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**SPACS: LISTING ON THE OFFICIAL LIST OR AIM**

Special purpose acquisition companies (SPACs) are commonly used as investment vehicles in the U.S. markets and have been adapted for use in the European markets, such as AIM and NYSE Euronext. Growing market acceptance of SPACs, in both the U.S. and Europe, prompted the Financial Services Authority (FSA) to review and comment on the admission of SPACs to the Official List. Currently, due to the continuing economic turmoil and resultant inaccessibility of debt, there has been renewed interest in SPACs and how to evolve the structure in order to address the status current of the financial markets and for their admission to either the Official List or AIM.

**WHAT ARE SPACS?**

SPACs are new companies usually formed by a high-profile entrepreneur or a group of sophisticated investors (promoters) for the sole purpose of raising capital to identify and acquire a suitable business opportunity (target). Generally, the promoters subscribe for shares in the SPAC for a nominal consideration and later receive a share of the profits. SPACs are often incorporated in a tax efficient jurisdiction.

Funds for the acquisition of the target are raised through an initial public offering and are held in trust for a specified period of time pending one or more merger, acquisition or other business combination by the SPAC.

Unlike a straight cash shell, SPACs have additional built-in features that are designed to make them more attractive to investors. These include:

- Very low running costs, primarily due to a deferred reward structure for the promoters that awards equity only when shareholders approve an acquisition. This allows the trust to retain a very high percentage of the cash raised on an IPO;

- The finite life of the SPAC before it becomes an operating company (on AIM, typically 12 to 18 months; otherwise, typically 24 months). If no target is found, the SPAC will be liquidated and the cash held in trust will be returned (usually with interest) to shareholders; and
- A shareholder vote must be carried out before any acquisition, merger or other business combination can be completed. After the vote, subject to any shareholder conversion limit, dissenting shareholders have the right to be cashed out if the acquisition is completed.

## OFFICIAL LIST

The main advantage to SPACs listing on the Official List is the greater liquidity and prestige of such listing when compared with AIM or NYSE Euronext.

## Secondary Listing

Initially, a SPAC does not have an independent business and so cannot have a primary listing on the Official List under Chapter 6 of the UK Listing Authority's (UKLA) Listing Rules. Instead, a SPAC can have a secondary listing under Chapter 14 of the Listing Rules, without requiring a primary listing in another jurisdiction.

For a secondary listing, the Prospectus Directive (2003/71/EC) rules apply, as opposed to the UKLA "super-equivalent" standards which apply to primary listings. Unlike SPACs listed on AIM, a SPAC listed on the Official List will have its listing documents pre-vetted and stamped by the UKLA to ensure that they comply with the Prospectus Directive.

Continuing obligations are also limited compared to a primary listing, as Chapters 6 to 13 of the Listing Rules do not apply; secondary listed companies need only comply with the FSA's Disclosure and Transparency Rules (DTRs) 4, 5 and 6.

The SPAC's securities must be freely transferable. If the securities are sold into the U.S., they will be classed as category 3 under the US Securities Act of 1933 (1933 Act). If the SPAC securities are not registered in the U.S., they will be restricted on resale into the U.S. except where the securities are sold:

- To qualified institutional buyers (QIBs) under Rule 144A of the 1933 Act;
- Pursuant to exemptions from registration; and
- To persons outside the U.S.

In these circumstances, the securities must be held initially in certificated form. SPACs will need to take legal advice on U.S. securities law issues.

A SPAC applying to list under Chapter 14 must have (unlike SPACs listed on AIM), at the date of admission and as a continuing obligation, 25% of its shares in public hands (the EEA distribution rule). This includes shares that are distributed to the public in one or more EEA states and shares listed in an EEA state.

Typically, the majority of investors in European SPACs (which to date have mainly listed on AIM) are QIBs based in the U.S. The FSA may modify the EEA distribution rule to accept a percentage lower than 25% if it considers that the market will still operate properly in view of the large number of shares of the same class and the extent of their distribution to the public. For that purpose, the FSA may take into account shares of the same class that are held (even though not listed) in non-EEA states, such as the U.S.

## **Suspending Listing**

The first acquisition (and possibly further acquisitions) made by a SPAC will be a reverse takeover. The FSA has clearly stated that, relying on Listing Rule 5.2.3G, it will cancel the listing of the SPAC's securities when it completes a reverse takeover, therefore the SPAC must be readmitted (in the same way that SPACs on AIM are required to be readmitted under the AIM rules). The enlarged entity will then need to produce a further prospectus.

As with all announcements of reverse takeovers, the FSA may, on a case-by-case basis, suspend listing pending publication of the prospectus. The FSA will do so if, considering all the information on the target, it is concerned that there is a disorderly market.

## **Re-admission**

Following de-SPAC, an application for the enlarged SPAC entity to be readmitted to the Official List may be made for a primary listing under Chapter 6. The FSA will assess the suitability for such admission in the usual way and, if admitted under Chapter 6, the usual rules for primary listed trading companies will apply.

However, the SPAC may wish to re-admit for a secondary listing under Chapter 14. There are several reasons why the SPAC, although now an operating company, may wish to do this:

- The eligibility criteria to list under Chapter 6 requires that the total issued warrants outstanding must not exceed 20% of the issued equity share capital. As a SPAC's units are marketed at the IPO as typically comprising one share and one warrant (although this structure is under review by the investment banks), this may be a bar to moving the company to a primary listing until enough of the SPAC's warrants are exercised; and
- Following the de-SPAC, there is no requirement under the Listing Rules for a Chapter 14 company to seek shareholder approval for any future acquisition of targets or related party transactions, unlike a Chapter 6 listing where certain transactions (depending on their size and nature) require shareholder approval (*Listing Rules Chapters 10 and 11*).

Promoters may advise a SPAC, once it is an operating company, to voluntarily adopt certain continuing obligation requirements under the Listing Rules, including the requirement to seek shareholder approval on certain transactions. However, the UKLA does not have the authority to monitor the company's voluntary compliance with the Listing Rules or impose sanctions in respect of any breach.

## MARKET CONDITIONS

Not surprisingly, due to market conditions, no SPACs have listed under Chapter 14 but it is hoped that investment banks and promoters, as well as management teams looking for new and varied investment structures will refocus on the SPAC Structure in the U.K., to:

- Help kick start the acquisition and funding of companies in the current financial crisis;
- Avoid the expense and regulation of the U.S. markets; and
- Seek the increased liquidity that listing on the Official List offers, or, the opportunity to grow early stage companies on AIM.

The FSA recently published amendments to the Listing Rules (effective, in the main, from 6 April 2010) which changes the current UK listing regime. This has resulted in the current structure being maintained but a primary listing re-labeled as a "premium listing" and a secondary listing as a "standard listing". Please see the article below entitled "The FSA creates a new category of listing".

## Stock Market Interest

In 2007, 66 special purpose acquisition companies (SPACs) raised \$12.1 billion and counted for nearly a quarter of all initial public offerings and 18% of the capital raised in the US. Historically, SPAC securities have traded on the over-the-counter bulletin board or AMEX and in latter years, also on AIM in London. However, interest from investors and stock exchanges prompted the following events:

- In February 2008, NASDAQ sought permission from the US Securities and Exchange Commission to list SPACs;
- In February 2008, AMEX indicated its willingness to accept listing applications from certain qualified foreign private issuer SPACs;
- In May 2008, NYSE approved a rule change to adopt new listing standards for SPACs;
- In September 2008, the TSX announced its willingness to list SPACs and published proposed new rules for SPACs; and
- In October 2008, the FSA published its views on listing SPACs on the Official List.

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For further information contact:

**LENA HODGE**  
+44.20.7851.6083  
lhodge@brownrudnick.com

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