

Top 5 Focus Areas for UK Equity Capital Markets in 2022

Broad reform to listing regimes, growing ESG scrutiny, and increasing retail participation in fundraisings are among the areas to watch.

Last year was memorable for UK equity capital markets (ECM). The IPO market was at its busiest since 2014, and we encountered innovative deal structures such as the emergence of special purpose acquisition companies (SPACs) in the UK, direct listings, and growing retail participation in fundraisings. In addition, the government and regulators embraced a radical and dynamic reform agenda, bolstering prospects for UK ECM.

Many of these trends are expected to continue in 2022. This *Client Alert* examines the top five legal and regulatory issues that will most likely impact ECM and listed companies and provides a timeline for the key regulatory developments.

Reforms to the UK Listing and Prospectus Regimes

No less than eight consultations and reviews were launched in 2021 to enhance the competitiveness and functioning of the UK capital markets. Several of these reviews are expected to report back in 2022, including HM Treasury's prospectus regime consultation, the UK Secondary Capital Raising Review, and the Financial Conduct Authority's (FCA) consultation on the functioning of the UK listing regime.

Given the far-reaching scope of the reform agenda, the outcome of these consultations and reviews will make 2022 an exciting year for UK ECM. Support for reform is strong, and the market is likely to see significant changes that will fundamentally revise the existing regimes.

IPO candidates seeking listings in H1 2022 (particularly founder-led innovative companies) will benefit from the FCA's rule changes that came into effect in 2021. These rule changes were in response to recommendations set out in Lord Hill's UK Listings Review and include the removal of some of the barriers that apply to listing through SPACs, permitting a limited form of dual class share structure on the premium segment, and reducing the free float level from 25% to 10%.

The 2021 reforms have already resulted in the first SPAC listing under the new UK regime (in November 2021), with more expected to follow in 2022. The UK regulatory environment is likely to become more welcoming to SPACs with the potential lowering of the statutory liability standard for forward-looking information in prospectuses (which is likely to be of particular interest to SPACs that often publish projections at the time of the de-SPAC). UK investor demand for SPACs, which has been bolstered by a revival in the US, is likely to be contingent on the success of de-SPAC processes. To date, the majority of

European de-SPAC activity — a critical element for building confidence in the SPAC construct — has involved US SPAC acquirers, although European SPACs (such as Lakestar’s business combination with HomeToGo and Odyssey Acquisition’s proposed business combination with BenevolentAI) are starting to appear.

Increased ESG Scrutiny for Listed Companies

Environmental, social, and governance (ESG) will continue to be a hot topic that attracts scrutiny from both regulators and investors. Regulators are increasingly focusing on ESG disclosures within prospectuses. Against this backdrop, listed companies will need to consider what disclosures they should make to their investors regarding ESG risks and opportunities, whether within a prospectus, financial reports, or ad hoc disclosures. (For information on developments outside of the UK, see Latham’s [blog post](#) on initiatives undertaken by the Hong Kong and Singapore stock exchanges to enhance ESG reporting.)

Specifically on the topic of climate change, the number of UK-listed companies that will need to comply with Task Force on Climate-related Financial Disclosures (TCFD)-aligned disclosure requirements will increase in 2022. Standard listed companies are now subject to the requirement to make disclosures in line with the TCFD Recommendations (on a comply or explain basis) for financial years commencing January 2022 (with disclosures to appear in their annual reports from 2023). In addition, the UK government has published legislation that would require large UK companies (including premium and standard listed companies and companies listed on AIM) and high-turnover private companies (in each case with more than 500 employees) to disclose certain climate-related financial information in a manner closely aligned with the TCFD Recommendations in relation to financial years beginning on or after 6 April 2022. From a supervisory standpoint, the FCA and the Financial Reporting Council (FRC) have indicated that they will pay particular attention to the first batch of annual reports containing TCFD disclosures for premium listed companies when they are published during the 2022 reporting season.

Growing Prominence of the UK FDI Regime

National security will become a more prominent factor when structuring investments in an IPO candidate or existing listed company. The UK’s first standalone review system of investments on national security grounds (the National Security & Investment Act (2021)) formally commenced on 4 January 2022. Under this regime, the UK government has the power to scrutinise and intervene in “qualifying acquisitions” in 17 sensitive industry sectors if they give rise to national security risks.

Market participants will need to consider this new regime if an investment is made in a listed company falling within one of the 17 sensitive sectors. The regime will be relevant to investments that would result in a shareholding of over 25% as well as acquisitions below 25% when “material influence” is involved.

In addition, HM Treasury is expected to report back on its consultation (which closed in August 2021) around developing a power to block listings on national security grounds.

Retail Participation in Fundraisings

Retail participation in ECM fundraisings increased in 2021, with close to 60 IPOs including a retail tranche (such retail tranches representing in aggregate more than £10 billion).

This trend will likely continue in 2022. Issuers and their advisers will need to focus on their retail engagement strategy and deal features to accommodate retail investors. UK regulators and exchanges are keen to encourage this trend; a key objective of the UK prospectus reforms is to facilitate wider participation in the

ownership of public companies and remove the disincentives for those companies to issue securities to wider groups of investors.

The 2022 AGM Season

For the coming annual general meeting (AGM) season, listed companies should ensure that they are prepared to deal with investor scrutiny regarding board diversity and climate change-related matters. Last year activist investors generated headlines in this space, and in late 2021 ISS and Glass Lewis released their 2022 proxy voting guidance, which highlights their focus on ESG matters such as recommending negative votes if boards have insufficient ethnic diversity or fail to oversee and manage material environmental and social issues. Another hot area for investor scrutiny will be ESG metrics incorporated into performance conditions within remuneration policies.

In early 2022, the FCA is expected to unveil its new rules imposing requirements for listed companies to disclose certain diversity and inclusion information with respect to their boards and senior management. The new rules are expected to apply to accounting periods starting on or after 1 January 2022, so that reporting will appear in annual financial reports published in spring 2023. However, given that the FCA is encouraging companies to consider making disclosures on a voluntary basis before then, listed companies should monitor developments and consider how these proposals apply to their existing policies, practices, and reporting.

With respect to meeting formats, AGMs that facilitate attendance through both physical and electronic means are likely to increase given the ongoing risk of convening in-person gatherings due to the COVID-19 pandemic. The ability of UK companies to conduct electronic shareholder meetings is, in effect, subject to their articles of association. During the 2021 AGM season, more than 90 FTSE 350 companies proposed amendments to their articles to allow for electronic meetings. Purely virtual AGMs are likely to remain rare, due to residual concerns around their legal validity and investor bodies have taken the position that purely virtual AGMs could hinder meaningful shareholder engagement.

See the Annex for a timeline illustrating the key regulatory developments expected in 2022.

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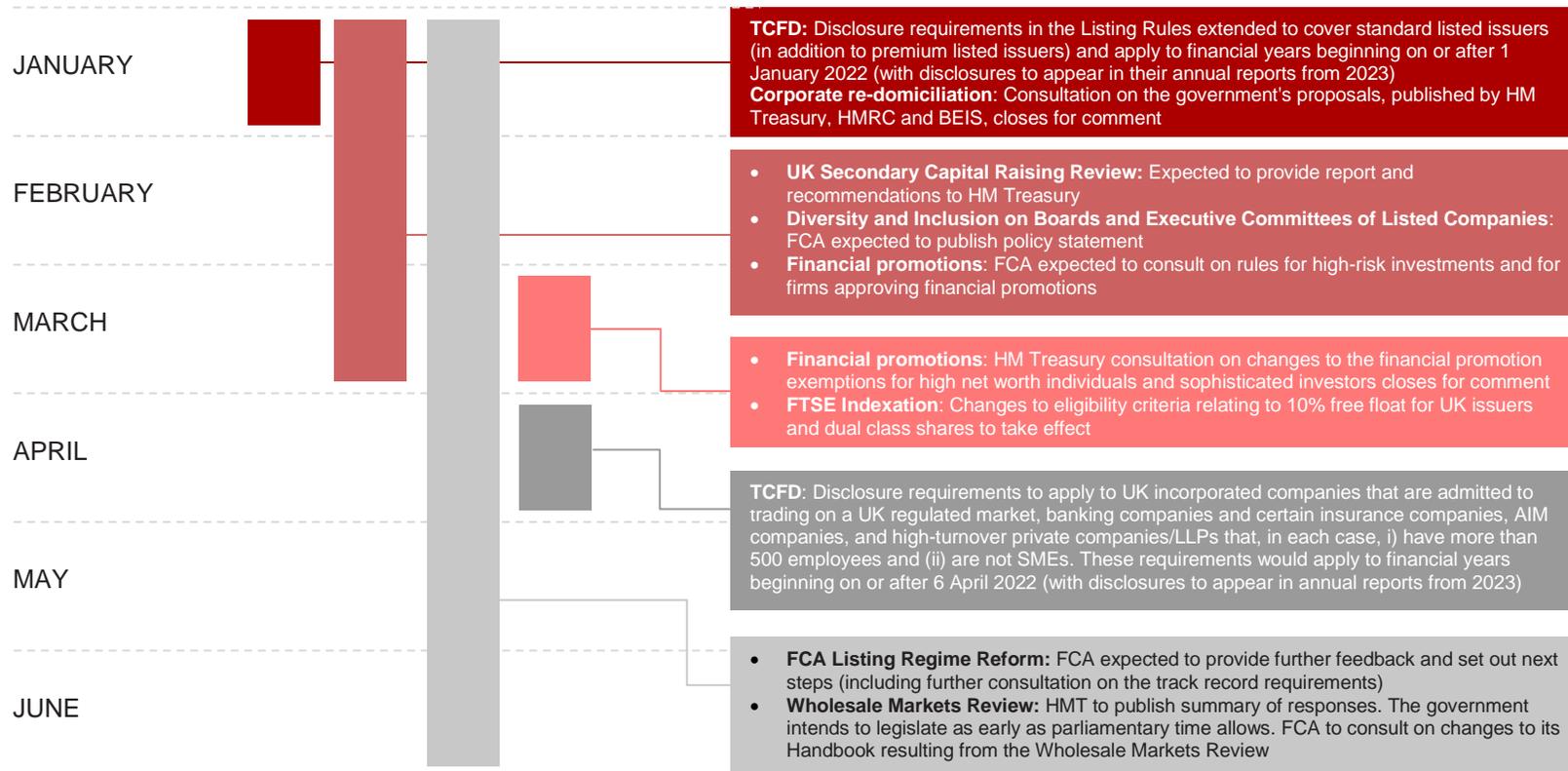
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Annex

Key Dates for UK Listed Companies and their Advisers in 2022



During 2022

- **Audit Reform:** BEIS expected to report on the outcome of its consultation (BEIS White Paper: Restoring Trust in Audit and Corporate Governance)
- **National Security Review:** HMT expected to launch further technical consultations on executive power to block listings on national security grounds
- **UK Green Taxonomy:** Technical Screening Criteria (setting the bar for investments that can be defined as environmentally sustainable) to be finalised by end 2022

During 2022-23

- **UK Prospectus Regime Review:** Replacement of the current prospectus regime to be achieved via a two-stage process:
 - A government consultation followed by legislation, assuming the government decides to proceed
 - An FCA review and consultation on the rules to replace the Prospectus Regulation