

SPACS in the UK: starting a new chapter?

In a policy statement published on 27 July 2021, the Financial Conduct Authority (FCA) published changes to the Listing Rules that are intended to increase the attractiveness of London markets for special purpose acquisition company (SPAC) listings. The rules and guidance came into force on 10 August 2021.

The FCA hopes that the new rules and guidance will provide a more flexible regime for SPACS than previously existed and one that is more competitive with other international markets. However, it remains to be seen whether they will result in a step change in the number of SPAC listings in London, particularly in the currently buoyant initial public offering (IPO) market where traditional operating businesses are vying for investor attention.

Encouraging SPACs in the UK

SPACs are relatively common in the US as they are often seen as a quick and efficient route to going public (see box "What are SPACs?"). According to the 2021 UK Listing Review, in 2020 there were 248 SPAC listings on US markets, raising an equivalent of £63.5 billion in total (see *News brief "UK Listing Review: closing a gap"*, www.practicallaw.com/w-030-2530).

However, despite the buoyant market for SPAC listings in the US, the 2021 UK Listing Review shows that only four SPACs were listed in the UK in 2020, raising an aggregate total of £30 million and the FCA's consultation published in April 2021 indicates that the operation of the Listing Rules in this area was one reason for this (www.fca.org.uk/publication/consultation/cp21-10.pdf). Accordingly, the adoption of new rules and guidance is one step being taken to encourage SPACs to list on the Main Market of the London Stock Exchange, while balancing the need for investor protections.

New rules and guidance

The new rules and guidance have removed the existing presumption in the Listing Rules that trading of shares in a SPAC will be suspended on the announcement of a potential acquisition, subject to certain investor protection requirements being met. The presumption of suspension existed to protect investors from a disorderly market existing in the shares of the SPAC at a time when there may be insufficient public

information to allow accurate price discovery. However, suspension results in investors being unable to trade their investment for an extended period until the acquisition is complete, which can be a key deterrent for potential investors in UK SPACs. To address this, the FCA has sought to remove the presumption of suspension requirement where the following criteria are met.

£100 million size threshold. The SPAC must raise at least £100 million in gross proceeds from public shareholders at its initial admission, which excludes any IPO proceeds received from the SPAC's founders, directors or sponsors. Sponsors are defined broadly under the new rules to include anyone providing capital or finance to support the SPAC's operating costs, financial, advisory, consultancy or legal services, facilities or support services, or any other material contribution to the establishment and operations of the SPAC. The logic for this threshold is that any fundraising that raises this amount will likely involve institutional investors carrying out detailed due diligence on the proposed acquisition, resulting in increased scrutiny and investor protection.

Ring-fenced IPO proceeds. The SPAC must meet certain requirements for ring-fencing its IPO proceeds, which include ring-fencing through an independent third party and ensuring that the proceeds (less pre-agreed amounts for the SPAC's running costs) can be used only to fund a duly approved acquisition or be returned to shareholders (in respect of a redemption of shares or if the SPAC winds up or fails to make an acquisition).

Deadline for making an acquisition. The SPAC's constitution must set a time limit of two years to find a target and make an acquisition, which can be extended to three years with shareholder approval. In limited circumstances, such as where an acquisition agreement has been entered into but not completed, the initial two-year period or extended three-year period can be extended for up to six months without shareholder approval.

Board and shareholder approval. The SPAC's constitution must require that an acquisition is approved by both the board, excluding any directors of the target or directors who are conflicted, and its shareholders, excluding founders, directors and sponsors.

What are SPACs?

Special purpose acquisition companies (SPACs), also known as cash shells, are formed to raise money through an initial public offering with the intention of identifying and acquiring target businesses (see *feature article "Private M&A: SPAC invaders"*, www.practicallaw.com/5-382-2700). The management team that establishes a SPAC will typically have experience in the sector or transaction type targeted by the SPAC and investors investing into a SPAC will typically do so in reliance on the reputation and expertise of the management team.

Fair and reasonable statement. If any of the SPAC's directors have a conflict of interest in relation to the target, the SPAC is required to publish a statement that the proposed transaction is fair and reasonable and that the SPAC's directors have been so advised by an appropriately qualified and independent adviser.

Shareholder redemption option. The SPAC shareholders must have a right to redeem their shares at a predetermined price before the completion of an acquisition. The predetermined price can be a fixed amount or a fixed pro-rata share of the ring-fenced proceeds.

Sufficient disclosure. The SPAC must provide investors with sufficient disclosure of key terms and risks from the time of the IPO to the conclusion of any acquisition. The SPAC must also release an announcement that meets certain requirements at the time of the acquisition.

The SPAC must liaise with the FCA in advance of any acquisition announcement and confirm that it fulfils all of the conditions to avoid a suspension of its shares, and that it will continue to do so until the completion of the acquisition.

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The FCA policy statement is available at www.fca.org.uk/publication/policy/ps21-10.pdf.
