

Response to the HKEX Consultation Paper on Special Purpose Acquisition Companies

Lead Organizing Unit

PROFESSIONAL INVESTOR ASSOCIATION

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恩盈創新國際智庫

The Professional Investor Association responded on 24 October 2021 to the Hong Kong Stock Exchange's (the "**Exchange**") Consultation Paper (the "**Consultation Paper**") on Special Purpose Acquisition Companies ("**SPAC**"), together with an interested advisory group of 15 corporate units representing professional associations, academia, think tank, accounting firms, law firms, investment managers, corporate finance advisers and sponsors (collectively the "Correspondents Group").

The Correspondents Group welcomes the timely publication of the Consultation Paper to collect market views and believes the Exchange has presented a holistic approach to introducing new listing alternatives and fund raising structures within the current listing framework. Introducing SPAC to Hong Kong will bolster the competitive position of the Exchange compared with the other leading global exchanges.

The Correspondents Group has the following observations on the proposed new rules and implementation of the SPAC listing regime in Hong Kong:

I. Concern on Market Acceptance and Liquidity of SPAC Shares

We understand the purpose of the Exchange's proposal to restrict subscription and trading of SPAC securities prior to a De-SPAC Transaction to Professional Investors only. This approach would insulate the retail investors from the uncertainties and risks that are inherent in the early launching stage.

However, it is a widely held view among stock market analysts that high liquidity and trading volume of A share stock market in PRC are the principal factors contributing to a high proportion of participation by retail investors. We are of the view that preventing retail investors from participating in the subscription and trading of SPAC securities prior to a De-SPAC Transaction is likely to result in low liquidity and trading of SPAC securities.

In addition, the proposal that a SPAC must distribute SPAC Shares and SPAC Warrants to a minimum of 75 Professional Investors sets a relatively high threshold, in light of which we believe it is unnecessary to require a) that at least 40% of such Professional Investors (30 of the 75 Professional Investors) be Institutional Professional Investors and b) that such Institutional Professional Investors hold at least 75% of the securities to be listed. These additional thresholds regarding Institutional Professional Investors may become major obstacles to the establishment of a SPAC in the Hong Kong Market as compared

to other major markets, such as the US, the UK and Singapore. Moreover, the requirement of a board lot size and subscription size of at least HK\$1,000,000 for its SPAC Shares is too onerous and will further dampen the liquidity of SPAC securities.

The potential for low liquidity and trading volume will deter potential SPAC Promoters from choosing Hong Kong as the venue for launching their planned SPAC product.

Our recommendations:

1. The Exchange may consider allowing retail investors to participate in the subscription and trading of SPAC securities prior to a De-SPAC Transaction on a pilot scheme basis followed by periodic reviews of the level of risk to which retail investors are exposed.
2. The SFC and the Exchange may consider rolling out retail investor education together with appropriate associations and bodies before opening the SPAC products to retail investors by reference to the practice of SGX.
3. If retail investors are excluded, we suggest that the proportion of Institutional Professional Investors among the total Professional Investors be lowered from 40% (30 out of 75) to not less than 10% and that the proposed distribution requirement of at least 75% of each of SPAC Shares and SPAC Warrants to Institutional Professional Investors be removed.

II. High Threshold on Setting Up SPAC and Subsequent De-SPAC transaction

Our views on the adoption of the highest standards and the key thresholds for setting up a SPAC in HK compared with other global leading stock markets are summarized below:

1. HK\$1 billion initial offering size may be too high. Taking a regular IPO case in HK as an example, the market capitalization of a new listing applicant to the Main Board of the Exchange shall be no less than HK\$500,000,000, thus a 25% equity offering of a new listing applicant requires an offering size of at least HK\$125,000,000. In contrast, the Successor Company after De-SPAC with a HK\$1 billion SPAC will significantly limit potentials for De-SPAC opportunities.
2. Favourable criteria of SPAC Promoter are too high. Under the current proposal in this consultation, information about SPAC Promoter's character, experience and integrity are disclosed in the Listing Document.

Therefore, the investors have sufficient information to assess their investment decision and it is not necessary to set such favourable criteria to screen out those SPAC Promoters with higher than average standards of ability and experience.

3. 100% of the gross proceeds of a SPAC's initial offering must be held in a ring-fenced trust account located in Hong Kong.
4. At least 80% of the net proceeds (fund raised from the SPAC's initial offering plus PIPE investments, less redemptions) must be used to fund a De-SPAC Transaction
5. A SPAC must obtain funds from outside independent PIPE investors for the purpose of completing a De-SPAC transaction

On the other hand, we 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 so that at least one SPAC Promoter is regulated. We are of the view that the stake-holder requirement of one SPAC Promoter (Type 6 or Type 9 holder regulated under SFC and holds at least 10% of the Promoter Shares) is considered to be reasonable and in line with the current market practice on the condition that no compulsory requirement should be imposed on SPAC Promoter to subscribe to the initial offering of the SPAC. If we set the entry barriers of SPAC Promoter to contribute their own capital commitment too high, say, at least 10% of the initial offering of the SPAC, many SPAC Promoters will lack motivations to set up a SPAC in the HK market. We do agree to strike the balance between the entry barrier and agency theory.

Our recommendations:

1. Good quality De-SPAC Targets include those of smaller market capitalisation but with high growth potential. We suggest that the Exchange lower the required initial offering size of SPAC to HK\$500 million so that smaller De-SPAC Targets with less cash requirement would also be considered favourable targets for De-SPAC transactions.
2. We suggest that the Exchange permit a specified amount of net proceeds from a SPAC offering to be retained for operating expenditures. Under the current requirements of the US and Singapore markets, 90% of net proceeds are required to be deposited in an independent trust account. The corresponding requirements of the UK market allow certain proceeds to be used for operating expenditures and the rest of the proceeds is held in trust or an escrow account. Our proposal is to require the SPAC Promoters to prepare 24 month operating cashflow forecasts and to disclose in the SPAC prospectus, for investors' assessment, the amounts expected to be retained

for operating expenditures disclosed in the SPAC prospectus for investors' assessment. Meanwhile, we suggest that the Exchange introduce the role of reporting accountants, together with the sponsor of SPAC, to review the operating cashflow forecast and give a comfort letter for due diligence purpose.

3. The choice of acquisition payment method provides the SPAC Promoters and management team with a scope to structure De-SPAC transaction to achieve better value to shareholders. Therefore, in our view, the Exchange should not impose a requirement that at least 80% of the net proceeds raised by a SPAC be used to fund a De-SPAC transaction, as this would limit the flexibility of De-SPAC transaction structure and influence the long term investment value to the shareholders.

4. Given that Promoters will have stakes in the SPAC to align their interests together with the investors/shareholders of the SPAC, a compulsory requirement of obtaining funds from outside independent PIPE investors for the purpose of completing a De-SPAC transaction is not necessary in order to the agency problem of artificially high valuation and verification for De-SPAC transaction. We also suggest that the Exchange consider the SGX approach to this issue, which is to permit, as an alternative to a PIPE transaction, appointment of an independent valuer and preparation of an independent valuation report that is disclosed in the De-SPAC transaction documents for potential investors' assessment.

III. Commitment of SPAC Promoter and Investor Protection

We agree with the restrictive approach to SPAC Promoters. To avoid the agency problem of acquiring poor quality De-SPAC Targets, it is good to lock up the SPAC Promoters for 12 months after completion of De-SPAC transaction, such that the SPAC Promoters would share in the SPAC shareholders' exposure to the agency problem. In addition, SPAC promoters enjoy the mechanism of Promoter Warrants to reward their efforts to manage the SPAC so it is not necessary to issue Promoter Warrants at less than fair value with more favourable terms to the SPAC Promoters.

Conclusion

Finally, we highly appreciate the extensive efforts that the

Securities and Futures Commission (the “SFC”) and the Exchange have made in conducting the Consultation. In consideration of advantages of SPAC as a listing alternative in terms of a shorter time to listing, greater price certainty and flexibility in structuring a De-SPAC Transaction, we hope our recommendations may improve market acceptance and liquidity of SPAC to make a successful reform to the current listing regime from the perspective of investors and market practitioners and look forward to the successful launch of the new listing regime for SPACs in Hong Kong.

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)? Please give reasons for your views.

Response:

We understand the purpose of limitation to Professional Investors only (for the subscription and trading of SPAC securities prior to a De-SPAC Transaction) can insulate the retail investors from participating these new SPAC securities and the inherent uncertainties and risks in the early launching stage. However, prohibiting retail investors from the subscription and trading of SPAC securities prior to a De-SPAC Transaction deprives of their investment rights in early stage investment firms with good potential.

Referring to paragraphs 73 to 76, we observe that the price performances of SPAC securities prior to De-SPAC are relatively stable, as pinpointed in paragraph 76 possibly because the “downside protection” offered by SPAC IPOs where investors have the right to redeem the shares in their SPAC Units before the De-SPAC Transaction. In addition, we also have to understand that majority of assets of SPAC securities prior to De-SPAC is cash under custodian accounts so the trading price of SPAC securities prior to De-SPAC possibly reflects the fundamental value of this restricted cash value. That means the risk of the subscription and trading of SPAC securities prior to a De-SPAC Transaction may not perceive to be as high as other new launching securities.

Therefore, we suggest that the Exchange may consider allowing retail investors to participate in the subscription and trading of SPAC securities prior to a De-SPAC Transaction on a pilot scheme basis followed by continued reviews of the exposure to retail investors. The SFC and the Exchange may consider rolling out retail investor education together with appropriate associations and/or regulatory bodies before opening SPAC products to retail investors by reference to the practice of SGX.

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)? Please give reasons for your views.

Response:

Same as response to Question 1.

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? Please give reasons for your views.

Response:

Yes

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? Please give reasons for your views. Please provide further technical details if you suggest a different option.

Response:

Option 2 is preferred because it provides an open market for the buyer and sellers to trade.

Option 1 acts similarly as Over-The-Counter market. The major risk of Option 1 is that the market for a SPAC security might be very delicately traded, with enormously large bid-ask spreads that make it very hard to trade beneficially.

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? Please give reasons for your views.

Response:

See response to Question 9.

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? Please give reasons for your views.

Response:

See response to Question 9.

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? Please give reasons for your views.

Response:

Agree. The reason is to maintain an open market to avoid concentration in stock holding.

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? Please give reasons for your views.

Response:

Agree. The reason is to maintain an open market to avoid concentration in stock holding.

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? Please give reasons for your views.

Response:

We are of the view that banning retail investors from participating in the subscription and trading of SPAC securities prior to a De-SPAC Transaction may likely result in low liquidity and trading of SPAC securities. It is a widely held view among stock market analysts that high liquidity and trading volume in the A share stock market in the PRC are mainly attributable to the high proportion of participation by retail investors. Hence, we expect that the liquidity of SPAC securities may be very low without retail investor. As explained in our stance in Q1 and Q2, we suggest to open the market of SPAC securities in stages to retail investors.

If retail investors are excluded, we suggest to lower the proportion of Institutional Professional Investors among the total Professional Investors from 40% (30 out of 75) to not less than 10% and remove the distribution requirement of having at least 75% of each of SPAC Shares and SPAC Warrants issued to Institutional Professional Investors.

Professional investors as defined by the Securities & Futures Ordinance (“SFO”), are divided into two groups. The first group refers to the institutional professional investors specified under the SFO, e.g. the recognised exchanges, brokerages, banks, insurance companies, MPF schemes and collective investment schemes, and the companies who manage these investment schemes. The second group refers to individuals, corporations, trust corporations and partnerships whose wealth reach a specified level under the Securities and Futures (Professional Investor) Rules (Cap. 571D). The professional investor definition is comparable to other major financial centres; it helps establish a regime for private placement activities, and is important to the regulatory regime on investment product sales and intermediary supervision.

Therefore, the threshold of marketing to the Professional Investor is relatively high, making it unnecessary to set a high bar of at least 40% of Institutional Professional Investors to endorse a SPAC Securities and distribute at least 75% of the offering distribution. These thresholds may become big hurdles to set up SPAC in HK market compared with other major markets like US, UK and Singapore and deters good quality SPAC promoters to consider launching their SPAC securities in HK market.

In addition, a board lot size and subscription size of a value of at least HK\$1,000,000 for its SPAC Shares are too onerous baselines, which will further dampen the liquidity of SPAC securities.

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? Please give reasons for your views.

Response:

Agree. The current arrangement does not involve the general public and retail investor, so special treatment should be considered.

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.

Response:

We take neutral stance and no preference about the issue price.

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? Please give reasons for your views.

Response:

We are of the view that HK\$1 billion initial offering size may be too high. Taking a regular IPO case in HK as an example, a 25% equity offering of an IPO issuer reflects a market capitalization of approximately HK\$4 billion. By the same token, the Successor Company after De-SPAC may account for HK\$4 billion for its total market capitalization.

Good quality De-SPAC Targets include those of smaller market capitalization but with high growth potential. We suggest to lower the initial offering size of SPACs to HK\$500 million so that smaller De-SPAC Targets with less cash requirement can also be considered favourable targets for De-SPAC acquisition.

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? Please give reasons for your views.

Response:

Agree.

Question 14

Do you agree that Promoter Warrants and SPAC Warrants should be exercisable only after the completion of a De-SPAC Transaction? Please give reasons for your views.

Response:

Agree. Before completion of De-SPAC transaction, the SPAC is only restricted cash in custodian account so the additional cash received from exercise is no use.

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? Please give reasons for your views.

Response:

Agree. SPAC Promoters have Promoter Warrants to reward them for managing the SPAC. So it is not encourage to give double benefits to the 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? Please give reasons for your views.

Response:

Agree. SPAC Promoters act as the agency to manage the SPAC so their character, experience and integrity and their standard of competence constitute an important investment consideration to investors.

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? Please give reasons for your views.

Response:

Agree. It provides a bright-line rule for the SPAC promoters and listing professionals to make reference.

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? Please give reasons for your views.

Response:

We are of the view that the favourable criteria of SPAC promoter are too high.

Under the proposal in this consultation, SPAC Promoter's character, experience and integrity (and disclose this information in the Listing Document. Therefore, the investors have sufficient information to assess their investment decision and there is no necessary to set such favourable criteria to screen out those SPAC Promoters with higher than average standards of ability and experience.^[1]

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? Please give reasons for your views.

Response:

We 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 so that at least one SPAC Promoter is regulated.

We are of the view that the stake-holder requirement of one SPAC Promoter (Type 6 or Type 9 holder regulated under SFC and holds at least 10% of the Promoter Shares) is considered to be reasonable in line with the current market practice on the condition that no compulsory requirement should be imposed on SPAC Promoter to subscribe the initial offering of the SPAC. We take the current practice of private equity fund as an example.

Private equity funds (buyout, venture capital and growth equity funds) are typically structured as limited partnerships, which have two types of partners: limited partners (LPs), which are passive investors in the fund; and a general partner (GP), which is the manager of the fund. The GP capital commitment is made by the firm and/or individuals that own the GP. Historically, this GP commit was 1% of the total committed capital of the fund.

We totally understand agency theory explores the relationship between a principals and agents in an enterprise, and the problems that can arise. In private equity, the LPs are the principals and the GP is the agent. In private equity funds, the GP has pretty much unfettered control over the management of the fund, and LPs have limited visibility into the management of the fund. In fact, by law, LPs must be passive investors in the fund and cannot be active participants in the management of the fund, or there may be some very unhappy tax and legal consequences. Because of the control GPs have in the fund,

they will be incentivized to maximize the cash flows the GP will receive, often at the expense of the LPs. If however, the GP (and the owners of the GP) invest a meaningful amount of their own personal capital into the fund, their interests are more aligned with those of the LPs, which is very important. The same theory applies to the case between SPAC Promoters and investors.

If we set the entry barriers of SPAC Promoter to contribute their own capital commitment too high, say, at least 10% of the initial offering of the SPAC, the motives of SPAC Promoters to set up SPAC in HK market may be deferred. We do agree to strike the balance between the entry barrier and agency theory as depicted above.

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)? Please give reasons for your views.

Response:

Agree. It can protect the investors' interests.

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? Please give reasons for your views.

Response:

Agree. This avoid the divergency between SPAC Promoters and the board of directors of a SPAC. Under the current requirements of US, US and Singapore, their laws and corporate governance listing requirements typically require that independent directors comprise a majority of the board of a SPAC (or at least a majority of the board committees) to ensure the board of directors of a SPAC will act for the best interests of the SPAC, not just for the SPAC Promoters.

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? Please give reasons for your views.

Response:

We suggest to allow a specified amounts be allowed to be retained for operating expenditures. Referring to current requirements of US and Singapore market, 90% is stipulated to deposit in an independent trust accounts. The respective requirements of UK market allow certain proceeds to use for operating expenditures and the rest of the proceeds is held in trust or an escrow account.

Our proposal is to let the SPAC Promoters to prepare 24 month operating cashflow forecasts and specify the amounts retained for operating expenditures disclosed in the SPAC prospectus for investors' assessment. Meanwhile, we suggest to introduce the role of reporting accountants, together with the sponsor of SPAC, to review the operating cashflow forecast and give a comfort letter for due diligence purpose.

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? Please give reasons for your views.

Response:

Agree, for better investor protection.

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? Please give reasons for your views.

Response:

We take neutral stance on the products.

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? Please give reasons for your views.

Response:

Please see the response to Question 22.

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? Please give reasons for your views.

Response:

Agree

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? Please give reasons for your views.

Response:

Agree. The main purposes of Promoter Shares and the Promoter Warrants are specially designed for the Promoters to justify and reward their performance to manage the SPAC.

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? Please give reasons for your views.

Response:

Agree. SPAC Promoter possesses price-sensitive information most of the time before De-SPAC because the formation purpose of SPAC is to look for potential acquisition (De-SPAC).

Question 29

Do you agree that the Exchange should apply its existing trading halt and suspension policy to SPACs (see paragraphs 249 to 251)? Please give reasons for your views.

Response:

Agree.

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? Please give reasons for your views

Response:

We understand that the Exchange apply new listing requirements to De-SPAC transactions, in line with the current standards adopted by the regulatory bodies in US, UK and Singapore. Following our responses to Question 12, we suggest to lower the minimum initial offering size be lowered such that those De-SPAC targets can not only fulfil the new listing requirements, but also justify a reasonable transaction value for the De-SPAC transaction.

Question 31

Do you agree that investment companies (as defined by Chapter 21 of the Listing Rules) should not be eligible De-SPAC Targets? Please give reasons for your view.

Response:

Considering the reasons stated in paragraphs 2 and 95 - 102, we are of the view that investment companies (as defined by Chapter 21 of the Listing Rules) should also be eligible as De-SPAC Targets.

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)? Please give reasons for your views.

Response:

We are of the view that, under an efficient market hypothesis, the fair value of the SPAC should reflect its fundamental cash value under the custodian account before De-SPAC transaction, assuming that no information leakage triggering unusual price and trading volume movement and investors are rational. Therefore, the transaction value of the De-SPAC Targets should be comparable to all the funds raised by the SPAC from its initial offering (prior to any redemptions) and 80% seems to be a reasonable guideline such that De-SPAC Targets are businesses with sufficient substance to justify a listing. De-SPAC Targets are businesses with sufficient substance to justify a listing.

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? Please give reasons for your views.

Response:

We do not agree that the SPAC must use the funds raised by a SPAC for the purposes of a De-SPAC Transaction. Please see our response to Question 34.

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? Please give reasons for your views.

Response:

We do not agree that the SPAC must use the fund raised from initial offering plus PIPE investments for the purpose of De-SPAC transaction and hence use at least 80% of the net proceeds for that.

For a normal merger and acquisition, investors can assess the value and method of payment that an acquirer offers for a potential target. The choice of cash, equity, debt or a combination provides an inside look into how management values their shares as well as the acquirer's ability to unlock value through an acquisition. A De-SPAC Target can be purchased using cash, stock, or a mix of the two. Stock purchases are the most common form of acquisition; however, the greater the confidence management has in the acquisition, the more they will want to pay for stocks in cash. This is because management believes the shares will eventually be worth more after synergies are realized from the merger. Under similar expectations, the De-SPAC target will want to be paid in stock. If paid in stock, the De-SPAC target becomes a partial owner in the acquirer and a beneficiary of expected synergies. Alternatively, the less confident a SPAC is about the De-SPAC target's relative valuation, the more the acquirer will want to share some of the risks with the seller. Thus, the acquirer will want to pay in stock. In addition, the unused and retained cash can be used for financing the future development and operation of the De-SPAC target.

The choice of acquisition payment method provides the SPAC Promoters and management team with a scope to structure De-SPAC transaction to achieve better value to shareholders.

Therefore, we are of the view that the Exchange should not impose restrictions of 80% or more of the net proceeds, which will limit the flexibility of De-SPAC transaction structure and influence the long term transaction value to the shareholders

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? Please give reasons for your views.

Response:

We are of the view that it is not mandatorily necessary for the Exchange to require independent PIPE investment. We fully understand the Exchange’s concern about the risk of artificial valuations of De-SPAC Targets could be mitigated by the validation of independent third parties, such as outside PIPE investors.

The shareholder’s approval mechanism has been in place as the same as the requirement for Reverse Takeover (RTO). The additional requirement, that outside independent PIPE investment constitute at least 25% of the expected market capitalisation of the Successor Company, implies that the Exchange imposes a more stringent requirement than RTO and puts a similar requirement of 25% independent fund raising like IPO. Both RTO and IPO requirements concurrently put two bars on SPAC and make SPAC offering extremely difficult. It defeats the purpose of having SPAC as an alternative to a

traditional IPO as doing so potentially results in a shorter time to listing, greater price certainty and flexibility in structuring a De-SPAC Transaction.

Given that Promoters have stakes already in the SPAC to align their interests together with the investors/shareholders of the SPAC so as to avoid the agency problem of artificially high valuation for De-SPAC transaction, we suggest to make reference to the SGX approach to appoint independent valuer to prepare an independent valuation report disclosed in the De-SPAC transaction documents.

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 give reasons for your views.

Response:

Refer to our response to Questions 35.

Question 37

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? Please give reasons for your views.

Response:

Refer to our response to Questions 35.

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? Please give reasons for your views.

Response:

Refer to our response to Questions 35.

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? Please give reasons for your views.

Response:

Agree, for protection of shareholders and investors of 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? Please give reasons for your views and provide any suggestions for alternative dilution cap mechanisms that could be considered.

Response:

Agree, for protection of shareholders and investors of SPAC.

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? Please give reasons for your views.

Response:

Agree.

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? Please give reasons for your views.

Response:

Agree.

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? Please give reasons for your views.

Response:

Agree, for better protection of the interest of the SPAC shareholders.

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? Please give reasons for your views.

Response:

Agree, the same rationale as the listing requirements for equity securities under chapter 14 and chapter 14A of Listing Rules.

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 DeSPAC Transaction must be included in the relevant resolution(s) that are the subject of the shareholders vote at the general meeting? Please give reasons for your views.

Response:

We have no comment on Question 45 because we propose to remove the requirement for outside investment and adopt independent valuation instead.

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? Please give reasons for your views.

Response:

Agree, the same rationale as the listing requirements for equity securities under chapter 14A.

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? Please give reasons for your views.

Response:

Agree.

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? Please give reasons for your views.

Response:

We generally agree to provide holders of its share with the opportunity to elect or redeem all or part of the shares they hold. However, we advocate to lower the portion of the gross IPO proceeds of SPAC to allow a specified amounts retained for operating expenditures, instead of 100% proceeds to deposit into the custodian accounts and hence we are of the view that full compensation of the remaining proceeds from initial offering plus accrued interest.

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? Please give reasons for your views.

Response:

Agree.

Question 50

Do you agree with the proposed redemption procedure described in paragraphs 355 to 362 of the Consultation Paper? Please give reasons for your views.

Response:

Agree.

Referring to 60 of the paragraph of the Consultation Paper and the most recent regulatory developments in the US, the SEC published a staff statement on accounting and reporting considerations for warrants issued by SPACs. The Office of the Chief Accountant's concluded that, based on the fact pattern of the terms of warrants issued by a SPAC, they should be classified as a "liability" measured at fair value, under US GAAP guidance, rather than as "equity".

Under US GAAP, whether the SPAC Warrants will be treated as liabilities depends on whether the shares that are issued on exercise of the warrants are redeemable. Redeemable shares issued by the SPACs will likely be treated as temporary or mezzanine equity, rather than permanent equity.

Please consider if the redemption procedures (the way it is currently worded) would have any implications on the accounting treatment of warrants.

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? Please give reasons for your view.

Response:

Agree.

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.

Response:

We agree because the private placement for initial offering of SPAC and subsequent De-SPAC transaction do not launch public offering and it is unrealistic to place SPAC securities to more than 300 shareholders under the book building of placement.

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? Please give reasons for your views.

Response:

Agree, the same rationale for maintaining open market under Listing Rules.

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 give reasons for your views.

Response:

Agree, the same rationale for maintaining open market under Listing Rules.

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? Please give reasons for your views.

Response:

We agree with the restriction. To avoid the agency problem of acquiring poor quality of De-SPAC Target, it is good to lock up the SPAC Promoters for 12 months after completion of De-SPAC transaction such that the SPAC Promoters would share in the exposure as the SPAC shareholders.

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 DeSPAC Transaction? Please give reasons for your views.

Response:

Agree. See our response to Question 55.

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? Please give reasons for your views.

Response:

Agree, the same rationale for maintaining market stability under Listing Rules 10.07 and 10.08.

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)? Please give reasons for your views.

Response:

Agree, the same rationale for maintaining market stability under Listing Rules 10.07 and 10.08.

Question 59

Do you agree that the Takeovers Code should apply to a SPAC prior to the completion of a De-SPAC Transaction? Please give reasons for your views.

Response:

Agree. SPACs is one of the listed companies in Hong Kong and should be subject to the regulatory regime of the Takeovers Code.

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? Please give reasons for your views.

Response:

Agree. The very purpose of SPAC is to acquire a De-SPAC Target which is destined to involve a change of control. So it will be highly burdensome going through the process under Rule 26.1 of the Takeovers Code in relation to a De-SPAC Transaction.

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)? Please give reasons for your views.

Response:

Agree. It is a reasonable time comparable with other SPAC markets.

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 DeSPAC Transaction Deadline (see paragraphs 424 and 425 of the Consultation Paper)? Please give reasons for your views.

Response:

Agree, for protection of investors.

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)? Please give reasons for your views

Response:

Agree, providing more flexibility for the De-SPAC process

Question 64

Do you agree that, if a SPAC fails to (a) announce / complete a DeSPAC 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? Please give reasons for your views.

Response:

Agree, for protection of investors.

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? Please give reasons for your views.

Response:

Agree.

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? Please give reasons for your views.

Response:

Agree.

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? Please give reasons for your views.

Response:

Agree.

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? Please give reasons for your views.

Response:

Agree.