

July 30, 2021

SPACs in the UK – De-SPAC Transactions to be Permitted in UK Without Suspension

UK Financial Conduct Authority to Amend the UK Listing Regime to Enhance the Attractiveness of London as a Potential Listing Venue for SPACs

SUMMARY

On July 27, 2021 the FCA published a policy statement setting out its planned amendments to the Listing Rules to remove the presumption of suspension that applies to special purpose acquisition companies (SPACs) when a potential acquisition target is identified (the ‘de-SPAC’ transaction), subject to certain investor protection features. These changes are geared towards making the London Stock Exchange a more attractive listing venue for SPACs and follow the publication of the UK Government’s review of the UK listing regime, as discussed in our [client memo](#) of March 3, 2021, and the subsequent consultation by the Financial Conduct Authority (FCA) published on April 30, 2021.

These changes to the Listing Rules are due to take effect on August 10, 2021.

CHANGES FOR SPACS

One of the reasons why London has traditionally been perceived as a relatively unattractive venue for SPAC activity is the requirement under the current Listing Rules for trading in a SPAC’s shares to be suspended upon announcement of a de-SPAC transaction, which effectively locks up SPAC shareholders.

This presumption of suspension will now be removed, provided SPACs provide certain protections and transparency for investors. The FCA’s stated goal with this change is to provide more flexibility to larger SPACs by “*striking a balance by setting robust, credible standards that we consider are more beneficial for investors and issuers alike, which may then encourage more SPAC listings in the UK in the future*”.

The criteria for disapplication of the presumption of suspension are as follows:

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1. The SPAC must raise a minimum of £100 million from public shareholders on IPO.
2. The SPAC needs to ring-fence the cash raised from public shareholders so that this cash can only be used for the following purposes:
 - to fund a de-SPAC transaction which has been approved by the SPAC's board of directors and by public shareholders; or
 - to fund redemptions of shares from public shareholders where such shareholders have chosen to exercise their redemption option (see below); or
 - to repay capital to public shareholders if the SPAC winds up or because it has failed to find a target or complete a de-SPAC transaction within the time limit.
3. The ring-fenced cash can exclude any amounts or proportion of the IPO proceeds that the SPAC will retain to fund its operations, as long as these amounts have been disclosed to investors in the IPO prospectus.
4. The SPAC has a time limit to find and acquire a target within two years from admission to listing, which may be extended by 12 months with public shareholder approval. A six month extension without shareholder approval is permitted in limited circumstances and is intended to provide more time for a SPAC to conclude a de-SPAC transaction. These circumstances may include where the SPAC has convened a shareholder meeting for approval of an acquisition, or has already gained approval and time is needed to complete the final stages of a transaction.
5. Board approval of any proposed acquisition is required, with the following excluded from both the board discussion and the vote:
 - any board member who is a director of the target or a subsidiary of the target or who has an associate who is a director of the target or any of its subsidiaries; or
 - any board member who has a conflict of interest in relation to the target or its subsidiaries.
6. The Board must publish a 'fair and reasonable' statement if any of the SPAC's directors have a conflict of interest in relation to the target or any of its subsidiaries.
7. Shareholder approval is required for the de-SPAC transaction, with SPAC founders, sponsors and directors excluded from the vote.
 - This is in contrast with the US model or the structures used in certain European jurisdictions where a SPAC sponsor typically may vote on a business combination and often commits to vote in favour of a business combination brought to a shareholder vote.
 - The FCA's argument here is that the requirement for shareholder approval will protect shareholders against a poor choice of target by allowing more opportunity for scrutiny, and will ensure that conflicts of interest in relation to any target are appropriately managed.
8. The SPAC should provide a redemption option allowing investors to exit the SPAC before any acquisition is completed.
9. Investors must be given sufficient disclosure on key terms and risks from the SPAC IPO through to the announcement and conclusion of any acquisition. This relies heavily on compliance with existing disclosure requirements such as in the Prospectus Regulation, Market Abuse Regulation, and the FCA's Disclosure Guidance and Transparency Rules.
 - Additional specific disclosures are also required upon the announcement of a target: the SPAC must undertake to provide, to the extent possible, the following information:
 - A description of the target's business and all relevant public information on the target, any material terms of the proposed transaction, and the proposed timeline for negotiations;
 - An indication of how the SPAC has, or will, assess and value the identified target; and
 - Any other material details and information that the SPAC is aware of, or ought reasonably to be aware of, about the target and the proposed deal that an investor in the SPAC needs to make a properly informed decision.

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The FCA will also modify its supervisory approach for SPACs, with the aim of providing more comfort to SPACs prior to listing that the SPAC will be able to benefit from the disapplication of the presumption of suspension, rather than only giving such comfort at the point of an announcement as had been originally proposed. The FCA plans to work with issuers and sponsors to give this comfort as part of the prospectus vetting process and assessing eligibility for listing.

SPACs must be mindful that such comfort will not necessarily endure where circumstances have changed. The FCA does not expect to revisit their previous assessment at the point of an announcement provided that the SPAC confirms the relevant criteria continue to be met.

Where the FCA has previously given comfort prior to admission, a SPAC should still contact the FCA in the following circumstances:

- Before announcing a reverse takeover which has been agreed or is in contemplation, in order for the SPAC to confirm it continues to meet the conditions and to discuss its proposed announcement of a target; and
- If there has been a leak, to inform the FCA of the action it has taken or will take.

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