

FCA PUBLISHES ITS FINAL RULES FOR SPACS

On 27 July 2021, the United Kingdom Financial Conduct Authority (the "FCA") published its eagerly anticipated final rules for special purpose acquisition companies ("SPACS") in Policy Statement PS21/10. This follows completion of the FCA's market consultation that was launched at the end of April 2021 (CP21/10) following recommendations made by Lord Hill in his UK Listing Review report published on 3 March 2021 which had been commissioned by the UK Chancellor as part of a plan to strengthen the UK's position as a leading global financial centre. The new rules and guidance come into force on 10 August 2021.

As identified by Lord Hill, there is a market view that London is not seen as a particularly "friendly" listing venue for SPACs, largely due to the current rules relating to reverse takeovers and associated listing suspensions contained in Chapter 5 of the FCA's Listing Rules. Broadly, these rules provide a general presumption that at the time a SPAC announces a proposed business combination (which, given the nature of a SPAC, would typically be classed as a reverse takeover under the Listing Rules) or if the details of such a proposed transaction are leaked then, unless adequate information can be made available to the market at the time of such announcement or leak, the SPAC's listing would be suspended by the FCA until such time as the market is provided with the required information. In those circumstances, a suspension is seen as necessary in order to protect investors from disorderly markets as a result of there being insufficient publicly available information. In practice, such a suspension could result in investors being locked up in a SPAC for a significant period of time - particularly in circumstances where there had been a leak - without any ability to exit an investment until the SPAC publishes the necessary information to permit the market to be able to assess the SPAC's financial position and have the suspension lifted.

In light of this perceived impediment, the FCA was tasked with considering how best to modify its rules in light of needing to strike a balance between making London a more attractive venue for SPAC listings whilst also ensuring strong investor protections. As a result, the FCA published its consultation paper on SPACs on 30 April 2021 (CP 21/10), which had at its heart a proposal to remove the general presumption around suspension (described above) in circumstances where the SPAC has certain prescribed investor protections in place.

The FCA's final rules largely track the proposed changes set out in CP21/10. As was hoped, the new rules provide clarity on the removal of the general

Key fact summary

The FCA will work with issuers to provide comfort that the presumption of suspension does not apply and that the SPAC meets the required conditions, as part of the prospectus vetting and eligibility for listing process. Before announcing a reverse takeover, the SPAC must re-confirm to the FCA that it meets the conditions and discuss its proposed announcement.

Key criteria that must be satisfied by the SPAC to ensure that it will benefit from the removal of the presumption of suspension include:

1. minimum £100 million capital raising from public shareholders; funds to be ring-fenced; and redemption rights to be provided to shareholders irrespective of how they vote on the business combination resolution
2. SPAC to have a 24-month term, extendable by a further 12 months (subject to shareholder approval) and for a further 6 months in certain circumstances, including when a target has been found but the transaction has not completed or has yet to be approved

presumption of suspension of a SPAC's listing upon announcement or leak of a reverse takeover, if a SPAC is able to demonstrate compliance with a number of conditions laid down by the FCA. Such conditions are believed by the FCA to be adequate to protect investors and permit the smooth operation of the market in the absence of any suspension of listing.

CONDITIONS TO BE SATISFIED

Under the new rules, a SPAC will be required to demonstrate in writing that the following conditions have been met in order to avoid suspension:

Size

The aggregate gross cash proceeds raised by the SPAC from its IPO must be at least £100 million. This is lower than the £200 million minimum proceeds that had initially been proposed by the FCA in CP21/10, in light of feedback to the consultation around the likely size of targets most UK SPACs would seek to acquire. This amount must be raised from public shareholders - any funds contributed by founders or sponsors of the SPAC will not count towards satisfying this condition.

Based on the typical size of capital raises undertaken in the European SPAC market in 2021, we do not believe that this condition ought to be particularly difficult for most SPACs to achieve.

Ring-fencing

The SPAC must ensure that it has binding arrangements in place with an independent third party to ensure that the cash proceeds raised in the IPO are ring-fenced from being used for any purpose other than to: (a) fund the consideration for the SPAC's acquisition; (b) redeem or repurchase the SPAC's listed securities held by public shareholders; (c) be distributed to public shareholders if the business combination has not been completed; or (d) be returned to public shareholders on winding-up of the SPAC.

The SPAC may exclude a specified sum of proceeds from the ring-fenced amount and retain and use it to fund its operations, provided that such amount has been adequately disclosed in the SPAC's IPO prospectus.

The new rules provide SPACs with the flexibility to use either trust or escrow arrangements to satisfy the condition. The FCA has also made clear there is no requirement for the service provider to be a regulated entity, nor should the requirement of independence necessarily exclude banks advising on the SPAC's IPO, from providing such ring-fencing services to the SPAC.

This ring-fencing requirement simply reflects existing US and European SPAC market practice.

Constitution – Term

The SPAC must adopt a constitution that provides that if it has not completed a reverse takeover (i.e. a business combination) within 24 months from the date of admission it will cease operations and distribute the ring-fenced proceeds to its public shareholders as soon as possible thereafter. The rules also provide that this 24-month term can be extended for up to a further 12 months provided that shareholder approval is obtained. The rules also permit an extension to either (i) the initial 24-month term or (ii) the extended (i.e. up to 36-month) term (if shareholder approval has been obtained), of a further six months in circumstances where: (i) shareholders have approved the proposed business combination but the transaction has not yet completed, (ii) the

Key facts continued

3. the proposed business combination must be approved by: (i) the board of directors of the SPAC, with conflicted directors abstaining; and (ii) shareholders at a general meeting, where sponsors/founders/directors are not permitted to vote
4. if a director has a conflict of interest in relation to the target or any subsidiary thereof, a fair and reasonable opinion from an independent adviser is required and a fair and reasonable statement must be published by the board of directors of the SPAC ahead of the business combination shareholder meeting
5. SPAC to provide written evidence to the FCA that the above conditions continue to be satisfied at the time of the announcement of the proposed acquisition and to discuss its proposed announcement with the FCA, which must include certain prescribed information

general meeting to obtain shareholder approval of the business combination has been convened, (iii) the SPAC has announced that the general meeting to obtain shareholder approval will be convened for a specified date and that notice of the general meeting will be sent to shareholders within a specified time, or (iv) the relevant agreement has been entered into but the transaction has not yet been completed (and the SPAC has not made an announcement in accordance with (iii)).

These new rules may provide helpful flexibility to a SPAC, with the additional 6-month extension (applicable in limited circumstances) largely mirroring prevailing European SPAC market practice. However, it remains to be seen whether in practice UK SPACs will look to make use of the additional 12 month extension granted by way of shareholder approval as our expectation is that many investors will not want to commit to having their capital tied up for such a lengthy duration.

Constitution – approvals

A SPAC's constitution must also ensure that the SPAC obtains both board and shareholder approval of a proposed acquisition. Any director of the SPAC who is, or an associate of whom is, a director of the target or a subsidiary of the target, or any director who has a conflict of interest in relation to the target or a subsidiary of the target, will be precluded from considering and voting on such board resolution to approve the proposed transaction.

Shareholder approval must be obtained from the SPAC's public shareholders, with any founding shareholder, sponsor or director precluded from voting on the relevant resolution. This requirement represents a fairly significant deviation from current European SPAC market practice where typically the sponsor and directors would be permitted to vote on the transaction. As such, it will be interesting to see how this requirement will be viewed by market participants. On the one hand, it provides strong investor protection that will likely be well received by investors, however, on the other hand, from a sponsors' perspective, it increases the risk of a transaction being voted down.

Another interesting point turns on the definition of "sponsor" under the new rules. As drafted, the definition captures anyone who provides "capital or other finance to support the operating costs of the shell company". One of the developments that we have seen in the European SPAC market is the importance of having "anchor" or "cornerstone" investors supporting deals. In addition to subscribing for the SPAC's public securities, the anchor or cornerstone investor may also purchase sponsor shares and sponsor warrants (often referred to as the "promote") such that they too share in some of the upside along with the sponsor upon completion of a business combination (in particular, the sponsor shares will typically convert into public shares representing 20% of the issued share capital of the SPAC following its IPO). On the face of it, under the new rules, such investment arrangements would result in the investor being treated as a sponsor, meaning that they would be prohibited from voting their public shares at any business combination shareholder meeting. If the removal of this right to vote is important to an anchor or cornerstone investor, we think that it should, subject to receiving investor feedback, be possible to structure their investment in such a way that the investor would not be deemed to be a sponsor. It is unclear from the FCA's guidance whether treating anchor or cornerstone investors as a sponsor for these purposes is a conscious decision by the FCA to balance the

interests of market participants or whether it is simply an unintended consequence.

Finally, the rules also provide that where any director has a conflict of interest in relation to the target or a subsidiary of the target, the board of directors of the SPAC must confirm to shareholders that the proposed transaction is fair and reasonable as far as public shareholders are concerned. Such statement must be supported by the SPAC having obtained a fair and reasonable opinion from an independent adviser ahead of shareholders approving the proposed transaction. Whilst an equivalent rule is not mandatory in other European SPAC markets, we have seen some European SPACs disclose in their IPO prospectus an intention to obtain a fair and reasonable opinion in similar circumstances.

Constitution – redemption

In what is viewed by most market participants as being the key investor protection, and one that is a key feature of the European SPAC market, the rules also require that the SPAC's constitution must provide shareholders with a right to require the SPAC to redeem or otherwise purchase its public shares in the SPAC prior to completion of a reverse takeover (i.e. the business combination). Such redemption must be for a pre-determined amount (as described in the IPO prospectus) and must be available to shareholders irrespective of whether or not a shareholder voted in favour of the proposed acquisition.

REBUTTING THE SUSPENSION PRESUMPTION: A TWO - STEP PROCESS

To address feedback received on CP21/10 for the need for greater clarity that the presumption of suspension will not apply to a SPAC, the FCA has amended its original proposal by introducing a two-step process. The first stage involves satisfying the FCA at the time of IPO that the SPAC has satisfied the conditions set out in the rules (described above) by providing written confirmation together with evidence thereof. In practice, the FCA will work with a SPAC to ensure that at the time of the SPAC's admission to the Official List it is clear whether or not the FCA is satisfied that the conditions have been met, having considered this as part of its prospectus vetting and eligibility for listing process. The second stage of the process then requires the SPAC to re-engage with the FCA prior to announcing the proposed business combination in order to re-confirm to the FCA that it continues to meet the conditions, as well as to discuss its proposed announcement.

The FCA has also prescribed the minimum disclosure requirements that the SPAC's reverse takeover announcement should contain. These include: a description of the target's business; hyperlinks to all relevant publicly available information on the target; all material terms of the proposed transaction, including the expected dilution effect on public shareholders; the proposed timetable for the transaction; an indication of how the SPAC has assessed and valued the target, with reference to the selection and evaluation process contained in the SPAC's IPO prospectus; and any other material details and information which the SPAC is aware of relating to the target or the transaction that an investor needs in order to make a properly informed decision.

If any of this information is not known at the time of the business combination announcement, the announcement must identify that information and the SPAC must subsequently announce it as soon as it is becomes available and

in any case ahead of the shareholder meeting to seek approval for the business combination.

We think the revisions the FCA has made to its original proposal are helpful and we welcome that the FCA will work with issuers to ensure there is appropriate comfort that the presumption of suspension will not apply.

USE OF UNIT STRUCTURE

Another topic mentioned in the policy statement, but which has not been resolved through the rules or guidance, is how a SPAC can implement the unit structure typically utilised in both the US and European SPAC markets (primarily to facilitate stabilisation arrangements being put in place). In such structures, the security that is initially offered to IPO investors at IPO is typically a unit (usually comprised of one ordinary share and a fraction of a warrant) which is then replaced by the underlying share and warrant at a later date. The FCA have noted that they are giving further consideration to such a structure and how it could be implemented under the Listing Rules, noting that they will engage with SPACs on a case by case basis and may potentially issue further guidance in due course. This would be welcome, as in keeping with the fact that many of the FCA's measures are in line with those features that already exist in the European SPAC market, it would be helpful if a unit structure could also be accommodated under the UK framework.

The new rules and guidance come into force on 10 August 2021. For more information on the FCA's final rules or if you have any questions, please contact your regular Clifford Chance contact.

To access the UK Listing Review referred to in this briefing click [here](#)

To access the FCA rules, policy and feedback statements referred to in this briefing click [here](#)

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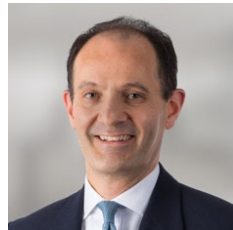
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