

## Special Purpose Acquisition Companies

### SPAC Promoter structures

1. **If SPAC Promoter A holds the Promoter Shares through a special purpose vehicle (SPV), should the SPV itself also be regarded as a SPAC Promoter?**

No, as long as the SPV's sole purpose is to hold Promoter Shares on behalf of SPAC Promoter A (as permitted under the Note to MB Rule 18B.27).

The SPV is expected to give an undertaking to the Exchange and the SPAC that so long as it has any direct or indirect interest in any Promoter Shares and/or Promoter Warrants, it will comply with the provisions of the Listing Rules which apply to SPAC Promoter A.

*MB Rule 1.01, 18B.26 and 18B.27*

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2. **Should an entity be regarded as a SPAC Promoter if it controls the beneficial ownership of Promoter Shares? If so, should all levels in the control chain be regarded as a SPAC Promoter, or are SPACs permitted to identify which entity it believes should be treated as a SPAC Promoter within the control chain?**

In general, holding a controlling stake in an identified SPAC Promoter in itself would not result in that controlling shareholder being regarded as a SPAC Promoter. A SPAC should identify the entities in its shareholding structure that should be regarded as SPAC Promoters for the purpose of the Listing Rules, and such entities must satisfy the suitability and eligibility requirements set out in MB Rule 18B.10.

In addition, according to MB Rule 18B.27, a SPAC must only allot, issue or grant Promoter Shares or Promoter Warrants to a SPAC Promoter, which may hold these securities through SPVs. As such, a SPV holding Promoter Shares on behalf of a SPAC Promoter should not have any minority shareholders who are not SPAC Promoters.

SPAC Promoters and SPVs holding Promoter Shares and Promoter Warrants should undertake to the Exchange and the SPAC that they will comply with the relevant provisions of the Listing Rules for so long as they hold any direct or indirect interests in any Promoter Shares and/or Promoter Warrants.

*MB Rule 1.01, 18B.10, 18B.26 and 18B.27*

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**3. Can multiple SPAC Promoters beneficially own Promoter Shares through a common SPV?**

Yes. The Exchange may impose additional conditions on the multiple SPAC Promoters having regard to the specific facts and circumstances of each case, for example, any departure or change in shareholding by the multiple SPAC Promoters in the common SPV will be regarded as a material change of SPAC Promoter under MB Rule 18B.32.

*MB Rule 1.01, Note 1 to 18B.32  
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**4. Can a SPAC Promoter set up a trust to hold part of its Promoter Shares for the purpose of an equity incentive plan to benefit the SPAC Promoter's nominated SPAC Directors and certain of its other senior management and employees (Plan Participants)? If not, would this be permissible if the Plan Participants only received SPAC Shares that result from the conversion of the Promoter Shares following a De-SPAC Transaction and the listing of the Successor Company?**

No. The proposed equity incentive arrangement would circumvent the requirement of MB Rules 18B.26 to 18B.27 that Promoter Shares must only be granted to SPAC Promoters. Also, the Plan Participants will not have made a corresponding economic contribution to justify the grant of Promoter Shares to them.

The grant of SPAC Shares (converted from Promoter Shares) to Plan Participants would also be prohibited as this would represent only a difference in the form in which the benefit is granted and would not change the fact that the Plan Participants: (a) are not SPAC Promoters; and (b) did not contribute commensurate "capital at risk" to be entitled to the benefits of the Promoter Shares.

*MB Rule 18B.26 and 18B.27  
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## Disclosure of SPAC Promoters' investment management experience

### 5. To what extent the investment experience of a SPAC Promoter should be disclosed in the listing document under MB Rule 18B.10 and paragraph 6 of Chapter 2.4 of the [Guide for New Listing Applicants \(Guide\)](#)?

The sponsor(s) and the applicant should take into account the following when disclosing the investment experience of a SPAC Promoter:

- A balanced and fair view should be presented, instead of cherry picking of information (e.g. only disclosing the relevant funds' performance over a particular investment period in which the funds have better performance, or disclosing the performance of selected funds with positive returns and omitting those funds with negative returns);
- Fund performance (e.g. internal rate of return (IRR), multiple on invested capital (MOC), distributions to paid-in capital (DPI) for private equity funds) should be presented on a year-to-year basis, specifying the launch date of each fund. When comparing the funds' performance with industry performance indexes, comparison should be made on a year-to-year basis over the same investment period; and
- For private equity funds, where the fund portfolio includes realised and unrealised/partially realised positions, disclosure should include the relative size of the respective positions and their valuation methods and their respective time of investment and divestment.

*MB Rule 18B.10, HKEX-GL113-22  
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## Funding of a SPAC's expenses

### 6. Is it acceptable for the funding for SPAC expenses to be separated from the obligations of a SPAC Promoter? For example, can a SPAC be established by a group that obtains the funding for its expenses from an affiliate within the group that is not a SPAC Promoter?

No. A SPAC Promoter must incur all (or a pro rata portion of) the expenses to establish and maintain a SPAC. SPAC Promoters should regard this as their "capital at risk" to help ensure that their interests are aligned with the interests of SPAC shareholders, and such expenses should therefore not be recoverable if a De-SPAC Transaction is not completed.

The amount provided by a SPAC Promoter to fund the SPAC's expenses should also be commensurate with its beneficial interest in the Promoter Shares.

A SPAC Promoter can obtain a loan from its affiliate or use a capital contribution from its own shareholders (if any) to fund a SPAC's expenses. However, the entities granting the loans or injecting capital to the SPAC Promoter should not have any rights to request repayment of the loan from, or make any claims against, the SPAC.

*MB Rule 18B.10  
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## SFC licensed SPAC Promoter

7. **Will the requirement for the SFC-licensed SPAC Promoter to hold at least 10% of the Promoter Shares be satisfied if it has only voting control of a 10% (or more) interest in the SPAC's Promoter Shares without a commensurate beneficial economic interest in the Promoter Shares?**

No. The SFC-licensed SPAC Promoter must have a corresponding economic interest to help ensure that its interests are aligned with the interests of SPAC shareholders.

*MB Rule 18B.10 and 18B.11  
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8. **If a SPAC has multiple SPAC Promoters, must the SFC licensed SPAC Promoter(s) have relevant management/investment experience (required by paragraph 6 of GL113-22) or is it sufficient for other SPAC Promoter(s) to meet this requirement?**

The Exchange takes a holistic approach in determining the suitability and eligibility of SPAC Promoter.

For example, if the key SPAC Promoter (e.g. holding a significantly large and dominant interest in the Promoter Shares) has demonstrated extensive management/investment experience, while the SFC licensed SPAC Promoter holding a minority interest in the Promoter Shares has a relatively short operating history with a strong management team, the Exchange will consider all the relevant information, including the experience and competence of the board/management of the SPAC Promoters.

The Exchange might impose additional conditions on the SFC licensed SPAC Promoter, for example, any departure of the responsible officer with relevant management/investment experience from the SFC licensed SPAC Promoter will be regarded as a material change in SPAC Promoter under MB Rule 18B.32.

*MB Rule 18B.10(1), 18B.32, HKEX-GL113-22  
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## Independence of independent non-executive directors

9. **Can a SPAC issue SPAC Shares at nil consideration for the purpose of remunerating the independent non-executive directors (INEDs)?**

No. Subject to the provisions under MB Rule 3.13, an INED of a SPAC may subscribe for SPAC Shares with his own resources, provided that the INED is a Professional Investor.

*MB Rule 3.13 and 18B.07  
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## Obligations of a trustee/custodian regarding the operation of the escrow account of a SPAC

### 10. What is the obligation of the SPAC and/or trustee/custodian in terms of managing the total value of cash or cash equivalents held in the escrow account, in particular, in circumstances of market movements or currency fluctuation?

Under the note to MB Rule 18B.18, upon listing of the SPAC, it is the SPAC's responsibility to ensure that funds are held in a form that allows them to meet the requirement to give full redemption to its shareholders under MB Rules 18B.57 and 18B.74. This generally includes proper management of any exposure to:

- (i) currency fluctuations, for example, minimising conversion of the proceeds raised to other currencies; and
- (ii) market condition related risk, for example, ensuring compliance with the requirements on "cash and cash equivalents" under MB Rule 18B.18 and the Guidance Letter HKEX-GL113-22.

*MB Rule 18B.18, 18B.57 and 18B.74  
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## Other matters

### 11. Can a trustee accepted by the SFC as a trustee of a REIT be considered as having the qualifications required under MB Rule 18B.17?

The Exchange will take a case-by-case approach to determine whether a trustee or custodian would be considered as having the qualifications required under MB Rule 18B.17.

Further, item (i) under "Qualification" in paragraph [2935](#) of [Guidance Letter HKEX-GL114-22](#) [Chapter 2.4 of the Guide](#) provides that a trustee or custodian that has already been accepted by the SFC in respect of existing Collective Investment Schemes authorised by the SFC will be considered as having the qualifications required under MB Rule 18B.17. Generally, a custodian/trustee that has been accepted by the SFC in respect of a REIT authorised by the SFC will be considered as having the qualifications required under MB Rule 18B.17.

*MB Rule 18B.17  
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**12. Would the independence of third party investors who invest in a De-SPAC Transaction be affected by: (i) the third party investor having participated in the initial offering of the SPAC; or (ii) co-investments with a SPAC Promoter in transactions unrelated to the SPAC or the De-SPAC Transaction?**

~~The Exchange considers independent third party investment required under MB Rule 18B.40 to be an important safeguard to support the valuation of a De-SPAC Target. It is therefore critical to ensure that the test for independence is rigorous.~~

- (i) Subject to the independence requirements ~~under MB Rule 18B.40~~ set out in paragraph 15 of Chapter 2.4 of the Guide being met and absent other factors, an investor who has participated in the SPAC's initial offering would be allowed to invest in a De-SPAC Transaction if the conditions for placing shares to existing shareholders as set out in paragraph ~~4213~~ of Chapter 4.15 of the Guide are met.
- (ii) Participation in co-investments ~~would not normally, by itself, result in a failure to meet the independence requirement. However, the Exchange retains the discretion to deem any investor to be not independent based on the facts and circumstances of an individual case. may affect the independence of the third party investor if this resulted in a relationship that was determined to be "a current business relationship" (for the purpose of MB Rule 13.84(4)) which would be reasonably considered to affect the third party investor's independence, or might reasonably give rise to a perception that the third party investor's independence would be so affected.~~

*MB Rule 13.84(4) and 18B.40  
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**13. The Fees Rules state that the initial listing fee for a new applicant must be calculated on the basis of the "monetary value of the equity securities to be listed". Should the applicant assume that the SPAC Warrants have a monetary value of zero for the purpose of calculating this fee?**

The monetary value of SPAC Warrants will be zero if there is no issue price. Accordingly, the initial listing fee for SPAC Warrants will be HK\$150,000 based on the Fees Rules.

*MB Fees Rules paragraph 1  
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