

Listing & Public Offers

Official Listing

Have the Changes to the UK Listing Regime Been a Success?

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A new listing regime for the UK was officially launched in April 2010 on the back of the Financial Services Authority's (FSA) extensive review of the old regime. The marquee announcement was the division of all London Stock Exchange (LSE) Main Market listings into two categories, "premium" and "standard," replacing the old "primary" and "secondary" labels. The premium listing is now London's gold standard listing: companies with a premium listing must comply with stringent and in some cases super-equivalent eligibility criteria and continuing obligations. All other Main Market listings fall within the standard listing category, to which EU-minimum standards apply.

The new UK listing regime set out with two principal aims: first, to create a regime that provides equal and appropriate flexibility and choice for UK and international companies seeking to raise capital in London; and secondly, to enable investors to better understand the obligations that apply to issuers with different types of listing on the Main Market. This article considers the success of the new UK listing regime by assessing the extent to which these aims have been met.

In summary, the new UK listing regime goes a long way towards meeting the first aim – appropriate flexibility and choice for companies seeking to raise capital. This has been most evident in the market's reaction to the new standard listing, which appears to have reinvigorated the old category of secondary

listings. Already we have seen a number of companies, particularly UK businesses, take advantage of the flexibility of a standard listing. In terms of the second aim – the creation of a regime that investors understand – it is trickier to gauge the success of the new regime after only a year. The new labels are undoubtedly an improvement on the old ones, but it is harder to make a convincing case that they have improved the average investor's understanding of the rules that apply to different Main Market issuers.

Does the UK Listing Regime Offer Appropriate Flexibility and Choice?

The principal substantive difference between the old UK listing regime and the new one is that UK companies can now conduct a standard listing of shares. Under the old system, UK companies were only eligible for a secondary listing of any securities if they already maintained a primary listing of shares. Accordingly, the standard listing is an option for a much wider universe of companies than the old secondary listing. Alongside this substantive change, the old secondary listing has enjoyed a makeover – even the simple change of name to standard listing appears to have had a markedly rejuvenative effect.

The standard listing was officially launched in April 2010, although it was made available to UK issuers from October 2009. Since then, a total of 14

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companies have offered their shares by way of a standard listing, of which eight were incorporated in the UK. While these figures are perhaps not earth shattering, it is worth bearing in mind that the standard listing is principally used by issuers of debt, depositary receipts and other specialist securities. Indeed, since April 2010 there have been some 240 standard listings of debt alone. Furthermore, the standard listing was launched in the aftermath of a deep recession – one from which the equity market is still in recovery. Against this backdrop, numbers of all equity listings are still volatile and have not yet returned to pre-recession levels.

As the following discussion of recent market activity will demonstrate, the real value of the standard listing for the equity market has been most apparent, not in the volume of listings, but in the types of companies that have used it.

UK Acquisition Vehicles

A number of share issuers that have entered the London market by way of standard listing since October 2009 – the likes of Vallar Plc and Marwyn Management Partners Plc – could be categorised as UK-incorporated acquisition vehicles. Acquisition vehicles tend to be newly incorporated companies, set up to identify and acquire an operating business. One way to finance this business model is to list the acquisition vehicle and use the listing proceeds to fund the intended acquisition. Acquisition vehicles are unlikely to be eligible for a premium listing, most commonly because they do not have the requisite three year track record. Under the old listing regime, with secondary listings only available to UK companies that already had a primary listing, the options for such companies would essentially have been limited to non-Main Market exchanges, such as the LSE's AIM and Specialist Fund Market.

Vallar, for example, was incorporated as a holding company with the purpose of acquiring and developing a business with "significant operations in the global metals, mining and resources sector." As a start-up, it lacked the requisite three year track record and was therefore ineligible for a premium

listing. Instead, Vallar successfully raised £707.2 million in July 2010 by way of a standard listed initial public offering (IPO). Soon after, it completed the acquisition of 25 percent of PT Bumi Resources Tbk and 75 percent of PT Berau Coal Energy Tbk, two large Indonesian mining companies. Following the acquisitions, Vallar announced its intention to move to a premium listing. This combined strategy of raising acquisition finance with a standard listing and thereafter taking the business to a premium listing is particularly suited to mining businesses, which enjoy certain exemptions from the track record requirements imposed on premium listed companies.

Being a UK company, Vallar could not have conducted a secondary listing of shares under the old UK listing regime. This is clearly a success story for the standard listing.

UK Companies "Stepping Up" to a Standard Listing

The expansion of the standard listing category to include UK share issuers has also benefitted a handful of small and medium-sized UK companies. In October 2010, for example, Avation Plc moved from the PLUS Market to the Main Market by way of standard listing, while in March 2010 KSK Power Ventur Plc transferred to a standard listing from AIM. When announcing its decision to move to the Main Market, KSK stated that "the Official List [the list, maintained by the FSA, to which companies must be admitted before they can join the LSE's Main Market] is likely to be a more appropriate platform than AIM for the continued growth of the Group."

For issuers such as Avation and KSK, a Main Market listing provides significant exposure and reputational benefits, as well as greater liquidity and future opportunities to raise capital, all of which are important ingredients for growth. Under the old regime, companies like these would have had to stay put until they were ready for a full premium listing. We expect to see more companies following in the footsteps of Avation and KSK in the future.

UK Companies "Stepping Down" from a Premium Listing

It is not only the newly incorporated acquisition vehicles and ambitious small to medium-sized companies that have utilised the new standard listing. Following the demerger of the premium listed Carphone Warehouse Group in March 2010, TalkTalk Telecom Group Plc (the first leg of the old Carphone) maintained its premium listing. For the new Carphone Warehouse Group Plc, however, this was not an option because it could not show the requisite three-year track record and was therefore ineligible for a premium listing. Instead, it opted for a standard listing. Here, we see a large UK company (albeit a successor company) – not necessarily a national treasure but a household name at least – turning to the standard listing and using it as a new route, indeed the only available route, to maintaining a Main Market listing.

And Carphone is not alone. CML Microsystems Plc, a UK-incorporated semiconductor manufacturer trading on the Main Market since 1996, moved from a premium to a standard listing in August 2010. Real Estate Opportunities Plc, a premium listed property company since 2001, did the same in February 2011. Both cases appear to be moves of choice rather than necessity: CML referred to the standard listing as a "framework of a public listing which provides for liquidity in the shares with an appropriate degree of flexibility for a company of its size," while Real Estate Opportunities cited its reduced market capitalisation and the high administrative costs associated with the premium listing as the reasons for its switch to a standard listing. The standard listing now offers companies like these a credible alternative to a premium listing. We expect to see further cases like this in the future.

JJB Sports Plc is another high profile UK issuer that has recently decided to "downgrade" from a premium listing. Instead of moving to a standard listing, JJB opted to migrate to AIM, declaring that AIM would "provide a market and environment more suited to a company of JJB's size and will simplify the ongoing administration requirements of the Company." JJB's

chairman waxed lyrical about the merits of joining AIM in the related press announcements, although in reality JJB would have had difficulty maintaining its premium listing or obtaining a standard listing: having conducted a series of share and warrant issues to existing major shareholders, the company was struggling to keep the requisite 25 percent "public float" of shares – an initial and ongoing requirement for both premium and standard listings, but one that does not apply to AIM listings.

Of course, JJB might well have opted to move to AIM in any event and it will be interesting to see how the competition between the standard listing and AIM develops. It was predicted that the new standard listing option for UK share issuers would spell the end for AIM. The figures so far, however, do not bear this out. According to LSE data, 101 companies have commenced trading on AIM since April 2010 (73 of which were incorporated in the UK), compared to 36 in 2009 (30 of which were incorporated in the UK) and 114 in 2008 (87 of which were incorporated in the UK). These figures, while clearly reflecting the recent volatility in the UK equity market, show that AIM has retained its appeal. In particular, it remains the natural starting point for start-ups and other small companies to begin trading.

International Companies & "Old Customers"

Non-UK issuers have always had the option to list shares on the LSE by way of standard (or secondary) listing. The indications following the introduction of the standard listing are that foreign issuers – and equally importantly, the investment banks advising them – are beginning to see the standard listing as a serious alternative to a full premium listing in a way that the old secondary listing arguably was not. For some of these issuers, the standard listing will serve as a stepping stone to a premium listing, while for others it might provide the perfect fit, in terms of exposure, liquidity and continuing regulatory obligations.

Canadian media company Entertainment One Limited, for example, obtained a standard listing in July 2010, transferring up from AIM. When announcing the

move, the company said that "admission to the Official List will provide improved liquidity of the common shares, and enhanced corporate exposure to an enlarged investor base." Similarly, Medusa Mining Limited, an Australian gold mining company, conducted a standard listing in October 2010. Its managing director said "Medusa is now of a size and stature that justifies and qualifies its graduation from AIM to the Official List. The [c]ompany regards the Main Market as an ideal platform to raise the [c]ompany's profile on a larger scale."

The enhanced status of the standard listing is important not only for attracting new issuers but also for retaining the business of its "old customers," many of which are international issuers of debt, depositary receipts and other specialist securities. This in turn may strengthen the LSE's ability to retain issuers that have multiple global listings, as it did with Mitsubishi Electric Corporation when the car giant decided to cancel a number of its international secondary listings in 2010.

Do Investors Understand the UK Listing Regime?

What about the FSA's second aim in revamping the UK listing regime: enabling investors to understand the obligations that apply to different LSE Main Market listed issuers? It is probably fair to assume that the premium and standard labels intuitively make more sense to investors than the old ones. In particular, the term "secondary" listing had an unfortunate propensity to confuse, and we can be thankful of its demise. Despite the new labels, however, critics maintain that the rules underpinning the premium and standard listing categories remain a mystery to most investors.

Voluntary Compliance with Premium Listing Obligations

While there might well be something in this view, cases such as Carphone Warehouse – already discussed above – offer a promising indication to the contrary. When the ubiquitous mobile gadget outlet conducted its standard listing in March 2010, it

announced that it would be complying on a voluntary basis with a suite of premium listing obligations. These included the requirement to obtain shareholder approval before conducting any related party or significant transaction, as well as the requirement to adhere to the FSA's overarching Listing Principles¹ (such as the requirement to act with integrity towards current and potential shareholders and to treat all holders of the same class of shares equally). Irrespective of whether Carphone's shareholders understood the precise differences between premium and standard listings, they were sufficiently attuned to appreciate that they were in danger of losing certain key protections once the company moved to a standard listing. Furthermore, they had a sufficiently strong collective voice to ensure that Carphone made a public commitment to continue to offer gold standard protections.

In fact, voluntary compliance with premium listing requirements has become something of a theme for new standard listings. Avation and KSK have both indicated their intention to comply with certain premium listing continuing obligations, as well as with central elements of the rules of their old listings (the PLUS Market and AIM, respectively). While this may be good news for shareholders, it could mean that it will take some time for a distinct market practice to emerge for standard listed issuers. In the meantime, there may be a blurring of the boundaries between premium and standard listings, as well as between Main Market and unregulated exchange listings.

Standard Listing Prospectuses

With market practice in constant flux, perhaps it was unrealistic to hope that the introduction of the premium and standard labels would enhance the average investor's understanding of the types of obligations that different companies are required to comply with. Any investor looking to improve their understanding in the area, however, might be interested in getting hold of a standard listing prospectus. In there, they are likely to find a section (typically titled "Consequences of a Standard Listing") dedicated to explaining the technical differences between standard and premium listings, as well as

one or more risk factors warning of how a standard listing "affords shareholders a lower level of regulatory protection than a premium listing." Perfect for a spot of holiday reading.

Conclusion

The new UK listing regime offers greater flexibility and choice for companies than the old regime. The standard listing, in particular, has effectively transformed the old second leg of the Main Market into a serious alternative for companies – especially UK businesses – ineligible or unsuitable for a premium listing. For investors, the simplified taxonomy of Main Market listings into two, better labelled categories is undoubtedly an improvement on the old, often confusing, primary and secondary listing categories. Yet it is optimistic to suggest that the new labels have enhanced the average investor's understanding of the specific obligations that apply to premium and standard Listed issuers. This is partly due to the absence of a clear market practice among share issuers recently admitted to a standard listing, which will need more than a year to evolve.

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¹ The Listing Principles are set out in the FSA's Listing Rules (LR) at LR 7.2.