

# SPACs and More: Key Proposals for Change to the UK’s Listing Regime

June 8, 2021

On April 30, 2021, the Financial Conduct Authority (“FCA”) launched a consultation (the “Consultation”)<sup>1</sup> on proposed changes to the UK Listing Rules as they apply to special purpose acquisition companies (“SPACs”), which have gained popularity in recent years as a structural alternative to a traditional initial public offering (“IPO”).

The Consultation comes in response to the report by Lord Hill, published on March 3, 2021, which includes a number of proposed reforms to the UK listing regime and rules related to reverse takeovers by “shell companies” (the “Listing Review”).<sup>2</sup>

The proposed changes are expected to be the first of a sweeping set of reforms that, as a whole, aim to strengthen the UK’s position as a hub for international equity listings, including in relation to SPAC listings on the London Stock Exchange (“LSE”).

The FCA expects to publish final rules relating to UK SPAC listings during the summer and final rules implementing the other proposed reforms to the UK Listing Rules by the end of the year.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

---

LONDON

**Sebastian R. Sperber**  
+44 20 7614 2237  
[ssperber@cgsh.com](mailto:ssperber@cgsh.com)

**Sarah E. Lewis**  
+44 20 7614 2376  
[slewis@cgsh.com](mailto:slewis@cgsh.com)

**Ferdisha Snagg**  
+44 20 7614 2251  
[fsnagg@cgsh.com](mailto:fsnagg@cgsh.com)

**Chrisan Raja**  
+44 20 7614 2224  
[craja@cgsh.com](mailto:craja@cgsh.com)

**Bree Morgan-Davies**  
+44 20 7614 2223  
[bmorgan-davies@cgsh.com](mailto:bmorgan-davies@cgsh.com)

---

NEW YORK

**Nicolas Grabar**  
+1 212 225 2414  
[ngrabar@cgsh.com](mailto:ngrabar@cgsh.com)

**Adam Brenneman**  
+1 212 225 2704  
[abrenneman@cgsh.com](mailto:abrenneman@cgsh.com)

**Julian Cardona**  
+1 212 225 2303  
[jcardona@cgsh.com](mailto:jcardona@cgsh.com)

<sup>1</sup> See: Consultation Paper (CP21/10): [Investor protection measures for special purpose acquisition companies: Proposed changes to the Listing Rules and](#) Press release, [FCA consults on strengthening investor protections in SPACs](#).

<sup>2</sup> See: <https://www.gov.uk/government/publications/uk-listings-review>



## I. The Listing Review

### A. *Mind The Gap*

Post-Brexit, there is an opportunity to modernise the UK listing regime (which is based heavily on retained European Union legislation) as international listing venues such as New York and Amsterdam continue to vie with London for big-name IPOs and SPAC listings. In recent years, London has also been less successful than other jurisdictions in attracting high-growth companies (particularly technology and life sciences companies) coming to market.

The reforms proposed by the Listing Review seek to close the perceived ‘gaps’ between the City and other international listing venues, and transform the UK into an open, dynamic market for old economy businesses and growth businesses of the future alike.

The Listing Review proposals are subject to further public consultation and implementation by the FCA, which intends to implement final rules by late 2021. However, given the increased demand for SPAC listings, the FCA intends to introduce the reforms proposed in the Consultation by the summer.

### B. *Lessons From Across The Pond*

The recent resurgence in SPACs has been attributed to dry powder in the global capital markets, as well as the speed of the SPAC process relative to the traditional IPO process and in their attractiveness as another structural option for companies to go public.

SPAC IPOs and listings have become particularly popular in the United States. According to the Listing Review, 248 SPACs were listed in the

United States in 2020, raising an equivalent of £63.5 billion in total, compared to only four SPACs that were listed in the UK last year and which raised an aggregate total of £0.03 billion.<sup>3</sup> The number of U.S. SPAC IPOs completed during the first five months of 2021 has already exceeded the total number completed last year, with 331 SPAC IPOs completed so far this year raising \$105 billion in total.<sup>4</sup> While SPAC listings in Europe still trail U.S. listings, European SPAC listings appear to be on the rise, with a total of five completed SPAC listings on Euronext Amsterdam and seven completed SPAC listings on the LSE since January 2020, according to Thomson One data at the time of writing.

Responses to the Listing Review’s Call for Evidence<sup>5</sup> suggested that the main roadblock to the development of a robust UK market for SPACs relates to the FCA rules which presume that trading in a listed SPAC’s securities will be suspended when the SPAC announces an intended acquisition (due to its classification as a reverse takeover under the Listing Rules).<sup>6</sup> The Listing Review also identified a need to facilitate the provision of more meaningful forward-looking information and guidance for investors in prospectuses and other published information (including in relation to SPACs), by amending the UK liability regime for issuers and their directors.

The suspension presumption, which effectively locks investors into a SPAC at the point a target is announced until completion (which may be several months later), is particularly unpalatable to many investors and issuers. As a result of the current UK liability regime for issuers and their directors, UK prospectuses typically include very

<sup>3</sup> See: Section 2.4 of the [UK Listing Review](#) dated March 3, 2021.

<sup>4</sup> See: <https://www.spacresearch.com/>.

<sup>5</sup> See: Policy Paper, [Call for Evidence – UK Listing Review](#) (updated April 21, 2021).

<sup>6</sup> The Listing Rules presume a SPAC will be suspended from trading when it announces a target acquisition, or if

details of the proposed acquisition are leaked, to safeguard investors from acting on potentially incomplete information in the market, which could impair proper price formation. Suspension is not a default but a rebuttable presumption.

little forward-looking information or guidance for investors. The Listing Review suggested that, with appropriate safeguards, such information may help support and inform investors in making their investment decisions. The Listing Review's recommendations therefore included that the FCA review the suspension presumption in relation to UK-listed SPACs, as well as the liability regime for prospectuses, listing particulars and other published information under the UK Financial Services and Markets Act 2000.

In the United States, forward-looking information (including projections) is typically included in disclosures relating to de-SPAC transactions.<sup>7</sup> U.S.-listed SPACs are also allowed to continue trading when a target is identified, with no presumption of suspension of trading. U.S. SPACs typically also have investor protections embedded into their structures through the operation of U.S. market practice and exchange rules. Such investor protections include shareholder approval of a proposed acquisition<sup>8</sup> and the option for shareholders to redeem their shares at the point of the proposed acquisition. While the New York Stock Exchange and Nasdaq listing rules only require that shareholders who vote against the proposed acquisition have the opportunity to redeem their shares, in practice, all shareholders are given the option to redeem their shares, regardless of how they vote.

Additionally, U.S. market practice typically limits a SPAC's operating period to two years within which it must complete a transaction, while exchange rules set a limit of three years. Other exchange rules include (among others) a requirement that 90% of the gross proceeds raised during the SPAC IPO must immediately be deposited and held in a trust account (although,

in practice, this is typically 100% of the IPO proceeds) and be subject to strict investment criteria. The SPAC's initial business combination must be with one or more businesses having an aggregate fair market value of at least 80% of the value of the SPAC's trust account. Under exchange listing rules, independent directors of the SPAC must approve the proposed transaction. It is also market practice for the SPAC to obtain a fairness opinion where the proposed transaction is with an affiliate of the sponsor or management of the SPAC.

There are currently no comparable rules or market conventions in the UK that would require UK SPACs to incorporate similar measures into a SPAC structure (although certain UK SPACs may do so). The Listing Review's recommendations included several potential conditions (based largely on the protections embedded in U.S.-style SPACs) for the FCA's consideration, including:

- the information that SPACs should disclose to the market upon the announcement of a transaction in relation to a target company;
- the rights investors in SPACs should have to vote on acquisitions prior to their completion;
- the rights investors in SPACs should have to redeem their shares prior to the completion of a transaction; and
- if necessary, to safeguard market integrity, the size of a SPAC below which the suspension presumption may continue to apply.

The Listing Review also made a number of other recommendations (*i.e.*, not specific to SPACs)

to ensure there are appropriate safeguards in place against the dissemination of potentially problematic forward-looking information to investors.

<sup>8</sup> While U.S. exchange rules do not always require this, it is necessary, for example, if more than 20% of the voting stock of the SPAC is being issued in the transaction. See Annex F of the [UK Listing Review](#) dated March 3, 2021.

<sup>7</sup> The U.S. Securities and Exchange Commission has nevertheless expressed concern about disclosures in the SPAC context, particularly in relation to forward-looking statements made in the context of de-SPAC transactions. See: Public Statement "[SPACs, IPOs and Liability Risk under the Securities Laws](#)". The staff has stated that it will continue to scrutinise SPACs and private target disclosures

some of which may, nevertheless, be relevant in the context of SPAC listings in the UK. These include:

- reducing the minimum free float requirement for both standard and premium listings from 25% to 15%, and allowing companies to use other measures of liquidity to meet this requirement (other than an absolute free float percentage), allowing for greater flexibility and improved accessibility; and
- permitting issuers with dual class share structures to list on the LSE's premium listing segment, subject to a time limit of five years and certain other conditions and eligibility requirements.

As these proposals remain subject to consultation, with final rules expected to be implemented by the FCA by the end of the year, it remains to be seen how many of the Listing Review's recommendations will be adopted.

For further information on the Listing Review's recommendations, please see Annex I at the end of this memorandum.

## II. The Consultation

### A. The FCA's proposals

In the Consultation (which closed on May 28, 2021), the FCA proposed to disapply the suspension presumption for UK-listed SPACs that could demonstrate higher levels of transparency and investor protections.<sup>9</sup>

The conditions that the FCA proposed UK-listed SPACs should incorporate in order to bypass the presumption of suspension include:<sup>10</sup>

- *Size threshold*: setting a minimum amount of £200 million to be raised when a SPAC's shares are initially listed,<sup>11</sup> to encourage a high level of institutional investor participation;
- *Ring-fencing of proceeds*: ensuring funds raised from public shareholders are ring-fenced to either fund an acquisition or be returned to shareholders, less any amounts agreed to be used for the operational costs of the SPAC;<sup>12</sup>
- *Time limit for an acquisition*: setting a two-year time limit on a SPAC's operating period if no acquisition is completed within that timeframe;<sup>13</sup>
- *Corporate approvals*: ensuring board and shareholder approval for any proposed acquisition,<sup>14</sup> based on sufficient disclosure of key terms and confirmation

<sup>9</sup> See: Press release, [FCA consults on strengthening investor protections in SPACs](#).

<sup>10</sup> More details on the provisions relating to suspending listing are set out in the FCA's Technical Note 420.2: Cash shells and special purpose acquisition companies. The FCA has included a copy of the Technical Note in Appendix 2 to the Consultation with proposed amendments to reflect the proposals. However, the amendments are only intended to reflect this new alternative approach to suspension being available if the FCA proceeds to finalising these measures.

<sup>11</sup> This excludes any funds the sponsors have provided, whether in return for shares or by way of general cash injection in the company.

<sup>12</sup> Any amount or proportion of the proceeds that the company will retain to fund its operations should be clearly disclosed to investors in the prospectus published at the time of admission to listing. There are currently no

comparative UK rules that require ring-fencing of proceeds raised during a SPAC IPO. While the directors have a fiduciary duty to act in the best interests of the company and to utilise funds in accordance with the disclosures in the prospectus, there are fewer controls in this regard than in the U.S. SPAC market.

<sup>13</sup> This period may be extended by up to 12 months subject to approval by a SPAC's public shareholders if, for example, a target has been identified and announced but the two-year deadline has lapsed before the SPAC is able to complete the acquisition. At the end of the two-year period, or the three-year period if extended, if the SPAC has not managed to complete its acquisition, ring-fenced proceeds should be returned to shareholders.

<sup>14</sup> It is recommended that SPAC sponsors should be prevented from voting.

that the terms are ‘fair and reasonable’ if any of the SPAC’s directors have a conflict of interest relating to a target company;

- *Redemption option*: allowing investors the option to exit a SPAC prior to any acquisition being completed;<sup>15</sup> and
- *Disclosure*: provision of adequate disclosures to investors at the appropriate stages in the SPAC’s lifecycle, from a SPAC’s initial listing to any final transaction that results in the SPAC completing a takeover of another business and establishing a new company.<sup>16</sup> The FCA also proposes that a SPAC issuer must provide, to the extent possible at the point of an initial target announcement:
  - a. 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 (where available)), any material terms of the proposed transaction (including the expected dilution effect on public shareholders from securities held by, or to be issued to, sponsors), and the proposed timeline for negotiations;
  - b. 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 original prospectus; and
  - c. 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.<sup>17</sup>

It should be noted that, even in cases where a SPAC issuer satisfies the conditions set out above, the FCA’s decision on whether or not to suspend a listing remains a point-in-time assessment when a SPAC has identified a target and approaches the FCA in connection with the proposed transaction.

To the extent that SPAC issuers are unable to meet the required conditions, the presumption for suspension of trading upon announcement of an acquisition target will remain.

The FCA also invited feedback on whether less stringent conditions would be appropriate for SPACs focused on sustainability and investing based on environmental, social and governance factors.

#### *B. Next steps*

Following the close of the Consultation, the FCA has indicated that it intends to implement final rules for UK SPACs during the summer.

The FCA has acknowledged that SPACs may seek to list in the UK before the final rules are published. In such circumstances, while the FCA has stated that it would “welcome” the adoption of good standards, the regulator has also warned it cannot provide any guarantee that compliance at the time of listing with the guidance outlined in the Consultation would discharge the presumption of suspension.

<sup>15</sup> The redemption option should be detailed in the SPACs initial prospectus and should specify a predetermined redemption price.

<sup>16</sup> For SPACs listed on a UK regulated market, the prospectus should include information required pursuant to the UK Prospectus Regulation. UK-listed SPACs will also

need to comply with the UK Market Abuse Regulation and the UK’s Disclosure and Transparency Rules (DTR 4 to 6).

<sup>17</sup> A SPAC should also update the information described in a. to c. above following an initial announcement of a target as necessary if new information becomes available prior to the shareholder vote.



### III. Do The FCA's Proposals Go Far Enough?

While many of the FCA's proposals mirror certain investor protections embedded in U.S.-style SPACs, some notable differences remain.

Additional protections that the FCA has not proposed and which might help further support the development of the SPAC market in the UK include the following features that are common in the U.S. SPAC market:

- 90% of the gross proceeds raised during the IPO must be immediately deposited and held in a trust account and subject to strict investment criteria – although the FCA has proposed ring-fencing the proceeds less the operational costs of the SPAC, imposing a similar threshold amount and introducing similar investment criteria would likely provide additional comfort to investors;<sup>18</sup> and
- a SPAC's initial business combination should be with one or more businesses having an aggregate fair market value of at least 80% of the value of the SPAC's trust account or (where there is no trust account) ring-fenced funds.

Although the protections outlined above were not included in the FCA's proposals, market practice could develop to encompass these protections to the extent that issuers seek to emulate the tried-and-tested practices within the U.S. SPAC market.

The FCA has also acknowledged that there may be merit in considering, in due course, a separate listing category for SPACs. This would allow for a more rules-based framework that, for example, includes some requirements as threshold conditions for a SPAC to list. The FCA intends to discuss this in later publications on its review of

primary markets and its response to the Listing Review.

...

CLEARY GOTTLIB

---

<sup>18</sup> In its consultation paper, the FCA states it has not proposed that funds must be held in trust or an escrow account in order to allow greater flexibility for issuers,

recognising that, for example, trust law is not consistent in all jurisdictions.

### **Annex I: The Listing Review's Key Recommendations For Reform**

The final report published following completion of the Listing Review sets out 15 recommendations to improve the UK listing process whilst also seeking to maintain the high standards of corporate governance, shareholder rights and transparency that underpin the UK regime. The Listing Review's key recommendations include the following proposals.

#### *A. Increased Flexibility and Access for Issuers*

The minimum free float requirement for both standard and premium listings should be reduced from 25% to 15%, and companies should be permitted to use other measures of liquidity to meet this requirement (other than an absolute free float percentage).

Issuers with dual class share structures should be permitted to list on the LSE's premium listing segment, subject to a time limit of five years and certain other conditions and eligibility requirements.

The UK Listing Rules regarding SPACs that require the suspension of trading upon the announcement of a potential acquisition should be revised, with additional safeguards for investors put in place.

The standard listing segment on the LSE should be rebranded and repositioned to make it more appealing to a broader range of issuers, and investor groups should be encouraged to develop guidelines that allow for companies listed on this segment to be eligible for indexation.

#### *B. Reshaping and Simplifying the Prospectus Regime*

HM Treasury should conduct a fundamental review of the UK's current prospectus regime to better tailor it to the UK market and the types of issuers coming to market in the UK.

Key areas for consideration include:

- a) whether admission to a regulated market and offers to the public should be treated separately;
- b) revision of prospectus exemption thresholds to better reflect the type of transaction and circumstances of the capital issuance; and
- c) use of alternative listing documentation where it is appropriate to do so.

Other notable recommendations are aimed at improving the overall efficiency of the listing process, supporting retail investors and rights issues, and tailoring information to better meet investors' needs.

The FCA should, subject to consultation, review the conduct of business rules in the FCA Handbook relating to the inclusion of unconnected research analysts in a UK IPO process (which, in practice, currently adds an extra seven days to the public phase of the process).

A rights issue review group should be re-established to consider how to improve the efficiency of further capital raisings by listed companies, with reference to models adopted by other jurisdictions and in light of technological advances.

The revenue earning requirements for scientific and research-based companies should be reviewed to broaden their application to a wider range of high-growth and innovative companies across various sectors.

The liability regime for issuers and their directors should be amended to facilitate the provision of forward-looking information by issuers in prospectuses.

An annual report should be prepared on the state of the City and its competitive position, and delivered to Parliament by the Chancellor.