



INVESTOR PROTECTION MEASURES FOR SPECIAL PURPOSE ACQUISITION COMPANIES: PROPOSED CHANGES TO THE LISTING RULES

Issued 28 May 2021

ICAEW welcomes the opportunity to comment on the consultation paper *Investor protection measures for special purpose acquisition companies: Proposed changes to the Listing Rules*, published by the Financial Conduct Authority on 1 April 2021, a copy of which is available from this [link](#).

The FCA is circumspect about any increase in demand resulting from proposed changes to the Listing Rules for SPACs - either from investors for such opportunities or from private companies for this alternative route to public markets. The US regulator (SEC) has also announced a review of rules and guidance for SPACs and investor protection. A review of the prospectus regime is due later this year and it would be better to consider at that point the need for (and features of) a calibrated regime and specific listing category for SPACs. These are grounds not to rush with easing of the SPAC regime, so that it can be better thought through and informed by lessons learnt in other jurisdictions and have greater potential of meeting the policy objectives.

Protection measures introduced in the proposals do not sufficiently focus on the de-SPAC stage, and the investors in the ultimate public company. There is also very little information on how original shareholder approval would be sought and what would need to be provided

ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)20 7920 8100 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

This response of 28 May 2021 has been prepared by the ICAEW Corporate Finance Faculty. Recognised internationally as a source of expertise on corporate finance issues and for its monthly *Corporate Financier* magazine, the faculty is responsible for ICAEW policy on corporate finance issues including submissions to consultations. The faculty's membership is drawn from professional services groups, advisory firms, companies, banks, private equity, law firms, brokers consultants, and academics.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 156,000 chartered accountant members in over 149 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

© ICAEW 2021

All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact: CFF@icaew.com

GENERAL POINT

1. Government policies behind recent and forthcoming changes in regulation do seem somewhat at odds with each other and reduce the clarity of government priorities. For instance, improvements to the UK listings regime, as recommended by Lord Hill¹, and competing with US SPACs for investment by removing one of the key protections (ie, the presumption of suspension) via the proposals in this consultation paper, seek to increase the attractiveness of the UK for business and investment. On the other hand, more stringent scrutiny of inward investment (by way of the National Security and Investment legislation²) and the proposed introduction of wide-ranging additional measures for audit and governance of listed companies considered to be public interest entities (as per the proposals for reform of audit and corporate governance³) are factors that could discourage business' ambitions for growth and admission to public markets.

KEY POINTS

2. The FCA is circumspect about any increase in demand resulting from proposed changes to the Listing Rules for SPACs - either from investors for such opportunities or from private companies for this alternative route to public markets. The US regulator has also announced a review of rules and guidance for SPACs and investor protection⁴. A review of the prospectus regime is due later this year and it would be better to consider at that point the need for (and features of) a calibrated regime and specific listing category for SPACs. These are grounds not to rush with easing of the SPAC regime, so that it can be better thought through and informed by lessons learnt in other jurisdictions and have greater potential of meeting the policy objectives.
3. Protection measures introduced in the proposals do not sufficiently focus on the de-SPAC stage, and the investors in the ultimate public company. There is also very little information on how original shareholder approval would be sought and what would need to be provided – does the FCA anticipate the equivalent of a Class 1 circular?

ANSWERS TO SPECIFIC QUESTIONS

Question 1: Do you agree with our description of the key features and risks of SPACs for investors?

Question 2: Are there other key features or risks that we should consider?

4. The proposed changes to the Listing Rules for SPACs are intended to level the playing field with other major markets that may be seen to offer more opportunities for investors and an alternative route to public markets for private companies. The FCA outlines additional protections for investors where it has identified risk from varying existing rules.
5. We consider that the following risks for investors are not sufficiently considered:

¹ UK Listings Review - GOV.UK (www.gov.uk)

² National Security and Investment Bill 2020 - GOV.UK (www.gov.uk)

³ Restoring trust in audit and corporate governance: proposals on reforms - GOV.UK (www.gov.uk)

⁴ SEC.gov | Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee

- While the FCA draws the attention of target companies and their management to the rigours of public market transparency and obligations (eg para 2.13), protection for investors from a business being prematurely admitted to market via a SPAC is not addressed. This is important for both original investors and investors in the ultimate public company.
- The FCA does not specify the minimum necessary information that must be provided to the board and shareholders to inform their approval (or otherwise) of acquisitions. This contrasts with the requirements for a Class 1 transaction.
- Uncertainty for investors remains as, even if the proposed conditions have been met by the SPAC, the FCA may still decide not to waive the presumption of suspension of trading when a potential acquisition target is identified. Has the FCA considered providing confirmation in advance of admission - at the time of the listing application - that conditions are satisfied and it will not suspend trading?

Question 3: Do you agree that SPACs should meet a size threshold as one of the criteria? If you do not think this is the right approach, please explain why.

Question 4: Is our proposed threshold set at the right level and, if not, what threshold would you propose and what evidence can you provide to support this?

6. We agree with the rationale for not using a threshold based on market capitalisation. A threshold based on aggregate gross cash proceeds from public shareholders, as defined, seems reasonable.
7. The £200m threshold is high compared to the data on market capitalisation of the UK SPAC market – this shows a clear majority having market capitalisation of £5m or less (para 3.4 of the paper). A lower threshold - £50m or £100m - that is still significantly higher than £5m would create more opportunity for realising the policy objectives of the change in rules. A threshold might not be necessary if retail investors are excluded from participating until after the target has published its first annual report as a listed company (see our response to Q19).

Question 5: Do you agree with our proposed criterion that proceeds should be ring-fenced by a SPAC so that they can only be used to fund an acquisition, redemption or repayment event?

8. While we agree with the proposed criterion, we believe that investor protection should also be enhanced though receiving assurances from the SPAC board and/or the SPAC sponsor that there are sufficient resources to cover appropriate running costs of the SPAC, and to properly investigate potential acquisitions. The threshold of proceeds from public shareholders, if adopted, will enable significant and/or more complex transactions requiring specialist and advisory support.

Question 6: As one of the criteria, do you agree that SPACs should set a time limit on their operations from the point of its admission to list? If not, please explain why.

Question 7: Do you agree with the 2-year period we propose for the time-limit, and flexibility for an extension of up to 12 months?

9. We agree that a time limit from the point of admission can help manage investor uncertainty and we do not disagree with providing flexibility for extension. We wonder whether the FCA has considered the option of rolling public shareholder approval - together with redemption rights - to enable multiple extensions?

Question 8: Do you agree that a Board approval should be required, and that this should exclude directors that are also a director of the target or a subsidiary of the target?

Question 9: Do you agree that the Board approval should exclude directors who have an associate that is a director of the target or any of its subsidiaries? Furthermore, are there other circumstances where we should consider conflicts of interest arising from associates of directors of a SPAC?

Question 10: Do you agree that the Board approval should also exclude any director who has a conflict of interest in relation to the target or its subsidiary?

10. We agree with the proposals. We also suggest that where the target is a related party of the SPAC's sponsor (eg, a portfolio business of the SPAC's sponsor), any persons who are also directors or related parties of the SPAC's sponsor entities should be precluded from voting.

Question 11: Do you agree that approval from shareholders, excluding SPAC sponsors, should be required in order to proceed with a proposed acquisition?

11. We agree that shareholder approval should be required. However, we consider that FCA guidance should set out expectations of what would constitute 'necessary information' for sufficient disclosure on all terms and information on a proposed transaction. This could be set out in Primary Market Technical Note 420.

Question 12: Do you agree that a 'fair and reasonable' statement should be published to shareholders based on advice from an appropriately qualified and independent adviser where any of the SPAC's directors have a conflict of interest in relation to the target is a subsidiary? Do you have feedback on who should be considered an appropriately qualified and independent adviser for this purpose?

12. We agree that a statement would be desirable in such circumstances while recognising the costs involved and the impact of risk for the adviser.
13. The FCA could refer to the Takeover Panel's guidance on competent independent advice for Rule 3 advisers.

Question 13: Should a fair and reasonable statement potentially be required to support any proposed transaction, regardless of any conflict of interest being present for SPAC directors?

14. This may or may not be proportionate depending on what other protection measures are adopted, such as ones relating to participation of retail investors and information requirements for shareholder approval.

Question 14: Do you agree with a criterion that a SPAC should include a redemption option for shareholders? If not, please explain why.

15. Yes, we agree, although this will make the SPAC structure more challenging for SPACs and their sponsor and may therefore make it less likely to achieve the policy objectives.

Question 15: Will the proposed disclosure requirements be sufficient, when taken together with wider existing disclosure obligations, to protect investors and ensure the smooth operation of markets?

Question 16: Is there any additional information that we should explicitly require to be disclosed which won't be addressed by the above, or are any elements likely to be difficult to satisfy for SPAC issuers?

16. We refer to our response to Q11.

17. Moreover, the consultation paper does not refer to provisions for locking in SPAC sponsors for a certain period after admission. We understand that, in practice, the absence of such a provision would likely be disclosed as a risk factor. It is also not obvious what disclosure is required in the event of a leak.

Question 17: Do you have any comments on our proposed supervisory and monitoring approach? We also welcome any feedback on proposed amendments to our Technical Note on cash shells and SPACs in Appendix 2.

18. We note that draft Listing Rule 5.6.18D R (Appendix 1) outlines the information to be included in the announcement of a reverse takeover where the FCA considers that conditions have been met so that suspension is not necessary. We do not think that it is clear how a SPAC will know that it has met all the requirements.
19. To further reduce uncertainty regarding the suspension presumption, has the FCA considered providing confirmation to the SPAC at the time of the listing application that conditions are satisfied and trading will not be suspended?

Question 18: Do you agree that it will be necessary for SPACs to contact us to request suspension in the event, post announcing a reverse takeover target, it no longer satisfies the proposed investor protection provisions?

20. Yes, we agree.

Question 19: Given the risks posed by SPACs, are there other investor protections than those we have proposed, that we should consider? This could include, for example, exploring marketing restrictions or other means to limit access for individual investors who are less sophisticated.

21. We refer to the risks identified in our response to Qs 1 and 2.
22. We also think that measures should be proposed for either restricting retail investors' direct investment in SPACs and/or ensuring that retail investors are fully informed that investment in a SPACs is categorised as very high risk.

Question 20: Should we explore providing differentiation in our measures applying to SPACs where they have a specific focus, eg on targets that develop green technologies? We welcome views on any benefits and risks this may have, and how this could be effectively implemented to avoid regulatory arbitrage.

23. We do not believe that there should be differentiation in measures at this point.
24. However, differentiation can be explored at such time as the FCA reviews the effectiveness of these measures and market requirements.