

# Tech and Governance: Return of the Founder Share to the UK Markets?

16 September 2020

THG Holdings plc (**THG**), which was formerly known as The Hut Group Limited, today announced the pricing of its initial public offering and commenced conditional trading on the London Stock Exchange.<sup>1</sup>

THG, an online retailer which also licenses its technology platform to other businesses, has been identified by the press as a UK tech success and growth story.

The IPO of THG will be the second largest IPO in Europe so far this year. It has a number of notable features, including that:

- THG has decided to apply for admission to the standard listing segment of the FCA's Official List (the **Standard Segment**), rather than London's gold standard listing regime – the premium listing segment of the FCA's Official List (the **Premium Segment**); and
- THG's co-founder, Matthew Moulding, will acquire a "special share" on IPO which will give him the power, for a limited period of time, to pass or block any shareholder resolution should there be a change of control of THG.<sup>2</sup>

In a previous alert memorandum<sup>3</sup>, we considered reports that the UK Government was considering the introduction of a regime to cater for the listing on the Premium Segment of companies with dual-class structures.

The novel structure of THG's IPO may bring into focus again the question of whether or not the Premium Segment should cater for dual-class structures, and may renew the significant debate in recent years between those who consider the one-share, one-vote principle as the bedrock of good corporate governance and those who advocate the benefits of insulating founders and entrepreneurs from increasingly short-term public market forces.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors:

LONDON

**Sam Bagot**

+44 20 7614 2232

[sbagot@cgsh.com](mailto:sbagot@cgsh.com)

**Chris Gollop**

+44 20 7614 2303

[cgollop@cgsh.com](mailto:cgollop@cgsh.com)

<sup>1</sup> See THG's [pricing announcement](#) dated 16 September 2020.

<sup>2</sup> The terms of the "special share" are summarised in the section entitled "*The Special Share*" in Part X of the THG's IPO prospectus, which was published on 10 September 2020 and is available at the FCA's National Storage Mechanism.

<sup>3</sup> See [alert memorandum](#) entitled "*London's Premium Segment and High-growth Companies: Return of the Dual-class Structure?*" dated 10 February 2020.



## Special share

As described in THG's IPO prospectus (the **Prospectus**), the special share referred to above which will be acquired by THG's co-founder, Matthew Moulding, carries no economic rights and (until a change of control of THG) no voting rights. Immediately on a change of control, however, the special share will automatically carry enough votes to pass or block any shareholder resolution. The rights attributable to the special share will expire at the latest three years after THG's IPO. The special share is intended to allow its holder to deter a hostile acquisition that, in its holder's opinion, would not deliver sufficient value (when compared with the value that the holder considers could be generated by THG in the three years post-IPO).<sup>4</sup>

The scope and operation of this special share (or founder share) falls short of a full dual-class structure similar to those of many U.S. corporates, under which founders typically hold a different class of listed stock with weighted voting rights. Indeed, Moulding commented to the Financial Times that many businesses in THG's position would instead choose to list in the U.S., where more material rights could be put in place for Moulding and the business.<sup>5</sup>

## Standard Segment vs Premium Segment

Another notable feature is THG's decision to list on the Standard Segment (rather than the Premium Segment). This has a number of implications.

First, only companies whose shares are admitted to the Premium Segment are eligible for inclusion in the FTSE UK Index Series.<sup>6</sup> Therefore, THG will be ineligible for inclusion in any FTSE index. Given its expected market capitalisation post-IPO, THG would be included in the FTSE 100 if its shares were admitted to the Premium Segment, and (absent other factors) it is notable that a company would opt out of eligibility for this index.

<sup>4</sup> See section entitled "*The Special Share*" in Part X of the Prospectus.

<sup>5</sup> See the article entitled "*Hut Group targets £4.5bn valuation in London listing*" published by the Financial Times on 27 August 2020.

<sup>6</sup> See section 4 of the [Ground Rules for the FTSE UK Index Series](#) published by FTSE Russell in September 2020.

Second, by virtue of THG's ineligibility for the FTSE indices, tracker funds may not be able to trade THG's shares. Other things being equal, this could presumably impact liquidity in THG's shares.

Third, as we explained in our previous alert memorandum, the UK Listing Rules (**Listing Rules**) contain a number of restrictions on companies with dual-class structures listing on the Premium Segment. It seems likely that Moulding's special share and certain additional rights afforded to Moulding would be inconsistent with certain of these restrictions.

Fourth, the continuing obligations to which a company admitted to the Standard Segment is subject are significantly less onerous (when compared with the Premium Segment): for example, the provisions of the Listing Rules relating to significant transactions and related party transactions only apply to companies admitted to the Premium Segment, which may be of particular relevance given THG has historically been highly acquisitive and, as described briefly below, Moulding will own a large proportion of the real estate used or occupied by the THG group. In addition, only companies admitted to the Premium Segment are required to "comply or explain" against the UK Corporate Governance Code, which is viewed as the benchmark standard for corporate governance. As described further below, this is relevant due to Moulding's proposed role as THG's executive chairman and chief executive officer.

## Moulding as executive chairman

One of the requirements of the UK Corporate Governance Code is that the chair should be independent on appointment and the roles of chair and chief executive should not be exercised by the same individual.<sup>7</sup>

As set out in the Prospectus, Moulding will remain as THG's executive chairman and chief executive officer post-IPO.<sup>8</sup> While the UK Corporate Governance Code is not binding on companies admitted to the Premium Segment, if THG were to

<sup>7</sup> See Provision 9 of The UK Corporate Governance Code, published by the Financial Reporting Council in July 2018.

<sup>8</sup> See Part III of the Prospectus.

list on the Premium Segment, it would be required to explain in its annual report that it had not complied with the provisions of the UK Corporate Governance Code relating to the roles of chair and chief executive officer.

### **Moulding's compensation package**

Certain options that have been awarded to Moulding and other members of THG's management team will vest based on the market capitalisation of THG as at 31 December 2022. Under THG's articles of association, those options vest in full if the market capitalisation of THG is greater than or equal to £7.25 billion as at that date. Other options that have been awarded to Moulding and other members of THG's management team will vest in full as the equity value of THG (including both listed and unlisted shares) was £5.25 billion or more on IPO.

If all of Moulding's options vest in full, he would (assuming no further shares were issued or sold following the IPO) hold approximately 25% of THG's ordinary shares.<sup>9</sup>

### **THG's property holdings**

Prior to THG's IPO, it is intended that a large proportion of THG's property holdings are demerged and distributed to a new entity owned and controlled by Moulding. THG will continue to use or occupy these properties pursuant to arm's length leases entered into between the relevant lessors and lessees.<sup>10</sup>

### **Premium Segment and the return of the founder share to the UK markets?**

The THG governance structure appears to give Moulding a significant degree of control over THG and its business.

Initial press reports indicated that this may have caused concern for certain investors.

Notwithstanding, five cornerstone investors made significant commitments to the THG IPO (worth

approximately £615 million in aggregate)<sup>11</sup>. In addition, press reports indicate that shares in THG soared nearly a third on their debut to the London market. Press reports also quote one of the coordinators of the IPO saying that the IPO had received multiple levels of oversubscription and that investors had not been put off by THG's unusual governance structure.<sup>12</sup> Given Moulding's knowledge of the business, vision and track record, investors may in fact see Moulding's degree of influence over the business as a positive factor.

In any event, given that THG will be one of the larger UK listed companies and given its profile as a potential UK tech growth story, it is notable that THG did not choose to list on London's Premium Segment. This may make the arguments to introduce a regime to cater for founder share or dual-class structures for high-growth businesses on the Premium Segment more compelling.

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<sup>9</sup> See section entitled "*The Concert Party*" in Part X of the Prospectus.

<sup>10</sup> See section entitled "*Propco Reorganisation*" in Part X of the Prospectus.

<sup>11</sup> See section entitled "*Material Contracts*" in Part IX of the Prospectus.

<sup>12</sup> See the article entitled "*Hut Group shares soar after biggest UK market debut in five years*" published by the Financial Times on 16 September 2020.