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Capital Markets Group Legal Alert

The FSA's views on listing SPACs

Introduction

Special purpose acquisition companies, or SPACs, are formed for the sole purpose of raising capital in an initial public offering and using the proceeds to fund one or more acquisitions, often in a particular business sector.

Most SPACs have been listed in the US, although recently there have been some listings in Europe. Whilst some SPACs and cash shells have been admitted to trading on AIM, the London Stock Exchange's junior market, there have not been any listings of SPACs on the main market.

Given the interest in listing SPACs on European markets, the Financial Services Authority (**"FSA"**), acting in its capacity as the UK Listing Authority, has published its views on the listing of SPACs. These views (which are not intended to be formal guidance) have been published in the FSA's latest newsletter, List! Issue No. 19, and are considered in more detail below. These views do not relate to AIM: the London Stock Exchange has separate rules regulating admission to trading of securities on AIM.

Comment

There has been speculation that SPACs might begin to play a more active role in private M&A activity in the coming months: existing SPACs which have not yet made acquisitions are cash rich and may be in a position to move quickly on a target. SPACs may face less competition from other potential bidders, particularly given reduced activity in the private equity arena.

Even in the current market climate, launching a SPAC may be an option. In the absence of significant inflation, the value of a SPAC's cash fund remains the same, and the new SPAC may be able to acquire a business for a reduced price. The decision whether to apply for a listing on the main market or to have securities admitted to trading on AIM may depend on how much a new SPAC is looking to raise, and in which sector it is proposing to invest.

What is a SPAC?

Unlike a cash shell, SPACs typically have additional features designed to make them more attractive to investors, including:

- restrictions on promoters' rights – promoters usually enter into escrow arrangements limiting their right to transfer or dispose of their interests in the SPAC. Other than a nominal monthly charge, promoters have not historically received salaries, management fees or finders fees before shareholders approve an acquisition;
- a finite period to make an acquisition (typically 12 – 18 months from admission), with a condition that if an acquisition target is not found within that period, the structure will be liquidated and cash returned to shareholders, with promoters' interests carrying only limited rights on liquidation; and
- the right for shareholders to be cashed out on completion of an acquisition if those shareholders have dissented on the shareholder vote required to approve that acquisition.

Can a SPAC be listed?

The FSA's current views on listing SPACs are summarised below, although these views are not intended by the FSA to be formal guidance.

ELIGIBILITY FOR LISTING

A key requirement for a primary listing (i.e. under LR6 of the Listing Rules (**"LR"**)), where the issuer is subject to the full requirements of the Listing Rules, is that the issuer has an independent business. A SPAC does not initially have an independent business so cannot be listed under LR6.

An alternative for some issuers is to apply for listing under LR15, which relates to closed-ended investment funds. To apply for listing under LR15, an issuer needs to have a policy of investing its assets to spread investment risk. A SPAC will not generally have such a policy, so cannot be listed under LR15.

However, a SPAC incorporated outside the UK can list under LR14. LR14 relates to "secondary" listings of overseas companies (although an overseas company seeking a "secondary" listing is no longer required to have a listing in any other jurisdiction).

WHAT HAPPENS WHEN A SPAC ACQUIRES A TARGET?

The first acquisition (and possibly, any subsequent acquisitions) of a target by the SPAC following listing will be a "reverse takeover" under the Listing Rules. The FSA will cancel the listing of the SPAC's securities upon completion of that reverse takeover, and the SPAC will need to apply to be readmitted to listing. This will involve producing a prospectus (i.e. in addition to the prospectus published upon the initial listing of the SPAC). The FSA may also suspend listing of the SPAC's securities prior to the publication of that prospectus. The FSA will do this if it believes there is a disorderly market (as result of there being insufficient information available to the market about the transaction). The usual presumption when the target in a reverse takeover is an unquoted private business is that the FSA will suspend listing. The suspension will be lifted on publication of the second prospectus.

HOW DOES A SPAC RE-LIST?

Following a reverse takeover, the FSA notes a SPAC could apply for its enlarged share capital to be listed under LR6, or alternatively under LR14. The FSA will assess eligibility for listing and, if re-admitted under LR6, the usual rules for primary listed trading companies apply. A primary listing may be perceived to have a certain cachet when compared to a secondary listing.

If you have any questions or require specific advice on any matter discussed in this publication, please contact Stephanie Bates, Justine Usher or your regular contact at Mayer Brown.

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