

Keeping up with the neighbours? The FCA consults on a new UK SPAC regime



Following Lord Hill's UK Listing Review, which included recommendations to change the current special purpose acquisition companies (SPAC) regime, the FCA has published its proposals to amend the Listing Rules relating to SPACs ([CP21/10](#)).

The proposed guidance attempts to align the UK SPAC regime more closely with market practice in the US and elsewhere in Europe. Broadly speaking, the FCA appears to be seeking to facilitate the admission in London of SPACs with similar capital structures and contractual arrangements as those that are currently listing elsewhere.

However, unlike in the US and Europe, the FCA has proposed prescriptive guidance for SPACs. This is different to the US and Europe where market practice has been the driver for setting the "rules" for SPACs. As such, there must be a concern that even if these proposals are implemented, a sponsor looking to list a SPAC in London will arguably have less flexibility. There is also the risk that, should market practice change elsewhere, the UK model could quickly fall out of step.

Then again, the proposed regime will lend some comfort to the buy-side who have voiced concerns over the potential risks in investing in SPACs and have sought some regulatory oversight of their activities.

The consultation period for the new SPAC regime is only 4 weeks with the intention to have it in place by summer 2021.

Background

Whilst New York from 2020 and now Amsterdam, Paris and Frankfurt have witnessed unprecedented interest in the SPAC product, London has been left behind on the starting line. This was primarily because, unlike on other exchanges, the UK listing regime includes a presumption that, on the announcement of an acquisition, securities in a SPAC on the London Stock Exchange's Main Market are suspended from trading.

The rationale behind this approach was a justifiable concern that, where a SPAC undertakes a reverse takeover, investors will not typically have sufficient information to trade in the listed securities, particularly where there is little or no publicly available disclosure on the intended target business.

However, in CP 21/10 the FCA now acknowledge that the existing rules have a drawback. By suspending the securities in a SPAC at the time of announcing a transaction, security holders are unable to exit their investment until such time as the acquisition completes, a particularly unjust scenario for those investors who are unsupportive of the transaction, which in turn makes investment in a SPAC at IPO unpalatable.

What are the proposals?

The Listing Rules would be amended to confirm that suspension of a SPAC's shares would not generally be required if the SPAC has certain features built into its structure and provides certain disclosures to protect investors such that the smooth operation of the market is not temporarily jeopardised when an acquisition is announced.



What features would SPACs need to have?

To avoid having its shares suspended, a SPAC would need to incorporate several features and make certain disclosures. Broadly speaking, these would not be particularly difficult for a SPAC and, in many cases, reflect the market norms for SPACs in other jurisdictions. The proposed features are:

- **Size threshold:** aggregate gross cash proceeds, raised at admission of the SPAC, to be at least £200m. This would exclude any funds the founders, directors and others that play a role in promoting or supporting a SPAC (known as ‘sponsors’) have provided (whether in return for shares or by way of general cash injection in the company). This is aimed at encouraging a high level of institutional investor participation.

- **Ring-fenced cash:** cash raised from public shareholders (i.e., shareholders other than the sponsors) to be ring-fenced to ensure that it can only be used to fund an acquisition (approved by the board and public shareholders); for redemptions of shares from public shareholders (if investors exercise this option); or for repayment of capital to public shareholders if the SPAC is wound up, having failed to find a target or complete an acquisition within the time limit.

The ring-fenced proceeds can exclude any amount or proportion of proceeds the SPAC will retain to fund its operations, provided that the amount/proportion has been clearly disclosed to investors in the IPO prospectus.

- **Time limit to make acquisition:** the SPAC’s articles of association (or equivalent constitutional document) must set a time limit of two years from admission to make an acquisition. With public shareholder approval, this can be extended to three years if a target acquisition has been identified and announced within the two years but not yet completed.

If the acquisition has not completed by the end of the two or three-year period (as applicable), the ring-fenced proceeds must be returned to shareholders and the FCA would expect the SPAC to be wound up and the listing cancelled.

- **Board/shareholder approval:** to protect shareholders against a poor choice of target and potential conflicts of interest by the SPAC’s sponsors, the FCA would require the SPAC’s constitutional documents provide for:
 - board approval of any proposed transaction, but any director of the target or a subsidiary of the target (or who has an associate that is a director of the target or any of its subsidiaries) and any director who has a conflict of interest in relation to the target or its subsidiaries would be excluded from the board discussion and vote; and
 - shareholder approval for any proposed acquisition, with a majority vote in favour being required to proceed with a deal. SPAC sponsors would not be able to vote.

- **Fair and reasonable statement:** if any of the SPAC's directors have a conflict of interest in relation to the target or a subsidiary of the target, the SPAC's constitutional documents need to provide that the board would need to state that the proposed transaction is fair and reasonable as far as the public shareholders of the SPAC are concerned, having been so advised by an appropriately qualified and independent adviser. The FCA is also consulting on whether the need for a fair and reasonable statement might be a requirement for all SPACs and not just where there is a conflict of interest.
- **Redemption option:** shareholders would have the option to exit a SPAC before any acquisition completes. The redemption option would specify a predetermined price at which shares would be redeemed or purchased, which could be a fixed amount or fixed pro rata share of the ring-fenced cash proceeds, less pre-agreed amounts the SPAC retains for its running costs. The terms of the redemption option would be set out in the IPO prospectus.
- **Sufficient disclosure:** the IPO prospectus would have to include sufficient disclosure about the structure and arrangements of the SPAC. In particular, it would have to include the full structure of the offer (including any warrants issued and their terms); details of the management's expertise; the SPAC's strategy; identified risk factors; and conflicts of interest. It would also have to disclose the matters described above.

The FCA state that

“a redemption option, combined with a ring-fencing of proceeds and time limit for identifying and making an acquisition, gives investors a means to exit their shareholding if they do not like the target or final terms of the deal”.



When is the decision made?

SPACs that want to avoid suspension would still have to contact the FCA before announcing a transaction which has been agreed or is in contemplation, or where details of the proposed target have leaked.

The SPAC would need to show at this point that they have met the conditions criteria (described under “What features would SPACs need to have?” above) from admission and that it will continue to do so after the announcement and until completion of the reverse takeover. The FCA is expecting the board to confirm this in writing and it may require evidence to support that written confirmation.

The FCA has made it clear that it will not provide any comfort to a SPAC at the time of IPO as to whether it has in place all of the necessary features to benefit from the ability not to have its securities suspended.

Where details of a proposed transaction have leaked, the presumption that the SPAC will be initially suspended remains unchanged. So, there may still be a short period of suspension before a SPAC confirms that the criteria have been met and makes the required announcement.



Announcement of transaction

Where the FCA has agreed that the SPAC has the relevant features, the SPAC must still make an announcement of the reverse takeover which has been agreed or is in contemplation to avoid suspension.

Under the existing regime, to avoid suspension, the Listing Rules require the SPAC to make a fulsome announcement that must include, amongst other things, three years’ financial information on the target and identify the key differences between the SPAC’s accounting policies and the policies used to present the financial information on the target. This can be a time-consuming task and lead to a significant period of suspension in the shares whilst the information is produced.

The FCA has therefore sought to streamline the announcement requirements. Instead, the announcement must include:

- a description of the target's business;
- links to all relevant publicly available information on the target (e.g. its most recent publicly filed annual report and accounts);
- all material terms of the proposed transaction (including the expected dilution effect on public shareholders from securities held by, or to be issued to, sponsors);
- proposed timeline for negotiation of the transaction;
- an indication of how the target has been, or will be assessed by the SPAC, with reference to any selection and evaluation process for prospective target companies as set out in the SPAC's original prospectus; and
- any other material details and information that the SPAC is aware of, or ought reasonably to be aware of, about the target and the proposed transaction that an investor in the SPAC needs to make a properly informed decision.

The announcement would also have to identify any information described above that has not been included because it is not known at the time of the initial announcement.

The SPAC will also have to update the information described above as necessary if new information becomes available before the shareholder vote.

The FCA also notes that the SPAC will be subject to MAR and the Disclosure Guidance and Transparency Rules.

Other issues

The FCA is also seeking views on whether its approach to SPACs should be differentiated for vehicles focused on sustainability and investing based on environmental, social and governance factors.

For example, if a SPAC is seeking to invest in targets that develop green technology and it provides disclosures that align with the Task Force for Climate-related Financial Disclosure initiative, the FCA state that it could consider applying modified criteria to such SPACs. This could include, for example, a longer period to complete an acquisition or a lower initial capital raising threshold (e.g. £100m).

Any guidance for ESG-focussed SPACs will not be implemented by summer but may follow if market participants see benefit in a slightly different regime for SPACs seeking acquisitions in this sector.

Timing

The consultation closes on 28 May 2021. The FCA is proposing to introduce these measures by the summer, given the market activity anticipated in this sector.

The guidance, however, may only be a temporary measure. In CP21/10, the FCA has indicated that it may seek to establish a separate listing segment for SPACs, which would have its own rules and guidance and that it could consult on this when seeking views on other recommendations from Lord Hill's review. See [The UK listing review – seizing the opportunity for reform?](#) for more information on Lord Hill's Listing Review.

A note of caution should also be made for the sponsors of any SPAC seeking to list in London this summer. The FCA makes it clear that the proposals are subject to change and that they can give no guarantee that there won't be revisions to the new guidance as a result of the consultation.



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