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London SPACs - The Opportunity

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London's IPO market has been silent for most of 2022, alongside the rest of Europe's major exchanges, due to the geopolitical and economic volatility that has caused huge swings in global equity indices. The U.K. is also currently suffering from perception among many investors of economic mismanagement due to partisan disagreement regarding the Brexit process and new economic policies proposed by Liz Truss' government.

This environment could work to the advantage of a London-listed special purpose acquisition company (London SPAC). Viable companies that were previously considering an IPO on the London Stock Exchange may be attracted towards going public, via a merger with a London SPAC, in a streamlined process that can have more certainty on price and execution than a conventional IPO.

Furthermore, whilst much has been written about the state of the global SPAC market, a recent article in *The Wall Street Journal* stood out, suggesting that the London SPAC may present a way forward for the structure in an otherwise hostile market for SPACs.

At the time of writing, four London SPACs have listed under the FCA's new Listing Rules, none of which have announced initial business combinations. This creates a blank canvas for the new London SPAC model and the following factors may make the London SPAC attractive for target companies seeking to go public.

- *Reliable Regulatory Environment* – the Listing Rules for London (see summary below) were changed recently and are much tighter compared to the rules of other jurisdictions, making it unlikely that the FCA will change these rules over the short term. This provides greater certainty from a regulatory perspective as compared to the U.S., where the Securities and Exchange Commission has proposed sweeping regulatory changes, many of which could result in changes to SPAC structures and market practices if adopted.
- *A Performance-Based Sponsor Promote* – in the U.K. and Europe, the sponsor promote structure is performance-based and linked to the share price growth following the initial business combination, in contrast to many U.S. SPACs, where the sponsor's promote is typically 20% of the SPAC's share capital upon IPO. The U.K. model will likely be viewed more attractively by targets and investors at the time of the business combination.

- *Forward-Looking Statements* – in the U.K., disclosure requirements and liability for forward-looking statements provide investors with greater comfort regarding the use of target projections in a business combination. Profit forecasts or estimates that are included in an investor presentation must be included in the prospectus and be clear and unambiguous, containing a statement setting out the principal assumptions upon which they have been based. Although an auditor's report on forecasts is no longer required to be included in the prospectus, issuers will likely continue to seek an auditor's report for their own comfort, on a private basis. Given that the issuer and its directors take responsibility for any forecast or estimate in the prospectus, this process should increase the accuracy of projections and target valuations. In the U.S., where forward-looking statements have historically been entitled to a measure of protection under a safe-harbour provision, some plaintiffs have alleged that forward-looking statements have too often been made without a reasonable basis.
- *Conflicts of Interest* – perceived conflicts of interest during a de-SPAC process have become a hotbed for shareholder litigation in some jurisdictions. The new Listing Rules have been specifically designed to ensure that this does not become the case in the U.K. Under the new Listing Rules, the SPAC's board and shareholders must approve any proposed acquisition by the SPAC, however the SPAC's founding shareholders, sponsors, and directors of the proposed target (and anyone with an interest in the proposed target) must be excluded from voting. In addition, in its vetting process for the IPO prospectus, the FCA has been quick to require direct and indirect interests to be disclosed of all persons mentioned in the prospectus, what they stand to gain and lose – often based upon hypothetical examples. We can expect the FCA to adopt a similar approach in respect of the prospectus for the initial business combination, thereby ensuring greater transparency for investors.

By way of recap, the London SPAC model that came into effect on 10 August 2021 removes the presumption of suspension from trading when a SPAC announces its initial business combination if certain conditions are met. Previously, a SPAC's shares would generally be suspended from trading as the FCA presumed that there was insufficient information in the market for the shares to trade fairly. Under the new Listing Rules, SPACs may continue to trade post-announcement if the following conditions are met:

- *Size*– A SPAC must raise at least £100m from public shareholders when its shares are initially listed, excluding its directors, founders, and sponsors;
- *Ring-Fencing Proceeds*– Proceeds raised from public shareholders are to be ring-fenced via an independent third party to ensure funds can only be used to fund (i) an acquisition; (ii) redemption of shares from shareholders; or (iii) repayment of capital to public shareholders if the SPAC winds up because it could not find a target or complete an acquisition within the time frame;
- *Time Limit*– The SPAC's articles of association (or other constitutional document) must impose a time limit of no more than two years from listing to identify a target and make an acquisition. This time limit can be extended to up to three years with public shareholder approval. This two or three-year period can be extended by an additional six months without shareholder approval in certain circumstances;
- *Board and Shareholder Approval*– The SPAC's board and shareholders must approve any proposed acquisition by the SPAC, however the SPAC's founding shareholders, sponsors, directors of the proposed target (and anyone with an interest in the proposed target) must be excluded from voting;
- *Redemption* – Public shareholders must be permitted to exit the SPAC by redeeming their shares at a pre-determined price before completion of an acquisition. The details relating to the redemption option must be set out in the SPAC's initial prospectus; and
- *Disclosure*– There must be sufficient disclosure of details relating to the target's business, as well as the material terms and risks to the SPAC's investors, throughout the stages in the SPAC's lifecycle.

It is our view that the current economic environment, whilst creating challenges for SPAC IPOs, creates opportunities for those London SPACs that are already listed to close their initial business combination and, in the process, take viable targets considering an IPO public on the London Stock Exchange in a streamlined process that can have more certainty on price and execution than a conventional IPO. At the same time, there is an opportunity to enhance the reputation of SPACs and to create a credible SPAC market in London for the first time.

For more information or questions relating to this article, please contact Paul Amiss or your Winston relationship attorney.

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