



Financial Markets Law Committee (“FMLC”)

Securities Markets Scoping Forum

Date: Wednesday 19 May 2021

Time: 2.00pm to 3.00pm

Virtual meeting

Attendees:

Tamara Box (Moderator)	Reed Smith LLP
Andrew Bryan	Clifford Chance LLP
Mark Chalmers	Davis Polk & Wardwell London LLP
Leland Goss	International Capital Market Association
Chris Haynes	Gibson, Dunn & Crutcher UK LLP
Kristina Locmele	Slaughter and May
Ferdisha Snagg	Cleary Gottlieb Steen & Hamilton LLP
Christina Taranidou	Athens University of Economics and Business
Madeleine Wanner	Linklaters LLP
James Warbey	Milbank LLP
Sanjev Warna-kula-suriya	Latham & Watkins LLP
Brian Gray	FMLC Secretariat
Venessa Parekh	FMLC Secretariat
Chhavi Sinha	FMLC Secretariat
Katja Trela-Larsen	FMLC Secretariat

Guest Speaker

Chris Horton	Latham & Watkins LLP
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Regrets

Carolyn Jackson	Katten Muchin Rosenman UK LLP
Matthias Lehmann	University of Bonn

Registered Charity Number: 1164902.

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Minutes:

1. Introductions

- 1.1. Ms Box opened the meeting.
- 1.2. The FMLC CEO, Mr Gray, introduced himself.

2. The FMLC is in technological transition (Venessa Parekh)¹

- 2.1. Ms Parekh informed Forum members of some changes they may notice while the FMLC is in technological transition, including the use of a temporary domain and the new systems being trialed to track members' availability to attend Scoping Forum meetings.¹ Finally, she asked attendees to send in short testimonials about the FMLC for use on the FMLC website.

3. The SPAC market: E.U. and U.K. trends (Chris Horton)²

- 3.1. Mr Horton provided an overview of the trends in the market for Special Purpose Acquisition Companies (the “**SPAC**”) in the U.S., the E.U. and the U.K. He explained that the boom in SPAC Initial Public Offerings (“**IPOs**”) in the U.S. has led to an increase in M&A activity. Referring to E.U. market data and trends, he noted that the U.K. and the E.U. have a much smaller SPAC market. Turning to the U.K. SPAC market, Mr Horton noted that London has seen little activity owing to the rigidity of existing listing rules, an issue which was picked up by the U.K. Listings Review chaired by Lord Hill (the “**U.K. Listings Review**”).³ The findings of the U.K. Listings Review led the Financial Conduct Authority (the “**FCA**”) to announce on 31 March 2021 that it would consult on strengthening investor protection rules relating to SPACs.⁴ The FCA's consultation on investor protection measures for SPACs,

¹ Please see Appendix I below.

² Please see Appendix II below:

³ The UK Listings Review, chaired by Lord Hill, was launched by the Chancellor on 19 November 2020 as part of a plan to strengthen the UK's position as a leading global financial Centre.

⁴ FCA statement, *Future consultation on strengthening investor protections in SPACs*, (31 March 2021); available at: <https://www.fca.org.uk/news/statements/future-consultation-strengthening-investor-protections-spacs>

which has now been published, sets out proposed changes to the Listing Rules.⁵ Mr Horton explained that the FCA Consultation proposes to remove the presumption of suspension for SPACs that meet certain criteria with the intention of strengthening investor protections whilst maintaining the smooth operation of the market.⁶ He added that the FCA Consultation will be closing on 28 May 2021 and some of the industry associations have indicated that they will respond to this Consultation.

3.2. Members observed that the Consultation has been generally well received in the market although the proposals in it do not create a totally level playing field with the E.U. or the U.S. Ms Box asked attendees if there were any issues that this Scoping Forum should be exploring from an E.U. and U.S. competition perspective.

4. **Plenary discussion of upcoming developments and priorities (Tamara Box)**

4.1. Ms Box invited members to share any upcoming regulatory developments relevant for the Securities Market Scoping Forum. A member drew members' attention to the European review of Regulation (EU) 2017/2402 for laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, (the "**E.U. Securitisation Regulation**") and the equivalent review that would be happening in parallel in the U.K. He noted in addition the broader "future regulatory framework" exercise being done in the U.K. and suggested that a recommendation should be made for as many of the securitisation rules as practical to be included in the FCA Handbook rather than primary legislation in the U.K. to ensure flexibility to adapt to changing market conditions and the availability of technical guidance and clarity. Members discussed the approach the U.K. might adopt towards securitisation. Members then discussed a report published by the European Supervisory Authorities (the "**ESA's**") on the implementation and the functioning of the E.U. Securitisation Regulation and an Opinion published by the

⁵ FCA, *Consultation Paper CP 21/10: Investor protection measures for SPACs: Proposed changes to the Listing Rules*, (30 April 2021); available at: <https://www.fca.org.uk/publications/consultation-papers/cp21-10-investor-protection-measures-special-purpose-acquisition-companies-proposed-changes-listing>

⁶ The proposed criteria include—meeting a minimum size threshold based on the amount raised when a SPAC's shares are initially listed; a redemption option allowing investors to exit a SPAC before any acquisition is completed; adequate disclosures being provided to investors at the appropriate stages in a SPAC's lifecycle. For SPACs not meeting these conditions, the presumption of suspension would continue to apply.

ESAs on the jurisdictional scope of application of the Securitisation Regulation.⁷ These documents include recommendations on how to address initial inconsistencies and challenges, which may affect the overall efficiency of the current securitisation regime. A member noted that, given the absence of detailed guidelines under the EU rules, the market has adopted certain practices and the report and opinion from the ESAs either created legal uncertainty around market interpretations of existing rules or proposed to change those rules in ways that might create significant legal uncertainty in the future.

- 4.2. Another member added that the Financial Action Task Force ("FATF") has recently added the Cayman Islands to its Monitoring List, i.e., the list of jurisdictions under increased monitoring in the area of anti-money laundering/countering terrorist and proliferation financing. Members discussed the implication of this update in the U.K., E.U. and the U.S.
- 4.3. A member brought the Forum's attention to a recently published FCA Consultation on changes to Directive 2014/65/EU on markets in financial instruments as onshored by U.K. in the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018 (the "U.K. Markets in Financial Instruments Directive" or the "U.K. MIFID")⁸ conduct and organisational requirements.⁹ She explained that the Consultation proposes changes to the existing inducements rules relating to Small and Medium Size Enterprises ("SMEs") and Fixed Income, Currencies and Commodities ("FICC") research, and removes two sets of best execution reporting obligations on firms. Members agreed that the Consultation raises no issues of legal uncertainty for the Scoping Forum to discuss.

⁷ ESA, *Report on the implementation and functioning of the securitisation regulation*, 17 May 2021; Available at: <https://www.esma.europa.eu/press-news/esma-news/esas%E2%80%99-report-implementation-and-functioning-securitisation-regulation>

ESAs' Opinion to the European Commission on the Jurisdictional Scope of Application of the Securitisation Regulation, 25 March 2021; Available at: https://www.esma.europa.eu/sites/default/files/library/jc_2021_16_-_esas_opinion_on_jurisdictional_scope_of_application_of_the_securitisation_regulation_003.pdf

⁸ The FCA's, Consultation Paper defines the UK Markets in Financial Instruments Directive (MiFID) as the collection of laws and rules that regulates the buying, selling and organised trading of financial instruments. This includes the UK MiFID framework as onshored in full at the end of the transition period on 31 December 2020. The EU MiFID framework was transposed and implemented in the UK by a combination of Handbook rules, Treasury legislation, and directly applicable EU regulations (in the latter case, notably by EU MIFIR (No 600/2014), the MiFID Org Regulation ((EU) 2017/565) and a number of RTSs/ITSs)

⁹ FCA, Consultation Paper CP21/19: *Changes to UK MIFID's conduct and organisational requirements*; available at: [CP21/19: Changes to UK MIFID's conduct and organisational requirements \(fca.org.uk\)](https://www.fca.org.uk/consult/condocs/cp2119/cp2119.pdf)

5. Any other business

5.1 No other business was discussed.

The FMLC is in Technological Transition



Venessa Parekh
Research Manager

Registered Charity Number: 1164902.

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New Email Addresses



The FMLC is in technological transition. For this reason, you may receive emails from the temporary domain "@fmlc.uk", which we would ask you to use or copy in correspondence addressed to the FMLC Secretariat until further notice. We hope to revert to the domain name of "@fmlc.org" at the end of the transition.

During the aforementioned technological transition process you may not be able to easily reach the Secretariat by telephone. Please accept our apologies for this.

Invitations to Scoping Forums meetings



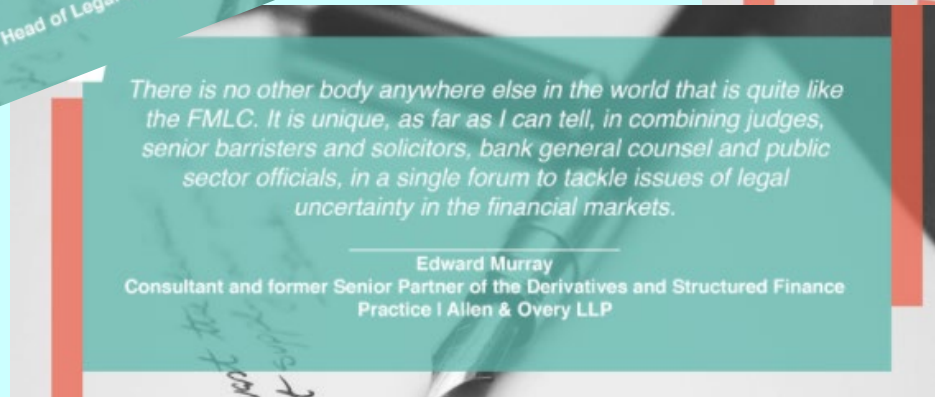
The Secretariat is trialing new systems to track members' availability to attend Scoping Forum meetings. We hope that you received a calendar invite for today's meeting.

The Secretariat hopes meeting invitations will improve administration of the Scoping Forums for members. Should you encounter any issues, however, please do let me know.

Please bear with us while we iron out a new process and continue to email forums@fmlc.uk to confirm your attendance.

Refreshing the FMLC Website

- A final component of our technological update is our website. We would be grateful to receive your testimonials or feedback for use on the FMLC website or social media



As always, please keep in touch

Katja Trela-Larsen, Forums Coordinator (forums@fmlc.uk)

and

Venessa Parekh, Research Manager (research@fmlc.uk)



US AND EUROPE COMPARISON

- In the 2021 wave of European SPACs the trend has been to closely follow US SPAC features
- These include redemption rights, tradeable units, shareholder approval of acquisitions, escrow accounts, warrants, PIPEs
- Key differences in Europe include:
 - Negative yield on the € proceeds in the escrow account
 - AIFMD
 - Different regime for disclosures at the PIPE stage
 - Tax structuring
- Amsterdam listing with a Dutch BV or Frankfurt listing with a Luxembourg company are the most common structures
- London has seen little activity owing to current listing rules

FCA CONSULTATION ON PROPOSED CHANGES TO THE LISTING RULES FOR CERTAIN SPACS – WHY?

- Lord Hill Review
- FCA announcement on 31 March 2021 (Future consultation on strengthening investor protections in SPACs)
- FCA consultation on proposed changes to the Listing Rules for certain SPACs (CP 21/10: Investor protection measures for SPACs: Proposed changes to the Listing Rules)

FCA CONSULTATION ON PROPOSED CHANGES TO THE LISTING RULES FOR CERTAIN SPACS – WHAT?

- FCA is proposing to remove the presumption of suspension for SPACs that meet certain criteria which are intended to strengthen investor protections whilst maintaining the smooth operation of the market
- The proposed criteria include the following:
 - Meeting a minimum size threshold based on the amount raised when a SPAC's shares are initially listed;
 - Setting a time limit on a SPAC's operating period if no acquisition is completed;
 - Ensuring monies raised from public markets are ring-fenced so that they are preserved to either fund an acquisition or be returned to shareholders (less any amounts specifically agreed to be used for a SPAC's running costs)

FCA CONSULTATION ON PROPOSED CHANGES TO THE LISTING RULES FOR CERTAIN SPACS – WHAT?

- The proposed criteria include the following: (cont.)
 - Ensuring shareholder approval for any proposed acquisition, based on sufficient disclosure of key terms and a “fair and reasonable” statement where any conflict of interest exists between SPAC directors and a target company;
 - A “redemption” option allowing investors to exit a SPAC before any acquisition is completed; and
 - Adequate disclosures being provided to investors at the appropriate stages in a SPAC's lifecycle (from a SPAC's initial listing to any final transaction resulting in a SPAC completing a takeover of another business and establishing a new company)
- For SPACs not meeting these conditions, the presumption of suspension would continue to apply

FCA CONSULTATION ON PROPOSED CHANGES TO THE LISTING RULES FOR CERTAIN SPACS – WHEN?

- The FCA is consulting for four weeks on the above proposals (with comments due by 28 May 2021) and is aiming to introduce the investor protection measures “by the summer”
- Impact on current SPAC transactions
- Market commentary on the proposals

QUESTIONS?

69.928

53.772

48.991

26.417

31.012



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