

## HKEX GUIDANCE LETTER

HKEX-GL114-22 (March 2022) (Withdrawn in January 2024)

*[Incorporated into the guidance letter GL113-22 (Guidance on special purpose acquisition companies).]*

<b>Subject</b>	<b>Guidance on the qualifications and obligations of a trustee / custodian regarding the operation of the escrow account of a SPAC</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Rules 18B.16 to 18B.20</b>

**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter. Unless otherwise specified, defined terms in the Listing Rules shall have the same meanings in this letter.*

### **Purpose**

1. This letter provides guidance on the qualifications and obligations of the trustee or custodian referred to in Rule 18B.17.

### **Relevant Listing Rules and Guidance**

2. Rule 18B.16 provides that “A SPAC must hold 100% of the gross proceeds of its initial offering (excluding proceeds raised from the issue of Promoter Shares and Promoter Warrants) in a ring-fenced escrow account domiciled in Hong Kong.”
3. Rule 18B.17 provides that “*The escrow account referred to in rule 18B.16 must be operated by a trustee or custodian whose qualifications and obligations are consistent with the requirements of Chapter 4 of the UT Code.*”
4. Rule 18B.18 provides that “the monies held in the escrow account referred to in rule 18B.16 must be held in the form of cash or cash equivalents.”
5. The Note to Rule 18B.18 further provides that: “*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. The Exchange may publish guidance on the Exchange’s website, as amended from time to time, on its interpretation of “cash equivalents” for the purpose of this rule.*”
6. Guidance Letter GL113-22 further states that “*The Exchange considers short-term securities issued by governments with a minimum credit rating of (a) A-1 by Standard & Poor’s Ratings Services; (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 as cash equivalent for the purpose of Rule 18B.18.*”

## Guidance

### **Qualifications and obligations of the trustee or custodian referred to in Rule 18B.17**

7. The purpose of Rule 18B.17 is to ensure that sufficient protections are placed around the funds raised by SPACs so that they are available to return to shareholders who choose to redeem their shares or to return to shareholders if and when the SPAC is liquidated.

#### Qualifications of trustee or custodian

8. 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.
9. In addition, given that the escrow account must be domiciled in Hong Kong as required under Rule 18B.16, the custodian or trustee appointed by a Hong Kong-listed SPAC is expected to be based in Hong Kong.
10. A custodian or trustee operating the escrow account must be independent of the SPAC and its connected persons, including the Promoter.

#### Obligations of trustee or custodian

11. For the purpose of Rule 18B.17 in relation to the operation of the escrow account, the trustee/custodian is expected to comply with the following general obligations (which are consistent with paragraphs 4.5 and 4.6 of Chapter 4 of the UT Code as amended from time to time). The obligations set out in the guidance below are the only obligations applicable to the trustee or custodian regarding the operation of the escrow account of a SPAC under Rule 18B.17.
12. The trustee/custodian must:

#### (a)

- (i) take into its custody or under its control the property of the SPAC in the escrow account referred to in Rule 18B.16 in accordance with Rules 18B.16 to 18B.20;
- (ii) register cash and registrable assets in the name of or to the order of the trustee/custodian;
- (iii) be liable for the acts and omissions of nominees, agents and delegates in relation to assets forming part of the property of the SPAC in the escrow account;

*Note: Nominees, agents and delegates can be appointed for the custody and/or safekeeping of the property of the SPAC in an escrow account as long as these entities are subject to prudential regulation and supervision by authorities such as The Hong Kong Monetary Authority. Such nominees, agents or delegates can be unaffiliated with the trustee/custodian.*

- (iv) segregate the property of the SPAC in the escrow account from the property of:

- (1) the SPAC and its core connected persons;
  - (2) the trustee/custodian and any nominees, agents or delegates throughout the custody chain; and
  - (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;
- (v) put in place appropriate measures to verify ownership of the property of the SPAC in the escrow account;
- (b) take reasonable care to ensure that any payments or distributions from the escrow account are carried out in accordance with the provisions of Rules 18B.19 and 18B.20;
  - (c) take reasonable care to ensure that the investment limitations set out in Rule 18B.18 (including guidance provided by the Exchange in relation to “cash equivalents”) are complied with;
  - (d) take reasonable care to ensure that the cash flows of the escrow account are properly monitored;
  - (e) exercise reasonable care, skill and diligence in the selection, appointment and ongoing monitoring of any nominees, agents and delegates appointed for the custody and/or safekeeping of the property of the SPAC in the escrow account; and be satisfied that the nominees, agents and delegates retained remain suitably qualified and competent on an ongoing basis to provide the relevant services;
  - (f) exercise due skill, care and diligence in discharging its obligations and duties appropriate to the nature of the escrow account;
  - (g) establish clear and comprehensive escalation mechanisms to deal with potential breaches detected in the course of discharging its obligations and report material breaches to the Exchange in a timely manner; and
  - (h) update the SPAC and report to the Exchange (either directly or via the SPAC) any material issues or changes that may impact its eligibility/capacity to act as a trustee/custodian of the escrow account.

#### Change of trustee / custodian

- 13. A SPAC must appoint a new trustee/custodian as soon as possible (in any case, no later than one month) after it becomes aware that the existing trustee/custodian is or will become ineligible to act as a trustee/custodian for the escrow account for the purpose of Rule 18B.17.
- 14. A trustee/custodian must not retire except upon the appointment of a new trustee/custodian. The retirement of the trustee/custodian should take effect at the same time as the new trustee/custodian takes up office.
- 15. The appointment of a new trustee/custodian must be subject to the prior approval of the Exchange.

### Undertaking

16. Prior to its appointment, a trustee/custodian to be appointed by a SPAC for the purpose of Rule 18B.17 must enter into an undertaking with the Exchange to comply with the obligations set out in paragraphs 12 and 14 of this guidance letter.