Financial Conduct Authority
12 Endeavour Square
London
E20 1JN

By email: cp21-10@fca.org.uk

28 May 2021

Dear Sir, Madam

Re: Consultation Paper (CP21/10) on investor protection measures for special purpose acquisition companies: Proposed changes to the Listing Rules

We are writing on behalf of the British Private Equity and Venture Capital Association ("BVCA"), which is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 700 firms, we represent the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers and investors. Between 2015 and 2019, BVCA members invested over £43bn into nearly 3,230 UK businesses, in sectors across the UK economy ranging from heavy infrastructure to emerging technology. Companies backed by private equity and venture capital currently employ 972,000 people in the UK and the majority of the businesses our members invest in are small and medium-sized businesses.

Overview of BVCA recommendations

We broadly agree with the proposals included within this consultation paper. The BVCA supports, in principle, the measures being introduced to protect investors and the proposals appear to be well reasoned and balanced. We consider that, if calibrated correctly and accompanied with other recommendations from the Lord Hill Listing Review, the protections would be helpful in ensuring the UK remains an attractive location for investment. The introduction of proposed guidance explaining how the FCA will be assured will provide sponsors and investors with the clarity needed to use a SPAC for an initial public offering. The inclusion of the proposed proportionate, clear investor protections is key to providing investors the information they require to make informed decisions. However, it is important to review certain aspects of the proposals where further clarity is needed, as this will ensure they do not become overly burdensome or costly for business.

SPACs can be important structures for our members offering an exit option and therefore a capital solution via access to public markets. They can allow for more open-ended private equity investments. Private equity and venture capital ("PE/VC") firms are long-term investors, typically investing in unquoted companies for around three to seven years. This is a commitment to building lasting and sustainable value in business. When nearing the end of an investment period, PE/VC funds will look to several exit opportunities for an investment, including an IPO.

Features of the SPAC regime in the US

- **Insights from activity in the United States, where SPACs have recently grown in popularity.** In terms of global activity during 2020, most of which took place in the US, there were 138 SPAC IPOs raising $53 billion in aggregate[1]. The US Securities and Exchange Commission ("SEC") has recently become concerned with the activity and is now reviewing various aspects of the SPAC

[1] SPAC IPO Transactions Statistics - by SPACInsider

regime. We would encourage the FCA to utilise existing insight and knowledge when making changes to the Listing Rules, including noting concerns raised in the US, so that the UK can establish an optimal SPAC regime that serves the purposes of companies, investors, the capital markets ecosystem.

- **Projections**. We broadly agree with the Government's selection of features and risks of SPACs for investors. However, when compared with the US, we believe there is a significant omission from the consultation document. The consultation does not mention growth projections, which are a vital feature and a driver of SPAC activity in the US, as well as a source of potential risk. A key attraction of SPACs relative to traditional IPOs derives from the perception that SPAC sponsors, targets and others involved in the SPAC benefit from a safe harbour and can disclose projections and other valuation material that would usually not be disclosed in conventional IPO prospectuses. Some others contend that these growth projections can be misleading in certain instances. We recommend that the FCA consider all risks and more importantly vital features of a SPAC to ensure the UK can attract SPAC opportunities while remaining an attractive place to do business, in line with the Listing Review recommendations.

- **Proxy Statement.** There are a number of areas included in these proposals that warrant additional communication and disclosure with both the FCA and SPAC investors and shareholders. We would like to re-iterate our broad agreement with these proposals. However, we believe that the additional work that may be required by both sponsors and the FCA might be overly burdensome and costly. As such, we would like to propose that the FCA consider a similar approach to the US 'Proxy Statement', which is a form mandated by the SEC that contains various information on matters seeking shareholder approval, including a description of the proposed merger and governance matters. It also includes a range of financial information of the target company, such as historical financial statements, management's discussion and analysis, and pro forma financial statements showing the effect of the merger. If something of this sort were to be established in the UK, it could include information on meeting the proposed criteria (fair and reasonable statement), as well as proposed disclosure requirements to protect investors.

BVCA responses to the consultation questions

We have limited our responses to those questions we believe are particularly relevant to our members.

Q1: Do you agree with our description of the key features and risks of SPACs for investors?

Yes, we agree.

Q2: Are there other key features or risks that we should consider?

Yes, as mentioned in our introductory comments, it is our view that projections are a very important feature and potential risk for SPAC investors and should be considered. In the consultation document there is no mention of projections, which are considered a very important aspect of the SPAC model for both sponsors and investors in the US. The ability to provide projections in a SPAC deal benefitting from a safe harbour has been considered to be a main driver of SPAC activity.

Projections are a key feature and attraction of the SPAC process when compared to a traditional IPO, as they allow direct communication of financial projections to the market, and therefore investors, and allow visibility into the target's future financial growth. In a de-SPAC transaction, the target becomes

a publicly traded company by virtue of its merger into the SPAC, and the target company can include financial projections.

While we note that projections are an important feature, they may become a greater area of risk in the near future. With increasing numbers of companies recently going public through the SPAC process in the US, projection-related litigation risks may increase. We note that the SEC is looking into the issue of projections and considering publishing guidance aimed at clarifying key liability protections for these forward-looking statements, although SEC staff guidance is not binding. We would therefore suggest that the FCA consider referring to this guidance in due course.

We would like to re-iterate that it is paramount that the UK remains an attractive place to do business, and while the proposals in this consultation do a lot to promote this view, this is a major area that needs to be considered and included in the reform of Listing Rules in the UK.

Q3: Do you agree that SPACs should meet a size threshold as one of the criteria? If you do not think this is the right approach, please explain why.

Yes, the threshold appears to be reasonable.

Q4: Is our proposed threshold set at the right level and, if not, what threshold would you propose and what evidence can you provide to support this?

Yes, the threshold of £200m appears reasonable, although we have not had the opportunity to scrutinise this further to ascertain if smaller businesses may miss out. The threshold should remain subject to review.

Q5: Do you agree with our proposed criterion that proceeds should be ring-fenced by a SPAC so that they can only be used to fund an acquisition, redemption or repayment event?

Yes, we agree with this proposal.

Q6: As one of the criteria, do you agree that SPACs should set a time limit on their operations from the point of admission to listing? If not, please explain why.

Yes, we agree there should be a time limit for the reasons set out in the consultation document. The time limit would presumably incentivise management to pursue a target in a timely manner and in the interests of investors.

Q7: Do you agree with the 2-year period we propose for the time-limit, and flexibility for an extension of up to 12 months?

We agree with this proposal. If the flexibility for an extension is to be included in these proposals, we would advocate for including details in the proposed guidance on what circumstances an extension might be allowed, the rules on communication with shareholders and the shareholder vote proposed herein.

Q8: Do you agree that a Board approval should be required, and that this should exclude directors that are also a director of the target or a subsidiary of the target?

Yes, we agree with this proposal. Board approval is a very important feature to include in the UK SPAC regime.

Q9: Do you agree that the Board approval should exclude directors who have an associate that is a director of the target or any of its subsidiaries? Furthermore, are there other circumstances where we should consider conflicts of interest arising from associates of directors of a SPAC?

Yes, however clarity should be provided on what constitutes an associate. In the proposed guidance it should clearly state who might be an associate as well as a clear definition of a subsidiary.

Q10: Do you agree that the Board approval should also exclude any director who has a conflict of interest in relation to the target or its subsidiaries?

Yes, we agree with this proposal.

Q11: Do you agree that approval from shareholders, excluding SPAC sponsors, should be required in order to proceed with a proposed acquisition?

Yes, we agree with this proposal.

Q12: Do you agree that a 'fair and reasonable' statement should be published to shareholders based on advice from an appropriately qualified and independent adviser where any of the SPAC's directors have a conflict of interest in relation to the target or its subsidiary? Do you have feedback on who should be considered an appropriately qualified and independent adviser for this purpose?

No, we do not agree with this proposal. We believe that the consultation document lacks sufficient detail on what is being proposed and why it is necessary. There is a lack of clarity on what the statement will include, on what an appropriately qualified and independent advisor is and on what is already shared with investors.

From our understanding of the US regime, we note that there is a substantial amount of information included in both a proxy statement (referenced above) and the prospectus of the SPAC – a prospectus or AIM admission document (as applicable) is required in order for the enlarged group to be re-admitted to trading. These legal documents must contain detailed information on the acquisition, including corporate governance issues, and on the enlarged business as well as the aforementioned information referred to in our introductory comments on proxy statements.

Therefore, we would propose that a similar regime be established in the UK. This might include a proxy statement, as well as the already well-established prospectus, being submitted to the FCA at the relevant time which includes the information suggested above. If this were to be required in the UK, it could include information on how the SPAC has met the proposed criteria, including the disclosure requirements to protect investors.

Finally, we would like to re-iterate our support for proposals under the "Board and shareholder approval of a transaction" and add that these should be sufficient in protecting investors from any conflict of interest that may arise, in addition to general disclosure made in the prospectus and the proposed disclosure requirements.

Q13: Should a fair and reasonable statement potentially be required to support any proposed transaction, regardless of any conflict of interest being present for SPAC directors?

No, please see our response to question 12.

Q14: Do you agree with a criterion that a SPAC should include a redemption option for shareholders? If not, please explain why.

Yes, we agree with this proposal. It is a key criterion.

Q15: Will the proposed disclosure requirements be sufficient, when taken together with wider existing disclosure obligations, to protect investors and ensure the smooth operation of markets?

Yes, we agree that the proposed disclosure requirements will be sufficient in protecting investors. However, we have outlined one further area of interest that should be considered by the FCA below.

Q16: Is there any additional information that we should explicitly require to be disclosed which won't be addressed by the above, or are any elements likely to be difficult to satisfy for SPAC issuers?

As noted in our opening remarks and response to question 2, projections are a key feature of SPACs. However, they can also pose a risk to investors and may even become a greater risk in future. We recommend that to the extent the FCA consider a safe harbour or similar in establishing a bespoke regime for SPAC projections, that such regime include recommendations that projections included have a reasonable basis and that projections be identified as forward-looking and accompanied by meaningful cautionary statements.

It is our understanding that the SEC is concerned with projections and is reviewing them with the aim of publishing guidance for SPAC sponsors and investors. We suggest monitoring market developments in the US and other active SPAC markets in order to benefit from their experience prior to promulgating final rules.

Q17: Do you have any comments on our proposed supervisory and monitoring approach? We also welcome any feedback on proposed amendments to our Technical Note on cash shells and SPACs in Appendix 2

We believe that the proposed approach would benefit from some further clarity. We broadly agree that the FCA should be notified prior to announcing a transaction, with the various indications included in the proposal, however we are concerned that the proposal could potentially be time consuming and burdensome for sponsors.

As for our response to question 12, we propose some mirroring of the US regime. If a proxy statement were required, it would allow the FCA to monitor information on matters seeking shareholder approval, including a description of the proposed merger and governance matters. The statement would also include a host of financial information on the target company, set out in our introductory comments, such as historical financial statements and pro forma financial statements showing the effect of the merger. In addition, and more importantly for these proposals, it could include information on meeting the proposed criteria, as well as satisfying some of the proposed disclosure requirements to protect investors.

This would allow for a streamlined, efficient supervisory and monitoring approach from the FCA. Which would benefit sponsors, shareholders and investors, and promote SPAC activity in the UK.

Q18: Do you agree that it will be necessary for SPACs to contact us to request suspension in the event, post announcing a reverse takeover target, it no longer satisfies the proposed investor protection provisions?

Yes, we agree with this proposal. However, please see our response to question 17 for our proposals.

Q19: Given the risks posed by SPACs, are there other investor protections than those we have proposed, that we should consider? This could include, for example, exploring marketing restrictions or other means to limit access for individual investors who are less sophisticated.

Yes, as noted elsewhere in our response to this consultation, we believe that the FCA should consider the potential risk of projections. If projections are to be used in the UK SPAC market, and we believe they should be a feature, consideration should be given to how investors might need to be protected.

In our introduction and response to question 2 we note the importance of projections in the SPAC regime for both sponsors and investors. They allow for direct communication of financial projections to the market, and therefore investors, and allow visibility into the target's future financial growth. Having said that, we realise that they could potentially pose a risk to investors when they do not give a true and fair view and believe that an investor protection could be considered. In question 16 we have outlined what might be included in an additional disclosure on projections.

The BVCA would of course be willing to discuss this submission with you further - please contact Ciaran Harris (charris@bvca.co.uk) at the BVCA.

Yours faithfully,

Amy Mahon

Chair, BVCA Legal & Accounting Committee