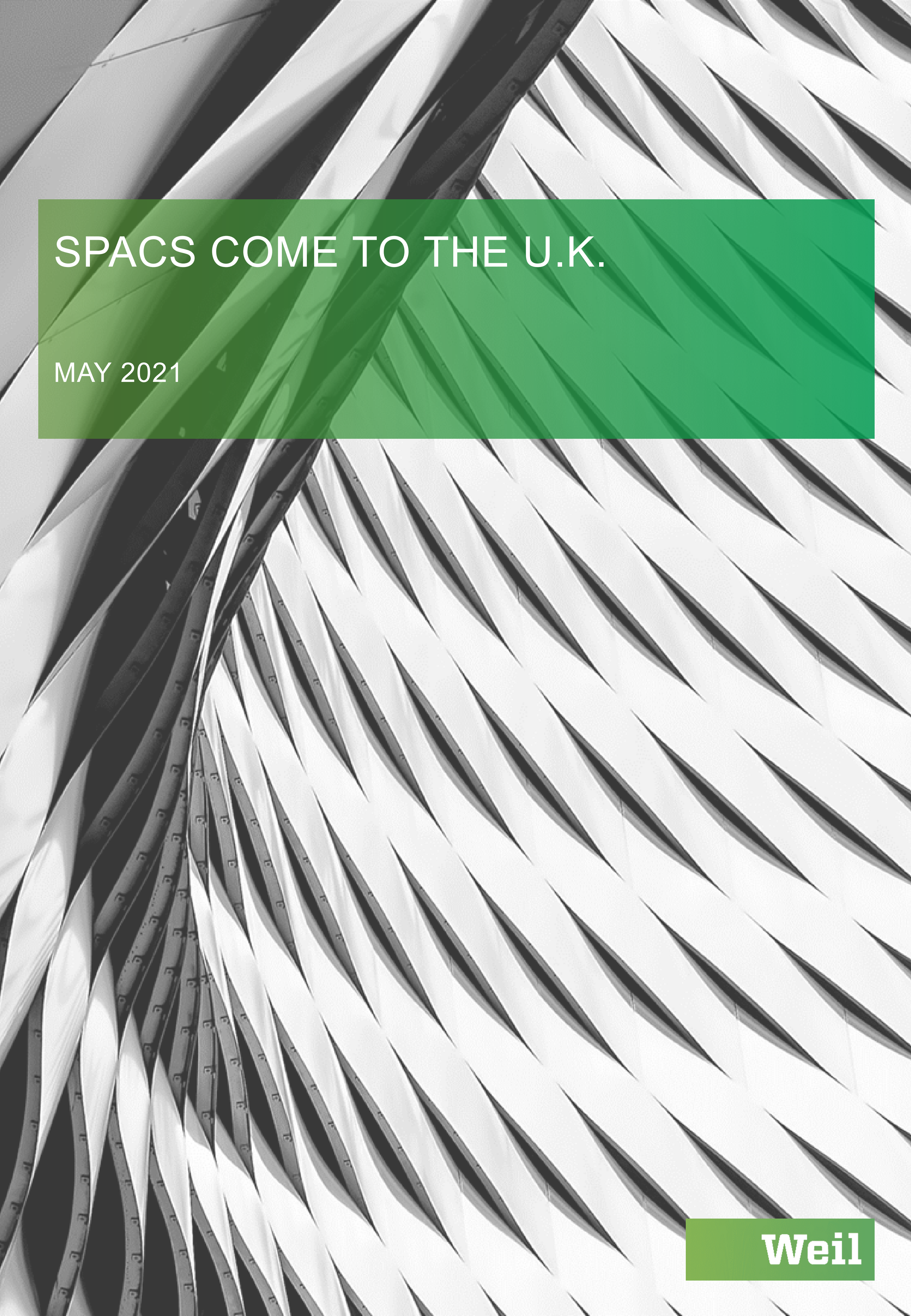

SPACS COME TO THE U.K.

MAY 2021

Weil

SPACS COME TO THE U.K.

THE UNITED KINGDOM'S FINANCIAL REGULATOR, THE FINANCIAL CONDUCT AUTHORITY (FCA), RELEASED A CONSULTATION PAPER OUTLINING PROPOSED AMENDMENTS TO ITS LISTING RULES DESIGNED TO ENCOURAGE SPACS TO OBTAIN A STANDARD LISTING ON THE LONDON STOCK EXCHANGE'S MAIN MARKET.

The amendments modify some aspects of the FCA's Listing Rules that have made it practically impossible for SPACs to list in London with the characteristics that have made them such a popular alternative for companies seeking to go public in the U.S. (as well as lucrative for their sponsors and attractive for certain public market investors).

The key problem is that under the existing rules, the FCA will suspend trading in the SPAC's shares if there is a leak or an announcement about a potential 'reverse takeover' (which, in the case of a SPAC, means any acquisition), until the SPAC can publish sufficient information about the target, typically in a revised prospectus. Under the proposed amendments, suspension will no longer apply if the requirements set out below have been and remain satisfied.

- **Minimum gross proceeds:** The SPAC must raise aggregate gross proceeds of at least £200m from 'public shareholders' (i.e. excluding a founder, director, or someone who otherwise promotes or supports the SPAC operationally, which the FCA refers to as 'sponsors').
- **Capital ring-fence:** The capital raised from public shareholders must be 'adequately ring-fenced' with a third party pending completion of the acquisition or liquidation of the SPAC. This is intended to permit either an escrow or a trust arrangement (or, conceivably, other ring-fencing arrangements). The capital raised from public shareholders cannot be used to fund organizational or operating expenses except to the extent of a specified proportion that has been clearly disclosed to public investors in the initial prospectus.
- **Time limits:** The SPAC must complete its acquisition within two years of admission to listing (extendable by another year with simple majority approval by its external investors if the SPAC has, by the two-year deadline, entered into a definitive agreement in respect of the initial business combination. If the acquisition has not been completed by the deadline then the SPAC must be wound up and the capital returned to investors.
- **Announcement obligations:** The announcement of the acquisition must include a description of the target's business, links to all relevant publicly available information on the proposed target company, 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 their associates, and the timeframe for negotiations (if not concluded); an indication of how the SPAC has assessed, or will assess, and value, the target (including by reference to any selection and evaluation process for prospective targets as set out in the SPAC's original prospectus); 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 acquisition that an investor in the SPAC needs to make a properly informed decision.
- **Board approval:** The acquisition must be approved by the board of the SPAC. Directors connected with the target or who have a 'conflict of interest in relation to the target' will be ineligible to vote, but directors connected with the sponsor, as well as independent directors, will be eligible to vote.
- **Shareholder approval:** The acquisition must also be approved by the SPAC's public shareholders. The sponsors and their affiliates will be precluded from voting. The SPAC must send a circular to its shareholders including 'sufficient information to enable shareholders to make a properly informed decision' (including detail on the impact on ordinary shareholders of shares or warrants held by the SPAC's sponsors, any conflict of interest they have in the proposed transaction, and any additional dilution effects on existing shareholders from potential redemptions or the terms on which additional investment is provided from private placements to fund the transaction).

SPACS COME TO THE U.K.

- **Fairness opinion in certain cases:** Where any of the SPAC's directors has a conflict of interest in relation to the target, the shareholder circular must also include a statement from the board that the acquisition is fair and reasonable so far as public shareholders are concerned, which statement must reflect advice from an independent financial adviser. The fairness opinion itself need not be published.
- **Redemption option:** The SPAC must permit shareholders to redeem their capital (or such of it as remains ring-fenced) whether or not they voted in favour of or against the acquisition.

The changes do not affect other aspects of the rules that would apply in relation to the acquisition. The SPAC will have to comply with its obligations under the Market Abuse Regulation (which imposes more stringent disclosure requirements than other jurisdictions); it will typically have to publish an FCA-approved prospectus in connection with the admission to trading of the shares it issues to institutional investors in the private placement and to shareholders of the target, on completion of the acquisition); and it will, if it wishes to upgrade to a premium (as opposed to standard) listing, have to satisfy the eligibility requirements for a premium listing (for example, with respect to the U.K.'s less flexible corporate governance requirements).

Some commentators believe that forward-looking statements published in connection with a de-SPAC transaction involving a U.S. SPAC, as a business combination, benefit from a safe harbour under the Private Securities Litigation Reform Act of 1995 (PSLRA) that is unavailable in the case of a traditional IPO. However, notwithstanding the potential[1] protection of the PSLRA, issuers are advised to limit forward-looking statements to information which constitutes management's good faith reasonable belief based on the facts and circumstances known at the time of the disclosure. There is no equivalent safe harbour in the U.K., where liability in respect of forward-looking statements will depend on general principles. Liability will not arise merely because revenue, profit or other financial or non-financial projections are not achieved. But including forward-looking statements in the transaction announcement, or in the shareholder circular, or in a prospectus published in connection with the issue of new shares by the SPAC to the target's shareholders and in the accompanying private placement, will carry an implied representation that the persons responsible for the announcement, circular or prospectus honestly believe, and have reasons to believe, that the projections are reasonably based. If they have no such belief, then they may be liable for fraud.

Even if fraud cannot be established, to avoid liability in negligence the directors will have to have taken reasonable steps to satisfy themselves that any projections are reasonably based. Attempts to diminish the significance of projections by reference to risk factors would, in our view, be unavailing.

The arrival on the scene of UK-listed SPACs may provide companies looking to go public with an alternative to SPACs that offer a listing in New York, Amsterdam or elsewhere. We might expect to see sponsors form SPACs on all these markets to provide a menu of choices for quality targets. Whether that is enough to sway the decision, considering all the other factors that make other listing venues attractive, remains to be seen.

FOR MORE INFORMATION

Our Corporate team is available to discuss any of these issues with you and answer any specific questions you may have. If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below:

Murray Cox

+44 20 7903 1478

murray.cox@weil.com

David Avery-Gee

+44 20 7903 1236

david.avery-gee@weil.com

1. John Coates, Acting Director of the Division of Corporation Finance at the SEC, has recently suggested that this view does not accord with the policy objective underlying the PSLRA (see https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws).

WEIL.COM