

FCA Releases Policy Statement on New Rules for SPACs

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On 30 April 2021, the UK Financial Conduct Authority (FCA) published a [consultation paper](#) (the Consultation) proposing changes to the Listing Rules applicable to special purpose acquisition companies (SPACs), discussed in our 4 May 2021 client note “[FCA Releases Consultation Paper Proposing Draft Rules for SPACs](#)”. On 27 July 2021, the FCA published a [policy statement](#) (the Policy Statement) summarising the feedback received on the Consultation and setting out the FCA’s policy response. The final rules for SPAC listings are, for the most part, unchanged from those proposed in the Consultation. However, there have been some key changes, which are discussed in this client alert. The amendments to the Listing Rules effecting the new rules for SPAC listings will come into effect on **10 August 2021**.

The principal changes to the original proposals in the Consultation are:

- **Size threshold:** lowering the minimum amount a SPAC would need to raise at initial listing to be able to satisfy the new rules from £200 million to £100 million;
- **Transaction time extension:** introducing an option to extend the proposed two-year (or three-year, if extended by shareholder approval) time-limited operating period of the SPAC by six months, without the need to obtain shareholder approval in specific circumstances (discussed below) where a proposed reverse takeover is well advanced and the SPAC requires more time to conclude the transaction; and
- **Supervisory approach:** modifying the FCA’s proposed supervisory approach to provide more comfort to SPACs *prior to admission to listing* that a SPAC is within the guidance that disapplies the presumption of suspension of a listing, rather than only at the point of announcement of a transaction.

There are also some points of interest in the Policy Statement — notably around the question of whether SPACs should be treated as an Alternative Investment Fund under the Alternative Investment Fund Managers Directive (AIFMD), the scope of directors’ conflicts of interest and the potential to use US-style “unit” structures for UK listings. These points are also discussed in this note.

Lowering the Size Threshold

A size threshold of £100 million was viewed by respondents to the Consultation, and the FCA in its response, as better reflecting the size of SPAC the market is likely to see in the UK/Europe and the likely size of prospective target companies. Crucially, the FCA felt that the intended policy outcome of ensuring the terms of a SPAC, as well as the credibility of its management, were scrutinised by institutional investors would be achieved at a £100 million threshold.

Transaction Time Extension

The FCA has agreed that there is merit in allowing an extension to the SPAC’s operating period, without the need to obtain shareholder approval, where a proposed reverse takeover is “well advanced”. The FCA considers that up to six months’ extension is reasonable in this scenario. Ultimately, this means a maximum operating period of a UK-listed SPAC using the new alternative approach to suspension will be 42 months (*i.e.*, a three-year period with shareholder approval plus a further six-month automatic extension). The FCA did not consider a rolling 12-month extension (subject to shareholder approval) to be appropriate or aligned with the policy intent that SPACs should not persist on public markets and continue to hold investor cash if no target has been successfully pursued during the initial operating period.

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Importantly, the FCA has emphasised that a six-month automatic extension cannot be triggered solely by the announcement of a proposed target, as this may encourage early or speculative announcements purely to trigger an extension. The FCA considers that an extension without shareholder approval should only be permitted in limited circumstances, such as where the SPAC is in the process of seeking shareholder approval for a transaction (e.g., a shareholder meeting has been convened), or has already gained approval, and time is needed to complete the final stages of such a transaction. Use of this additional six-month extension must be notified to the market, before the end of the initial two-year period (or three-year period if extended with shareholder approval).

Supervisory Approach

The FCA has responded to the feedback that prospective SPACs would need greater certainty at the point of listing that the presumption of suspension of their listing would not apply at the point of announcing a reverse takeover under the Listing Rules.

The FCA has confirmed that it will work with SPACs and their advisers to ensure that comfort regarding the presumption of nonsuspension is achieved as part of vetting the prospectus and assessing eligibility for listing. At the same time, SPACs will need to be mindful that such comfort will not endure in the event that circumstances/arrangements have changed or have not been accurately described to the FCA. At the point of announcement, the FCA has confirmed that it would not expect to revisit its previous assessment provided the SPAC confirms the conditions are met. Where a SPAC meets the criteria, it generally will be treated similarly to commercial companies, whereby the FCA expects compliance with the UK Market Abuse Regulation (UK MAR) and has general suspension powers under Listing Rule 5.1.1R.

The FCA reiterated that where comfort has been given prior to admission of a SPAC, it should still contact the FCA (i) before announcing a reverse takeover that has been agreed or is in contemplation, in order for the SPAC to reconfirm (via written confirmation of the SPAC's board of directors) it meets the SPAC conditions and to discuss its proposed announcement of a target and (ii) if there has been a leak, to inform the FCA of the action it has taken or will take. In accordance with existing obligations, a SPAC (in line with all other listed companies) should have a plan that enables it to respond and cleanse the market as soon as possible in response to a leak.

SPACs as AIFs

The FCA noted in the Policy Statement that it is not the FCA's intention that the changes under the Consultation and the Policy Statement bring SPACs within the scope of the AIFMD regime. Most SPACs are established so as not to be treated as an AIF, and consequently to remain outside of the scope of AIFMD (which applies in both the UK and the European Union). The FCA reiterated that whether a SPAC is an AIF or not is a matter for each SPAC to consider, taking legal advice where appropriate, as well as pointing to Chapter 16 of The Perimeter Guidance Manual, in the FCA Handbook, which contains detailed FCA guidance on the scope of the AIFMD regime.

Conflicts of Interest

The FCA has clarified that for the purposes of whether a director is excluded from the approval of the SPAC's board of directors for a reverse takeover where a conflict of interest exists, the conflict of interest in question must specifically relate to the target or its subsidiaries, rather than, for example, the director simply holding shares (or "sponsor shares") in the SPAC itself.

Unit Structures

The FCA noted that it is giving further consideration to US-style "unit" structures and how these interact with the Listing Rules. In our experience, a key issue here has been the free-float requirement, under Listing Rule 14.2.2, in relation to the underlying ordinary shares, prior to redemption of the units when there is zero free float in the ordinary shares and, subsequently, in relation to the units, following the redemption of the units where the free float ceases to exist in the units. The FCA has indicated it will engage with prospective SPACs considering a unit structure on a case-by-case basis, and it may consider further communication on the approach to "unit" structures in due course.

Conclusion

The Policy Statement provides welcome clarity on the proposed changes to the Listing Rules and the date that such changes are expected to be implemented. Additionally the changes made by the FCA to the proposed rules in response to the Consultation make SPAC listings in the UK more attractive and flexible. In particular, the FCA's clarification on its supervisory approach, and the comfort this will give to SPACs, is very welcome. We also view the FCA's acknowledgement of and willingness to engage in relation to certain other issues that have been hot topics for SPACs that are considering listing in London as positive for the UK SPAC market going forward.

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