DEVELOPMENTS IN THE LONDON LISTING MARKETS: SPACS, DUAL CLASS SHARE STRUCTURES AND OTHER LISTING RULES REFORMS

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This is the first in a series of briefings covering a number of recent changes to the Listing Rules for companies listed or listing on the Main Market (premium or standard segment) of the London Stock Exchange (LSE), new rules introduced by the Aquis Stock Exchange, proposed reform of the UK prospectus regime, a proposed new power to block listings on national security grounds, recent and further proposed changes to the Takeover Code and the review of financial promotion exemptions relating to high net worth individuals and sophisticated investors.

In this inaugural briefing, we concentrate on the changes that have been made to the Listing Rules in relation to special purpose acquisition companies (SPACs) and dual class share structures, as well as providing a brief overview of certain other key changes to the Listing Rules that have come into effect.

SPACS

On 10 August 2021, the Financial Conduct Authority (FCA) implemented changes to the Listing Rules for SPACs. These changes were introduced in response to Lord Hill's UK Listing Review Report, published on 3 March 2021, with the objective of attracting more SPAC listings to London.

Background

A SPAC is a company formed to raise funds from investors through an IPO of its shares, with those funds then used to facilitate the acquisition of an operating business. The acquisition constitutes a reverse takeover as it represents a fundamental change to the SPAC's business.

SPACs can be listed on AIM or the standard segment of the Main Market of the LSE, but are not eligible for a premium listing. Historically, far fewer SPACs have been admitted to AIM.

While SPAC listings in London are not new, 2020 saw a rise in the number of SPACs coming to market in the US, spurring renewed interest in SPACs in Europe. With use of SPACs widely regarded as a quicker and less cumbersome alternative to an IPO of an operating business, the FCA is keen to ensure its rules stay closely aligned with those of other international markets, particularly its European counterparts.

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Lord Hill's review of the UK listing regime identified a barrier which was considered to be a significant deterrent to listing a SPAC in London. Under the previous version of the Listing Rules, there was a general presumption that the FCA would suspend the listing of a SPAC on announcement of a potential acquisition target until the completion of said acquisition. This was intended to protect investors from concerns relating to insufficient information available in the market at the time of the acquisition of the proposed target. However, suspension exposes investors to the risk of being "locked in" to their investment for an unspecified period following identification of an acquisition target even if they wish to exit.

New regime

Following a consultation which was launched on 10 April 2021, the FCA outlined a new approach which came into effect on 10 August 2021 and which disapplies the presumption of suspension, provided that a SPAC meets the following conditions:

- ***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 two years from listing to identify a target and make an acquisition. This time limit can be extended 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.

Commentary

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Under the new regime, the FCA is striking a balance between promoting London as a competitive market for larger SPAC listings, whilst also providing strong investor protections for public investors in the market. The revised rules provide greater flexibility and clarity which will be welcomed by various market participants. For instance, in November 2021, venture capital firm Hambro Perks specifically cited changes to the UK Listing Rules as being crucial to choosing London as the market for its SPAC. It is hoped that these changes will have the effect of encouraging a wider range of SPAC listings to the London market, in turn offering a better choice of investment opportunities and alternative routes to public market for private companies.

DUAL CLASS SHARE STRUCTURES

Lord Hill's review of the UK listing regime also proposed permitting dual share class structures on the premium segment of the London Stock Exchange's Main Market. Following the Hill review and the Kalifa review of UK Fintech, the FCA published a consultation paper (CP21/21) in July 2021 on the effectiveness of primary markets.

Background

A dual class share structure involves a class of shares that allows certain shareholders to hold a weighted degree of control that is disproportionate to their economic interests in the company.

The FCA's Listing Rules have historically prevented companies with dual class share structures from being admitted to the premium segment of the Main Market due to the 'one share, one vote' principle. This system was regarded as fundamental to investor protection as it ensures management of the company remains accountable to investors. Deliveroo's adoption of the dual class share structure has been specifically noted as one of the reasons for its poor performance on IPO on the standard segment of the Main Market and Legal & General Investment Management highlighted this as one of its key reasons for not participating in the IPO in March 2021.

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FCA's proposals

The FCA set out a number of proposals in relation to dual class share structures in its consultation paper (CP21/21), such as:

- ***Widening participation for unlisted weighted voting rights holders*** – As an exception to the general rule, holders of unlisted weighted voting rights shares would be entitled to vote on matters otherwise reserved to shareholders of premium listed shares by Listing Rule 9.2.21R. Such matters include, but are not limited to, votes on transactions such as rights issues and open offers under Listing Rule 9.5, approving significant transactions under Listing Rule 10 and approving related party transactions under Listing Rule 11. This would only be available to issuers seeking admission to premium listing for the first time;

- ***Five-year sunset clause*** – The exception would last for up to five years from the date the premium listed shares were admitted to premium listing. Companies can extend this time period for longer than five years at the expense of their premium listing by passing a shareholder vote to move to another segment or to de-list;
- ***Conditions*** – The exception only applies to shares which meet certain conditions, such as the requirement that the shares must have a cap on weighted voting rights relative to ordinary shares of 20:1, holders are limited to directors of the company at the time of IPO or beneficiaries of a director's estate following the death of the director and there must be a mechanism to convert the weighted voting shares to ordinary shares at the end of the five-year period; and
- ***Limitation on scope*** – Weighted voting rights would only apply to certain resolutions, such as (i) a vote on the removal of the holder of the specified weighted voting rights as a director and (ii) on matters following a change of control in order to deter takeovers.

The FCA's consultation on the primary markets effectiveness review closed on 14 September 2021. On 2 December 2021, the FCA published a policy statement (PS21/22), in which it confirmed feedback and the final changes relating to dual class share structures following its consultation paper (CP21/21). The new reforms came into force on 3 December 2021.

Commentary

The FCA's reforms on dual class share structures will align the UK listing regime more closely with other leading global listing markets.

The relaxation of the Listing Rules along these lines is likely to encourage companies with dual share structures to IPO on the Main Market. In this context, it is worth noting that The Hut Group, which launched the largest IPO in the UK in five years in September 2020, was required to list on the standard segment of the LSE's Main Market as a result of its dual class share structure. However, it is also worth noting that in late October 2021 the Hut Group announced its intention to remove the dual class share structure following questions over the company's profitability and valuation as well as a sharp fall in its share price in the preceding weeks. Questions therefore remain how accepting investors in the London market will be of dual class share structures in practice, and the chances are that, rather than taking off in a big way, they will simply provide an additional means of achieving an IPO in specific circumstances regarded as sufficient to justify the structure.

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OTHER LISTING REFORMS

The FCA also confirmed in PS21/22 the following changes with effect from 3 December 2021:

- ***Market capitalisation*** – increase of the minimum market capitalisation threshold for premium and standard listing segments for shares in ordinary commercial companies from £700,000 to £30m. The threshold was reduced from the £50m initially proposed in the consultation paper (CP21/21) following feedback received from market participants that the previous threshold was too high. The FCA also provided transitional/"grandfathering" provisions which allow:

(i) applicants that have made a complete submission for a listing eligibility review by the date of the publication of the policy statement (2 December 2021) to continue to be able to formally apply for a listing based on the minimum market capitalisation threshold of £700,000, provided they apply within 18 months;

(ii) shell companies (including SPACs) already listed at the date of commencement to make listing applications following an acquisition based on the threshold of £700,000 provided that complete submissions for an eligibility review for listing and a prospectus review are made within two years of the commencement date; and

(iii) companies with existing classes of shares admitted to listing prior to 3 December 2021, and that continue to have at least 1 class of shares listed, to list additional classes of shares based on a minimum market capitalisation threshold of £700,000, which is not time limited;

- ***Free float*** – reduction of the amount of shares an issuer of a premium or standard listed company is required to have in public hands (i.e. free float) from 25% to 10% at listing and as a continuing obligation; and
- ***Other changes*** – minor updates to the Listing Rules, Disclosure Guidance and Transparency Rules and the Prospectus Regulation Rules to reflect modern technology and business practices, as proposed in the consultation paper (CP21/21).

Conclusion

All of these changes are welcome and illustrate the willingness and ability of the London listing market to adapt to changes in the market and to trends in other international markets with a view to attracting more companies to list in the UK, while ensuring that UK markets continue to uphold the highest standards of market integrity.

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