<u>Submitted via Qualtrics</u>

Company/Organisation view

<u>Question 1</u>
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)?

Yes

Please give reasons for your views.

The proposed requirement would result in retail investors being excluded from subscription for and trading of SPAC securities prior to a De-SPAC Transaction (the "RI Exclusion"), which is unique to the Hong Kong SPAC framework proposed in the HKEX Consultation Paper on Special Purpose Acquisition Companies (the "HKEX Consultation Paper") as there are no similar requirements in the US and Singapore SPAC regimes. The RI Exclusion also represents a major departure from the traditional Hong Kong regulatory focus of ensuring fair treatment and access between retail investors and professional investors.

However, since Professional Investors (the "PIs") are better placed than retail investors to assess, monitor and mitigate the combination of risks associated with SPACs, e.g., PIs, particularly Institutional PIs, perform due diligence on a SPAC's management and structure, and this potentially leads to greater scrutiny of the investment proposition, we accept that the proposed RI Exclusion is a step in the right direction, especially when Hong Kong is in the early stage of establishing its own SPAC framework, and given that currently there is a lack of class action procedure, system and legal precedents for aggrieved retail investors to turn to if the SPAC Promoter does not perform proper due diligence or closes the De-SPAC Transaction in bad faith. It should also be noted that the RI Exclusion does not apply to the Successor Company as its securities would be freely transferable amongst all types of investors.

<u>Question 2</u>
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)?

Yes

Please give reasons for your views.

We are of the view that the measures proposed in paragraphs 151-159 on pages 34-35 of the HKEX Consultation Paper are sufficiently comprehensive to ensure that SPAC's securities are not marketed to, and traded by, the public in Hong Kong.

Question 3a

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?

Yes

Please give reasons for your views.

By way of introduction, since the US dominates the SPAC market globally (the proceeds raised from US SPAC IPOs increased from US$10.0 billion in 2017 to US$13.6 billion in 2019 and then grew to US$83.4 billion in 2020. In September 2021, US-listed SPAC IPO proceeds exceeded the whole of 2020 and amounted to US$122 billion), its SPAC trading arrangements and market practice could be regarded as the most representative and fit for adoption by SPAC regimes in other jurisdictions. In addition, the UK's Financial Conduct Authority (the "FCA") and the SGX had recently conducted consultations on SPACs, which were completed in April and September 2021 respectively, and the SGX became the first major stock exchange in Asia to permit listing of SPAC shares on it effective from 3 September 2021 after amendments were made to the SGX-Main Board Listing Rules (the "SLR), the views expressed in the SGX's and FCA's SPAC consultations as well as the relevant SLR 210(11), can be used as points of reference for the development of the SPAC framework in Hong Kong.

Bearing the above in mind, we consider it appropriate for SPAC Shares and SPAC Warrants to be traded separately in Hong Kong based on the US and Singapore precedents as described in the following paragraphs (see also paragraphs 3.25-3.26 on pages 48-49 of the SGX Response Paper).

It is noted that separate trading of SPAC Warrants and SPAC Shares is a fundamental feature of the SPAC regime in the US, which usually occurs 52 days after the SPAC IPO. The main reason for the issuance of SPAC Warrants is to compensate SPAC shareholders for (i) the lost opportunity costs of having committed money to the SPAC which they could have invested elsewhere; and (ii) the lack of return on their investment until a business combination (i.e., De-SPAC Transaction in Hong Kong's proposed SPAC framework) occurs. Without detachability from SPAC Shares (i.e., the shares and the warrants would not have to be traded as a single unit) and separate trading of SPAC warrants, investors are unlikely to be interested in investing in SPACs in Hong Kong due to the inflexibility and limited investment upsides, as compared to other active SPAC markets such as the US.

Separate trading of SPAC Warrants is also endorsed by the SGX, which originally rejected the idea in the SPAC consultation paper dated 31 March 2021 due to its concerns over the significant dilutive effect of the retention and subsequent exercise of warrants by SPAC shareholders after the business combination (i.e., the De-SPAC Transaction in Hong Kong's proposed SPAC framework). However, after considering market feedback, the SGX decided to permit separate trading of SPAC Warrants in recognition that the detachability of warrants and the ability to trade shares and warrants separately (i) are the main draw for SPAC IPO

investors, who require some benefits in return for investing in a SPAC for up to 36 months; and (ii) remain fundamental to potential investors' considerations in a SPAC investment and comprises an inherent feature that ultimately gives SPACs its commercial attractiveness.

For the above reasons, we are of the view that it is appropriate for the SPAC regime in Hong Kong to have a separate trading arrangement for SPAC Shares and SPAC Warrants.

Question 3b
As your answer to question 3a is "No", do you have any alternative suggestions?

Please set out any alternative suggestions below.

Question 4a
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?

Option 2

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

We are satisfied that Option 2 as set out in paragraph 171 to 174 on pages 37-38 of the HKEX Consultation Paper is adequate to mitigate the risks of extraordinary volatility in SPAC Warrants and a disorderly market.

Question 4b
Do you have any other suggestions to address the risks regarding trading arrangements we set out in the Consultation Paper?

No

Please give any suggestions below:

Please refer to the answer to above Question 4(a) and we have nothing further to add in this regard.

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?

Yes

Please give reasons for your views.

While we agree in general that the proposed requirement would help achieve a good distribution of holders of SPAC Shares and Warrants, it would be helpful if the Stock Exchange could explain why 75 PIs (30 of whom are institutional PIs) is chosen as the benchmark minimum.

<u>Question 6</u>
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?

Yes

Please give reasons for your views.

Yes. Please refer to the answer to above Question 5.

<u>Question 7</u>
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?

Yes

Please give reasons for your views.

Since the Stock Exchange proposes to consider a De-SPAC Transaction to be a deemed new listing (see paragraph 260 on page 60 of the HKEX Consultation Paper), and the proposed requirement is similar to Rule 8.08(3) of the Main Board Listing Rules (the "Listing Rules" or "Rules" or LR"), hence, it is acceptable.

<u>Question 8</u>
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?

Yes

Please give reasons for your views.

The proposed requirement is similar to LR 8.08(1), hence, it is acceptable. However, the Stock Exchange may consider clarifying whether the word "public" as used in this Question is to be interpreted as "individual professional investors".

Question 9a

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?

Yes

Please give reasons for your views.

Please refer to the answers to above Questions 5-8. Accordingly, we are satisfied that the shareholder distribution proposals set out in paragraphs 181 and 182 on page 40 of the HKEX Consultation Paper will provide sufficient liquidity to ensure an open market in the securities of a SPAC, albeit in a PI only market, prior to completion of a De-SPAC Transaction.

Question 9b

Are there other measures that the Exchange should use to help ensure an open and liquid market in SPAC securities?

No

Please set out any suggestions for other measures below.

Please refer to the answer to above Question 9(a).

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?

Yes

Please give reasons for your views.

Because of the RI Exclusion under the proposed SPAC framework in Hong Kong, SPAC Shares will be marketed to and traded by only PIs before completion of a De-SPAC Transaction, so the number of investors who are eligible to subscribe for SPAC Shares in its initial offering will be much smaller than those in a typical IPO. Accordingly, it is reasonable for SPACs not to be subject to the requirements of:

- demonstrating that there will be sufficient public interest in the business of the SPAC and in the securities proposed to be listed; and
- ensuring that their securities are freely transferable by the public (but they must ensure that their securities are freely transferable between PIs, whether institutional PIs or individual PIs).

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

Yes

Please give reasons for your views.

It is noted that in the US, listing rules of NYSE and NASDAQ require a SPAC to have a minimum issue price of US$4 (equivalent to approximately HK$31.2), but SPACs listed there typically have a unit issue price of US$10 (equivalent to approximately HK$70.8). The UK SPAC regime, on the other hand, does not specify a minimum issue price for SPAC Shares.

The SGX proposes in the SGX Response Paper a minimum issue price of S$5 (equivalent to approximately HK$29) for SPAC shares in light of the minimum issue price in the US. The SGX considers that the minimum issue price of S$5 to be sufficiently high for retail investors to carefully consider the associated risks of investing in a SPAC, but also provides sponsors (i.e., SPAC Promoters in Hong Kong's proposed SPAC framework) with more commercial flexibility in pricing the SPAC Shares.

The proposed issue price of HK$10 or above (with a ceiling of approximately HK$29, see the preceding paragraph) for SPAC Shares in Hong Kong is lower than the minimum issue price in the US and Singapore, and should be able to afford the SPAC Promoters with more commercial flexibility in pricing the SPAC Shares.

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?

No

Please give reasons for your views.

We have reservations on the proposed requirement.

It is worth noting, as set out in paragraph 193 on page 43 of the HKEX Consultation Paper, that a minimum fund raising requirement would (i) validate the reputation of SPAC Promoters by showing that investors have faith in their ability to complete De-SPAC Transactions on terms in favour of the investors; and (ii) ensure that the transactions will be of a sufficiently large size to

attract Successor Companies that meet the minimum market capitalisation requirements for listing.

The FCA says in paragraph 4.8 on pages 16 and 17 of the UK SPAC consultation paper (i.e., CP21/10), that by requiring a minimum level of funds to be raised by a SPAC from its initial offering, it would ensure a higher level of participation in the SPC by institutional investors and their conduct of a separate set of due diligence on a SPAC's management and structure would lead, in turn, to a greater scrutiny of the investment proposition. In paragraph 2.8 on page 11 of the UK Conclusions Paper, the FCA maintains that a threshold of £100 million (equivalent to approximately HK$1.1 billion), which is lowered from the originally proposed £200 million (equivalent to approximately HK$2.1 billion), is sufficiently high to achieve the intended benefit of setting a minimum fund raising ceiling as described above, while better reflecting the size of SPACs in UK/European markets, and the size of prospective SPAC targets. The same paragraph also refers to the fact that proceeds raised during a SPAC's IPO typically account for only a portion (e.g., one-fifth) of the amount used for the actual acquisition of the target company.

If FCA's views are any guide to the proposed SPAC framework in Hong Kong, HK$1 billion (the local equivalent of £100 million) could be seen as an appropriate threshold for the amount of funds to be raised by the SPAC from the initial offering because, e.g., a SPAC raising HK$1 billion may result in a Successor Company valued at up to HK$5 billion (see the preceding paragraph), which would be able to comply with the market capitalisation requirement of HK$4 billion under the market captialisation/revenue test in LR 8.05(3)(d) without difficulty (see paragraph 193 on page 43 of the HKEX Consultation Paper). That said, we have, however, doubts on whether the FCA's views could equally apply in a local context and consequently the suitability of HK$1 billion as the minimum fund raising threshold, on the following grounds.

(a) Because of the RI Exclusion in the proposed SPAC framework in Hong Kong, the force of the FCA's policy rationale of having a minimum fund raising threshold to enhance investor protection for less sophisticated investors by ensuring more institutional investors are involved alongside them would be weakened to a significant extent.

(b) SPACs that are capable of raising at least HK$1 billion at SPAC IPO are still not a common occurrence. For example, paragraph 194 on page 43 of the HKEX Consultation Paper refers to the fact that out of the 12 Greater China and South East Asian companies which were listed in the US via a De-SPAC Transaction in the last three years, only four (33%) did so via a SPAC that raised HK$1 billion or more from its IPO.

(c) The Stock Exchange's market capitalisation/revenue test caters for only a small minority of very large companies in requiring a market capitalisation of HK$4 billion in addition to HK$500 million of revenue in the most recent financial year. As a result, approximately only 4%

of companies applying to list on the Main Board of the Stock Exchange between 2016 and 2019 relied on the Market Capitalisation/Revenue test.

(d) Finally, the Main Board of the Stock Exchange is noted to be the only market which requires listing applicants to meet a financial eligibility test as well as satisfy market capitalisation requirement. As market capitalisation is subject to prevailing market conditions, which are unpredictable, the Successor Company may be unable to reach a market capitalisation of HK$4 billion during a poor market, but, in order to meet the financial eligibility test for new listing, would still be required to earn substantial profits, so as to avoid a very high price earnings ratio (the "P/E ratio") and risk the Stock Exchange's possible rejection of its listing, on such discretionary basis. Under such circumstances, potential investors may consider shares of the Successor Company to be overvalued and be deterred from buying them.

For the above reasons, we are of the view that the funds expected to be raised by a SPAC from its initial offering should be lower than HK$1 billion.

<u>Question 13</u>
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?

Yes

Please give reasons for your views.

We are of the view that the proposed modifications to the existing requirements relating to SPAC Warrants and Promoter Warrants in Chapter 15 and Practice Note 4 of the Listing Rules, as set out in paragraph 202 on page 45 of the HKEX SPAC Consultation, are appropriate.

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

Yes

Please give reasons for your views.

The proposed requirement is in line with (i) the US market practice which provides, among others, SPAC Warrants and Promoter Warrants usually become exercisable on the later of 30 days after the completion of a De-SPAC Transaction or 12 months from the IPO closing (see paragraphs 26 and 43-44 on pages 7 and 10 of the HK Consultation Paper); and (ii) the requirements in SLR 210(11)(j).

Question 15a
Do you agree that a SPAC must not issue Promoter Warrants at less than fair value?

Yes

Please give reasons for your views.

SPAC shareholders rely on SPAC Promoters' ability to identify a suitable target and negotiate terms for the De-SPAC Transaction that will provide them with a return on their investment. According to the Joint Study, SPACs with high quality SPAC Promoters produced better post-completion returns as compared to other SPACs (see paragraph 79 on page 18 of the HKEX Consultation Paper). There is therefore a need for a SPAC to offer incentives to experienced and reputable professional managers to act as SPAC Promoters. However, interests of SPAC Promoters and SPAC shareholders may diverge as the shareholders are not offered the same incentives as the promoters are. That said, it is important that the SPAC should align the interests of SPAC Promoters and SPAC shareholders as far as possible, so that the promoters are not incentivised to act against the interests of the shareholders. Nevertheless, the structure of a SPAC may cause misalignment of interests to occur between them, e.g., (a) SPAC Promoters may be offered SPAC Units of an amount or at a consideration that may be overly generous and not commensurate with the effort required to launch and manage the SPAC as well as identify a suitable De-SPAC Target; and/or (b) SPAC Promoters may be offered warrants to acquire shares in the Successor Company on terms that are more generous than those offered to SPAC shareholders. In both of these circumstances, the SPAC Promoter's gain (or mitigation of its potential loss) may incentivise the SPAC Promoter to identify, negotiate and accept a De-SPAC Transaction that is not in the best interests of SPAC shareholders (see paragraphs 136-137 on page 30 of the HKEX Consultation Paper).

To reduce the risk of misalignment of interests between SPAC Promoters and SPAC shareholders, we agree with the proposed requirements that (i) a SPAC must not issue Promoter Warrants at less than fair value; and (ii) the terms of Promoter Warrants should not be more favourable than those of the SPAC warrants. In this regard, more favourable terms which are prohibited include (a) an exception from the forced exercise of the promoter warrants if the shares of the Successor Company trade above a prescribed price; (b) the ability to exercise on a cashless basis; and (c) a more favourable warrant-to-share conversion ratio.

Question 15b
Do you agree that a SPAC must not issue Promoter Warrants that contain more favourable terms than that of SPAC Warrants?

Yes

Please give reasons for your views.

Please refer to the answer to above Question 15a.

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?

Yes

Please give reasons for your views.

Since SPACs have no track record of operational performance, investors reply on the experience and reputation of SPAC Promoters to decide whether or not to invest in SPACs. A skilled, experienced and reputable SPAC Promoter is more likely to be able to (i) identify a suitable and good quality De-SPAC Target, which should, in turn, attract sizeable commitments from large well-established investors; and (ii) negotiate favourable De-SPAC Transaction terms for SPAC Investors in good faith.

On the contrary, sub-standard SPAC Promoters lack the experience and expertise to find a suitable De-SPAC Target in time and strike a good deal for SPAC investors. Hence, low quality SPAC Promoters may be tempted to deliberately mislead Investors as to the extent of their abilities by fabricating, exaggerating, or hiding facts about their backgrounds to portray themselves as successful professionals, which of course is not in the best interest of the investors.

Question 17a
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?

Yes

Please give reasons for your views.

Considering the huge amount of information available, it is respectfully submitted that the Stock Exchange should limit the scope of the information to be provided for each of the proposed SPAC Promoter to only those set out in Box 1 on pages 48 and 49 of the HKEX Consultation Paper in order to avoid information overload. Such information should also be disclosed in the listing document, which is published by a SPAC for its initial offering since investors rely on the SPAC Promoters to make investment choices (see the answer to above Question 16).

Question 17b
Is there additional information that should be provided or information that should not be

required regarding each SPAC Promoter's character, experience and integrity?

No

Please provide the details of any such information below.

Please refer to the answer to above Question 17a.

<u>Question 18</u>
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?

Yes

Please give reasons for your views.

However, for the avoidance of doubt, it is respectfully suggested that the following words in parenthesis be included in paragraph 216, which would then read in part as follows "… we will view favourably (at least one of the) SPAC Promoters that can demonstrate that they have experience …"

<u>Question 19a</u>
Do you agree that at least one SPAC Promoter must be a firm that holds a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) license issued by the SFC?

Yes

Please give reasons for your views.

A SPAC Promoter is in a position of trust with regard to the funds raised from investors, and would be expected to act in the best interests of investors as a whole regarding the use of those funds. If the SPAC Promoter breaches such trust and because it is a SFC's licensee, SFC can take enforcement actions against the SPAC Promoter to protect the interests of SPAC Investors.

<u>Question 19b</u>
Do you agree that the SFC licensed SPAC Promoter must hold at least 10% of the Promoter Shares?

No

Please give reasons for your views.

We are unable to agree with the proposed requirement at this stage because there is insufficient information in the HKEX Consultation Paper to justify the need for requiring a SPAC Promoter to hold at least 10% of the Promoter Shares (the "Promoter Equity Participation" or "PEP"). For example, paragraph 209 on page 47 of the HKEX Consultation Paper describes the PEP equivalent scheme in the Singapore SPAC regime but does not analyse it and discuss its merits. Paragraph 217 on page 50 of the HKEX Consultation Paper refers to the PEP by suggesting that it may help ensure appointment of high quality SPAC Promoters and better alignment of interest with other SPAC Investors, without discussing the scheme in detail. Neither does the Stock Exchange address in paragraph 217 a view expressed by a number of respondents in the Singapore SPAC consultation (see paragraph 2.130 on page 32 of the SGX Response Paper) that it would be unnecessary to require SPAC Promoters to implement scheme similar to PEP as they would typically incur sizeable at-risk capital such as the up-front costs of establishing and listing the SPAC (namely, transactional expenses, professional fees and listing fee) to fund the expenses of setting up and listing the SPAC, and such incurred expenses could be viewed as a similar "commitment" to that of PEP.

Without further information on and analysis of the PEP, we are not in a position to support the proposed requirement now.

<u>Question 20a</u>

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)?

Yes

Please give reasons for your views.

In view of the fundamental reliance by investors on the profile and experience of a SPAC Promoter and/or the management team as a primary basis of their investment in the SPAC, any material change in the SPAC Promoter itself and/or its suitability and/or eligibility to act as SPAC Promoter, e.g. a change in the identity and composition of its controlling shareholders, revocation of its SFC licence, breach of laws, rules and regulations (see paragraph 218 on page 50 of the HKEX Consultation Paper) would be critical to the success or otherwise of a De-SPAC Transaction. If such transaction fails, it may lead to suspension of trading of SPAC Shares, liquidation and delisting of the SPAC itself (see paragraphs 435 and 436 on pages 97 and 98 of the HKEX Consultation Paper). Accordingly, we are of the view that any material change in the SPAC Promoter and/or its suitability/eligibility to act as SPAC Promoter must be approved by a special resolution of only independent shareholders at a general meeting. SPAC Promoter (including its directors and employees) and its close associates must abstain from voting on the relevant resolution at the general meeting. The board of the SPAC will be responsible in deliberating whether or not a change is material insofar as the SPAC Promoter is concerned,

and the Stock Exchange will retain the discretion to determine whether an event of material change has occurred in respect of the SPAC Promoter.

We also agree with the proposed requirement that if the requisite shareholder approval is not obtained within one month of the material change, the trading of a SPAC's securities should be suspended and that the SPAC must return to its shareholders the funds which it has raised from its initial offering, and commence liquidation and de-listing of the SPAC.

Finally, in terms of what constitutes material event affecting the SPAC Promoter, in addition to the examples cited in paragraph 218 on page 50 of the HKEX Consultation Paper, it is respectfully submitted that the Stock Exchange also include two examples set out in the SGX Response Paper, namely, a material adverse change in the SPAC Promoter's financial standing, inability of the SPAC Promoter to perform its duties due to death or incapacitation (see paragraphs 4.4 and 4.7 on pages 52 and 53 of the SGX Response Paper).

<u>Question 20b</u>

Should the trading of a SPAC's securities be suspended and the SPAC 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) if it fails to obtain the requisite shareholder approval within one month of the material change?

Yes

Please give reasons for your views.

Please refer to the answer to above Question 20a.

<u>Question 21</u>

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?

Yes

Please give reasons for your views.

We are of the view that the proposed requirement ensures that SPAC Promoters are held accountable for the SPAC's performance and that officers of SPAC Promotors, as directors of the SPAC, owe fiduciary duties of skill, care and diligence to SPAC shareholders and the SPAC as a whole.

<u>Question 22</u>

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?

Yes

Please give reasons for your views.

The proposed requirement of placing 100% of the gross proceeds of a SPAC's IPO in a trust account is in line with the market practice in the US, which typically places 100% of the SPAC IPO proceeds in an escrow account. However, the regulatory requirements of other stock exchanges in, e.g., Toronto, Singapore and Malaysia mandate a lower percentage threshold of SPAC IPO proceeds to be placed in the escrow account. The SLR 210(11)(i)(i) prescribes a threshold of placing 90% of the gross proceeds of a SPAC's IPO in an escrow account. In the SGX Response Paper, the SGX makes the point that market discipline and commercial negotiations will factor into a SPAC's considerations as to the structure of its terms of offering, including voluntarily increasing the quantum of escrowed funds beyond the 90% regulatory threshold (see paragraph 2.96 on page 25 of the SGX Response Paper). This, together with the short history of the Hong Kong SPAC regime, lead us to conclude that the proposed threshold of 100% of the gross proceeds of a SPAC's initial offering to be held in a ring-fenced trust account located in Hong Kong should be adopted in Hong Kong's SPAC regime.

<u>Question 23</u>
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?

Yes

Please give reasons for your views.

The proposed requirement is in line with one of the requirements in the SLR 210(11)(i)(i) that the independent escrow agent must be a financial institution licensed and approved by the Monetary Authority of Singapore. The key point here is that the independent escrow agent should be a suitably qualified person to be appointed for the position, e.g., it should be a separate and independent legal entity not under the SPAC's control or influence and have relevant experience. Trustees/custodians whose qualifications and obligations are consistent with the requirements set out in Chapter 4 of the Code on Unit Trusts and Mutual Funds are considered to be suitably qualified persons to be appointed as escrow agents.

<u>Question 24</u>
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?

Yes

Please give reasons for your views.

The proposed requirement is in line with the requirement in SLR 210(11)(i)(iv) that the SPAC (through the escrow agent) should invest the escrowed funds in only low risk, safe and liquid investments of cash or cash equivalent short-dated securities of at least A-2 ratings (or an equivalent).

It is noted that by permitting investments of the escrowed fund in low-risk cash or cash equivalent short-dated securities, it (i) would result in additional income to be earned from the idle escrowed funds to help preserve value of the principal investments by SPAC Investors, but at the same time (ii) would not require the SPAC Promoter to shift from its primary focus in its pursuit and completion of a De-SPAC Transaction.

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?

Yes

Please give reasons for your views.

The proposed requirement is generally in line with the requirements in SLR 210(11)(n) and (o).

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?

Yes

Please give reasons for your views.

A SPAC Promoter is economically incentivised by Promoter Shares and Promoter Warrants to find a suitable De-SPAC Target and negotiate De-SPAC Transaction terms that are favourable to SPAC Investors. Hence, we agree that the Promoter Shares and Promoter Warrants should not be owned by persons other than SPAC Promoters.

Question 27
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?

Yes

Please give reasons for your views.

The purpose of the proposed restrictions on the listing and transfer of Promoter Shares and Promoter Warrants in paragraph 241 on page 56 of the HKEX Consultation Paper is to ensure that only the SPAC Promoter should be able to beneficially hold Promoter Shares and Promoter Warrants at listing and thereafter. We also agree with the proposal in paragraph 242 on page 56 of the HKEX Consultation Paper that a limited partnership, trust, private company or other vehicle may hold Promoter Shares and/or Promoter Warrants on behalf of a SPAC Promoter provided that such an arrangement does not result in a transfer of beneficial ownership.

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?

Yes

Please give reasons for your views.

We agree, for the following reasons (see paragraph 2.137 on page 34 of the SGX Response Paper).

(i) It is essential for SPAC Promoter and its close associates to align their interests with independent SPAC shareholders and remain invested in the future growth and strategy of the SPAC, as investors have invested in the SPAC based on the track record and experience of the SPAC Promoter and its team. This will in turn instil investor confidence in the SPAC.

(ii) This commitment ensures the quality of the SPAC Promoter and degree of quality in the De-SPAC Transaction as the SPAC Promoter and its team will participate in the transaction.

(iii) The market is familiar with such regulatory requirement which is imposed for traditional IPOs and will assist to minimise volatility in the share price of the SPAC.

(iv) Although there is no stipulated regulatory moratorium period in the US and lock-ups of the sponsor's holdings are market driven and commercially negotiated, it is recognised that this requirement is unlikely to deter SPAC Promoters here as they have no commercial incentive to dispose of their holdings prior to the completion of the De-SPAC Transaction.

Question 29

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

Yes

Please give reasons for your views.

Since a SPAC has no business operations, any upward movement in its share price would be the sole result of the disclosure of a De-SPAC Announcement, revealing terms of a De-SPAC Transaction favourable to SPAC Investors. It follows that if a person is in possession of Inside Information on the terms of the De-SPAC Transaction prior to the disclosure of the De-SPAC Announcement, he would have greater certainty of making a gain from insider dealing the SPAC Shares than in the shares of an ordinary listed issuer. Hence, this person would be more incentivised to engage in insider trading the SPAC Shares, and the probability of insider dealing occurring in a listed SPAC would therefore be higher than for an ordinary listed issuer (see paragraph 125-128 on page 28 of the HKEX Consultation Paper). To reduce the possibility of insider dealing and maintain a fair, orderly trading market, we share the Stock Exchange's view that the existing trading halt and suspension policy, as set out in LR 6.02 to LR 6.10A and in the Guidance Letter of HKEX-GL83-15, should also be applicable to SPACs in Hong Kong.

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?

Yes

Please give reasons for your views.

The proposed application of initial listing requirements, as set out in paragraphs 259 to 281 on pages 60-63 of the HKEX Consultation Paper, to a De-SPAC Transaction is appropriate in our view. This is because such application (i) is consistent with the approaches adopted in the SPAC regimes in the US, the UK and Singapore; (ii) would ensure that there is an even playing field between issuers which are listed on the Stock Exchange via a De-SPAC Transaction and those that are listed via traditional IPOs, thereby preventing any potential regulatory arbitrage by ensuring that the quality of the Successor Company minimally meets the same initial listing requirements that apply to issuers which are listed via traditional IPO; (iii) maintains the quality of the De-SPAC Target company, which will eventually list on the Stock Exchange via a De-SPAC Transaction; and (iii) promotes fair and orderly trading of shares of the Successor Company upon successful completion of a 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?

Yes

Please give reasons for your views.

This is because Chapter 21 companies are listed under a regime that is already separate and distinct from that of a traditional IPO (see paragraph 284 on page 64 of HKEX Consultation

Paper). It follows that businesses which are eligible and suitable for listing in Hong Kong as eligible De-SPAC Targets would include, without limitation, WVR companies, biotech companies and mineral companies which meet all applicable requirements of the Listing Rules.

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)?

Yes

Please give reasons for your views.

Both the US and Singapore SPAC regimes have requirements similar to the proposed requirement. The key difference is that the SGX requires under SLR 210(11)(m)(iii) that this requirement be satisfied at the time of entering into the binding agreement for the business combination, whereas the listing rules of NASDAQ and NYSE permit this requirement to be satisfied through the aggregate value of multiple transactions.

It is noted that some of the respondents in the Singapore SPAC consultation express the view, with which the SGX agrees, that this 80% requirement would safeguard investors' interests and ensure that the resulting issuer (i.e., the Successor Company) has major ownership and/or management control of a sizeable and identifiable core business.

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?

Yes

Please give reasons for your views.

We note that the rationale (the "Rationale") behind the proposed requirement is to allay the concern that if a Successor Company is able to retain all the net funds (i.e., funds raised from the SPAC's initial offering plus PIPE investments, less redemptions), it may result in a substantial portion of its assets consisting wholly or substantially of cash following the De-SPAC Transaction, rendering the Successor Company as a "cash company" unsuitable for listing under LR 8.05C(1) (see paragraph 289 of the HKEX Consultation Paper). However, we also understand that it is a market practice that the consideration for De-SPAC Transaction is settled mostly through payment in shares and for the cash raised by a SPAC to be used by the Successor Company for the latter's future development (the "Market Practice"). Accordingly, there is a need to balance the Rationale and the Market Practice in the scales in order to arrive at an appropriate amount of the net funds to be used to fund the De-SPAC Transaction, so that

no breach of LR 8.05C(1) will occur. Please refer to the answer to Question 34 below for the result of the balancing exercise.

<u>Question 34</u>
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?

No

Please give reasons for your views.

With reference to the answer to above Question 33, after balancing the Rationale against the Market Practice in light of the requirement in paragraph 9 of the Guidance Letter of HKEx-GL84-15 (in short, a company with less than half (50%) of its assets being cash would not normally be regarded as a cash company), we have reservations on the proposed requirement of using at least 80% of the net proceeds which the SPAC raises from its initial offering to fund a De-SPAC Transaction, bearing in mind the unsuitability of cash company to be listed as per LR 8.05C(1) and the Market Practice as described in paragraph 290 on page 65 of the HKEX Consultation Paper. Therefore, it is respectfully submitted that the 80% threshold should be reduced to, say, 60%-70% or even a percentage lower than 60% in order to strike a balance between the Rationale and the Market Practice and avoid breaching LR 8.05C(1).

<u>Question 35</u>
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?

Yes

Please give reasons for your views.

In an IPO, a listing applicant demonstrates that it meets the market capitalisation threshold by receiving subscriptions to purchase its shares at an IPO price, following a book building exercise. Such exercise, however, is not required for a De-SPAC Transaction. Instead, a valuation is agreed between the De-SPAC Target and the SPAC Promoter, providing an opportunity to determine, negotiate and lock in the value of the target at the beginning of the process without being subject to pricing fluctuations and similar market risk at the very end of the process. However, the relatively small group of persons involved in determining the valuation of a De-SPAC Target means that the transaction is more susceptible to deliberate over-valuation for the purpose of circumventing the Stock Exchange's minimum market capitalisation threshold for new listings.

The objective of the proposed requirement is to provide validation of the valuation of the De-SPAC Target by an independent third party, namely, PIPE investors, so as to mitigate the risk of deliberate over-valuation of the De-SPAC Target by the SPAC Promoter as described above

(see paragraphs 134-135, 293 and 295 on pages 30, 66 and 67 of the HKEX Consultation Paper).

We are of the view that the participation and investments of PIPE investors in SPACs will provide SPAC Investors with additional comfort on the valuation of the De-SPAC Target as PIPE investors are willing to separately conduct their own set of due diligence and valuation work in assessing the terms underpinning the De-SPAC Transaction. Hence, the presence of PIPE investors in SPACs will fulfil the function of a market-based price discovery mechanism, which is similar to that of the book-building process in a traditional IPO.

Question 36

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?

Yes

Please give reasons for your views.

The proposed percentages are acceptable in our view. PIPE investment plays at least two important roles for SPACs. First, the high redemption rate by SPAC Investors (approximately 58% on average) causes uncertainty as to the amount of cash that will be available to meet the terms of a De-SPAC Transaction and pay for daily expenses in running the SPAC. Hence, PIPE financing is sourced to replenish funds in the trust account depleted by investors' redemptions. SPAC Shares are typically offered at a discount to PIPE investors (in the US, PIPE investors subscribe for SPAC shares at the issue price of US$10 per share) to entice them to invest in the SPAC. The market practice is that the IPO proceeds raised by SPACs typically cover 25%-35% of the purchase price or funding needs of the De-SPAC Target. Hence, PIPE investment, which accounts for approximately 40% of the funds raised for a De-SPAC Transaction, is without doubt an important source of funding for SPACs. PIPE financing is popular among SPACs because it involves lower transaction costs and can be carried out more quickly as compared to other public offerings, not to mention the fact that it provides SPACs with the opportunity to raise additional cash proceeds to fund the De-SPAC Transaction.

The second important role played by PIPE investors, as mentioned in the answer to above Question 35, is to ensure the valuation of a De-SPAC Target is fair and consistent with the Stock Exchange's emphasis on having a high quality SPAC regime with high quality De-SPAC Targets.

Given the important roles played by PIPE investors as described above in the De-SPAC Transaction, we agree with the proposed requirement.

<u>Question 37</u>
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?

Yes

Please give reasons for your views.

The proposed requirement is part of the scheme to introduce PIPE investments into the SPAC and to validate the valuation of a De-SPAC Targets as fair and reasonable by PIPE investors. See also the answer to above Question 35.

<u>Question 38</u>
Do you agree with the application of IFA requirements to determine the independence of outside PIPE investors?

Yes

Please give reasons for your views.

Given the important role PIPE investors play in, among others, ensuring the genuineness of the valuation of the De-SPAC Target, it is critical to ensure the independence of PIPE investors from SPAC Promoters and shareholders of the De-SPAC Targets. Accordingly, it is appropriate in our view to apply the IFA requirements under LR 13.84 to determine the independence of PIPE investors.

<u>Question 39</u>
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?

Yes

Please give reasons for your views.

It is preferable that a cap should be imposed on the maximum dilution possible from the conversion of Promoter Shares or exercise of warrants issued by a SPAC.

As set out in paragraph 138 on pages 30-31 of the HKEX Consultation Paper, Promoter Shares are typically issued to SPAC Promoters at a much lower price than the price of SPAC Shares issued at the SPAC IPO, reflecting their commitment of time and expertise to find a De-SPAC Target. When Promoter Shares are converted into SPAC Shares on a one-for-one basis, SPAC

Promoters would not provide any additional funds, so their conversion would result in a dilution in the value of SPAC Shares. Similarly, when warrants issued by a SPAC are exercised, this would result in the issue of new shares, which would, in turn, dilute the number of SPAC Shares in issue. Accordingly, to be fair to other SPAC Investors, it is acceptable, in our view, to impose a cap on the maximum dilution possible from the conversion of Promoter Shares into SPAC Shares or exercise of warrants issued by a SPAC. The SGX also endorses the imposition of such a cap in the Singapore SPAC regime (see paragraph 3.32 on page 50 of the SGX Response Paper).

Question 40
Do you agree with the anti-dilution mechanisms proposed in paragraph 311 of the Consultation Paper?

Yes

Please give reasons for your views.

Paragraph 311 on page 70 of the HKEX Consultation Paper proposes:

(a) capping Promoter Shares at 20% of the total number of shares which the SPAC has in issue as at the initial offering date (the "Proposed Promoter Shares Cap");

(b) prohibiting the SPAC from issuing warrants that (a) entitle the holder to purchase more than 1/3 of a share upon exercise; or (b) if exercised, would result in more than 30% of the number of the SPAC's shares in issue at the time such warrants are issued; and

(c) prohibiting the SPAC from issuing Promoter warrants, which if exercised would result in more than 10% of the number of the SPAC's shares in issue at the time such warrants are issued. The 10% dilution cap imposed on the promoter warrants is part of the 30% dilution cap imposed on all warrants issued by a SPAC.

In respect of (a), namely, the Proposed Promoter Shares Cap, we are of the view that by imposing a limit on the Promoter Shares, it would (i) reinforce the alignment of interests between the SPAC Promoter and the independent shareholders as Promoter Shares are typically an incentive tied to the De-SPAC Transaction rather than the long-term success of the Successor Company; and (ii) mitigate the potential dilutive impact to shareholders of the SPAC since Promoter Shares, as described in the answer to above Question 39, is one of the key SPAC features that materially contributes to dilution.

The market practice in the US is that Promoter Shares would normally represent approximately 20% of the SPAC's outstanding shares at the closing of its IPO. The SGX also notes that, based on its research, a sponsor will typically acquire a promote of approximately 20% of the SPAC's IPO issued share capital. Accordingly, we agree with the imposition of the Proposed Promoter Shares Cap.

As for the dilution cap on warrants (see above (b) and (c)), it is noted that there is no specific cap on dilution of warrants in the US SPAC regime. The SGX, on the other hand, specifies under SLR 210(11)(k) that the maximum percentage dilution to shareholders arising from conversion of warrants or other convertible securities issued at the SPAC's IPO be capped at 50% of the SPAC's post-invitation issued share capital. The SGX believes that by stipulating a maximum cap of 50% on warrants dilution, it would help ensure the quality of the sponsor, as market discipline will play a role of check and balance to verify that the maximum percentage limit of dilution with respect to conversion of warrants is appropriate for and acceptable to the market, in particular, such terms will come under the scrutiny of institutional investors at the SPAC's IPO. Nevertheless, given the early stages of the implementation of the SPAC regime in Singapore, the SGX would be prepared to consider a waiver on a case-by-case basis of the proposed maximum 50% dilution cap requirement if the SPAC can demonstrate sufficient bases (see paragraph 3.32 of the SGX Response Paper).

In light of the SGX's position described above, we agree with the proposed dilution caps on warrants as stated in above (b) and (c). However, it is respectfully submitted that the Stock Exchange follow the SGX's example and similarly retain the discretion to consider applications for waiver of the dilution cap on a case-by-case basis.

<u>Question 41</u>
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 of the Consultation Paper are met?

Yes

Please give reasons for your views.

We are of the view that the 10% earn-out portion, which is set out in paragraph 312 on pages 70 and 71 of the HKEX Consultation Paper, would help SPAC Promoters in De-SPAC Transaction negotiations by acting as a benchmark for them to negotiate for the issuance of additional Promoter Shares. The four conditions in paragraph 312 are not onerous and are acceptable.

<u>Question 42</u>
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?

Yes

Please give reasons for your views.

If a SPAC Promoter is granted any anti-dilution rights, those rights could not result in it holding more than the number of Promoter Shares that it holds at the time of the SPAC's initial offering, i.e., 20%, and additional 10% subject to the Successor Company meeting set performance targets (i.e., earn-outs). If this is not the case, the purpose of granting anti-dilution rights to the SPAC Promoter would be defeated because the dilution effect increases with the number of Promoter Shares being issued and converted into SPAC Shares.

<u>Question 43</u>
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?

Yes

Please give reasons for your views.

The objective of the proposed requirement is to protect SPAC shareholders from a selection of De-SPAC Targets of poor quality, and is also in line with the current practice under the Listing Rules which require listed issuers to obtain shareholders' approval before engaging in sizeable notifiable transactions as well as the requirements in SLR 210(11)(m)(viii). We also agree that written shareholders' approval will not be accepted in lieu of holding a general meeting, which is in line with the requirement in LR 14.55.

<u>Question 44</u>
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?

Yes

Please give reasons for your views.

Partly yes, for the following reasons.

We note that in order to avoid conflict of interests, the Stock Exchange requires that shareholders with a material interest in a transaction abstain from voting on the resolution to approve the transaction. That said, we also note the force in the following arguments that SPAC shareholders such as the SPAC Promoter and its close associates which have a material interest in the De-SPAC Transaction should be allowed to vote at the relevant general meeting:

(i) The SPAC Promoter is heavily involved in the whole transaction process, e.g., it would have expended significant time identifying the suitable SPAC Target, completing due diligence and negotiating the terms for the De-SPAC Transaction. Prohibiting a SPAC Promoter from voting on the De-SPAC Transaction disproportionately disenfranchises it from the transaction.

(ii) The ability of SPAC Promoter and its close associates to commit their votes in favour of the SPAC Transaction is critical to potential SPAC Targets as it provides a higher degree of deal certainty. Absent such commitment from the SPAC Promoter and its close associates, the SPAC Target company may be less inclined to go through the rigour of a De-SPAC Transaction process as it (i) will be subjected to the uncertainty of the vote of the independent shareholders at the general meeting; and (ii) will question the SPAC Promoter's and its close associates' ability to deliver the De-SPAC Transaction. Deal certainty is an important consideration for target companies, and the vote restriction could detract the attractiveness of SPACs as compared to other funding options, and weaken the Stock Exchange's proposed development of Hong Kong into a listing venue of choice for SPACs.

(iii) There is sufficient alignment of the SPAC Promoter's interest to ensure a rational and optimal voting outcome taking into account the other safeguards under the proposed SPAC framework in Hong Kong, such as the imposition of lock-up periods on the SPAC Promoter's disposal of SPAC Shares post De-SPAC Transaction, independent shareholders' exit option via the exercise of their redemption rights.

(iv) The SPAC Promoters and its close associates have the necessary knowledge and ability to direct the De-SPAC Transaction and assess its merits. Hence, their vote may benefit other shareholders in deciding whether or not to support the De-SPAC Transaction.

(v) Independent shareholders may not fully appreciate the value of the De-SPAC Transaction proposed and are not privy to the due diligence and negotiation process. This will increase the difficulty in obtaining the necessary approval threshold to consummate a successful business combination as the SPAC Promoter and its close associates are unable to vote with their shareholdings.

Having considered the safeguards under the Stock Exchange's proposed SPAC framework, we, on balance, agree with the proposed requirement in Question 44 to the following extent:

(a) SPAC shareholders who have a material interest in the De-SPAC Transaction should abstain from voting on the resolution(s) to approve the transaction at the general meeting;

(b) the prohibition in (a) does not apply to the SPAC Promoter and its close associates, who are permitted to vote on the De-SPAC Transaction on the basis of their respective holdings in the SPAC, excluding the Promote; and

(c) any outgoing controlling shareholder(s) of the SPAC and their close associates, if the De-SPAC Transaction results in a change of control, must not vote in favour of the relevant resolution(s).

It is noted that the SGX includes above (a) and (b) in SLR 210(11)(m)(viii) and requires under SLR 210(11)(m)(ix) that in the circular to SPAC shareholders in relation to the De-SPAC Transaction (the "Circular") contain an opinion from an independent financial adviser and the issuer's audit committee stating that the terms of the transaction are on normal commercial terms and are not prejudicial to the interests of the issuer and its minority shareholders. It is respectfully submitted that the Stock Exchange adopt a requirement similar to SLR 210(11)(m)(ix) to provide additional safeguard and comfort to other SPAC shareholders. In addition, there should be in the Cricular a clear statement as to whether the SPAC Promoter and its close associates have a material interest in the De-SPAC Transaction.

Question 45

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?

Yes

Please give reasons for your views.

Since the PIPE investors play a key role in validating the valuation of the De-SPAC Targets, this proposed requirement should be accepted in the interests of transparency.

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?

Yes

Please give reasons for your views.

Partly yes. We agree that the Stock Exchange should apply its existing connected transaction

Rules to De-SPAC Transactions involving persons connected to the SPAC such as the SPAC Promoter, the SPAC's trustee/custodian, any of the SPAC directors, or an associate of any of these parties.

However, we do not agree with the additional requirements in paragraph 334 on pages 75-76 of the HKEX Consultation Paper as we are of the view that the current connected transaction regime under the Listing Rules is able to provide adequate safeguards, and there is no need to introduce additional requirements. Moreover, some of the additional requirements, e.g., demonstration of minimum conflicts of interest by the SPAC, would be difficult to meet as they are not sufficiently objective in our opinion.

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 of the Consultation Paper?

Yes

Please give reasons for your views.

Partly yes. We are of the view that SPAC shareholders should be given the opportunity to redeem their SPAC Shares if they vote against the resolutions to (i) approve a material change in the SPAC Promoter managing a SPAC or the eligibility and/or suitability of a SPAC Promoter (see paragraph 352(a) on page 79 of the HKEX Consultation Paper); and (ii) extend the De-SPAC Announcement Deadline or the De-SPAC Transaction Deadline (see paragraph 352(c) on page 79 of the HKEX Consultation Paper).

However, we disagree, on balance, with the proposal to allow only those SPAC shareholders who vote against the De-SPAC Transaction to have the opportunity to redeem their SPAC Shares (the "Proposal") (see paragraph 352(b) on page 79 of the HKEX Consultation Paper). Our reasons for disagreeing with the Proposal are as follows.

First, redemption right is one of the economic benefits for investing in SPACs and SPAC shareholders are entitled to exercise this right freely. In our view, any interference with and restriction on the exercise of such right must be based on exceptional grounds. However, we do not consider SPAC shareholders' voting in favour of the De-SPAC Transaction at the general meeting to be such an occasion which justifies the restriction of the exercise of shareholders' redemption right, particularly in light of the delinking of the exercise of redemption right from shareholders' voting decisions in the US and Singapore SPAC regimes (see the following paragraphs). In fact, the Stock Exchange acknowledges in paragraph 33 on page 8 of the HKEX Consultation Paper that the accepted practice is that redemption is not contingent upon a SPAC shareholder voting against the De-SPAC Transaction. A SPAC shareholder may vote for

the De-SPAC Transaction but still chooses to redeem his shares. Hence, we are of the view that the Proposal has little basis and should be rejected.

In the US, prior to 2010, redemption rights were linked with shareholders' voting decisions for SPACs, and sponsors there were subject to pressure by sophisticated investors who refused to vote in favour of the business combination in order to negotiate a better private deal with the sponsors, thereby increased the risk of a SPAC failing to complete a business combination by the deadline, resulting in fewer target companies being willing to participate in business combinations due to the higher uncertainty. Consequently, the US authorities delinked redemption rights from shareholders' voting decisions to prevent investors from blocking a business combination, not because shareholders were unable or failed to see the merits of the business combination but because they wished to use their voting powers to their own advantage and retain flexibility on the exercise of their redemption rights. The regulatory change was considered to be a key factor that led to the significant increase in completion of business combination transactions by US SPACs from end of 2012.

Third, it is noted that the SGX rejected the inclusion of a proposition similar to the Proposal in the SPAC consultation in Singapore in September 2021. The SGX was originally of the view that the proposition could be used to (i) address dilutive concerns stemming from the high redemption rates which it had observed in the US market; and (ii) encourage SPAC shareholders to stand by their voting decisions. However, after considering market feedback that high redemption level would be unlikely to contribute to incremental dilution due to the market practice to put in place PIPE financing for the purpose of replenishing the cash levels of the SPAC caused by redemption, the SGX recognises that high redemption rates are not a key source of dilution and that the proposition may not serve its primary intended purpose to mitigate its dilution concerns. Accordingly, the SGX decided to abandon the proposition and allow SPAC shareholders to redeem their shares regardless of how they have voted in relation to the business combination: SLR 210(11)(m)(x).

Finally, the Stock Exchange argues (see paragraphs 340-341 on page 77 of the HKEX Consultation Paper) that the Proposal would result in higher alignment of interest between SPAC Promoters and SPAC Investors, and that SPAC promoters will have to ensure that the valuation of the De-SPAC Target is fair and reasonable as a result. If not, the De-SPAC Transaction is likely to be voted down at the general meeting. However, we respectfully disagree with these arguments. We are of the view that instead of the Proposal, which, as admitted by the Stock Exchange, is not the position of many of the participants in its preliminary discussions with stakeholders (see paragraph 340 on page 77 of the HKEX Consultation Paper), there are other requirements proposed by the Stock Exchange, e.g., having a mandatory PIPE investor of a reasonable size together with at least one asset management firm or fund (with asset under management of at least HK$1 billion) holding at least 5% of the issued shares of the Successor Company as at the date of the latter's listing, which should help ensure that the valuation of a De-SPAC Target is fair and reasonable and that the interest between SPAC Promoters and SPAC Investors is aligned.

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?

Yes

Please give reasons for your views.

Partly yes. Please refer to the answer to above Question 47.

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?

No

Please give reasons for your views.

We disagree with the proposed requirement. We note that while redemption right is one of the economic benefits for investing in SPACs, establishing a limit on the exercise of redemption rights would curtail SPAC Investors' economic rights and reduce the availability of options to them. Hence, although redemption right offers protection to SPAC shareholders against dilution risks, it may not necessarily be a favoured trade-off to all SPAC shareholders. That said, we understand that under SLR 210(11)(m)(x), the SGX allows a SPAC to impose a redemption limit, which may not be set at lower than 10% of the shares issued at SPAC IPO. We understand that this is also the accepted market practice in the US. Accordingly, it is respectfully submitted that the Stock Exchange should likewise adopt this 10% limit on the amount of SPAC Shares which a SPAC Shareholder (alone or together with their close associates) may redeem. SLR 210(11)(m)(x) also requires that the redemption limit be disclosed in the SPAC IPO prospectus and the Circular, which may also be considered for adoption in the proposed Hong Kong SPAC framework by the Stock Exchange.

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

Yes

Please give reasons for your views.

We are satisfied that the proposed redemption procedure described in paragraphs 355 to 362

on pages 79-80 of the HKEX Consultation Paper are adequate and appropriate.

<u>Question 51</u>
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?

Yes

Please give reasons for your views.

The proposed requirement is in line with the requirements in LR 11.16 – LR 11.19. The Singapore SPAC regime is noted to have similar requirements (see paragraph 4.40 on page 61 of the SGX Response Paper).

<u>Question 52</u>
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?

Yes

Please give reasons for your views.

As stated in paragraphs 379-380 on page 84 of the HKEX Consultation Paper, due to the Stock Exchange's proposal that subscription and trading of SPAC securities prior to De-SPAC Transaction would be limited to PIs only, SPACs are likely to have a much smaller shareholder base consisting of fewer than 300 shareholders at the time when they conduct a De-SPAC Transaction. Hence, while a Successor Company must ensure an adequate spread of holders of its shares, we are of the view that the minimum number of shareholders could be reduced from 300 to 100.

<u>Question 53</u>
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?

Yes

Please give reasons for your views.

Both the SPAC regimes in the US and Singapore require that the resulting issuer (i.e., the Successor Company in Hong Kong's proposed SPAC framework) be able to meet the initial listing requirements upon the completion of the business combination. According to the SGX, such approach (i) ensures an equitable regulatory treatment in permitting the listing of a target company through the business combination with a SPAC instead of listing via the traditional IPO

route; (ii) maintains the quality of the target company which will eventually be listed via the business combination; and (iii) promotes fair and orderly trading of the resulting issuer's shares upon the successful completion of a business combination (see paragraph 4.31 on page 59 of the SGX Response Paper).

The Stock Exchange has proposed to adopt the same approach, which means that the Successor Company is required to meet all the requirements applicable to a new listing, including, among others, management and ownership continuity and the financial eligibility tests, IPO sponsor due diligence and approval by the Listing Committee. Consequently, it is reasonable that the Successor Company should also be subject to the current open market requirements for an IPO under the 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?

Yes

Please give reasons for your views.

Since the shareholder distribution proposals set out in paragraphs 380 and 382 on pages 84-85 of the HKEX Consultation Paper are in line with the current requirements under LR 8.08(1) and LR 8.08(3) respectively, we are satisfied that the shareholder distribution proposals are sufficient to ensure an open market in the securities of the Successor Company.

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?

Yes

Please give reasons for your views.

SPAC Promoters are commercially incentivised to sell their respective holdings (including Promoters Shares and Promoter Warrants) after the completion of a De-SPAC Transaction due to the potential profit to be gained from the Successor Company's positive share price performance subsequent to the business combination. The imposition of a moratorium period on SPAC Promoters to dispose of their holdings in the Successor Company will therefore be necessary to (i) ensure that the SPAC Promoters demonstrate commitment to the long-term success of the Successor Company; and (ii) align interests between the SPAC Promoters and other shareholders. In addition, the moratorium period will also help show that both the SPAC

Promoter and the controlling shareholder(s) of the SPAC Target have negotiated the terms of the De-SPAC Transaction between themselves in good faith and are committed to the validity of the terms of that transaction.

Question 56a
Do you agree that 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?

Yes

Please give reasons for your views.

The proposed lock-up period of 12 months is acceptable as its duration is in line with the market practice in the US, which also represents the upper limit of the lock-up period under SLR 210(11)(h).

Question 56b
Do you agree that Promoter Warrants should not be exercisable during the period ending 12 months from the date of the completion of a De-SPAC Transaction?

Yes

Please give reasons for your views.

The proposed requirement is in line with market practice in the US and the requirements in SLR 210(11)(j).

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?

Yes

Please give reasons for your views.

The proposed requirement is in line with the requirements in SLR 210(11)(h)(iii).

Question 58
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)?

Yes

Please give reasons for your views.

Since the Successor Company is required to meet the initial listing requirements (see the answer to above Question 53), it is reasonable to require that the current lock-up periods on controlling shareholders of listed issuers under the Listing Rules should also apply to the controlling shareholders of the Successor Company equally.

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

Yes

Please give reasons for your views.

We agree for the reasons set out in paragraph 404 on page 90 of the HKEX Consultation Paper such as: (i) the Takeovers Executive considers that a period of up to 36 months (the deadline for completing a De-SPAC Transaction) without the application of the Takeovers Code to be unsatisfactory as opportunistic behaviour such as making of unregulated offers may occur during this period; and (ii) the SPAC is a public company in Hong Kong with a primary listing on the Stock Exchange and it should therefore 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?

Yes

Please give reasons for your views.

We agree that, for the reasons set out in paragraphs 407-410 on pages 91 and 92 of the Hong Kong Consultation Paper, the Takeovers Executive should in general 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 caveats set out in paragraphs 411 to 415 on pages 92-93 of the HKEX Consultation Paper.

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)?

Yes

Please give reasons for your views.

The proposed time limits for the publication of a De-SPAC Announcement (i.e., within 24 months of the date of listing of the SPAC) and for the completion of a De-SPAC Transaction (i.e., within 36 months of the date of listing of the SPAC) are similar to the requirements under SLR 210(11)(m)(i). The US stock exchange rules also stipulate that a SPAC must complete a business combination within 36 months of the SPAC's IPO without further extension.

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)?

Yes

Please give reasons for your views.

The proposed requirement is similar to that of SLR 210(11)(p).

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)?

Yes

Please give reasons for your views.

As noted above, De-SPAC Transaction possesses uncertainty risks and the transaction may be delayed or falls through for reasons beyond the SPAC Promoter's control. The risk of the SPAC making sub-optimal decisions due to time pressure at the expense of independent shareholders' interests may also occur. All of these risks will be mitigated if the SPAC is granted an extension to either a De-SPAC Announcement Deadline or a De-SPAC Transaction Deadline provided that the SPAC is able to show good reasons for the Stock Exchange to grant the extension.

Such reasons may include, e.g., (a) having entered into a binding agreement for the business combination but the SPAC requires more time to satisfy the relevant conditions precedents; (b) delay in process of obtaining necessary regulatory approvals for the De-SPAC Transaction, where applicable; (c) occurrence of acts of nature such as natural disasters, pandemic etc.; and (d) such other reasonable circumstances that are beyond the SPAC Promoter's control. However, it is not practical to predict an exhaustive list of valid reasons.

Accordingly, we agree that (i) the SPAC should be able to make a request after obtaining approval of the extension by an ordinary resolution of its shareholders at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting); and (ii) the Stock Exchange should retain a discretion and exercise it on reasonable grounds to approve or reject a request for extension by the SPAC.

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 of the Consultation Paper) 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?

Yes

Please give reasons for your views.

In terms of (a), the SGX has a similar requirement under SLR 210(11)((n)(ii), and it is also provided in SLR 210(11)((n)(iii) that SPAC Promoters and their close associates must waive their right to participate in the liquidation distribution in respect of all equity securities owned or acquired by them prior to or pursuant to the IPO. It is respectfully submitted that the Stock Exchange should adopt the same in the Hong Kong SPAC regime. As for (b), please refer to the answer to above Question 20.

Question 65
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?

Yes

Please give reasons for your views.

The proposed requirements are similar to that of SLR 210(11)(p).

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?

Yes

Please give reasons for your views.

A SPAC is a cash shell company which does not have any business operations (or track record of business operations). It raises funds on the Stock Exchange through an IPO and use proceeds therefrom to acquire a target company identified by the SPAC Promoters. The SPAC would then combine with the target company in what is described as a De-SPAC Transaction, resulting in a Successor Company being listed. Given SPAC's business nature, we agree that it is reasonable to grant to a SPAC specific exemptions from complying with the requirements set out in paragraph 437 on page 99 of the HKEX 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?

Yes

Please give reasons for your views.

We agree with the proposed 1-month limit for the submission of a listing application on behalf of a SPAC given that the due diligence required of a SPAC is minimal due to the fact that SPAC is a newly formed cash company and has no business operations. However, we respectfully submit that the Stock Exchange may at its discretion grant an extension of one month to the submission of the SPAC's listing application (which complies with the requirement under LR 3A.02B) if the SPAC can provide the Exchange with valid reasons in seeking the extension.

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?

Yes

Please give reasons for your views.

Since the SPAC does not have any business operations prior to a De-SPAC Transaction, we agree that it is appropriate to exempt it from certain Listing Rule disclosure requirements such Corporate Governance and Environmental, Social and Governance reporting requirements.