

Primary Market Technical Note

Shell companies (cCash shells and special purpose acquisition companies (SPACs))

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA.

UKLR 13.1.3 R, LR 6.7.2.1 R, LR 14, and LR 5.6.5 AR

The Equity shares (shell companies) category in UKLR 13 is targeted at shell companies. The definition of "shell company" set out in UKLR 13.1.3 R is designed to encompass what are generally known as "cash shells" and "SPACs".

The terms 'cash shell' and 'SPAC' are not defined in the UK Listing Rules, but UKLR 13.1.3 R provides a general description for cash shells in UKLR 13.1.3R(1) and SPACs in UKLR 13.1.3R(2). However, we note in the following technical note, we further discuss points about how these terms are broadly understood, how these types of issuers meet the eligibility requirements for listing shares and when the listing may be suspended if an reverse takeover initial transaction is announced or leaked (as cash shells and SPACs will be shell companies under LR 5.6.5 AR).

The terms 'cash shell' and 'SPAC'

Cash shells

'Cash shell' is a term often used for companies whose assets consist wholly solely or predominantly of cash (or potentially short-dated securities). A listed issuer may be a cash shell because it has been admitted to the Official List as a commercial company but has subsequently disposed of all or a majority of its assets and currently operates only residual business activities, if any. These types of issuers may have had their equity shares listed pursuant to Chapter 5 or Chapter 22 of the UK Listing Rules. ~~been admitted to the Official List with either a premium listing (pursuant to Chapter 6 of the Listing Rules) or a standard listing (pursuant to Chapter 14 of the Listing Rules).~~ Cash shells may or may not have a strategy to seek an acquisition opportunity or to develop a business as a start-up. So there is some overlap between cash shells and SPACs.

SPACs

We understand the term special purpose acquisition company or 'SPAC' to mean a new company whose predominant purpose or objective is to undertake an acquisition or merger, or a series of acquisitions or mergers, incorporated to identify and acquire or merge with a suitable business opportunity or opportunities. It may also be referred to as a 'search fund'. We would expect that a SPAC would fall within LR 5.6.5AR(2). Its initial funds are usually raised through an IPO on a stock market or through a fundraising undertaken before the IPO. After IPO, its cash resources are used to identify acquisition opportunities, finance the due diligence costs and potentially fund or part fund the acquisition of a suitable business to invest in. The issuer may have raised significant funds to finance these activities. However, this is not always the case and we note that many such issuers are microcap companies listing with a market capitalisation of around £1 million.

Eligibility for listing

When these types of issuers Shell companies are listed under Chapter 13 of the UK Listing Rules, they are most typically, but not always, listed under Chapter 14 of the Listing Rules which sets out requirements for the listing of equity shares of a shell company such types of issuer standard listing of shares.

An applicant which is a cash shell or SPAC shell company seeking a listing of its equity shares does not meet the admission requirements for a commercial company. UKLR 5.1.1R(3) states that Chapter 5 applies to an applicant for admission of equity shares other than those of a shell company. would not meet the eligibility requirements for premium listing. This is because it would not have an independent business and a financial track record that meets the requirements of LR 6 (additional requirements for premium listing, commercial companies). A shell company It would also not normally have a policy of investing and manage its assets in a way which is consistent with its object of to spreading investment risk in accordance with the requirements of UKLR 11.2.3R5 (closed-ended investment funds category). A cash shell or SPAC shell company can list under Chapter 13 of the UK Listing Rules UKLR 13-LR 14 provided it is not an 'investment entity' as defined in the UK Listing Rules (LR 14.1.1R and Glossary).

Minimum market cap

A shell company needs to demonstrate that the expected aggregate market value of all securities to be listed must be at least £30 million for shares (UKLR 3.2.7R). To satisfy us that a shell company meets this eligibility requirement, it will need to demonstrate that the net proceeds of any pre-admission fundraising is £30 million or more. This is because a shell company does not have any other assets apart from the net proceeds of any such fundraising.

Shell companies listed in categories other than the Equity shares (shell companies) category

Issuers that are admitted to a category other than the equity shares (shell companies) category, but that have become a shell company ~~Cash shells that have previously been admitted to premium listing and remain premium listed~~ should note UKLR 21.5.4A.165.18G in relation to transfer as an alternative to cancellation of listing which will apply to them. This states that there may be situations where an issuer's business has changed over time so that it no longer meets the requirements of the applicable listing category which it was initially assessed for listing. In those situations, we may consider cancelling the listing of the equity shares or suggest to the issuer that, as an alternative, it applies for ~~the~~ a transfer of its listing category.

We therefore encourage such issuers to consider whether to apply to us for their listing to be cancelled, or to transfer to the category for shell companies (UKLR 13) and consider its obligation to appoint a sponsor in the circumstances set out under UKLR 4.2 and ask their ~~to standard listing (LR 14), and sponsor~~ to contact us to discuss an application to transfer ~~this~~ (where applicable). Issuers are also reminded to refer to the guidance set out in UKLR 13.1.6G to 13.1.8G.

Reverse takeoversInitial transactions

~~Listed cash shells and SPACs are caught by the provisions on reverse takeovers that apply to a 'shell company' in LR 5.6.5AR. This is because a shell company is a listed issuer whose assets consists solely or predominantly of cash or short dated securities, or whose predominant purpose or objective is to undertake an acquisition or merger or a series of acquisitions or mergers.~~

~~Also, the~~ When a shell company enters into an initial transaction, as defined in UKLR 13.4.2R, it must, amongst other things, notify a RIS as soon as possible after the terms of an initial transaction are agreed, send an initial transaction circular to its shareholders and obtain shareholder approval (UKLR 13.4.21R). It is important to note that the definition of "initial transaction" captures a wider range of transactions than reverse takeover transactions, a concept used elsewhere in the UK Listing Rules, and therefore not limited to acquisitions of a company for example. It also does not apply a size threshold. This means that the first transaction that a shell company enters into (either post listing or post an existing listed company becoming a shell company) will generally constitute an initial transaction. ~~acquisition by a cash shell or SPAC of a target is a reverse takeover according to the definition in LR 5.6.4R[and the related guidance in LR 5.6.5G. In particular, the percentage ratios are likely to be 100% or more because, in applying the class tests, the cash and short dated securities held by the cash shell or SPAC must be excluded in calculating its assets and market capitalisation (paragraph 8R(5) in LR 10 Annex 1). Also, the transaction is likely in substance to result in a fundamental change in the business or a change in board or voting control of the issuer.~~

The classification of the transaction as ~~a reverse takeover~~ an initial transaction under the UK Listing Rules is important because ~~a cash shell or SPAC~~ a shell company will be subject to the rebuttable presumption that, where an ~~reverse takeover~~ initial transaction is announced or leaked, there will generally be insufficient publicly available information in the market that will often lead to the suspension of listing in the context of an ~~reverse takeover~~ initial transaction. We refer to this as the 'rebuttable presumption of suspension'. In this case the ~~issuer or, if the issuer is premium listed, its sponsor, is required to~~ must contact us as early as possible to discuss whether a suspension is appropriate (before announcing ~~a reverse takeover~~ an initial transaction which has been agreed or is in contemplation) or to request a suspension (where details of the ~~reverse takeover~~ initial transaction have leaked) (UKLR 13.4.4R).

A shell company that has completed an initial transaction will generally no longer meet the definition of shell company and as a result will not be eligible for listing in the equity shares (shell company) category.

~~Also, We~~ we will therefore generally seek to cancel the listing of ~~an issuer's~~ a shell company's equity shares when ~~the issuer~~ it completes ~~a reverse takeover~~ an initial transaction (UKLR 5.2.313.4.36G); and accordingly a sponsor must contact us on behalf of the shell company as early as possible (before an initial transaction which has been agreed or is in contemplation is announced; or where details of the initial transaction have leaked) to discuss whether the cancellation of the issuer's listing is appropriate on completion of the initial transaction (UKLR13.4.34 R).

We discuss these points further below.

Suspending listing

We may suspend, with effect from such time as we may determine, the listing of any securities if the smooth operation of the market is, or may be, temporarily jeopardised or it is necessary to protect investors (UKLR 21.1.1R(1)~~5.1.1R(1)~~).

Rebuttable presumption of suspension

The UK Listing Rules create a rebuttable presumption that ~~certain types of issuer~~ a shell company will be suspended upon announcement or leak of ~~a reverse takeover~~ an initial transaction as there will generally be insufficient publicly available information in the market.

When suspending, we will rely on the general suspension power set out under LR 5.1.1R(1) which is supported by examples of when we may suspend listing in LR 5.1.2G. These include where it appears to us that the issuer cannot accurately assess its financial position and inform the market accordingly in LR 5.1.2G(3) or there is insufficient information in the market about a proposed transaction in LR 5.1.2G(4).

Although LR 5.1.2G(4) refers only to a 'proposed transaction', we would consider this to refer to situations where information has been announced or leaked in relation to transactions under contemplation, as well as those where the terms have been agreed.

Early engagement on reverse takeovers initial transactions

UKLR 13.4.65-6.8G highlights that, in the case of an reverse takeover initial transaction for the types of issuer referred to in LR 5.6.5AR by a shell company, we will often consider that a suspension will be appropriate, unless we are satisfied that:

- (i) there is sufficient publicly available information about the proposed transaction, or
- (ii) (ii) where the issuer falls within UKLR 13.1.3R(2)5.6.5AR(2), it has sufficient measures in place to protect investors and so that the smooth operation of the market is not temporarily jeopardised

This is subject to no other situations occurring at the same time where we would usually suspend pursuant to UKLR 5.1.121.1.1R(1).

Although UKLR 21.1.2G(4) refers only to a 'proposed transaction', we would consider this to refer to situations where information has been announced or leaked in relation to transactions under contemplation, as well as those where the terms have been agreed.

We would like to remind issuers of the need to ensure that they consider Listing Principle 2, which requires issuers to deal with us in an open and co-operative manner, when considering the appropriate time to contact us.

Early engagement with us is particularly important in circumstances where the issuer intends to pursue the transaction or has reached a stage where the transaction can be described as being in contemplation (UKLR 13.4.5G)5.6.7G). A decision to suspend can have a significant market impact and so early engagement, preferably before the point where a reverse transaction an initial transaction can be considered in contemplation, is essential.

Timing of the announcement

UKLR 13.4.5.G5.6.7G sets out examples of when we will generally consider a potential initial reverse transaction sufficiently advanced to trigger an announcement and that a suspension in the event that details of the transaction leak may be appropriate.

However, we know that at times the situation may not be as clear cut as set out in these examples. There may be situations where there has been a purely speculative leak and a potential suspension would be inappropriate.

We also recognise that competitive auction processes are often difficult to fit into this framework, so we are happy to discuss the specifics of each case with ~~issuers or their advisers~~ sponsors. In making a decision about whether it is appropriate to consider suspension, we would expect the issuer to apply a similar rationale as they would when considering the announcement requirements under the UK Market Abuse Regulation (MAR). We would not, for example, expect the issuer to request a suspension where the transaction is too speculative to trigger an announcement under MAR.

Timing of suspension, cancellation and readmission

When an ~~reverse takeover~~ initial transaction is announced or has leaked, we may suspend listing if we believe, having considered the information in the market on the target at the time, that the smooth operation of the market is or may be temporarily jeopardised or it is necessary to protect investors. We will follow this approach in the case of ~~acquisitions~~ an initial transaction by shell companies because our experience is that share prices in these types of issuers can experience a lot of volatility and price spikes around the time of a proposed transaction. An exception will be where a ~~SPAC~~ shell company confirms that it meets certain conditions and makes certain disclosures such that we are satisfied that the ~~SPAC~~ shell company has sufficient measures in place to protect investors and so that the smooth operation of the market is not temporarily jeopardised (~~LR 5.6.18AG to LR 5.6.18FR~~)(UKLR 13.4.17G).

Restoration

Where discussions between parties terminate and/or the initial transaction falls away, we will generally seek to restore the listing. Given that the grounds for the suspension no longer exist, the shell company should contact us as soon as possible to apply for restoration under UKLR 21.4.3G.

Subsequently, should the shell company wish to pursue another initial transaction, it should once again consider the guidelines on suspension of listing set out within this Technical Note and contact us as soon as possible.

Cancellation and re-admission

As noted above, ~~UKLR 13.5.2-3G~~ 14.36G makes it clear that we will generally seek to cancel the listing of a company's equity shares when it completes an ~~reverse takeover~~ initial transaction. UK-regulated markets follow suit and will cancel the admission to trading. So, if the issuer wants to remain listed and admitted to trading, it will need to apply to us to be re-admitted to listing as well as making appropriate arrangements with the operator of the relevant market about its readmission to trading.

The application for re-admission to a regulated market is most likely to trigger the requirement for the issuer to publish a further prospectus. We may suspend listing pending publication of that prospectus if we believe, having considered the information in the market on the target, the initial transaction at the time and considered whether UKLR 13.4.17G5-6.18AG to LR 5.6.18FRJ have been complied with, that the smooth operation of the market is or may be temporarily jeopardised or it is necessary to protect investors. We will follow this approach in the case of acquisitions by a cash shell or SPAC.

The cash shell or SPAC shell company may apply for its enlarged share capital to be listed under LR 6 when it has completed the acquisition a suitable category (for example the equity shares (commercial companies category) other than the equity shares (shell companies) category, assuming that it can meet the applicable eligibility requirements for that category. Alternatively, it may wish to apply to be listed under LR 14. We will assess eligibility in the usual way and if re-admitted under LR 6, the usual rules for premium-listed commercial companies will apply.