



# Markets Brief

## Special Purpose Acquisition Companies (SPACS)

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### Introduction

The purpose of this Markets Brief is to provide general information about the DFSA's likely approach to listing SPACs in the DIFC. Although we currently do not have specific rules for listing SPACs, we would expect new SPAC applicants to demonstrate that their businesses are suitable for listing under MKT 9.3.4. We would also consider imposing conditions for listing under Article 34 of the Markets Law, on a case-by-case basis, to give effect to the approach suggested in the brief. We believe that the approach described in this brief provides a proportionate listing framework to protect investors. We may consider introducing a more detailed rules-based framework in the future.

A SPAC (often referred to as a “blank cheque company” or “cash shell company”) is typically a publicly listed shell company with no commercial

operations that is formed to raise capital in an Initial Public Offer (IPO) solely in anticipation of subsequently identifying and acquiring a target private company. After an acquisition has been completed, the enlarged operating company continues to be traded on an exchange. A SPAC is created by a management team, often referred to as a ‘sponsor’.<sup>1</sup>

### Guidance

Please note that the contents of this communication are not intended to be Guidance as defined by the Regulatory Law 2004 and the contents should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rules for Guidance or contact the DFSA if you require individual guidance.

Technical explanations given in this Brief are for illustrative purposes and should not be considered or relied upon as legal advice.

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<sup>1</sup> This should not be confused with a sponsor firm appointed under MKT 7.

## **Known risks**

SPAC related risks vary depending on how a SPAC is structured and the stage of its lifecycle. A typical life cycle of a SPAC lasts 2 years and involves: (1) an IPO, (2) a period of time leading up to an acquisition of a target company, (3) a shareholder vote on the acquisition, (4) a liquidation event or the new operating company (as enlarged by the acquisition) continuing trading on an exchange.

Below are some of the documented risks relating to SPACs that investors should be aware of.

### **Market integrity**

*The increased risk of market abuse activity.* In order to manage many of the risks described below, it is important that a SPAC (before and after acquisition of a target company) has appropriate corporate governance controls and financial reporting systems and controls in place to ensure that it can comply with its continuing obligations and disclosure responsibilities. For example, there may be significant uncertainty and market speculation relating to the operations of a SPAC immediately prior to a target company acquisition. A SPAC needs to be in a position to disclose immediately inside information on the acquisition of a target company. Failure to do so may lead to an uninformed market and the suspension of listing and trading of the SPAC's securities.

### **Quality of management and strategy**

*The risk that the management team are unqualified or incompetent.* Investors are reliant on the quality of the management team to identify an appropriate target company.

### **Less information**

*The risk of an investor in a SPAC making a bad investment decision based on limited information.* A SPAC prospectus is likely to include less information than a prospectus of a traditional commercial company. Experience in other markets suggests that investors are likely to base their investment decisions on the management team's reputation and track record.

### **Structure and incentives**

*The risk of shareholder dilution.* There may be elements of a SPAC structure that have a dilutive effect on shareholders. Such elements typically include: the management team's nominal share investment, a marketing fee for redeemed shares, and any warrants or other security related incentives issued as part of the transaction.

### **Time limit**

*The risk that no acquisition will occur and investors lose some of their cash investment.* SPACs typically set a time limit of 2 years to identify a target company, failing which the SPAC will be liquidated and the cash held returned to investors. There are no guarantees that a SPAC will identify a target company. In such cases,

investors may receive less back than they put in, as well as the lost opportunity cost of having committed money they could have invested elsewhere.

### **Conflicts of interest and fraud**

*The risks arising from potential conflicts of interest and fraud.* As noted above, the management team are typically incentivised to identify and complete an acquisition of a target company within a certain time limit. This may result in poor quality acquisitions being proposed late in the life cycle of the SPAC or management team decisions being driven by conflicts of interests relating to a proposed target company.

### **Transparency and due diligence in respect of a target business**

*The risk that investors may not be presented with sufficient information to make an informed decision about the acquisition of the target company.* It is important that the information presented to shareholders is sufficient so that investors can make an informed voting decision.

### **Suitability for listing**

*The risk that once an acquisition is made that the enlarged business is not suitable for listing.* The enlarged business will need to meet the DFSA's listing eligibility requirements (and prospectus requirements, if applicable).

### **Speculative trading of SPAC shares**

*The risk that speculation about possible target companies being considered by the SPAC may lead to price volatility.* The shares of a listed SPAC will be

admitted to trading on an exchange in the DIFC. While, in substance, the SPAC's fundamental economic value should broadly equal the cash raised at IPO (plus interest and less running costs), speculation on possible target company acquisitions being considered by the SPAC may lead to price changes and volatility in its share price.

### **Incorporation and other jurisdictions**

*The risk that shareholder rights may differ depending on the nature of the company and insolvency laws in different jurisdictions.*

### **Our general approach to listing SPACs**

The DFSA approach below is designed to mitigate many of the risks described above. This approach may vary depending on the nature and complexity of a proposed SPAC. Each SPAC will be considered on a case-by-case basis.

### **Appointment of a sponsor firm under the MKT Module**

A new applicant SPAC will ordinarily be required to appoint a sponsor firm under MKT 7.1.2. for the initial listing of a SPAC and the acquisition of a target company. The sponsor firm will be the primary contact for the purpose of ongoing communications with the DFSA.

### **Safeguarding capital raised**

We believe that SPACs should adequately ring-fence proceeds raised from investors. This is to protect

investors from misappropriation of funds or excessive running costs being incurred by the SPAC's management. This may be achieved through a legal structure managed by an independent third party, for example, in trust, or an escrow type arrangement. Proceeds should be ring-fenced to ensure that they can only be used to fund specified actions, for example, an acquisition, a redemption of shares or a repayment of capital if a SPAC liquidates or fails to complete an acquisition.

The amount of proceeds ring-fenced may be reduced by an amount relating to funding general operations, on the condition that the amount is specific and has been clearly disclosed (together with the proposed use of proceeds) to investors in the prospectus.

We may also consider imposing further safeguards on how the SPAC proceeds may be invested prior to any use.

### **Time limits**

SPACs should find and acquire a target company within 2 years of the date of the prospectus. We may consider permitting the SPAC's operational life to be extended by another 12 months, subject to shareholder approval. At the end of a SPAC's operational life, if a SPAC has not managed to complete an acquisition, ring-fenced proceeds should be returned to shareholders. In this scenario, a SPAC would be likely to be a cash shell. In such circumstances, we would expect it to apply to have its listing cancelled.

We would expect the above time limits to be included in a SPAC's constitutional documents.

### **Board and shareholder voting rights**

In respect of a proposed acquisition, SPACs should follow the following process:

- *obtain board approval.* Board members that are in any way associated with, or have a conflict of interest in relation to, the target company should be excluded from any discussions and vote;
- *provide shareholders with the right to vote on an acquisition,* with an ordinary resolution being required in order to proceed with the acquisition. The management team should be prohibited from voting;
- *ensure shareholders are provided with sufficient information on the proposed acquisition transaction to allow them to make an informed decision;* and
- *publish a statement that the proposed transaction is fair and reasonable as far as the shareholders are concerned, made after taking advice from an appropriate independent expert.* This statement should be published in advance of the shareholder vote date.

### **Shareholder redemption rights**

SPACs would be expected to provide shareholders with the right to redeem their shares at a predetermined price.

### **Retail investor restriction**

There may be circumstances where we may find it necessary to restrict the offer and trading in the shares to professional clients only.

### **Market liquidity**

We would expect liquidity providers to be appointed.

### **Primary market disclosure**

SPACs will need to meet the DFSA's listing eligibility and prospectus requirements. We recognise that, because of the nature and structure of SPACs, certain waivers or modifications from our listing eligibility requirements may sometimes be required. The sponsor firm appointed by a SPAC should consider listing eligibility matters at an early stage.

The Markets Law sets out the overarching requirement that a prospectus should contain all the information which an investor would reasonably require and expect for the purpose of making an informed assessment of (a) the assets and liabilities, financial position, profits and losses and prospects of the issuer and any guarantor; and (b) the nature of the Securities and the rights and liabilities attaching to those securities. In addition, we would expect the prospectus to include information on:

1. the key elements of the SPAC structure, as referred to above;
2. the structure of the offer (including information on the management team's incentives, such as the issue of warrants);

3. management experience and expertise;
4. the strategy of the SPAC;
5. the evaluation processes used to select a target company and valuation methods adopted;
6. full details of remuneration and costs;
7. key risk factors, and
8. existing and potential conflict of interests.

If a prospectus includes a profit forecast or estimate, it should also include information about the principal assumptions used, and a report prepared by an independent expert. For more information on our approach to profit forecast information, see: Markets Brief No. 8. <https://www.dfsa.ae/what-we-do/dfs-a-listing-authority/knowledge-base>

### **Secondary market disclosure**

SPACs will be treated no differently than any other Reporting Entity. As such, SPACs will need to comply with the DFSA requirements relating to corporate governance, inside information and other continuing obligations, financial information disclosures, prevention of market abuse and takeover regulation.

A new target company being considered by a SPAC will, essentially, become the principal operations of the SPAC after acquisition. For this reason, the target company will be expected to meet the DFSA listing eligibility requirements and prospectus

requirements (if a prospectus is required).

Once a target company has been identified, SPACs will be expected to:

1. appoint a Sponsor firm under MKT 7.1.2;
2. contact the DFSA to discuss the target's listing eligibility (waivers and modifications may be required) and the proposed transaction structure;
3. make a full announcement, to be followed by a circular to shareholders, on the enlarged business combination. The announcement would be expected to include:
  - a. a description of the target's business operations;
  - b. all relevant publicly available information, e.g., financial information;
  - c. an indication of how a SPAC has, or will, assess the value of the target; and
  - d. any other material details and information that the SPAC management team is aware of, or should reasonably be aware of, about the target company, or the proposed transaction, and that an investor in a SPAC needs in order to make a properly informed decision;
4. update the information above if new information becomes available prior to a shareholder vote; and
5. provide shareholders with an information circular summarising the

information announced above. The circular should be sent to shareholders at least three weeks prior to a shareholder meeting.

Where an announcement or shareholder circular contains a profit or revenue forecast or estimate, a SPAC will be required to make an announcement once it becomes aware of material differences between the forecast and the actual (factual) result.

### **Suspension policy**

SPACs can pose market integrity risks if they do not comply with continuing obligations and disclosure requirements. We may suspend the listing and trading of any securities if we feel that the market is uninformed or it is necessary to protect investors.

## Contact us

Visit the DFSA website [www.dfsa.ae](http://www.dfsa.ae) for:

- other editions of the Markets Brief;
- access to DFSA-administered legislation and the DFSA Rulebook,

including a full text of the Markets Law and Markets Rules; and

- the [Code of Market Conduct](#).

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### Feedback

We appreciate your feedback and welcome any suggestions that you may have. Please email us at [markets@dfsa.ae](mailto:markets@dfsa.ae).