

FCA Consults on Rule Changes to Accommodate SPACs

Proposed changes to the UK Listing Rules would allow certain SPACs to avoid a listing suspension.

Key Points:

- The FCA is proposing to amend its rules so that SPACs meeting certain conditions and disclosure requirements could avoid a listing suspension when they identify a target to acquire.
- These proposals are designed to enhance the attractiveness of the UK as a destination for larger SPACs that have appropriate investor protection measures embedded in their structures.
- Comments are requested by 28 May 2021.

On 30 April 2021, the FCA published a Consultation Paper ([CP21/10](#)) on changes to the UK Listing Rules to better accommodate special purpose acquisition companies (SPACs). Whilst currently there is a presumption that a listing should be suspended temporarily when a SPAC identifies a potential acquisition target, the FCA is proposing to introduce an exception if a SPAC can confirm that it meets certain specified conditions and has made certain prescribed disclosures. In such cases, the FCA would be satisfied that sufficient investor protection measures were in place so that a suspension would not be required.

This consultation follows the recent recommendation made by [Lord Hill's review](#) of the UK listing regime, which suggested liberalising the rules for SPACs. The FCA notes that it can take a more “nimble” approach to domestic policymaking post-Brexit, thus enabling it to react more promptly to the upward surge in SPAC listings over the past year. The FCA hopes that by making these changes, it will provide a more flexible regime for SPACs in the UK, potentially resulting in more SPACs choosing to list there.

Background

Currently, there is no particular barrier to a SPAC listing in the UK, but the UK Listing Rules include a presumption that a listing of a shell company (which includes a SPAC) should be suspended when a reverse takeover is announced or leaked. The overarching aim of these rules is to prevent disorderly markets at a time when limited information is publicly available. While this presumption can be rebutted, a company is required to provide detailed information to the market on a proposed target to avoid a suspension.

Therefore, a SPAC listing is typically suspended at the point it identifies an acquisition target. This differs from other major markets, particularly in the US and continental Europe, where alternative measures are used to promote investor protection. The FCA acknowledges that the UK framework potentially imposes a disproportionate barrier to listing for larger SPACs that already build certain investor protections into their structures. It also results in investors being locked into a SPAC at the point at which a target is announced, potentially for many months prior to completion, which often does little to enhance investor protection.

As such, the FCA is seeking to enhance the flexibility of the UK listing regime to accommodate larger and more sophisticated SPACs where it believes that adequate investor protection can be secured by means other than a listing suspension.

Proposals

The FCA is proposing to remove the presumption of suspension for SPACs that have certain features built into their structures and make certain disclosures to the market. The FCA explains that the proposed criteria are designed to benefit SPACs that can achieve a certain scale, as these SPACs are more likely to have experienced management and advisors, and the ability to attract institutional investors that will apply increased scrutiny to the investment proposition.

The FCA proposes the following investor protection features:

- A minimum amount of £200 million (aggregate gross cash proceeds raised from public shareholders) to be raised when a SPAC's shares are listed, to encourage a high level of institutional investor participation.
- Monies raised from public shareholders must be ring-fenced to either fund an approved acquisition or be returned to shareholders. A SPAC would be able to deduct any amounts agreed to be used for the running costs of the SPAC, where these amounts were clearly disclosed to investors in the prospectus. The FCA is not proposing to specify that ring-fenced monies must be held in trust or in an escrow account.
- A SPAC must include a two-year time limit on its operations in its articles of association (or equivalent), requiring the SPAC to find and acquire a target within two years of admission. To provide some flexibility, the FCA is proposing to allow a SPAC to extend its operations by 12 months, subject to approval by its public shareholders.
- Approval requirements for any proposed acquisition, such that the board of directors and shareholders must approve the transaction. Any board approval must exclude board members who have a close association with the target or its group, or who have any other conflict of interest in relation to the target. Public shareholders must be given sufficient disclosure on all terms and sufficient information to allow them to make a properly informed decision (the SPAC's founders or directors would be excluded from the shareholder vote). In particular, disclosure to shareholders would need to include details of any dilution effects.
- In circumstances where any of the SPAC's directors have a conflict of interest, a requirement for the board to publish a statement that the proposed transaction is fair and reasonable as far as the public shareholders of the company are concerned. The statement would need to be based on advice from "an appropriately qualified independent adviser", and would need to be published in sufficient time ahead of the shareholder vote.

- A “redemption” option that would allow investors to exit a SPAC prior to completion of an acquisition if they are not happy with the target or the final terms of the deal. This option would need to specify a predetermined price at which shares would be redeemed, and the terms would need to be set out in the prospectus.

Further, a SPAC would be required to provide sufficient disclosures to investors on key terms and risks, from the SPAC’s initial listing to the announcement and conclusion of any acquisition. In this regard, the FCA expects that the initial SPAC prospectus will include the following information:

- The full structure of the offer, including any warrants issued alongside shares and the terms of those instruments
- Voting and redemption rights attached to shares
- Information relating to ring-fenced arrangements
- Time limits for making an acquisition
- A commitment to publish a fair and reasonable statement
- Details of the expertise of management
- The strategy of the SPAC
- Identified risk factors
- Conflicts of interest

At the point of the initial announcement regarding the acquisition of a potential target, the SPAC would be expected to provide (to the extent possible):

- A description of the target business, links to all relevant publicly available information on the proposed target company (e.g., its most recent publicly filed annual report and accounts), any material terms of the proposed transaction (including the expected dilution effect on public shareholders), and the proposed timeline for negotiations
- An indication of how the SPAC has, or will, assess and value the identified target, including by reference to any selection and evaluation process for prospective target companies as set out in the SPAC’s initial prospectus
- 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 deal that an investor in the SPAC needs to make a properly informed decision

The announcement would also need to identify any such information not included because it is unknown at the time of the announcement. Further, the SPAC would be required to update this information prior to the shareholder vote if new information were to become available.

Under the FCA proposals, any SPAC wishing to use the new approach would still have to contact the regulator before announcing a transaction, providing a board confirmation in writing that the SPAC satisfies the relevant conditions and will continue to do so until the acquisition is completed. The FCA

notes that supporting evidence may also need to be provided on request. Consequently, as avoidance of a suspension is not automatic, a short suspension may still occur in leak scenarios while the SPAC puts together the board confirmation demonstrating that the conditions are met.

The regulator is keen to stress that it will not be able to provide assurance to SPACs at the time of listing that they can avoid a listing suspension once they have identified a target. This is the case even though some of the criteria will need to be met at the time of listing. The FCA emphasises that its decision on whether or not to suspend a listing will remain a point-in-time assessment. Therefore, SPACs will need to take care that any language included in the prospectus regarding the SPAC's intention to benefit from this regime to avoid a suspension reflects this position.

The FCA also proposes to include a new notification obligation to require a SPAC to contact the FCA to request a suspension if it makes changes to, or removes, any of the specified investor protection measures such that the criteria are no longer met at any point after the board provides its confirmation.

SPAC issuers unable to meet these conditions, or those choosing not to, would continue to be subject to a presumption of suspension. The FCA emphasises that its general power to suspend a listing if it has other concerns about the smooth operation of the market or investor protection would not be affected by the proposed changes. SPACs would also continue to be subject to other relevant regimes, such as the UK Market Abuse Regulation and the FCA's disclosure and transparency rules.

Next Steps

The FCA requests comments on its proposals by 28 May 2021.

Interestingly, the FCA states that it is also keen to consider whether it could differentiate SPACs that are focused on investing based on ESG factors. Although the regulator has not made any proposals in this regard at this stage, it might consider allowing ESG-focused SPACs wishing to avoid a listing suspension to comply with more generous conditions, such as allowing a longer operating period, or having a lower initial capital raising threshold. The FCA states that it welcomes any views on this subject.

The FCA notes that its proposals are intended to offer a timely response and that there may be merit in considering a separate listing category for SPACs in due course. The FCA is mindful that its proposals primarily take the form of guidance rather than rules, and that a more rules-based approach may be appropriate in future. The regulator may, for example, choose to introduce some threshold conditions for SPAC listings such that appropriate investor safeguards would be embedded into a SPAC's structure from the outset.

The FCA plans to consider this further in future planned publications as part of its review of primary markets in the UK. The regulator also warns that (assuming the changes are introduced as proposed) it may seek to introduce more stringent measures if evidence suggests that some larger SPACs are not complying with its rules and guidance. For now, these proposals are a quick fix to help open up UK markets to the more sophisticated end of the SPAC spectrum in response to the recent growth in this sector. The proposals show a desire for UK markets to continue to be a leading global destination for listings. The question is whether the UK has been quick enough off the mark in this instance.

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