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Baker McKenzie partner Nick O'Donnell considers who or what is to blame for the fall in publicly-listed stocks worldwide – and why it's unfair to say it's the companies themselves

The process of de-equitisation – the decline in the amount of equity in issue across western stock markets – has accelerated since the financial crisis. The number of US-domiciled listed companies has fallen from around 7,000 in 1999 to around 4,000 today. In the same period, the number of Main Market companies in London has halved from around 1,900. Many have warned that the big losers in this are ordinary retail investors, but a story is being told that it is public companies themselves that are a problem, rather than a key part of the solution both to this and other challenges.

In markets like the UK, retail investors remain stubbornly overweight in domestic stocks, and the smaller pool of listed companies therefore risks less diversified portfolios – which can put retirement plans at risk. At the same time, the delay in companies seeking to come to market means that retail investors are increasingly missing out on opportunities to participate in the high-growth stages of their development as companies turn to venture capital money instead. To take an extreme case of the opportunities denied to ordinary investors, First Round Capital, a US venture capital fund, was given the opportunity to invest $510,000 during Uber's earlier growth. That stake was valued at $2.5 billion by the time Uber eventually decided to come to market.

Governments and regulators on both sides of the Atlantic have been accused of not doing enough to resist this trend. In the US, where companies spent $1 trillion buying back their own shares last year, this has primarily manifested itself in concerns over the scale of these share buybacks. In the UK, concerns have been focused on the hollowing out of the number of listed companies in sectors like pharmaceuticals, technology and manufacturing following the takeovers of such as Shire, ARM Holdings and GKN.

To some extent these accusations are unfair, as the unstoppable impact of the policies of quantitative easing (QE) that have accelerated these trends since 2009 is something that governments can't find the levers to control. Today's cheap debt is fuelling both take-privates and buybacks, as well as meaning that there is less need for high-growth companies to seek equity capital funding on the public markets. The fact that debt pricing remains stuck at historically low prices, plus the

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fallout from a reversion to normalised interest rates, is not something western governments are able to swallow. Indeed, interest rate futures are currently pricing in interest rate cuts by the Federal Reserve.

However, while it may not be fair to blame today's governments for yesterday's policy decisions, the story is being increasingly twisted to lay the blame at the door of the public companies themselves. As well as depressing interest rates, the other primary impact of the liquidity created by QE has been that stock prices remain near record highs (with the S&P 500 up over 300% since the lows of March 2009), fuelling a sense of growing inequality. This has fed the narrative that it is the public companies creating the circumstances when, in reality, they and governments are stuck in the same boat, trying to navigate the waters.

This narrative has already broken into political discourse (think of Boris Johnson's "f**k business" or the Labour Party's nationalisation policy) to a relatively muted reception from a public inured from years of public companies being portrayed as the bad guys rather the country's largest innovators, employers, taxpayers and the bedrock of the country's pension savings. At the same time that narrative has fed into the development of the listed company regulatory framework, which is increasingly aimed at taming public companies rather than supporting them. Public companies are an easy target as in fact they are, as a rule, run by diligent people, who work hard to implement each new policy.

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These new rules afford politicians a way to point at action at a time when they've lost the ability to influence the macroeconomic seas. However, increasingly, the regulatory story is the opposite. That is, regulations are damaging the best-proven way for the ordinary retail investor to share in the fruits of the economy. The increased costs and fostering conservative attitudes impairs performance, while retail investors are persuaded that listed companies should not be trusted with their money. It is no surprise that a recent survey showed that 43% of millennial investors had more trust in cryptocurrency exchanges than in traditional stock markets, despite a century of evidence proving that long-term stock market investing is the best strategy.

At the same time, this view of public companies has led to the prioritisation of regulations that allow politicians and regulators to tick the seemingly right boxes, whether they are effective or not, and at the cost of areas in need of regulatory attention.

In the initial public offering (IPO) market, this can be seen through last year's changes to the UK process which, while driven by laudable aims to improve transparency for smaller investors, justified imposing additional costs and hurdles on the process by simply imagining the emergence of a thriving unconnected analyst community. That community duly failed to develop, even for the high profile Aston Martin float, but the burdens remain in place for prospective IPO candidates.

More broadly, this process can be seen in the growth in the size of listed companies' annual reports, which are now the result of hundreds of hours of work as companies, aided by lawyers, accountants and a specialist consultant industry, seek to address disclosure obligations that often make little sense in the circumstances of that business.

A prominent example of this is the requirement in the 2018 UK Corporate Governance Code for companies to report on how they have taken into account not just shareholders and employees but suppliers, local communities and the environment, which rather implies this had not been done previously. Boards will be under scrutiny as to how they are seen to have met this challenge, but the requirements are so broad that the practical application of this change is likely to be minimal. Indeed, while there is no doubting the importance of these topics, in reality, boards are meant to have focused on these same factors since the 2006 Companies Act. In practice good boards will, as they always have, continue to focus on these factors when relevant to their business for many reasons, but not because of the distraction of how the disclosure in the annual report will look.

In contrast to vague goals which seek to correct bad behaviour, we have seen smarter regulation and discourse based on clear facts, combined with positive messaging, making a real difference. The standout example is gender diversity where, although there remains much to do, the increase in female board representation in the FTSE100 from 12.5% to 29% from 2011 to 2018 shows the potential of that approach. It is hoped that this more positive approach will be the model for engagement with public companies and that they will be, and will be recognised as, a key part of the solution to such challenges as lack of diversity, environmental concerns, economic insecurity and inequality.

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