

FCA Releases Consultation Paper Proposing Draft Rules for SPACs

Skadden

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On 30 April 2021, the UK Financial Conduct Authority (FCA) published a [consultation paper](#) proposing changes to the Listing Rules applicable to special purpose acquisition companies (SPACs).

The proposed changes to the Listing Rules follow the UK Listing Review carried out by Lord Hill, and the recommendations of that review that were published on 3 March 2021. Lord Hill's review noted that the London Stock Exchange (LSE) and London's capital markets were at a disadvantage, and losing ground, to European rivals such as Euronext Amsterdam in the race to be Europe's premier location for the flood of SPAC listings that occurred in 2020 and seem on track to continue in 2021. The imperative for quick action in altering the rules is perhaps best evidenced by the FCA consulting only for the minimum permitted period of four weeks, ending on 28 May 2021. As such, the new rules are expected to come into effect shortly after the closing of the consultation period.

The key Listing Rule that has impeded London's development as a centre for SPACs is the current presumption that a SPAC listing will be suspended when it identifies a potential acquisition target, in order to protect investors. In fact, many investors have argued that these suspensions have had the opposite effect, depriving them of the opportunity to sell their shares at the precise time when they might wish to do so. The proposed changes would remove this presumption and replace it with guidance by the FCA that it will generally be satisfied that suspension is not required, subject to the SPAC satisfying certain conditions (described later in this alert). The board of directors of the SPAC will be required to confirm the satisfaction of these conditions to the FCA at the point of announcing the acquisition by the SPAC (known as the de-SPAC transaction). Importantly, the board of the SPAC will also need to confirm that these conditions have been met (and make the required announcement) in the event that details of the de-SPAC transaction are leaked. Where details of the de-SPAC have leaked, absent the required confirmation and announcement, the presumption that the listing of the SPAC will initially be suspended will remain unchanged.

As summarised below, the FCA's proposed conditions largely incorporate into the UK regime many of the protections applicable to a typical US-listed SPAC. This mirrors Skadden's recent experience in advising on SPAC listings on Euronext Amsterdam, where the trend has been to seek to replicate the US SPAC product. Despite the similarities, there are some interesting and important deviations from the US model in the FCA's proposed changes to the Listing Rules that SPAC sponsors will need to consider.

Principal amongst these deviations are: (i) the SPAC sponsor cannot participate in the shareholder vote to approve the de-SPAC transaction; (ii) a "fair and reasonable statement" will be required where a SPAC director has a conflict of interest in relation to a de-SPAC target; (iii) there is no requirement proposed under the changes for the de-SPAC transaction to utilise at least 80% of the funds raised in the SPAC's IPO; (iv) the new rules will only apply to SPACs that raise in excess of £200 million, excluding any funds invested by the SPAC sponsor; and (v) although funds raised by the SPAC must be ring-fenced and held by an independent third party, there is no requirement that this be by way of a trust or escrow account (although it is expected that these will be the most commonly used methods).

Whilst none of these changes impact the fundamental model of a US-style SPAC imported into and listed on the LSE, those who are structuring SPACs will need to keep them in mind initially and when planning any de-SPAC transaction. Particularly notable

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amongst the deviations are the exclusion of the SPAC sponsor from the shareholder vote to approve the de-SPAC transaction and the inclusion of a requirement for a “fair and reasonable statement” where a SPAC director has a conflict of interest. It will be interesting to see how the market reacts to these changes in future fundraisings by LSE-listed SPACs.

Proposed conditions to avoid suspension of a SPAC's listing

Below is a summary of the FCA's proposed conditions to avoid a suspension of a SPAC's listing at the point of announcement of the de-SPAC transaction.

- **Size threshold.** The SPAC must raise gross proceeds from public shareholders at initial admission of at least £200 million. This amount excludes any funds invested by the SPAC sponsors, including any founders, directors or others that have a role in promoting or supporting the SPAC. The FCA has sought views in the consultation on whether this size threshold should be reduced to £100 million for SPACs focused on sustainability or environmental, social or governance (ESG) issues.
- **Time limit.** The SPAC must acquire a target within two years of admission to listing. This can be extended by up to 12 months if approved by the public (*i.e.*, non-sponsor) shareholders. If no acquisition is made within the relevant time period, then the funds should be returned to shareholders and the SPAC would be expected to wind itself up.
- **Approval of acquisition.** Board and shareholder approvals are required for any de-SPAC transaction. The board approval must exclude any board member who is, or has an associate who is, a director of a target entity or who has a conflict in relation to the target entity. The shareholder vote must exclude the SPAC sponsor, and a majority vote in favour by the public shareholders will be required. The shareholders must also be provided with sufficient disclosure on the terms of the transaction to make a properly informed decision. This would include (i) the impact on ordinary shareholders of shares or warrants held by the sponsor (*e.g.*, dilution); (ii) any conflict of interest the sponsor has in relation to the proposed transaction; and (iii) any additional dilution effects on existing shareholders from potential redemptions or the terms on which additional investment is provided from private placements to finance the transaction. (*e.g.*, any “PIPE” transaction).
- **Redemption rights.** The SPAC should provide a redemption right to shareholders at the point of announcing the de-SPAC transaction, specifying a predetermined price at which shares will be redeemed if the de-SPAC transaction completes, whether a fixed amount or a pro rata share of the cash proceeds less any pre-agreed amounts for running costs.
- **Fair and reasonable statement.** Where any of the SPAC's directors have a conflict of interest in relation to the target, the SPAC should publish a fair and reasonable statement, *i.e.*, a statement that the proposed transaction is fair and reasonable, backed by advice from an independent adviser.
- **Ring-fencing of funds.** The SPAC must adequately ring-fence, via an independent third party, proceeds raised from public shareholders. There is no requirement for the ring-fencing to be by way of a trust or escrow account, although the FCA acknowledges that these are the methods commonly used. The ring-fenced cash may only be used for the de-SPAC transaction, redemption payments to shareholders or repayment on winding up.
- **Required disclosure.**
 - *At listing:* Clear disclosure will be required in the IPO prospectus on ring-fencing arrangements, the time limit for completing the de-SPAC transaction, the SPAC's commitment to publish a fair and reasonable statement, and voting and redemption rights. Typical information already provided in SPAC prospectuses, such as the structure of the offer (including the terms of the warrants), details of management expertise, SPAC strategy, identified risk factors and conflicts of interest will also be required to be disclosed.
 - *At de-SPAC transaction:* The SPAC must provide information to the market at the time it announces a de-SPAC transaction, including (i) a description of the target business and the proposed timeline for negotiations; (ii) an indication of how the SPAC has or will assess the value of the target; and (iii) 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. The SPAC must update the information as necessary if new information becomes available prior to the shareholder vote.
 - *Disclosure regarding new FCA Listing Rules:* The SPAC should include disclosure in the IPO prospectus indicating its intention to seek to take advantage of the proposed alternative guidance to avoid suspension. Note however that even if the SPAC is in compliance with the new rules and guidance, the FCA will not guarantee that suspension at a future date will not be necessary, and the disclosure in the prospectus should reflect this fact.

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