

## **Questions Relating to Special Purpose Acquisition Companies**

### **Status of “Frequently Asked Questions”**

The following frequently asked questions (FAQs) are designed to help applicants and issuers to understand and comply with the Listing Rules, particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not substitutes for the Rules. If there is any discrepancy between the FAQs and the Rules, the Rules prevail. Defined terms used herein have the same meaning as ascribed to them in the relevant Rules and guidance.

In formulating our “responses”, we may have assumed certain underlying facts, selectively summarised the Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Contact the Listing Division at the earliest opportunity with any queries.

FAQ No.	Release Date (Last Update Date)	Main Board Rules	GEM Rules	FAQ No.	Query	Response
<b>SPAC Promoter structures</b>						
1.	16/09/2022	1.01, 18B.26, 18B.27	N/A	102-2022	If SPAC Promoter A holds the Promoter Shares through a special purpose vehicle (“ <b>SPV</b> ”), should the SPV itself also be regarded as a SPAC Promoter?	<p>The SPV will not be regarded as a SPAC Promoter as long as its sole purpose is to hold Promoter Shares on behalf of SPAC Promoter A (as permitted under the Note to Rule 18B.27).</p> <p>Although the SPV will not be regarded as a SPAC Promoter, it 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.</p>

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2.	16/09/2022	1.01, 18B.26, 18B.27	N/A	103-2022	<p>Should an entity be regarded as a SPAC Promoter if it controls the beneficial ownership of Promoter Shares?</p> <p>If so, should all levels in the control chain, including the ultimate controlling shareholder, 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?</p>	<p>According to Rule 1.01, a SPAC Promoter refers to a person who establishes a SPAC and/or beneficially owns Promoter Shares issued by a SPAC.</p> <p>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 Rule 18B.10. 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.</p> <p>In addition, according to 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.</p> <p>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.</p>

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3.	16/09/2022	1.01, Note 1 to Rule 18B.32	N/A	104-2022	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 Rule 18B.32.

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<b>Disclosure of SPAC Promoters' investment management experience</b>						
4.	16/09/2022	18B.10, HKEX-GL113-22	N/A	105-2022	To what extent the investment experience of a SPAC Promoter should be disclosed in the listing document under Rule 18B.10 and paragraph 8(c) of Guidance Letter HKEX-GL113-22 (“ <b>GL113-22</b> ”)?	<p>In disclosing the SPAC Promoter's investment experience, the sponsor(s) and the applicant should present a balanced and fair view, and avoid cherry-picking of information, for example, 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.</p> <p>In addition, when comparing the funds' performance with industry performance indexes, comparison should be made on a year to year basis over the same investment period.</p> <p><u>For private equity funds, where the fund portfolio includes realized and unrealized/partially realized positions, disclosure should include the relative size of the respective positions and their valuation methods and their respective time of investment and divestment.</u></p>

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<b>Funding of a SPAC's expenses</b>						
5.	16/09/2022	18B.10	N/A	106-2022	<p>Is it acceptable for the funding for SPAC expenses to be separate from the obligations of a SPAC Promoter?</p> <p>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?</p>	<p>No. A SPAC Promoter must incur all (or a pro rata portion of) the expenses to establish and maintain a SPAC, which should not be recoverable if a De-SPAC Transaction is not completed. SPAC Promoters should regard this as their "capital at risk" to help ensure that their interests are aligned with the interests of SPAC shareholders.</p> <p>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.</p> <p>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 loans from, or make any claims against, the SPAC.</p>
<b>SFC licensed SPAC Promoter</b>						

6.	16/09/2022	18B.10, 18B.11	N/A	107-2022	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.
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7.	16/09/2022	18B.10(1), HKEX- GL113-22	N/A	108-2022	If a SPAC has multiple SPAC Promoters, must the SFC licensed SPAC Promoter(s) have relevant management/investment experience (required by paragraph 8 of GL113-22) or is it sufficient for other SPAC Promoter(s) to meet this requirement?	<p>As stated in paragraph 13 of HKEX-GL113-22, the Exchange will exercise its discretion on a case-by-case basis and adopt a holistic approach, taking into account all the information provided and all relevant circumstances to determine whether it is satisfied as to the suitability and eligibility of a SPAC Promoter.</p> <p>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 take into account all the relevant information, including the experience and competence of the board/management of the SPAC Promoters in addition to the SPAC Promoters' own operating track records. In such circumstances, the Exchange reserves the right to 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 Rule 18B.32.</p>



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8.	16/09/2022	18B.26, 18B.27	N/A	109-2022	<p>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 other of its senior management and employees ("<b>Plan Participants</b>")?</p> <p>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?</p>	<p>No. The proposed equity incentive arrangement would circumvent the requirement of 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.</p> <p>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.</p>

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<b>Independence of independent non-executive directors</b>						
9.	16/09/2022	3.13, 18B.07	N/A	110-2022	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 Rule 3.13, an INED of a SPAC may subscribe for SPAC Shares with his own resources, provided that:  (a) the INED is a Professional Investor; and  (b) the number of SPAC Shares held by the INED will not result in the 1% cap on holdings by INEDs under Rule 3.13(1) being exceeded.

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<b>Obligations of a trustee / custodian regarding reporting of material breaches</b>						
10.	16/09/2022	18B.17, 18B.18	N/A	111-2022	What kinds of material breaches are required to be reported under paragraph 12(g) of Guidance Letter HKEX-GL114-22?	<p>Trustee/custodian is expected to:</p> <ul style="list-style-type: none"> <li>(i) update the SPAC and report to the Exchange any material issue or change that may impact its eligibility/capacity to act as a trustee/custodian referred to in Rule 18B.17; and</li> <li>(ii) inform the Exchange promptly of any material breach of the Listing Rules and relevant Guidance Letters in relation to the operation of the escrow account that has come to its knowledge, which has not been otherwise reported to the Exchange by the SPAC.</li> </ul> <p>An example of “material breach” which the trustee/custodian is expected to update the SPAC and report the Exchange includes, but not limited to, the failure of the trustee/custodian to fulfil its obligations as set out in the Guidance Letter (HKEX-GL114-22), for example, acquisitions of securities which fall outside the scope of cash equivalents for the purpose of Rule 18B.18 as set out in paragraph 6 of the Guidance Letter.</p>

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<b>Obligations of a trustee / custodian regarding the operation of the escrow account of a SPAC</b>						
11.	16/09/2022	18B.18	N/A	112-2022	What is the obligation of 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 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 shareholders under rules 18B.57 and 18B.74. This generally includes proper management of any exposure to:  (i) currency fluctuations, for example, minimizing conversion of the proceeds raised to other currencies; and  (ii) market condition related risk, for example, ensuring compliance of the requirements on "cash and cash equivalents" under Rule 18B.18 and the Guidance Letter HKEX-GL113-22.
12.	16/09/2022	18B.19, 18B.59, 18B.74	N/A	113-2022	In the event that the monies held in the escrow account are required to be returned to the SPAC shareholders (for example, upon the liquidation or winding up of the SPAC), is the trustee / custodian required to return the proceeds to the SPAC shareholders directly or can the proceeds be remitted to the SPAC for it to handle the distribution?	The funds should be remitted to the shareholders directly.

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13.	16/09/2022	18B.16	N/A	114-2022	For an escrow account to be “ring-fenced”, is a separate account sufficient, or are there any additional safeguards requirements to be put in place?	<p>As set out in the Guidance Letter HKEX-GL114-22 (including, in particular, paragraph 12(a)(iv)), the trustee/custodian must segregate the property of the SPAC in the escrow account from the property of:</p> <ol style="list-style-type: none"> <li>(1) the SPAC and its core connected persons;</li> <li>(2) the trustee/custodian and any nominees, agents or delegates throughout the custody chain; and</li> <li>(3) other clients of the trustee/custodian and nominees, agents or delegates throughout the custody chain, unless held in an omnibus account with adequate safeguards in line with international standards and best practices to ensure that the property of the SPAC in the escrow account is properly recorded with frequent and appropriate reconciliations being performed.</li> </ol>

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						<p>Please also refer to paragraphs 11 and 12 of the Guidance Letter regarding other obligations of the trustee or custodian. As set out in paragraph 12(f), the trustee/custodian must exercise due skill, care and diligence in discharging its obligations and duties appropriate to the nature of the escrow account, and should if the SPAC and the trustee / custodian consider necessary, they may put in place additional safeguards as appropriate in managing the assets of the SPAC.</p>

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<b>Qualifications of trustee / custodian of a SPAC</b>						
14.	16/09/2022	18B.17	N/A	115-2022	Can a trustee accepted by the Commission as a trustee of a REIT be considered as having the qualifications required under Rule 18B.17?	<p>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 Rule 18B.17.</p> <p>Further, paragraph 8 of Guidance Letter HKEX-GL114-22 provides that “<i>In general, only a custodian or trustee that has already been accepted by the Commission in respect of existing collective investment schemes authorised by the Commission will be considered as having the qualifications required under Rule 18B.17.</i>” Generally, a custodian/trustee that has been accepted by the Commission in respect of a REIT authorised by the Commission will be considered as having the qualifications required under Rule 18B.17.</p>

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<b>Other Matters</b>						
15.	16/09/2022	18B.40	N/A	116-2022	<p>Would the independence of third party investors who invest in a De-SPAC Transaction be affected by:</p> <p>(a) the third party investor having participated in the initial offering of the SPAC; or</p> <p>(b) co-investments with a SPAC Promoter in transactions unrelated to the SPAC or the De-SPAC Transaction?</p>	<p>The Exchange considers independent third party investment 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.</p> <p>(a) 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 under Guidance Letter HKEX-GL85-16 are met.</p> <p>(b) Participation in co-investments 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 Rule 13.84(4)) which would be reasonably considered to affect the third party investor's independence, or which might reasonably give rise to a perception that the third party investor's independence would be so affected.</p>



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16.	16/09/2022 <a href="#">(31/12/2023)</a>	<del>Appendix 8 Fees Rules</del> paragraph 1	N/A	117-2022	<p><del>Appendix 8 The Fees Rules</del> states 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”.</p> <p>Would the Exchange expect a “monetary value” of the SPAC Warrants to be calculated for this purpose or should the applicant assume that the SPAC Warrants have a monetary value of zero for the purpose of calculating this fee?</p>	<p>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 <del>Appendix 8 the Fees Rules to the Rules</del>.</p> <p>Separately, a SPAC is also required to pay the initial listing fee for SPAC Shares according to <del>the Appendix 8 Fees Rules to the Rules</del>.</p>