FCA Consultation on Rules for SPACs Listing in London

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On 30 April 2021, the Financial Conduct Authority (**FCA**) published a **consultation paper** on proposed changes to the Listing Rules that apply to special purpose acquisition companies (**SPACs**). A SPAC is a shell company that raises funds with the objective of buying one or more companies. Funds are raised primarily through an initial public offering (**IPO**). 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.

Although SPACs can be listed on the main market of the London Stock Exchange (**LSE**), there is currently a presumption under the FCA's Listing Rules that a SPAC's listing will be suspended by the FCA at the point an acquisition target is identified. This is to protect investors from disorderly markets as a result of incomplete information being available at that stage, which could impair the process of proper price formation. Suspension is not a default, but a rebuttable presumption. The acquisition of a target company will be a reverse takeover for the purposes of the Listing Rules. Upon completion of the reverse takeover, the listing of the SPAC's shares will be cancelled and a new listing application will be required for the combined entity.

The suspension of a SPAC's listing potentially imposes a disproportionate barrier to listing for larger SPACs that build specific investor protections into their structures. The FCA proposes to remove the presumption that it will suspend the listing of a SPAC when it identifies a potential acquisition target, provided the SPAC meets certain criteria. These changes to the Listing Rules are intended to provide a more flexible regime for larger SPACs, while still ensuring that investors are protected, and potentially resulting in a wider range of large SPACs deciding to list in the UK.

The Current SPAC Market

Although the UK has historically seen limited activity in this sector, the United States experienced an unprecedented number of SPAC IPOs during 2020 and that trend has continued into 2021. US regulation does not presume a suspension of listing when a SPAC identifies a target and SPACs listed on US public markets routinely include features designed to improve protections for investors. Models similar to those seen in the US are now emerging with SPAC issuers considering listing in the UK and on markets in the European Union. Several recent listings on markets in Amsterdam and Paris have combined features from US market practice with European regulatory requirements, while also not presuming a suspension of listing at the time an acquisition is being contemplated. The FCA views it as timely to reconsider whether it can better calibrate the Listing Rules to permit SPACs which demonstrate higher standards of investor protection, and so promote more effective UK markets.

FCA Proposals

The FCA proposes to introduce guidance explaining that it will generally be satisfied that a suspension is not required where a SPAC has certain features built into its structure and provides certain disclosures to protect investors. The criteria a SPAC would be expected to meet in order to discharge the FCA's presumption of suspension include:

- **Size threshold**: setting a minimum amount of £200m to be raised when a SPAC's shares are initially listed (excluding any funds provided by the sponsors), to encourage a high level of institutional investor participation;
- **Ring-fenced cash for acquisition, redemption or repayment purposes**: ring-fencing proceeds raised from public shareholders, via an independent third party, to protect investors from misappropriation or excessive running costs being incurred by the SPAC's management;

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- **Time limit for making an acquisition**: including a time limit on operations in the SPAC's articles of association or equivalent constitutional document, requiring the SPAC to find and acquire a target within 2 years of admission to listing, with the possibility of an extension of up to 12 months with the approval of its public shareholders;
- **Board and shareholder approval of a transaction:** (i) ensuring board approval for any proposed acquisition excluding from the discussion and vote any director who has a conflict of interest relating to a target company and (ii) ensuring shareholder approval for any proposed acquisition with SPAC sponsors prevented from voting;
- **Fair and reasonable statement on the terms of an acquisition:** publishing 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 have a conflict in relation to the target group. This statement should reflect advice by an appropriately qualified and independent adviser;
- **Redemption option for shareholders:** allowing investors to exit a SPAC before any acquisition is completed. Any redemption option should specify a predetermined price at which shares will be redeemed, which could be a fixed amount or fixed pro rata share of the cash proceeds ring-fenced for investors, less pre-agreed amounts the SPAC retains for its running costs; and
- **Disclosure:** providing 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.

Alongside the proposed criteria, a SPAC with shares admitted to trading on a UK market would continue to be subject to the UK Market Abuse Regulation and the transparency rules in the FCA's Disclosure Guidance and Transparency Rules sourcebook. As SPACs are not eligible for premium listing, the FCA's proposals will not impact premium listed issuers.

The FCA is consulting for four weeks on these proposals, with a view to introducing investor protection measures by the summer, given the market activity anticipated in this sector.

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

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