in the US have restrictions in place that target more precisely the dangers involved than the new FCA regime.[215] Similarly, in relation to the revised free-float rules, with large companies that want to go public with low free floats the LSE seems destined to lose out to stock markets such as the NYSE which operate without maintaining a minimum percentage free-float, seemingly without substantially compromising liquidity.[216]

Lord Hill acknowledged in his review of the UK listing regime that there were factors that have an adverse impact on listings that he did not seek to address because prompt public policy fixes were unavailable. He said of his reform agenda 'unlike some deeper-rooted structural issues, it is one where we can take swift action to redress the balance.'[217] In the shadow of Brexit,[218] the Hill Review was looking for some easy wins. Our analysis suggests that with respect to IPOs, even those easy wins will be hard to come by.

Some wins could be around the corner. The Hill Review's recommendations have not been fully implemented, including in relation to rules governing the issuance of prospectuses

---

[215] See n 20 above, 91-99, describing Hong Kong and Singapore rules that seek to curtail the most egregious opportunities for controllers to expropriate public shareholders.

[216] n 138 above.

[217] n 3 above, 2. Likewise, the FCA, in its July 2021 consultation paper on primary markets, acknowledged the Listing Rules were 'only one part of the wider landscape contributing to' barriers to companies listing on the LSE (n 10 above, 3). The FCA recognised similarly that there are 'a range of complex factors that may drive fewer IPOs.' (n 10 above, 7).

[218] n80-83 above, and accompanying text.

that accompany public offerings of shares.[219] A consultation has been commenced to streamline the prospectus regime which dictates when a prospectus is required and governs their contents.[220] Reform here theoretically could help to foster IPOs.[221] Until changes are actually made, it is impossible to gauge whether further reform will help to revive the LSE.[222] Still, even if reforms ideally suited to fostering IPOs are implemented, due to deeper-seated issues any strengthening of UK equity markets will likely be marginal. We consider these deeper-seated issues next.

THE DEEPER-SEATED ISSUES

Various deeper-seated issues mean adjusting rules governing IPOs cannot in isolation dramatically strengthen UK equity markets, regardless of whether or not this should be a policy priority. As we discuss next, there are factors that may well deter companies from moving to the stock market regardless of the IPO policy mix. Examples include 'over-regulation' and depressed share valuations that hamper publicly traded companies. Furthermore, the number of listings is only one element of the strength of UK equity markets.

---

219 See Table 1.

220 Currently, prospectus requirements are statutorily mandated under FSMA 2000, s. 85(2). The Treasury has proposed that responsibility for prospectus regulations be shifted to the FCA, which would allow future changes to be made without recourse to the potentially onerous Parliamentary statutory amendment processes. See HM Treasury, 'UK Prospectus Regime Review: A Consultation' (July 2021) 11. Further proposals include giving the FCA powers to relax prospectus requirements for follow-on issuances of securities when a company issues a full prospectus upon initial admission to trading (*ibid*, 13), simpler recognition of overseas prospectuses for secondary listings in the UK of companies already listed abroad (*ibid*, 41), and raising the liability standard for misleading forward-looking prospectus statements from a 'negligence' standard to a 'dishonesty or reckless' standard (*ibid*, 22).

221 Empirical analysis indicates that America's 2012 Jumpstart Our Business Startups (JOBS) Act (Pub. L. No. 112-106, 126 Stat. 306), which created for 'emerging growth companies' an IPO 'on-ramp' involving relaxed disclosure requirements and increased scope to test the waters privately with regulators and investors, helped to foster IPO activity. See M. Dambra, L. Casares Field and M. Gustafson, 'The JOBS Act and IPO Volume: Evidence That Disclosure Costs Affect the IPO Decision' (2015) 116 J. Fin. Econ. 121.

222 For a preliminary assessment, see Payne and Perreira, n 7 above, 11-13.

A crucial measure of a stock market's strength is its market capitalisation/GDP ratio, and this is dictated as much or more by the size of the companies that are listed as by the number.[223] As a top executive at a leading asset manager has said with respect to bolstering UK equity markets, 'The bigger issue is not so much whether companies list in London and more about whether companies…grow there.'[224] Ensuring that companies, once they list, remain on the LSE, will be crucial in this regard. The LSE, however, suffers from a high volume of 'exits' that means increasing the number of IPOs might amount to little more than running to stand still.

Downsides to Being Publicly Traded That Can Deter Listings

Due to a surfeit of previously unavailable private capital in the market, operators of businesses with a promising future are under much less pressure to move to the stock market than used to be the case.[225] Rules governing IPOs will be one factor that will influence a decision to list rather than remain private or exit by way of a sale to a corporate buyer or a private equity fund. Regulation affecting companies already traded on the stock market is another.[226]

Regulation has been characterised 'as a crevasse that has opened between public and private companies'[227] that helps to explain 'why many companies are turning their back on the stock market.'[228] A Main Market-listed company operates subject to various legislative

---

[223] n 12-15 above, and accompanying text.

[224] n 79 above.

[225] n 46 above, and accompanying text.

[226] E. Warner, 'Easing the Rules to Let Companies Flourish is Not Something to Fear' *Times* (7 February 2022); 'Order Floww' *Economist* (19 March 2022), 23.

[227] R. Soames, 'Pressure for Ethical Investing is Weighing Down Public Companies' *Times* (13 December 2021) 43.

[228] Wright (2019), n 17 above, 34.

measures not applicable to other firms.[229] The Listing Rules and many of the provisions in the FCA's Disclosure and Transparency Rules govern only listed companies.[230] Moreover, various 'super-equivalent' measures in the Listing Rules apply solely to premium-listed companies.[231]

One 'super-equivalent' requirement is that premium listed companies must discuss the extent of their adherence to the UK Corporate Governance Code, including disclosing and explaining any failures to comply with Code provisions.[232] The arrangement reputedly 'really grinds the gears' of those who believe listed companies are over-regulated.[233] This may be an exaggeration. A 2013 report by DBIS found that for listed companies levels of corporate governance were not an overriding factor in decisions about whether to remain publicly traded.[234] Executives running large, publicly-traded firms know and have tended to accept that 'jumping through hoops' is 'part of the added responsibility that comes with running a listed company.'[235] Public company executives, however, are increasingly taking the view that due to enhanced governance obligations 'the balance has begun to tip and the burden has become simply too onerous.'[236] Moreover, as the DBIS report acknowledged,

---

229 For example, quoted companies must prepare an annual report on directors' remuneration and arrange for shareholders' 'say on pay' votes at prescribed times (CA 2006, ss. 420, 439, 439A).

230 On Disclosure and Transparency Rules, see para. 2A in the definition of 'issuer' in the glossary of the FCA Handbook at https://www.handbook.fca.org.uk/handbook/glossary/.

231 n 106 above.

232 LRs 9.8.6(5) and 9.8.6(6).

233 M. O'Dwyer, 'Have Governance Gripes and a Rise in Red Tape Driven Companies Away?' *Telegraph* (5 January 2020) Business and Money, 5. See also 'Britain's Sluggish Stockmarket' *Economist* (2 October 2021) 18.

234 n 38 above, 46, 70.

235 B. Wright, 'Don't Blame Private Equity for the Red Tape Choking the Stock Market' *Telegraph* (9 July 2021) Business, 4.

236 *ibid*.

proprietors of established unlisted businesses that might contemplate a move to the stock market have expressed concern about reporting costs and an increasing regulatory burden associated with being publicly traded.[237] In sum, 'over-regulation' of publicly traded companies has, with some justification, been identified as one of the more prominent 'explanations for Britain's incredible, shrinking stock exchange.'[238]

Depressed share valuations are another feature of being publicly traded in the UK that likely deters LSE listings. Other major stock markets have substantially outperformed the LSE in recent times.[239] Brexit-related political and currency risk has contributed substantially to the pattern.[240] A reorientation of investor priorities has also put downward pressure on UK share prices. British based asset managers seeking cross-border diversification and superior risk-adjusted returns have forsaken a home bias that formerly fortified demand for shares in UK-listed companies.[241] Moreover, even when UK-based asset managers hold domestic equity, to a greater extent than peers elsewhere they prize dividend yields rather than the robust share price growth fledgling businesses can deliver.[242] UK-

---

237 n 38 above, 44, 46.

238 J. Warner, 'Boardroom Wokery is Driving Companies out of Public Markets' *Sunday Telegraph* (22 August 2021), Business, 2.

239 nn 22-25 above, and accompanying text.

240 n 1 above; H. Robertson, 'The FTSE 100 is Lagging Behind Soaring Global Markets – But Why?' *City AM* (13 July 2020) at https://www.cityam.com/the-ftse-100-is-lagging-behind-soaring-global-markets-but-why/ ; S. Soubeyran, 'From Headwinds to Tailwinds: A Reversal in Fortune for the FTSE 100?' FTSE Russell, 2 July 2021 at https://www.ftserussell.com/blogs/headwinds-tailwinds-reversal-fortune-ftse-100.

241 nn 56-57 and accompanying text; Briefing, 'Britain's Sluggish Stockmarket' *Economist* (2 October 2021) 18; Investment Association (2021) (n 113 above 83). The proportion of funds under management by UK asset managers allocated to UK shares indeed fell from 39 per cent in 2005 to 14 per cent in 2020 (Investment Association (2021), *ibid*).

242 Briefing (2021), *ibid*; P. Marshall, 'London is Becoming the Jurassic Park of Stock Exchanges' *Financial Times* (1 December 2021) 16; Oliver Shah, 'The Income Addiction' *Sunday Times* (16 January 2022), Business, 8.

based VCs and tech firms indeed have doubts whether the country's institutional investors are genuinely interested in backing fledgling, innovative domestic enterprises.[243]

Depressed share valuations in UK do not necessarily preclude listings by British firms with a substantial but uncertain upside -- such firms might well go public on a stock market elsewhere where market conditions are more propitious. According to one UK fund manager, 'America is the capital centre of the world' and, referring to ARM, said 'Why would you list one of the most interesting stocks in a pool of capital that is diminishing? If you want to get the highest price for it then surely you'll list it in the country with the highest appetite for risk?'[244] UK companies with sufficiently promising prospects to list on stock markets elsewhere may not be adversely affected when they in fact do so but, as the angst surrounding ARM's plan to list on Nasdaq indicates, it is widely believed the pattern is disadvantageous for UK investors, the City of London and the British economy more broadly.[245]

Exits

While the recent Listing Rule reforms focus on encouraging companies to join the stock market, a dearth of IPOs is only one part of the equation that has led to the marked fall in the number of LSE companies Figure 1 documents.[246] An additional pivotal point to which Figure 3 draws attention is departures from the exchange, given that they have steadily eroded the number of LSE-listed companies. Focusing on the Main Market, which dominates AIM in terms of market capitalisation,[247] in each year since 1999, save for 2018 and 2021,

---

243 'Punishment Beating', *Economist* (29 January 2022), 23.

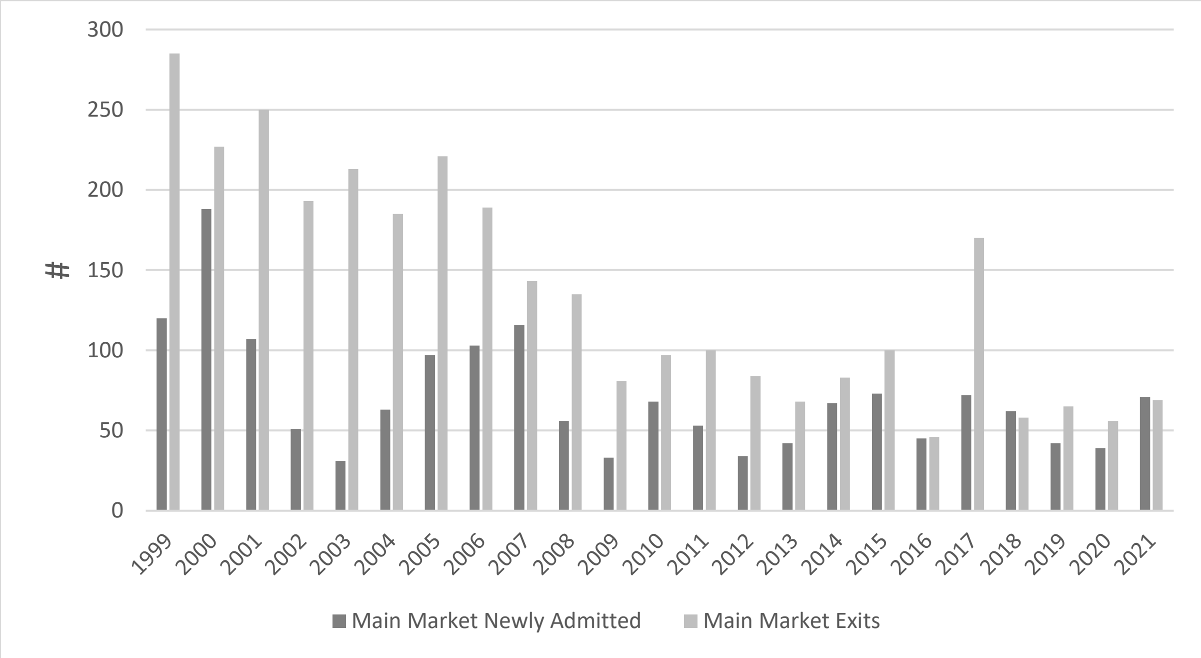
244 n 79 above.

245 nn 77-79 above, and accompanying text.

246 See also nn 9-11, and accompanying text.

247 See text accompanying n 20 above.

Figure 3: # of IPOs and Exits on the LSE's Main Market 1999-2021



Source: London Stock Exchange Reports at https://www.londonstockexchange.com/reports?tab=issuers. Exits derived by aggregating data for annual changes in numbers of issuers with annual IPO data

the number of Main Market exits has exceeded the number of IPOs. In 2021, ostensibly a 'banner year' for IPOs,[248] due to exits the number of Main Market issuers only increased by two companies.

One type of exit is where a company's shares are traded in another jurisdiction as well as on the LSE and the company decides to reduce its regulatory burden by cancelling the UK listing. According to an analysis of causes of delisting in a 2017 FCA discussion paper, between 2010 and 2016 a quarter of companies that left the LSE were taking this step.[249]

---

248 D. Thomas and P. Stafford, 'UK Tech Sector Seeks More Listing Reforms to Keep IPOs Rolling' *Financial Times* (7 February 2022) at https://www.ft.com/content/363d8d3d-456c-4d73-b6ad-a9c778bdb2b5.

249 FCA DP17/2, n 11 above, 45 (89 out of 347 companies delisting). The figure of 89 also included the de-listing of global depositary receipts (GDRs), but the proportion that involved GDR de-listings rather than equity de-listings was probably small given the FCA's

Financial distress also contributes meaningfully to stock market departures. According to the analysis of delisting in the FCA's 2017 discussion paper, between 2010 and 2016 just over 20 per cent of companies exited from the stock market due to insolvency or to financial distress necessitating the private restructuring of debt.[250] Among larger companies, however, it is uncommon for a financial collapse to prompt a departure from the stock market. As of 2018, with the FTSE 100, only three of the founder members from 1984 had left the index due to bankruptcy.[251]

Acquisition is by far and away the most common cause for delisting from the LSE. According to the FCA, acquisitions accounted for nearly half of the exits from the listed company sector between 2010 and 2016.[252] Among the original FTSE 100, as of 2018 58 companies had left the index because they were acquired.[253] And extending further back through time, among companies listed on the LSE as of 1948 that had de-listed by 2018, more than four out of five did so as a result of having been taken over.[254]

---

later emphasis in the discussion paper on secondary listings rather than GDRs (*ibid*, 16 and 21).

250 *ibid* (out of 347 companies delisting, 53 issuers delisted due to insolvency and 20 delisted to restructure in response to financial distress). See also n 38 above, 16 (reporting de-listings in the wake of the financial crisis 'were heavily populated with liquidations and business failures').

251 A.J. Bell, 'House of Fraser Fighting to Avoid Becoming Fourth Founder Member of FTSE 100 to go Bust' August 10, 2018 at https://www.youinvest.co.uk/articles/investmentarticles/153679/house-fraser-fighting-avoid-becoming-fourth-founder-member-ftse.

252 FCA DP17/2 (n 11 above 45) -- out of 347 companies delisting, 141 were 'taken over'. Another 44 issuers were listed as moving to another market, which typically involved a reverse takeover by an AIM-listed company.

253 i*bid.*

254 G. Meeks and G. Whittington, 'Death on the Stock Exchange: The Fate of the 1948 Population of Large UK quoted companies, 1948–2018' (2021) Business History 1, 7 https://doi.org/10.1080/00076791.2021.1893696

Of the 58 original FTSE 100 companies that had been acquired by 2018, with 19 the buyer was another FTSE 100 company. Acquisitions of this sort are not a major blow to the LSE's status because the assets remain in the hands of UK-listed companies.[255] Although the number of issuers falls, the market capitalisation/GDP ratio should not take a significant hit. A much greater threat to the viability of the listed company sector is acquisition by 'another firm', in this particular context a firm other than a FTSE 100 company. Not only was this a considerably more common cause of exit than an acquisition by a FTSE 100 company -- 39 members of the original FTSE 100 had left in this way by 2018 -- the assets likely leave the LSE entirely.

One type of acquisition by a firm not listed on the LSE that could result in corporate assets leaving the UK stock market is where a private equity fund executes a private-to-public buyout. When private equity funds fulfil their undertaking to investors by unwinding their holdings,[256] the possibility exists that the assets will return to public markets, either via an IPO or a 'trade sale' to a publicly traded firm.[257] There is no guarantee, however, that the assets will return to the LSE.

Acquisitions of listed companies by corporate buyers not listed on the LSE also occur, and, unlike private equity firms, such buyers are not under an explicit onus to divest businesses they buy.[258] Moreover, if the purpose of an acquisition is to exploit economies of scale, to foster vertical integration, to exploit the advent of new technology or is otherwise

---

[255] B. Eckbo and Markus Lithell, 'Follow the Assets: Is the US Listing Gap "Real"?' (2020), unpublished working paper, 1-2 at https://gess.uni-mannheim.de/fileadmin/user_upload/2020_Eckbo_Lithell_Follow_the_Assets__2020_.pdf.

[256] nn 34-35, and accompanying text.

[257] Wright (2019), n 17 above, 32. Between 2010 to 2016, according to FCA data, in any given year between a quarter and a half of UK IPOs involved private equity backed companies (FCA DP17/2, n 11 above, 51, Figure 7).

[258] B. Cheffins and J. Armour, 'The Eclipse of Private Equity' (2008) 33 Del. J. Corp. 1, 32-33.

strategically motivated,[259] relaunching the acquired firm as a publicly traded company is unlikely to be in the game plan. Even if a corporate buyer divests a UK business by way of an IPO, the public offering may not occur on the LSE. Softbank's plan to list ARM on Nasdaq is a case-in-point.[260] Correspondingly, with acquisitions of listed companies by corporate buyers not only are the assets removed from the UK stock market but they are unlikely to return.

It is beyond the scope of this paper, which is evaluating IPO-related reforms, to analyse exits in detail but a few observations based on topics already canvassed are in order. First, and most fundamentally, given that departures from the LSE have routinely outnumbered IPOs, policymakers seeking to promote strong equity markets need to be mindful of exits as well new listings. Second, Listing Rules reforms that permit the use of specified weighted voting rights have exit implications, in that beneficiaries of such voting rights likely will have a *de facto* veto over acquisitions.[261] Two important qualifications are in order, however: the protection only lasts for five years[262] and does not operate at all with companies already listed.

Third and finally, just as 'over-regulation' of publicly traded firms likely deters IPOs,[263] the pattern can also foster exits. For instance, the regulatory burden applicable to listed companies was identified as a catalyst for a surge in private equity buyouts of listed companies in the mid-2000s,[264] with the opportunity to drop the UK Corporate Governance

---

[259] *ibid.*, 21.

[260] nn 33 and 78, and accompanying text.

[261] n 156 above.

[262] n 164 above.

[263] nn 227-238 above, and accompanying text.

[264] Cheffins (n 30 above 398).

Code (then the 'Combined Code') reputedly tempting companies off the stock market.[265] To the extent that policymakers tackle over-regulation of publicly traded firms to foster IPOs they should simultaneously deter at least some exits.

The pattern is similar with share prices. Depressed share prices, in addition to putting a damper on IPOs, can encourage exits from the stock market. Companies with low share valuations 'are sitting ducks'[266] for bargain-minded acquirors. For instance, media reports suggest private equity firms have been looking and finding 'unloved stocks' to acquire.[267] Likewise, reputedly 'undervaluation has led to a flurry of bids by foreign firms',[268] though a weak pound has also contributed to UK-listed companies being 'sitting ducks'.[269] Further study is required to deduce what reforms might bolster LSE share prices, but it is safe to say that stronger stock market performance would deter at least some exits as well as fostering more IPOs.

CONCLUSION

There is currently a consensus among UK policymakers that fostering a flourishing stock market is a priority. There is also an influential school of thought that maintains that having the appropriate laws in place can do much to foster strong equity markets. Consistent with this line of thinking, the FCA has recently made changes to the Listing Rules intended to foster new Main Market listings, opting for the most part for changes aligned with a deregulatory 'contracting' paradigm rather than introducing tougher regulation.

---

265 G. Searjeant, 'Boardrooms Should Soak Up the Culture of Private Equity' *Times* (1 February 2007) 52.

266 R. Watts, 'Britain for Sale' *Sunday Times* (25 August 2019), Business, 5.

267 Shah, n 23 above.

268 n 1 above.

269 For example, in relation to the acquisition of ARM by Softbank, see n 81, and accompanying text.

Reverting to the original question posed by the title of this paper; will Listing Rule Reform Deliver Strong Public Markets for the UK? For various reasons the answer is mostly 'no'. With respect to IPOs, the topics the Hill Review and the FCA addressed were sensible enough, such as offering founders greater scope to retain voting control post-IPO, relaxing restrictions related to SPACs and reducing the free float for which a newly listed company must provide. It is doubtful, however, that the reforms will foster a substantial wave of additional IPOs that resuscitate the UK stock market. For this to be a realistic prospect, a greater tilt in favour of the contracting paradigm likely was needed. The ability of founders to retain voting control remains subject to significant qualifications, all free float restrictions could have been safely abolished and the FCA could have refrained from increasing the minimum market capitalisation associated with an IPO. With respect to SPACs, deregulation may foster additional IPOs but it is far from clear the process will result in the listing of the types of companies UK policymakers envisage.

More enthusiastic deployment of the contracting paradigm would by no means have guaranteed a surge in IPO activity. Full-scale deregulation might well have fostered sub-standard IPOs that could have harmed the LSE's reputation, thereby compromising the fostering of equity markets over the long haul. More fundamentally, amending IPO rules is unlikely to provide 'easy wins'[270] on the public offering front. Substantial private capital available via venture capital and private equity funds means promising companies can be choosy about a move to the stock market, no matter how IPO rules are configured. Also, the prospect of public company 'over-regulation' and depressed UK share prices are hardly likely to entice successful private businesses on to public markets, at least in Britain.

[270] n 218 above, and accompanying text.

Even if the foregoing assessment of recent IPO reforms is too pessimistic and IPOs do flourish as a result of recent regulatory changes, it can hardly be taken for granted that markedly stronger equity markets will develop in the UK. IPOs are only one factor influencing the strength of the stock market. Exits are another important variable, and the recent FCA reforms do not directly address these.

Our intention here has been to focus on IPO reforms. Engaging in any detail with the changes that could foster in general terms strong securities markets in the UK is beyond the scope of this paper. Still, we have drawn attention in passing to a few candidates for change that could play a role in reviving the UK stock market on a wholesale basis. One is the regulatory 'crevasse' separating private and public companies that arguably is driving potentially eligible firms away from the stock market.[271] Although there is no indication that public company deregulation is on the agenda,[272] more scrutiny of the regulatory burden on listed companies may be in order to bolster the listed company sector. Another candidate for change relevant to listed companies is that British institutional investors have been forsaking UK financial assets, likely contributing to languishing share prices.[273] The issue is on the public policy agenda, with the Prime Minister and the Chancellor of the Exchequer urging UK-based institutional investors to 'buy British' to foster an 'Investment Big Bang'.[274] It is unlikely, however, that challenges investor bias pose can 'be solved with Lord Kitchener-

271 nn 227-238 above and accompanying text.

272 Indeed, governance-related pressure on publicly traded companies is building, not receding (n 66 above).

273 nn 241-242 above and accompanying text.

274 Prime Minister and Chancellor of the Exchequer, 'Igniting an Investment Big Bang: A Challenge from the Prime Minister and Chancellor to the UK's Institutional Investors' (August 2021) at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1008814/A_Challenge_Letter_from_the_Prime_Minister_and_Chancellor_to_institution__1_.pdf.

style entreaties'[275] to reallocate capital in favour of British assets. More targeted policy responses are probably required.

The additional possible lines of enquiry just canvassed provide potentially fruitful avenues for future research. For now, the key takeaway is that debate on resuscitating the UK stock market is destined to continue even if recent FCA reforms do foster some fresh moves to the LSE's Main Market.

[275] n 57 above.

Electronic Access to the Working Paper Series

The full set of ECGI working papers can be accessed through the Institute's Web-site (https://ecgi.global/content/working-papers) or SSRN:

Finance Paper Series	http://www.ssrn.com/link/ECGI-Fin.html
Law Paper Series	http://www.ssrn.com/link/ECGI-Law.html