WINSTON & STRAWN LLP

CLIENT ALERT

SPACs in the UK: The FCA Opens its Doors

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The Financial Conduct Authority (FCA) has published the final rule changes to the Listing Rules (PS 21/10) for special purpose acquisition companies (SPACs).

A SPAC is a shell company that raises funds through an initial public offering (IPO) of its shares and lists, with the objective of using the funds raised to acquire or merge (which we refer to here as a “business combination”) with one or more to be identified companies in the future. This process can in some cases provide a quicker route to a stock market listing and reduce pricing uncertainty that can often be associated with an initial public offering.

Given activity in the US and more recently in Europe, the FCA is seeking to attract more SPAC listings in London whilst at the same time ensuring that there is sufficient protection for investors. Having consulted on the rule changes in May this year, it has now published its final rules, which take effect from 10 August 2021.

Previously, the FCA has permitted SPACs to be listed on the London Stock Exchange, but it has always worked on a rebuttable presumption that the SPAC’s shares will be suspended from trading upon announcement of its business combination. This approach was intended to protect investors due to concerns that there may be insufficient information in the market on the proposed target being acquired. The inability to sell shares in the secondary market after announcement of a transaction due to the suspension requirement has been a key regulatory factor holding the UK back from developing a sustainable SPAC market.

On 10 April 2021, the FCA launched a consultation on the proposed changes to the Listing Rules for SPACS. After reviewing the responses, the FCA has now published the results of this consultation and outlined the new alternative approach which will allow a SPAC to avoid suspension on announcement of its business combination provided that the SPAC meets enhanced requirements designed to protect investors, including (i) a requirement for shareholder approval for its business combination and (ii) the ability for investors to get their money back by redeeming their shares. These are two key investor protection components underpinning US and European SPACs.

Under the new rules, in order to avoid a suspension, the SPAC must demonstrate a high level of investor protection for its public shareholders by meeting the following requirements:

- **Size**– A SPAC will have to raise £100 million or more (down from £200 million which the FCA had originally proposed in the consultation paper) from public shareholders at listing (which exclude the SPAC’s founding shareholders, sponsors and directors).

- **Ring-fencing**– Monies raised from public markets will have to be ring-fenced so that they are preserved either to fund a business combination or to be returned to public shareholders, less any amounts specifically agreed to be used for the SPAC's running costs.
- **Time limit for business combination** – The SPAC will have to return capital to public shareholders unless it is able to find its target and complete its business combination within two years, with an option to extend this period to three years with shareholder approval. There will also be an option to extend it by a further six months without the need to get shareholder approval to provide more time for a SPAC to complete a business combination in limited circumstances where a transaction is well-advanced.
- **Shareholder approval** – Approval of public shareholders will be required for any proposed business combination. SPAC founders, sponsors and directors are prevented from voting.
- **Redemption** –Public shareholders must have the right to redeem and exit a SPAC before any business combination is completed and this right may be exercised by a shareholder whether or not it approves the transaction.
- **Disclosure** – Sufficient disclosure on key terms and risks will have to be given to investors at the appropriate stages in the SPAC's lifecycle, from a SPAC's initial listing to any final transaction that results in a business combination. A 'fair and reasonable' statement will be required where any of the SPAC directors have a conflict of interest in relation to the target company.

The reverse takeover rules will continue to apply which means that the trading of the SPAC's shares will be cancelled on completion of the business combination, and a new prospectus on the enlarged group will be required to be published to secure readmission. In practice this should not disrupt the process as a SPAC will often issue shares to the sellers of a target as share consideration and will need to produce a prospectus to do this. The proxy statement for the shareholder vote and redemption process will all be built into this prospectus.

It is worth noting that those SPACS that do not meet the size threshold requirement of the new approach can still list on the London Stock Exchange; however they will continue to be subject to the suspension presumption.

Through the introduction of this new approach, the FCA aims to provide greater flexibility to larger SPACs whilst continuing to promote investor protection for public shareholders and the smooth operation of the markets without having to enforce suspension from trading.

In our view, these new rule changes lay down the foundations for the creation of a sustainable SPAC market in the UK. At the same time, the FCA has included some additional measures which are intended to further protect investors, and these measures do differ from US and European requirements.

The full results of the FCA consultation are available here.

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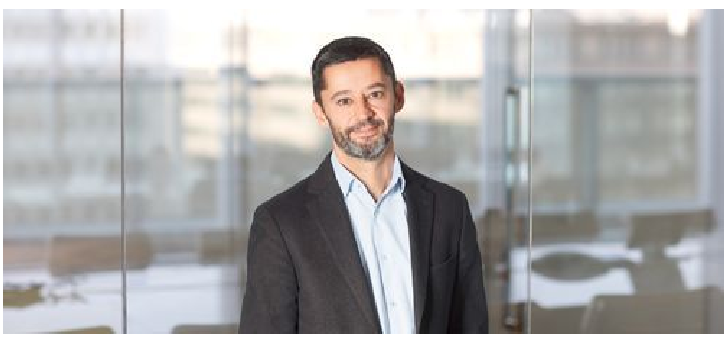

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