

FCA publishes final rules for SPACs listing in London

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The FCA has published a [Policy Statement](#) containing its final rules and changes to the Listing Rules for SPACs seeking to list on the main market of the London Stock Exchange. These rules, which enter into force on 10 August 2021, remove the presumption that the SPAC's listing will be suspended where an acquisition target is identified provided the SPAC satisfies certain conditions.

On 27 July 2021, the Financial Conduct Authority (FCA) published a [Policy Statement](#) containing its final rules and changes to the Listing Rules for certain special purpose acquisition companies (SPACs) seeking to list on the main market of the London Stock Exchange (LSE). This follows the FCA's [Consultation Paper](#) on the same topic published in April 2021 which is discussed in our earlier [client memorandum](#).

A SPAC is a shell company that raises funds with the objective of buying one or more operating companies. Funds are raised primarily through an initial public offering. SPACs do not have an operating business model when created, but their management works to identify and then negotiate with potential acquisition targets. Typically, a SPAC seeks out a private company to buy in a reverse takeover in order to form a new operating company (known as a de-SPAC transaction), which will need to apply to be listed on public markets.

SPAC listings in London

To date, London has largely missed out on the recent boom in SPAC listings, particularly compared to New York and, to a lesser extent, certain other European exchanges such as Amsterdam. Although SPACs can currently be listed on the main market of the LSE, certain features of the UK listing regime are viewed as deterring SPACs from pursuing a listing in London. In particular, under the FCA's Listing Rules there is a presumption that a SPAC's listing will be suspended by the FCA at the point an acquisition target is identified and announced to the market or if details of the proposed acquisition have leaked. Although the purpose of this rule is to protect investors from disorderly markets as a result of insufficient information being publicly available which could impair the price formation process, the suspension of a SPAC's listing and the inability for investors to trade in the SPAC's securities potentially imposes a disproportionate barrier to listing for larger SPACs.

Conscious of the perceived deterrent effect of the current Listing Rules, and in an effort to attract more SPAC listings to London, the FCA proposed in the Consultation Paper to remove the presumption of suspension provided the SPAC satisfies certain criteria relating to investor protection and disclosure.

The FCA's final rules

The FCA's final rules set out in the Policy Statement, which enter into force on 10 August 2021, remove the presumption of suspension where the SPAC satisfies the following conditions:

- **Size threshold:** the SPAC must have raised at least £100 million in aggregate cash proceeds from public shareholders (i.e. shareholders other than a founder, sponsor or director of the SPAC) as consideration for its shares.

This is significantly lower than the £200 million threshold originally proposed by the FCA in the Consultation Paper;

- **Ring-fenced cash for acquisition, redemption or repayment purposes:** the SPAC must enter into binding arrangements with an independent third party to ensure that cash proceeds received as consideration for its listed shares are protected from being used for purposes other than: (i) as consideration for a reverse takeover; (ii) to redeem or repurchase its own shares; (iii) to return to shareholders in the event a reverse takeover has not taken place within a specified timeframe (see below); or (iv) to return to shareholders in the event of a winding-up of the SPAC. The SPAC is permitted to exclude a specified amount from the ring-fencing requirement to fund its operations provided that this has been disclosed in its prospectus;
- **Time limit for making an acquisition:** the SPAC is required to complete a reverse takeover within 24 months of the date its shares are admitted to trading on the main market of the LSE. The 24 month time limit can be extended by a further 12 months with the approval of the SPAC's public shareholders. There is also the possibility of extending the 24 or 36 month time period by an additional 6 months where a reverse takeover has not yet completed but is at a sufficiently advanced stage. The approval of the SPAC's public shareholders is not required to make use of the 6 month extension. However, the reverse takeover must either have already been approved by the SPAC's shareholders or a general meeting convened for the purposes of obtaining such approval. In addition, use of the 6 month extension must be notified to the market before the end of the 24 or 36 month time period. The additional 6 month time period was not included in the FCA's original proposals. However, following consultation, the FCA determined that allowing a further 6 months was a reasonable period for transactions that are close to completing;
- **Board and shareholder approval of a transaction:** the SPAC's constitution must provide for board approval prior to entering into a reverse takeover. Any director of the SPAC that is also a director of the target or a company in the target's group cannot take part in the board's consideration of, or vote on, a reverse takeover. In addition, the SPAC's shareholders must approve the reverse takeover before it is entered into or, if the transaction is conditional on such approval, before completion. The SPAC's founders, sponsors and directors must be excluded from voting on the resolution to approve the reverse takeover;
- **Fair and reasonable statement:** the SPAC's board is required to publish a statement that the proposed transaction is "fair and reasonable" as far as the public shareholders of the SPAC are concerned where any of the directors of the SPAC has a conflict in relation to the target group. This statement should reflect advice by an appropriately qualified and independent adviser;
- **Redemption option for shareholders:** the SPAC must provide shareholders with an option to redeem their shares before a reverse takeover is completed; and
- **Disclosure:** the SPAC will need to make disclosures to investors at certain stages in the SPAC's lifecycle, from its initial listing to any final transaction that results in the SPAC completing a takeover of another business and establishing a new company. A SPAC issuer must undertake to provide, to the extent possible, at the point of an initial target announcement: a description of the target business and the material terms of the proposed transaction; an indication of how the SPAC has assessed the value of the target business; and any other material details of which investors should be aware in order to make a properly informed decision. The FCA has emphasised its expectation for SPACs to comply with their public disclosure obligations under the UK Market Abuse Regulation on an ongoing basis.

Perhaps the most significant and welcomed aspect of the Policy Statement relates to the FCA's supervisory approach. In the Consultation Paper, the FCA explained that SPACs seeking to avoid a suspension would need to contact the FCA before the announcement of the reverse takeover and provide it with written board confirmation that the specific conditions required to remove the presumption of suspension have been met. This approach was seen by many as unsatisfactory as it did not provide sufficient certainty at the point of listing that the presumption of suspension would not apply at the point of the announcement of the reverse takeover. A number of respondents to the Consultation Paper noted that this uncertainty may put off investors and effectively undermine the policy intention of removing barriers to listing for SPACs that have certain investor protections built into their structures.

In response to these concerns, the FCA altered its supervisory approach and has said that it will now work with issuers and their advisors to provide such comfort to issuers regarding disapplication of the presumption of suspension as part of vetting the prospectus and assessing eligibility for listing. However, the FCA does note that such comfort will not endure in the event that circumstances or arrangements change during the period between listing and the announcement of a reverse takeover. Where the FCA has given comfort to an issuer prior to admission that the presumption of suspension will not apply, the FCA still expects the SPAC to contact it before announcing the reverse takeover to re-confirm that it meets the conditions described above or to notify the FCA that the conditions are no longer met.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Leo Borchardt

+44 20 7418 1334
leo.borchardt@davispolk.com

Mark Chalmers

+44 20 7418 1324
mark.chalmers@davispolk.com

Connie I. Milonakis

+44 20 7418 1327
connie.milonakis@davispolk.com

Will Pearce

+44 20 7418 1448
will.pearce@davispolk.com

Simon Witty

+44 20 7418 1015
simon.witty@davispolk.com

Reuven B. Young

+44 20 7418 1012
reuven.young@davispolk.com

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