

The new UK SPAC regime – not following the crowd



The FCA has published its [final rules and changes to the Listing Rules](#) for special purpose acquisition companies (SPACs) ([PS21/10](#)). This follows Lord Hill's UK Listing Review, which included recommendations to change the listing regime for SPACs, and the FCA's consultation on its proposed changes ([CP21/10](#)).

PS21/10 also includes the final changes to the FCA's Technical Note on cash shells and SPACs.

The new rules and guidance come into force on 10 August 2021.

Main changes

The FCA has removed the presumption of suspension of a SPAC's shares if the SPAC has certain features and provides certain disclosures designed to protect investors and maintain a smooth operation of the market once an acquisition is announced.

The current rule - a presumption that, on the announcement of an acquisition, securities in a SPAC on the London Stock Exchange's Main Market are generally suspended from trading - will still apply to a SPAC that does not meet the new criteria.

Unlike in the US and Europe, where market practice has set how SPACs are structured and are expected to behave, the FCA has imposed prescriptive criteria for certain SPACs. This sets the UK apart from most other jurisdictions and it remains to be seen if the new rules will help attract SPACs to the London market.

By formalising the requirements for certain SPACs in the Listing Rules, the UK market will be less flexible than its competitors and will not be able to adapt quickly to any changes in practice. Then again, the new regime lends 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.

What features do SPACs need to have?

To avoid having its shares suspended on announcement of an acquisition, a SPAC must incorporate several features and make certain disclosures. Broadly speaking, these should not be particularly difficult for a SPAC and, in many cases, reflect the market norms for SPACs in other jurisdictions. The features are:

- **Size threshold:** aggregate gross cash proceeds, raised at IPO of the SPAC, of at least £100m (lowered from £200m in the consultation). This excludes 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 SPAC).
- **Ring-fenced cash:** cash raised from public shareholders (i.e., shareholders other than the sponsors) at IPO must be ring-fenced with an independent third party to ensure that it can only be used to fund:
 - an acquisition (approved by the board and public shareholders);
 - redemptions of shares from public shareholders (if investors exercise this option); or
 - repayment of capital to public shareholders if the SPAC is wound up or if the SPAC has failed to 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 an 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. The two and three year periods can be extended by a further six months in certain circumstances.

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 expects the SPAC to be wound up and the listing cancelled.

- **Board approval:** to protect shareholders against a poor choice of target and potential conflicts of interest with the SPAC’s sponsors and directors, the SPAC’s constitutional documents must 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 must be excluded from the Board discussion and vote.

The aim is to exclude directors that may have loaned the target money, hold an equity stake in the target or have other direct links with the target. It does not prevent a director from participating in Board approval due to having a general financial interest in the SPAC, including where they hold ‘sponsor’ shares.

- **Shareholder approval:** the SPAC's constitutional documents must also provide for shareholder approval of any proposed acquisition, with a majority vote in favour being required to proceed with a deal. SPAC sponsor shareholders cannot vote.

- **Fair and reasonable statement:** if any of the SPAC's directors have a conflict of interest in relation to the target or a target's subsidiary, the board must publish a statement that the proposed transaction is fair and reasonable as far as the public shareholders of the SPAC are concerned, the directors having been so advised by an appropriately qualified and independent adviser.

The FCA have decided not to add more prescriptive requirements or guidance on who should be considered an appropriately qualified and independent adviser. They have also decided not to apply this requirement more generally to an acquisition.

- **Redemption option:** shareholders must have the option to exit a SPAC before any acquisition completes. The redemption option must specify a predetermined price at which shares will be redeemed or purchased, which can 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 must be set out in the IPO prospectus.

- **Sufficient disclosure:** the IPO prospectus must include sufficient disclosure about the structure and arrangements of the SPAC. In particular, it must 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 must also include disclosure of the matters described above.

When is the decision made?

The FCA has removed some of the uncertainty for SPACs and, contrary to the approach it proposed in the consultation paper, agreed to give comfort at the time of IPO that a SPAC is within the guidance instead of only at the time that an announcement of an acquisition is to be made. The comfort will be given as part of the prospectus vetting process and assessing eligibility of the SPAC for listing. But this comfort only remains in place if the arrangements do not change and have been accurately described.

Before announcing an acquisition, the SPAC must contact the FCA to confirm that the conditions are still met (and will be until the acquisition has been completed) and to discuss the announcement. The board must give this confirmation in writing and the FCA

may require evidence to support that written confirmation.

Where details of a proposed transaction have leaked, the FCA has clarified that it would not expect to reconsider its previous assessment of whether the SPAC meets the conditions nor would it take action to suspend at this stage if the SPAC has acted in compliance with MAR and provides a written Board confirmation that it still meets the conditions.

The SPAC must notify the FCA if any of the conditions cease to be met and the presumption of suspension will re-apply (unless the SPAC can show that it meets the sufficient publicly available information requirements under LR 5.6.8G(1)).



Announcement of acquisition

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 trading of the shares of the SPAC whilst the information is produced.

The FCA has therefore streamlined 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 the transaction;
- an indication of how the target has been, or will be assessed and valued 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 must also 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 UK MAR and the Disclosure Guidance and Transparency Rules, as is currently the case.

Other considerations

The FCA is considering further the 'unit' structure, which is a feature of many US and EU SPACs. A unit is a share with a warrant stapled to it such that the two securities cannot be separated for a set period of time, typically the stabilisation period. When that period is over, the unit can be split and the shares and warrants trade separately.

The FCA states that it will engage with prospective SPAC issuers considering this structure on a case-by-case basis and, more generally, determine how this structure interacts with the Listing Rules. It may consider further communication on its approach to unit structures in due course.

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