Hong Kong Institute of
Certified Public Accountants
香港會計師公會

29 October 2021

Our Ref.: C/CFAP, M131808

The Stock Exchange of Hong Kong Limited
8/F, Two Exchange Square,
8 Connaught Place, Central,
Hong Kong

Dear Sirs,

Re: Consultation Paper on Special Purpose Acquisition Companies

The Hong Kong Institute of Certified Public Accountants has considered the above-referenced consultation paper and our views on it are contained in the Appendix.

Should you have any questions on this submission, please feel free to contact me at the Institute on 2287 7084 or at <peter@hkicpa.org.hk>.

Yours faithfully,

Peter Tisman
Director, Advocacy & Practice Development

PMT/NCL/pk
Encl.

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Consultation Paper on Special Purpose Acquisition Companies (SPACs)

(A) Conditions for Listing

I. Investor Suitability

Question 1 - Do you agree that the subscription and trading of SPAC securities prior to a De-SPAC Transaction should be limited to Professional Investors only (see paragraph 149 of the Consultation Paper)?

The Institute is somewhat ambivalent about the proposed listing regime for Special Purpose Acquisition Companies (SPACs) as it stands, although we agree that this is an issue that merits consideration by the Exchange. The level of interest and activity around SPACs in some markets, primarily in the United States (U.S.), but also in the United Kingdom (U.K.) and Singapore, where revised rules and a new listing regime for SPACs, respectively, have been introduced, and the importance of Hong Kong's role as an international financial centre with attractive and competitive capital markets, makes this a topic that is difficult to ignore. We also note the interest among some companies in this region to list via SPACs.

Overall, our view is that if it is decided to introduce a listing regime for SPACs in Hong Kong, which seems likely given the support expressed from various quarters, we should proceed with caution, taking into account the specific characteristics of the Hong Kong market, which still has a substantial proportion of retail investor participation. SPACs are potentially highly speculative investments, as exemplified by the latest developments around Digital World Acquisition Corporation in the U.S., and they involve issues of shell and cash companies that would not otherwise be eligible for listing, or continuing to be listed, on the basis that they have no substantial business. At the same time, SPACs are unique in having a specific mandate that must be fulfilled within a defined period of time, otherwise they face delisting and their funds are being returned to shareholders.

We note that the changes in the U.K. and Singapore relating to SPACs are very recent, taking effect only in the past few months (as paragraphs 64-68 of the consultation paper (CP) explain) and that the surge in SPAC listings in the U.S. over the past couple of years has been accompanied by increased regulatory scrutiny and warnings to investors from the Securities and Exchanges Commission (CP, paras. 57-59). A Joint Study by academics from the Stanford Law School and New York University, referred to in the CP, indicates that post-merger SPAC price performance is below that of traditional initial public offerings (IPOs) (CP, para. 77).

On top of this, the Exchange and the Securities and Futures Commission have taken a number of steps to address concerns about shell company listings and reverse takeovers over the past few years and this particular concern was reiterated by the Exchange in the Consultation Paper on the Main Board Profit Requirement published in November 2020. Yet, as the current consultation paper explains, "A SPAC is a type of shell company that raises funds through an IPO for the purpose of conducting a business combination with an operating company within a pre-defined time period after listing (typically two years)" (CP, para. 17). Added to this, consideration also needs to be given to the long-term implications for the traditional IPO process were SPACs to become a significant route for new listings in future.

With reference to paragraphs 144 to 147 of the CP, we note that various views were expressed in preliminary discussions between the Exchange and different stakeholders on the investor suitability for SPACs. Trying to strike a balance between investor protection and competitiveness in terms of the proposed SPACs listing regime, the Exchange is proposing that the subscription and trading of SPAC securities prior to a "De-SPAC Transaction", should

be restricted to Professional Investors ("PIs") only, on the basis that PIs have more experience and knowledge to assess, monitor and mitigate the combination of risk associated with SPACs.

The proposal includes other safeguards to address major issues, such as the risk of market manipulation and insider dealing, as well as issues of quality, including the quality of management. These include:

(i) Setting a high bar for the minimum funds to be raised via a SPAC
(ii) Requiring a "Successor Company" to meet all new listing requirements

As a result, the proposed conditions and requirements for the listing of SPACs in Hong Kong would be among the most stringent internationally. Despite this, the Exchange remains confident that the proposed approach could attract high-quality "De-SPAC Targets", based on the evidence of the introduction, in recent years, of new listing regimes for biotech companies, under Chapter 18A of the listing rules (LRs), and companies with weighted voting rights, under LRs Chapter 8A, (CP, para. 12).

From an investor protection perspective, the proposal is understandable, especially given the relatively higher level of retail market participation in Hong Kong, compared with, e.g., the U.S. In addition, Hong Kong investors, in general, do not have the legal avenues available in the U.S. to tackle abusive behaviour by listed issuers.

However, the other side of the coin is that the extensive restrictions being proposed could raise questions about the attractiveness and viability of the regime. If the main reason for the launching of a listing regime for SPACs in Hong Kong is to encourage businesses that wish to list through SPACs to consider Hong Kong as a suitable venue, and to offer a competitive alternative to other overseas stock exchanges with SPAC listing regimes in place, such as the U.S., the UK and Singapore, which allow retail investor participation at the outset (CP, para. 143), there may be doubt over whether the proposed listing framework will serve the purpose.

For this reason, some members of the Institute's Corporate Finance Advisory Panel (CFAP) consider the regime needs to be opened to retail investors to be viable. They believe that the risk profile of SPACs is equal to, or lower than biotech companies listed under Chapter 18A of the LRs, particularly given that investors in SPACs can fully redeem their investments, subject to certain conditions. Both LRs Chapter 18A and Chapter 8A companies are open to subscription by retail investors, subject to certain safeguards, including requirements embedded in the listing conditions. Some may question whether it is fair to disallow retail investors, who may be aware of the risks involved in investing in SPACs, by applying more stringent protection measures in place than other exchanges.

Taking all things into consideration, our view, as indicated above, is that, if Hong Kong proceeds along this road, it should do so cautiously in the first instance. Given the potentially speculative nature of SPACs, from a corporate governance perspective, we would agree that, the Exchange should ensure adequate protection to investors, especially retail investors.

Some CFAP members suggest that, if the regime is open to PIs only at the pre-merger phase, the Exchange should consider relaxing some other requirements, such as the deal size, minimum number of investors and allocation of investors, etc. The proposed regime then could be geared towards being a more tailor-made investment tool for experienced PIs, for whom fewer protections are deemed necessary. This would help to increase the competitiveness of the SPAC listing regime in Hong Kong. We suggest that this could be considered further.

Meanwhile, we take this opportunity to reiterate that the definition of "Individual Professional Investor" is in need of review. As pointed out in the Institute's submission in response to the *Consultation Paper on Review of Chapter 37 – Debt Issues to Professional Investors Only*, in

February 2020, we see this as a concern given that the size of an investment portfolio that qualifies an individual to be called a "professional investor" has not been increased for almost 20 years, and is now equivalent only to the value of a small flat in Hong Kong. Moreover, a "portfolio" could be merely a time deposit at a bank. In conjunction with introducing any new listing regime targeted at PIs, therefore, the definition of who falls into this category should also be reviewed.

II. Arrangements to Ensure Marketing to and Trading by Professional Investors only

Question 2 - If your answer to Question 1 is "Yes", do you agree with the measures proposed in paragraphs 151 to 159 of the Consultation Paper to ensure SPAC's securities are not marketed to and traded by the public in Hong Kong (excluding Professional Investors)?

If subscription and trading of a SPAC's securities is to be restricted to PIs only, we generally agree with the measures proposed in paragraphs 151 to 159 of the CP. In particular we support the proposal that the Exchange will assign a special stock short name marker to the stock short names of SPAC shares and SPAC warrants to help the market differentiate them from the securities of other listed issuers (CP, para. 159). It may also be worth considering whether keeping the marker for Successor Companies, even after De-SPAC Transactions. Although a Successor Company will have gone through much of a regular IPO process, it may be useful to continue to alert investors as to the origin of the company, as this could have a bearing e.g., its valuation and the pricing of its securities.

III. Trading Arrangements

Question 3 - Do you consider it appropriate for SPAC Shares and SPAC Warrants to be permitted to trade separately from the date of initial listing to a De-SPAC Transaction? If not, do you have any alternative suggestions?

We have no strong views on this.

Question 4 - If your answer to Question 3 is "Yes", would either Option 1 (as set out in paragraph 170 of the Consultation Paper) or Option 2 as set out in paragraph 171 to 174 of the Consultation Paper) be adequate to mitigate the risks of extraordinary volatility in SPAC Warrants and a disorderly market? Do you have any other suggestions to address the risks regarding trading arrangements we set out in the Consultation Paper?

CFAP members consider that *Option 2 – allow both automatching of orders with Volatility Control Mechanism, and manual trades*, *on SPAC securities*, is preferred as majority of investors, including individual PIs and institutional PIs, generally place orders via electronic devices directly. Manual trades are not popular nowadays.

IV. Open Market Requirements

Question 5 - Do you agree that, at its initial offering, a SPAC must distribute each of SPAC Shares and SPAC Warrants to a minimum of 75 Professional Investors in total (of either type) of which 30 must be Institutional Professional Investors?

The Exchange seems confident that high-quality SPACs should attract sizeable commitments from large well-established investors (CP, para. 180 refers) and that it should not be a problem to gain a minimum of 75 PIs in total, of which 30 must be institutional PIs. We note that LRs Chapter 21 companies, which can be marketed in Hong Kong only to PIs, still require a

minimum of 300 shareholders and have a minimum board lot of HK$500,000. So, some further explanation of the proposed figures is required. At the same time, some CFAP members consider that the proposed requirement, particularly for a minimum of 30 institutional PIs, may be over-optimistic and would suggest that the Exchange further consults market practitioners to establish a suitable base level of PIs and institutional PIs for all SPACs.

Question 6 - Do you agree that, at its initial offering, a SPAC must distribute at least 75% of each SPAC Shares and SPAC Warrants to Institutional Professional Investors?

We agree that sufficient interest from institutional PIs needs be demonstrated and, without this it may be difficult to raise a minimum of HK$1 billion in initial offering funds. However specifying a figure of 75% seems somewhat arbitrary. There should be mechanism for allocating a larger portion than 25% to non-institutional investors if there is evidence of significant interest from this sector. Some CFAP members believe that the proposed allocation could make the market very illiquid and unattractive to investors. The outcome may be that it is the same small group of investors involved in most SPAC listings. These thresholds relating to Institutional PIs may become an obstacle to the establishment of SPACs in the Hong Kong market when compared with other major markets.

Question 7 - Do you agree that not more than 50% of the securities in public hands at the time of a SPAC's listing should be beneficially owned by the three largest public shareholders?

Question 8 - Do you agree that at least 25% of the SPAC's total number of issued shares and at least 25% of the SPAC's total number of issued warrants must be held by the public at listing and on an ongoing basis?

We have no particular issue with the proposals in Question 7 and 8 to try to ensure a more open market, although, clearly, there will be constraints on liquidity with the proposed PI-only regime.

Question 9 - Do you agree that the shareholder distribution proposals set out in paragraphs 181 and 182 of the Consultation Paper will provide sufficient liquidity to ensure an open market in the securities of a SPAC prior to completion of a De-SPAC Transaction or are there other measures that the Exchange should use to help ensure an open and liquid market in SPAC securities?

As suggested above, we have some doubts over whether the shareholder distribution proposals set out in paragraphs 181 and 182 of the CP will provide sufficient liquidity.

Question 10 - Do you agree that, due to the imposition of restricted marketing, a SPAC should not have to meet the requirements set out in paragraph 184 of the Consultation Paper regarding public interest, transferability (save for transferability between Professional Investors) and allocation to the public?

This seems reasonable given the limitations on marketing.

V. SPAC Share Issue Price

Question 11 - Do you agree that SPACs should be required to issue their SPAC Shares at an issue price of HK$10 or above?

Please give reasons for your views.

We do not have strong views on the level of the issue price of SPAC shares. Given that investment in SPAC shares will be restricted to PIs, this is likely to mitigate the relatively high price volatility associated with SPACs in the U.S.

VI. SPAC Fund Raising Size

Question 12 - Do you agree that the funds expected to be raised by a SPAC from its initial offering must be at least HK$1 billion?

We understand the rationale for the Exchange's proposal to set a high entry point for SPAC listing and De-SPAC Targets, to ensure that SPACs have the funds available to seek good quality De-SPAC Targets that have a proportionately higher transaction value.

However, we note the UK Financial Conduct Authority (FCA)'s policy statement and consultation feedback paper, *Investor protection measures for special purpose acquisition companies: Changes to the Listing Rules* (July 2021) states at paragraphs 2.7-2.8:

"We asked:

> 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.*
>
> 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?*

Summary of feedback

About half of the respondents that commented on this proposal agreed a size threshold was needed, but most thought £200m was too high, with most suggesting £100m (or no more than that) as an alternative threshold. They viewed this as better reflecting the size of SPAC we are likely to see in UK/European markets, and the likely size of prospective target companies. This is based on the fact that proceeds raised during a SPAC's IPO typically account for only a proportion (e.g. one-fifth) of the amount used for the actual acquisition, so a SPAC raising £100m may look at a target valued at up to £500m. Some noted that £100m would still require a SPAC to attract institutional investors to raise this level of funds, so it still achieves our intended policy outcome of ensuring scrutiny by institutional investors of the terms of a SPAC, the credibility of its management and other aspects."

The FCA concluded:

"We maintain that setting a minimum amount to be raised at initial listing should enhance investor protection for less sophisticated investors by ensuring more institutional investors are involved alongside them. All investors are responsible for undertaking their own due diligence.

However, institutional investors perform due diligence on a SPAC's management and structure, and this potentially leads to greater scrutiny of the investment proposition, giving co-investing individual investors some assurance. We also maintain that requiring a minimum level of funds to be raised is also more likely to mean a SPAC has an experienced management team and supporting advisors.

We agree with feedback that a lower size threshold of £100m will be sufficiently high to achieve the intended benefit of this approach, while being more appropriate to the relative size of likely targets in a UK context. So we have changed our final rules to require a minimum amount to be raised at initial listing of £100m."

Given the UK experience that funds raised in a SPAC listing may account for only 20% or 25% of the amount used for acquisition of a SPAC Target, this would point to a target valued at HK$4 billion - HK $5 billion in Hong Kong, which is quite high in the light of the relative size of De-SPAC Targets in Asia. Reducing the minimum funds raised in the initial offering to, e.g., HK$500 million, may be more realistic, particularly in view of the proposal to limit investment in SPACs to PIs, including institutional PIs, who must be major participants under the Exchange's proposal, and taking into account also the additional investment that will be required to be obtained from PIPE investors. The need for the greater investor protection for smaller investors afforded under the FCA's size requirement will, therefore, be reduced in Hong Kong. A lower initial offering threshold here may still be able to capture good quality De-SPAC Targets, including those with a smaller market capitalisation but with high growth potential.

Question 13 - Do you agree with the application of existing requirements relating to warrants with the proposed modifications set out in paragraph 202 of the Consultation Paper?

Question 14 - Do you agree that Promoter Warrants and SPAC Warrants should be exercisable only after the completion of a De-SPAC Transaction?

Question 15 - Do you agree that a SPAC must not issue Promoter Warrants at less than fair value and must not issue Promoter Warrants that contain more favourable terms than that of SPAC Warrants?

We have no particular issue with the proposals in Questions 13-15.

(B) SPAC PROMOTERS AND SPAC DIRECTORS

I. SPAC Promoters

Question 16 - Do you agree that the Exchange must be satisfied as to the character, experience and integrity of a SPAC Promoter and that each SPAC Promoter should be capable of meeting a standard of competence commensurate with their position?

Question 17 - Do you agree that the Exchange should publish guidance setting out the information that a SPAC should provide to the Exchange on each of its SPAC Promoter's character, experience and integrity (and disclose this information in the Listing Document it publishes for its initial offering), including the information set out in Box 1 of the Consultation Paper, or is there additional information that should be provided or information that should not be required regarding each SPAC Promoter's character, experience and integrity?

Question 18 - Do you agree that the Exchange, for the purpose of determining the suitability of a SPAC Promoter, should view favourably those that meet the criteria set out in paragraph 216 of the Consultation Paper?

Question 19 - Do you agree that at least one SPAC Promoter must be a firm that holds: (i) a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) license issued by the SFC; and (ii) at least 10% of the Promoter Shares?

Question 20 - Do you agree that, in the event of a material change in the SPAC Promoter or the suitability and/or eligibility of a SPAC Promoter, such a material change must be approved by a special resolution of shareholders at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting) and if it fails to obtain the requisite shareholder approval within one month of the material change, the trading of a SPAC's securities will be suspended and the SPAC must return the funds it raised from its initial offering to its shareholders, liquidate and de-list (in accordance with the process set out in paragraphs 435 and 436 of the Consultation Paper)?

Question 21 - Do you agree that the majority of directors on the board of a SPAC must be officers (as defined under the SFO) of the SPAC Promoters (both licensed and non-licensed) representing the respective SPAC Promoters who nominate them?

We generally agree with the proposals in Questions 16 to 21. Regarding the information set out in Box 1 of the CP (Question 18), which is quite extensive, the Exchange should set out more clearly and specifically how it will make use this information and what weight will be given to different aspects.

In addition, the proposal in paragraph 216 of the CP (Question 19) indicates that the Exchange will view favourably SPAC Promoters that can demonstrate that they have experience with regard to:

(i) Managing assets with an average collective value of at least HK$8 billion over a continuous period of at least three financial years; or

(ii) Holding a senior executive position (e.g. Chief Executive or Chief Operating Officer) at an issuer that is or has been a constituent of the Hang Seng Index or an equivalent flagship index

While we do not object this proposal, we suggest that the Exchange should evaluate the experience of joint SPAC Promoters as a whole together; otherwise this requirement would seem to benefit fund managers from large banks/ funds to the exclusion of fund managers from small-and-medium-sized firms/ funds.

(C) CONTINUING OBLIGATIONS

I. Funds Held in Trust

Question 22 - Do you agree that 100% of the gross proceeds of a SPAC's initial offering must be held in a ring-fenced trust account located in Hong Kong?

We agree with this proposal to ring-fence the proceeds from the initial offering as a protection to investors. Currently, for transactions conducted under the Takeovers Code, banks can help

ring-fence money for a general offer and should be able to take up the responsibility of acting as a custodian for SPAC proceeds. It should not be necessary to set up a separate trust, which could be complicated and incur extra costs, as well as involving other legal and tax implications.

Question 23 - Do you agree that the trust account must be operated by a trustee/custodian whose qualifications and obligations should be consistent with the requirements set out in Chapter 4 of the Code on Unit Trusts and Mutual Funds?

We agree with this proposal, if it is decided that 100% of the gross proceeds of a SPAC's initial offering is required to be held in a ring-fenced trust account located in Hong Kong.

Question 24 - Do you agree that the gross proceeds of the SPAC's initial offering must be held in the form of cash or cash equivalents such as bank deposits or short-term securities issued by governments with a minimum credit rating of (a) A-1 by S&P; (b) P-1 by Moody's Investors Service; (c) F1 by Fitch Ratings; or (d) an equivalent rating by a credit rating agency acceptable to the Exchange?

We suggest that the gross proceeds of the SPAC's initial offering should be held in the form of cash or bank deposits only. We do not agree that SPACs should be allowed to hold the proceeds in the form of any short-term government securities, as the value of these securities, even if their credit ratings are high, may still drop in a volatile market, resulting in a loss of principal. There would also be potential exchange rate risks.

Question 25 - Do you agree that the gross proceeds of the SPAC's initial offering held in trust (including interest accrued on those funds) must not be released other than in the circumstances described in paragraph 231 of the Consultation Paper?

We agree.

II. Promoter Shares and Promoter Warrants

Question 26 - Do you agree that only the SPAC Promoter should be able to beneficially hold Promoter Shares and Promoter Warrants at listing and thereafter?

Question 27 - If your answer to Question 26 is "Yes", do you agree with the restrictions on the listing and transfer of Promoter Shares and Promoter Warrants set out in paragraphs 241 to 242 of the Consultation Paper?

We generally agree with the rationale put forward in the CP in response to Question 26 and 27. However, there may be exceptional circumstances which need to be catered for, e.g., where a Promoter is declared bankrupt and control of his/ her assets passes to a trustee in bankruptcy.

Question 28 - Do you agree with our proposal to prohibit a SPAC Promoter (including its directors and employees), SPAC directors and SPAC employees, and their respective close associates, from dealing in the SPAC's securities prior to the completion of a De-SPAC Transaction?

We agree with the proposal, in order to minimise the risk of insider dealing.

III. Trading Halts and Suspensions

Question 29 - Do you agree that the Exchange should apply its existing trading halt and suspension policy to SPACs (see paragraphs 249 to 251)?

We agree with the rationale put forward in the CP.

(D) DE-SPAC TRANSACTION REQUIREMENTS

I. Application of New Listing Requirements

Question 30 - Do you agree that the Exchange should apply new listing requirements to a De-SPAC Transaction as set out in paragraphs 259 to 281 of the Consultation Paper?

We understand that the Exchange would like to apply new listing requirements to a De-SPAC Transaction, as set out in paragraphs 259 to 281 of the CP. This would prevent the use of SPACs to circumvent the quantitative and qualitative criteria for a new listing, which could result in the listing of a sub-standard businesses and/ or assets and reduce the quality and reputation of the Hong Kong market as a whole. It is also consistent with the Exchange's and the Securities and Futures Commission's long-standing policy and efforts to address the problem of shell activities and backdoor listings. This would suggest that there is little choice in the matter.

However, this creates something of a dilemma. Applying nearly the entirety of the new listing requirements, such as suitability and eligibility requirements, IPO sponsor appointment and due diligence requirements, to a De-SPAC Transaction, would in practice be likely to discourage SPAC listings in Hong Kong, as the costs and time involved in the De-SPAC Transaction may end up being similar to, or more than, listing via the traditional IPO listing framework. It would also result in a good deal of uncertainty because, even if a De-SPAC Transaction has gained unanimous approval at a shareholders' meeting, there will be no guarantee that the deal will go through or when it will go through.

While a SPAC will be required to publish a De-SPAC Announcement within 24 months of the date of its listing, the uncertainty will be exacerbated by the proposal in the CP that SPAC shareholders will be able to redeem SPAC shares only if they object the transaction (question 47 refers), which is not the case in other markets that provide for the listing of SPACs.

II. Eligibility of De-SPAC Target

Question 31 - Do you agree that investment companies (as defined by Chapter 21 of the Listing Rules) should not be eligible De-SPAC Targets?

We agree that including investment companies as eligible De-SPAC Targets would not make much sense.

III. Size of De-SPAC Target

Question 32 - Do you agree that the fair market value of a De-SPAC Target should represent at least 80% of all the funds raised by the SPAC from its initial offering (prior to any redemptions)?

We agree that De-SPAC Targets should have sufficient substance to justify listing, but that should be assured, in any event, by the fact that the Successor Company would need to meet

the new listing requirements. It also needs to be clarified whether a SPAC could pursue multiple targets and not just a single target. We understand that this is possible in the U.S.

We would like to seek clarification, in a situation where, for example, a significant proportion of investors redeem their shares and even with further PIPE investment, the SPAC has only proceeds of HK$700 million remaining, whether the SPAC could carry out a De-SPAC Transaction using 80% of that HK$700 million only?

Please also refer to our response to Question 12.

Question 33 - Should the Exchange impose a requirement on the amount of funds raised by a SPAC (funds raised from the SPAC's initial offering plus PIPE investments, less redemptions) that the SPAC must use for the purposes of a De-SPAC Transaction?

Question 34 - If your answer to Question 33 is "Yes", should a SPAC be required to use at least 80% of the net proceeds it raises (i.e. funds raised from the SPAC's initial offering plus PIPE investments, less redemptions) to fund a De-SPAC Transaction?

In principle, the answer to Question 33 is "yes" because that is the purpose of the SPAC raising the funds in the first place. However, as noted at paragraph 290 of the CP, the market practice is for the consideration for a De-SPAC Transaction to be settled mostly through payment in shares and for the cash raised by a SPAC to be used by the Successor Company for its future development. To prevent this arrangement would be to tie the hands of a SPAC and disadvantage the Successor Company. It could even cause the deal to fail. One option might be for the Successor Company to be required to explain in its prospectus how any unused SPAC proceeds will be employed.

IV. Independent Third Party Investment

Question 35 - Do you agree that the Exchange should mandate that a SPAC obtain funds from outside independent PIPE investors for the purpose of completing a De-SPAC Transaction?

As indicated in our response to Question 5, some CFAP members believe that the requirement of obtaining a minimum of 75 PIs in total, at least 30 of which must be institutional PIs, is already a tough ask. If, in addition, it is made mandatory to obtain funds from outside independent PIPE investors representing at least 25% of the expected market capitalisation of the Successor Company (albeit with a lower percentage if the Successor Company is expected to have a market capitalisation at listing of over HK$1.5 billion), they see this as being very challenging for SPAC Promoters.

It is noted in paragraph 294 of the CP that, in preliminary discussions with the Exchange, some stakeholders considered that the risk of over-valuation of the Successor Company could also be mitigated by (a) market reaction to the De-SPAC Transaction as reflected in a drop in the SPAC share price following the announcement of the transaction; and (b) the ability for SPAC shareholders to redeem their shares if they consider the terms of the De-SPAC transaction unattractive. We believe these two factors are relevant.

However, disinterested SPAC shareholders may not have sufficient information to make a clear judgment and may rely on SPAC Promoters. Given also the inherent conflicts of interest involved, we consider that independent PIPE investors could help to validate the transaction and facilitate price discovery. However, we query whether the 25% threshold for independent PIPE participation is too high and would suggest that this be reduced to, e.g., 10-15%, bearing in mind that there is no such requirement at all in the relevant overseas markets.

Question 36 - If your answer to Question 35 is "Yes", do you agree that the Exchange should mandate that this outside independent PIPE investment must constitute at least 25% of the expected market capitalisation of the Successor Company, with a lower percentage of between 15% and 25% being acceptable if the Successor Company is expected to have a market capitalisation at listing of over HK$1.5 billion?

Please refer to our response to Question 35.

Q37 - If your answer to Question 35 is "Yes", do you agree that at least one independent PIPE investor in a De-SPAC Transaction must be an asset management firm with assets under management of at least HK$1 billion or a fund of a fund size of at least HK$1 billion and that its investment must result in it beneficially owning at least 5% of the issued shares of the Successor Company as at the date of the Successor Company's listing?

While we understand that it would be desirable to obtain investment from at least one very substantial PIPE, we would just ask whether that PIPE needs to be restricted to an asset management firm or a fund.

Question 38 - If your answer to Question 35 is "Yes", do you agree with the application of IFA requirements to determine the independence of outside PIPE investors?

We have no particular issue with this.

V. Dilution Cap

Question 39 - Do you prefer that the Exchange impose a cap on the maximum dilution possible from the conversion of Promoter Shares or exercise of warrants issued by a SPAC?

Question 40 - If your answer to Question 39 is "Yes", do you agree with the antidilution mechanisms proposed in paragraph 311 of the Consultation Paper?

Question 41 - If your answer to Question 39 is "Yes", do you agree that the Exchange should be willing to accept requests from a SPAC to issue additional Promoter Shares if the conditions set out in paragraph 312 are met?

Question 42 - Do you agree that any anti-dilution rights granted to a SPAC Promoter should not result in them holding more than the number of Promoter Shares that they held at the time of the SPAC's initial offering?

We have no particular issues in relation to Questions 39 – 42 and agree that such anti-dilution measures should be put in place.

VI. Shareholder Vote on De-SPAC Transactions

Question 43 - Do you agree that a De-SPAC Transaction must be made conditional on approval by the SPAC's shareholders at a general meeting as set out in paragraph 320 of the Consultation Paper?

Question 44 - If your answer to Question 43 is "Yes", do you agree that a shareholder and its close associates must abstain from voting at the relevant general meeting on the relevant resolution(s) to approve a De-SPAC Transaction if such a shareholder has

a material interest in the transaction as set out in paragraph 321 of the Consultation Paper?

Question 45 - If your answer to Question 43 is "Yes", do you agree that the terms of any outside investment obtained for the purpose of completing a De-SPAC Transaction must be included in the relevant resolution(s) that are the subject of the shareholders vote at the general meeting?

We agree with the proposals reflected in Questions 43-45 in order to avoid conflicts of interest, as with large notifiable transactions generally, and to ensure that shareholders are in a position to make well informed decisions.

VII. De-SPAC Transactions Involving Connected De-SPAC Targets

Question 46 - Do you agree that the Exchange should apply its connected transaction Rules (including the additional requirements set out in paragraph 334) to De-SPAC Transactions involving targets connected to the SPAC; the SPAC Promoter; the SPAC's trustee/custodian; any of the SPAC directors; or an associate of any of these parties as set out in paragraphs 327 to 334 of the Consultation Paper?

We agree.

VIII. Alignment of Voting with Redemption

Question 47 - Do you agree that SPAC shareholders should only be able to redeem SPAC Shares they vote against one of the matters set out in paragraph 352?

We have some qualms about restricting shareholders' right of redemption in this way, particularly since this restriction does not apply in other relevant markets. It was also not the view of participants in the Exchange's preliminary discussion with stakeholders (CP, para. 340). Furthermore, it seems counter-intuitive that shareholders should have to vote against a proposal that they may believe to be good, simply because they want to redeem their investment, or part of it, for other unrelated reasons. The proposal may therefore increase the risk of failure of a sound De-SPAC Transaction and discourage potential SPAC Promoters, given the uncertainties. We understand the Exchange's rationale, which is intended as a further investor protection measure: "Implementing this prohibition should help ensure that the shareholder vote on the transaction functions as a meaningful check on the reasonableness of its terms of and would help curb abusive practices (such as over-valuation)" (CP, para. 340). However, with all the other checks and balances in the proposed regime, this may be seen as an overly cautious "belt and braces" approach. We suggest that this issue be reconsidered.

IX. Share Redemptions

Question 48 - Do you agree a SPAC should be required to provide holders of its shares with the opportunity to elect to redeem all or part of the shares they hold (for full compensation of the price at which such shares were issued at the SPAC's initial offering plus accrued interest) in the three scenarios set out in paragraph 352 of the Consultation Paper?

We agree.

Question 49 - Do you agree a SPAC should be prohibited from limiting the amount of shares a SPAC shareholder (alone or together with their close associates) may redeem?

We agree.

Question 50 - Do you agree with the proposed redemption procedure described in paragraphs 355 to 362 of the Consultation Paper?

Please refer to our response to Question 47. In addition, we have some doubts about the proposed the arrangement described in paragraph 360 of the CP, i.e.:

"In the case of a shareholder vote on a De-SPAC Transaction (see paragraph 352(b)), redemptions would be subject to completion of the De-SPAC Transaction. A SPAC's funds would remain held in trust if the De-SPAC Transaction does not successfully complete so that the SPAC can use them for the purpose of listing an alternative De-SPAC Target at a later date."

It is unclear how this dovetails with the de-listing conditions in Section (F) of the CP, under which is it proposed to immediately suspend the trading of a SPAC's securities if it fails to publish a De-SPAC Announcement within the De-SPAC Announcement Deadline (24 months of the SPAC listing) or fails to complete a De-SPAC Transaction within the De-SPAC Transaction Deadline (36 months of the SPAC listing). Is paragraph 360 intended to relate only to circumstances where the De-SPAC Transaction is put forward well within the deadlines referred to above, leaving sufficient time to put forward an alternative De-SPAC Transaction?

X. Forward Looking Information

Question 51 - Do you agree that SPACs should be required to comply with existing requirements with regards to forward looking statements (see paragraphs 371 and 372 of the Consultation Paper) included in a Listing Document produced for a De-SPAC Transaction?

We have no particular issues with this proposal.

XI. Open Market in Successor Company's Shares

Question 52 - Do you agree that a Successor Company must ensure that its shares are held by at least 100 shareholders (rather than the 300 shareholders normally required) to ensure an adequate spread of holders in its shares?

Please give reasons for your views.

We disagree. As the Successor Company, as for other issuers listed through a traditional IPO, will have to meet new listing requirements, and its securities would be opened for trading by retail investors, we do not see any reason to give a concession in terms of the minimum number shareholders, rather than a normal requirement for other listed issuers of at least 300 shareholders.

It would be the responsibility of SPAC Promoters to ensure that, at the time of completion of the De-SPAC Transaction, the requirement to have at least 300 shareholders is met. It could be done through a post De-SPAC placement of shares. On the basis that SPACs, which upon listing would be restricted to PIs only, are likely to have a much smaller shareholder base than 300 shareholders at the time they conduct a De-SPAC Transaction, we suggest that a grace period of, say, three months after the De-SPAC Transaction could be granted, to let the

Successor Company to meet this requirement. This is consistent with the LRs requirement applicable to other listed companies if they fail to meet the public float requirement.

Question 53 - Do you agree that the Successor Company must meet the current requirements that (a) at least 25% of its total number of issued shares are at all times held by the public and (b) not more than 50% of its securities in public hands are beneficially owned by the three largest public shareholders, as at the date of the Successor Company's listing?

We agree.

Question 54 - Are the shareholder distribution proposals set out in paragraphs 380 and 382 of the Consultation Paper sufficient to ensure an open market in the securities of a Successor Company or are there other measures that the Exchange should use to help ensure an open market?

Please refer to our responses to Questions 5, 12, 35 and 52.

XII. Lock-up Periods

Question 55 - Do you agree that SPAC Promoters should be subject to a restriction on the disposal of their holdings in the Successor Company after the completion of a De-SPAC Transaction?

Question 56 - If your answer to Question 55 is "Yes", do you agree that:
(a) the Exchange should impose a lock-up on disposals, by the SPAC Promoter, of its holdings in the Successor Company during the period ending 12 months from the date of the completion of a De-SPAC Transaction; and
(b) Promoter Warrants should not be exercisable during the period ending 12 months from the date of the completion of a De-SPAC Transaction?

Question 57 - Do you agree that the controlling shareholders of a Successor Company should be subject to a restriction on the disposal of their shareholdings in the Successor Company after the De-SPAC Transaction?

Question 58 - If your answer to Question 57 is "Yes", do you agree that these restrictions should follow the current requirements of the Listing Rules on the disposal of shares by controlling shareholders following a new listing (see paragraph 394 of the Consultation Paper)?

We have no particular issue with the proposals reflected in Questions 55-58.

(E) APPLICATION OF THE TAKEOVERS CODE

I. Prior to De-SPAC Transaction Completion

Question 59 - Do you agree that the Takeovers Code should apply to a SPAC prior to the completion of a De-SPAC Transaction?

We have no particular issue with this proposal. In the meantime, we would like to seek clarification as to how Note 2 in Rule 2.4 of the Takeovers Code is to be interpreted for SPACs, in particular how "existing issued voting share capital" is counted and whether promoter shares will be counted.

II. The De-SPAC Transaction

Question 60 - Do you agree that the Takeovers Executive should normally waive the application of Rule 26.1 of the Takeovers Code in relation to a De-SPAC Transaction, the completion of which would result in the owner of the De-SPAC Target obtaining 30% or more of the voting rights in a Successor Company, subject to the exceptions and conditions set out in paragraphs 411 to 415 of the Consultation Paper?

We agree.

(F) DE-LISTING CONDITIONS

I. Deadlines

Question 61 - Do you agree that the Exchange should set a time limit of 24 months for the publication of a De-SPAC Announcement and 36 months for the completion of a De-SPAC Transaction (see paragraph 423 of the Consultation Paper)?

We have no particular issue with this proposal, which is in line with the objectives of listing a SPAC.

Question 62 - Do you agree that the Exchange should suspend a SPAC's listing if it fails to meet either the De-SPAC Announcement Deadline or the De-SPAC Transaction Deadline (see paragraphs 424 and 425 of the Consultation Paper)?

In principle, we agree but please refer our response to Question 50**.** It needs to be clarified how this sits with the proposal in paragraph 360 of the CP that a SPAC's funds will remain held in trust if the De-SPAC Transaction does not successfully complete, so that the SPAC can use them for the purpose of listing an alternative De-SPAC Target at a later date.

Question 63 - Do you agree that a SPAC should be able to make a request to the Exchange for an extension of either a De-SPAC Announcement Deadline or a De-SPAC Transaction Deadline if it has obtained the approval of its shareholders for the extension at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting) (see paragraphs 426 and 427 of the Consultation Paper)?

As a Successor Company will need to go through much of a regular IPO procedure, which can be time consuming, we would suggest that an extension of up to an additional 12 months be allowed for completion of a De-SPAC Transaction.

II. Liquidation and De-Listing

Question 64 - Do you agree that, if a SPAC fails to (a) announce / complete a De-SPAC Transaction within the applicable deadlines (including any extensions granted to those deadlines) (see paragraphs 423 to 428 of the Consultation Paper); or (b) obtain the requisite shareholder approval for a material change in SPAC Promoters (see paragraphs 218 and 219) within one month of the material change, the Exchange will suspend the trading of a SPAC's shares and the SPAC must, within one month of such suspension return to its shareholders (excluding holders of the Promoter Shares) 100% of the funds it raised from its initial offering, on a pro rata basis, plus accrued interest?

Question 65 - If your answer to Question 64 is "Yes", do you agree that (a) a SPAC must liquidate after returning its funds to its shareholders and (b) the Exchange should automatically cancel the listing of a SPAC upon completion of its liquidation?

While the above proposals in Question 64 and 65 would be the logical outcome of a SPAC failing to achieve its objective, please refer to our response to Question 50**.** It needs to be clarified how this sits with the proposal in paragraph 360 of the CP that a SPAC's funds will remain held in trust if the De-SPAC Transaction does not successfully complete so that the SPAC can use them for the purpose of listing an alternative De-SPAC Target at a later date.

(G) CONSEQUENTIAL MODIFICATIONS AND EXEMPTIONS

Question 66 - Do you agree that SPACs, due to their nature, should be exempt from the requirements set out in paragraph 437 of the Consultation Paper?

Question 67 - Do you agree with our proposal to require that a listing application for or on behalf of a SPAC be submitted no earlier than one month (rather than two months ordinarily required) after the date of the IPO Sponsor's formal appointment?

We have no strong view on the proposals reflected in Questions 66 and 67.

Question 68 - Should the Exchange exempt SPACs from any Listing Rule disclosure requirement prior to a De-SPAC Transaction, or modify those requirements for SPACs, on the basis that the SPAC does not have any business operations during that period?

We do not believe that a SPAC should be exempted from all corporate governance disclosures, although, given its lack of business operations, it may not be necessary to require a SPAC to comply with the Environmental, Social and Governance Reporting Guide (Appendix 27 of the Main Board LRs).

Although a SPAC may not have any regular business operations during the period prior to a De-SPAC Transaction, some of the corporate governance requirements under the Corporate Governance Code and Corporate Governance (Appendix 14 of the Main Board LRs) may still be relevant. For example, the disclosure requirements related to (i) board operation and functioning; and (ii) risk management and internal control remain important. The former information is important for investors to properly assess the management and oversight of a SPAC and to enhance investor confidence in the board.

Since a SPAC may be dissolved if it fails to publish a De-SPAC Announcement within 24 months of the date of its listing, subject to any limited extension that may be granted by the Exchange (CP, para. 428), directors may be under some pressure to complete a deal without adequately evaluating potential SPAC Targets, thus increasing the risk to other SPAC shareholders. Therefore, assurance of proper risk management and internal control procedures, including in relation to how the SPAC's targets are selected, reviewed and decided upon, will be important to investors. This will also help to guard against possible conflicts of interest and lack of objectivity in decision making.

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