By Hand and by Email ([redacted])

29 October 2021

Hong Kong Exchange and Clearing Limited
8/F, Two Exchange Square
8 Connaught Place
Central
Hong Kong

Dear Madam / Sir,

CONSULTATION PAPER ON SPECIAL PURPOSE ACQUISITION COMPANIES ("SPACs")

CFA Institute and CFA Society Hong Kong are writing to provide you with our response in relation to the above-mentioned consultation paper by the Hong Kong Exchange and Clearing ("HKEX") on the proposed framework for special purpose acquisition companies (the "Proposal").

Our comments are consistent with the mission and objective of CFA Institute[1] and CFA Society Hong Kong[2] to uphold market integrity and ensure investor protection in financial markets. These are critical elements that drive efficient and effective capital allocation, without which sustained innovation and economic growth will be compromised.

CFA Institute and CFA Society Hong Kong have long recognized the importance of effective capital formation, whether via public or private markets.[3] We support regulatory efforts that balance the need for innovation and business development on the one hand, and robust investor protection, sound corporate governance practices, as well as a high level of trust in the system on the other. In particular, we support the idea of establishing a SPAC listing regime in Hong Kong, as another pathway for new companies to list on the exchange. We note, however, that the regime will only make sense if it is commercially viable for the region's financial institutions, while ensuring sound investor protection.

Much of our knowledge about SPACs is based on the analysis and research of these structures in the US. It is perhaps worth noting one crucial difference between the two markets. Unlike in the US, in Hong Kong contingency fee-based class action is not allowed, making it difficult for investors to hold management and directors to account. This places an

[1] CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 170,000 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 161 local member societies.

[2] CFA Society Hong Kong (the Society) is a non-profit organization founded in 1992 as the Hong Kong Society of Financial Analysts by a group of CFA Charterholders. The Society shares the mission of CFA Institute in raising the professional and ethical standards of financial analysts and investment practitioners through our advocacy and continuing education efforts. In addition to promoting the CFA designation in Hong Kong, the Society aims to provide a forum for our members, CFA Institute, other investment practitioners and regulators for networking and the exchange of industry insights and best practices.

[3] Rosov, S. "Capital Formation: The Evolving Role of Public and Private Markets", CFA Institute, November 2018, https://www.cfainstitute.org/-/media/documents/article/position-paper/capital-formation.ashx.

extra burden on the financial regulators to create rules and regulations to prevent fraudulent and neglectful activities. In formulating our views, we have sought to balance all of the above considerations. In this cover letter, we describe briefly our positions. Answers to the questions posed in the consultation paper and more detailed reasoning are provided in the enclosed appendix.

Features we like

- **No regulatory arbitrage:** It is clear from the Proposal that there is no desire to ease off the focus that HKEX has placed on the regulation of shell companies in Hong Kong over the years. We welcome this. In our view, there should be no difference in requirements for new listing candidates, regardless of the route they choose, i.e. via a traditional IPO or via a SPAC. We feel this approach is necessary in order to minimize opportunities for regulatory arbitrage.

  This is also consistent with developments in other major markets, notably in the US. In April 2021, the Securities and Exchange Commission ("SEC") in the US clarified that perceived benefits of SPACs due to regulatory arbitrage do not exist, and warned market participants against exploiting market loopholes (whether real or perceived). Rules around accounting of warrants have also been tightened. [4]

- **Professional Investors ("PI") only:** We also agree in principle with the regime being available to PI only. We appreciate this is a divisive issue in Hong Kong, where retail investors form a large contingent of equity traders, bringing liquidity and vibrancy to the market. However, the inherent complexity and volatility of SPACs, as well as their relative lack of track record in this region, provide a strong argument for this. We also note the precedent of the Rusal IPO in 2010, which was only available to PIs, or those willing to purchase at least HK$ 1 million worth of shares, effectively excluding retail investors.

- **Eligibility criteria of SPAC Promoters:** We believe this is an important feature of the proposed regime. Research in the US[5] shows that the post-merger returns of SPACs that have high quality promoters[6] were higher than those of SPACs with non-high quality promoters. While post-merger returns are a function of many factors, setting a high bar for SPAC Promoters is essential in safeguarding the integrity of the market.

- **Independent shareholder vote only:** There are many conflicts inherent in a SPAC structure. One such conflict is that SPAC Promoters are incentivized to do any deal before the deadline. Promoter shares are given to SPAC Promoters for free and align a SPAC Promoter's economic interest with that of other shareholders, but they should not give SPAC Promoters the right to vote for a transaction they identified and negotiated in the first place.

- **Tying redemption to those who vote against the merger:** We are supportive of the Proposal to link voting with redemption. Allowing SPAC shareholders to vote for a merger and then redeem their shares increases the amount of dilution for non-

[4] "Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies", SEC, 12 April 2021, https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs

[5] Klusner et al. "A Sober Look at SPACs", 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[6] As defined by having assets under management of US$1 billion or more and being a former CEO or other senior officer of a Fortune 500 company

redeeming shareholders. Offering redemptions only to those who vote against the De-SPAC would reduce such dilution. It would also incentivize SPAC Promoters to find and negotiate a high quality deal, or risk it being voted down and losing their investment.

Additional features, or features that need more emphasis and/or clarification

- **Independent non-executive directors (INEDs) at the time of the SPAC IPO:** The Proposal is silent on whether the Listing Rule requirement to have at least three INEDs or at least one-third of the board being INEDs applies to a SPAC at its IPO. In our view, this is an important governance requirement and is worth more emphasis. The role of INEDs is particularly important if the De-SPAC Transaction is a connected transaction.

- **Disclosures:** Here we are guided by the view that transparency improves market integrity and investor outcomes. While the Proposal refers to a Listing Document and shareholder circular, some features of a SPAC may warrant more extensive and specific disclosure requirements. Such disclosures may include, among others, the effect of the redemption of SPAC shares and of the exercise of outstanding warrants on the dilution of the value of SPAC investors' holdings, scenario analysis of possible dilution, transparency on all fees and costs, and on the valuation methodology of the target.

  We would also appreciate clarity on the information that needs to go out to SPAC shareholders for their evaluation and approval (or otherwise) of the De-SPAC Transaction. Save for procedural matters, disclosures in the Listing Document should be the same as those in the circular to shareholders, to prevent any information arbitrage between the two.

- **Fairness opinion:** We welcome the requirement for an IPO Sponsor to be responsible for the due diligence of a De-SPAC Target. In addition to due diligence performed by the IPO Sponsor, it is worth considering recommending as a best practice an independent valuation report including a fairness opinion on the target prepared by an independent valuer. Fairness opinions provide an additional level of due diligence and have become a common feature of US-based SPACs.

Features that should be removed or adjusted

- **Mandatory PIPE investment:** We recommend that PIPE investment should not be a mandatory requirement but should remain a commercial arrangement. Not all SPACs need to raise additional funding through PIPE. In the US, the presence of PIPE signals validation of the De-SPAC Transaction and of the target's valuation. It also purportedly provides additional comfort to other shareholders that the target is a credible one because of the due diligence performed by the PIPE investors.

  However, these benefits are not as applicable in the Hong Kong context, since the Proposal mandates an appointment of an IPO Sponsor who will be responsible for due diligence of the target. If the objective is to provide justification on the valuation, then a fairness opinion is a much more direct way of doing so. Further, the presence of PIPE investors does not guarantee the quality of the transaction. An example is Nikola Motor Company, which listed on the Nasdaq Stock Exchange via a merger with a SPAC in June 2020. The company managed to secure PIPE investment from prominent investors, but later it came to light that the viability of its products and the value of the company had been fraudulently inflated, resulting in criminal and civil charges against the company's CEO.

In some PIPE investments in the US, sometimes additional inducements are provided to entice PIPE investors. These are often referred to as “side deals”. While it may be too early to gauge if this would be a trend in Hong Kong, we would recommend that if such side deals and sweeteners exist, they must be fully disclosed. We also recommend that the involvement of PIPE investors, or lack thereof, the size of PIPE investment, and any related considerations (including side deals and sweeteners) must be fully disclosed.

- **Dilution cap:** While we are in broad agreement with the imposition of a cap on maximum dilution, we are of the view that setting an aggregate limit of 30% dilution from warrants is too low and propose increasing it to 50%. Warrants, if structured well (such as being priced sufficiently out-of-the-money and with long vesting periods) can align the interests of SPAC Promoters with those of post-merger shareholders and we believe there should be greater flexibility to the anti-dilution mechanisms in paragraph 311.
- **Amount of gross proceeds to be ring-fenced:** We suggest bringing this down from 100% to 95%. While the intention is laudable, asking SPAC Promoters to effectively bear all the fees and costs incurred may be too onerous and may drive SPAC Promoters to other markets. At 95%, SPAC Promoters will still bear some of the fees and costs and will be incentivised to run a lean and effective operation.

Conclusion

We acknowledge HKEX’s effort to allow companies an alternative route to market without compromising its investor protection regime. We welcome the opportunity to discuss our observations and suggestions with HKEX. Should you have any questions on our positions, please do not hesitate to contact [redacted] at [redacted] or [redacted], at [redacted].

Yours faithfully
For and on behalf of
CFA Institute

[redacted]

For and on behalf of
CFA Society Hong Kong

[redacted]

Encl.

Question 1

Do you agree that the subscription and trading of SPAC securities prior to a De-SPAC Transaction should be limited to Professional Investors only (see paragraph 149 of the Consultation Paper)?

Please give reasons for your views.

The proposal to limit the subscription and trading of SPAC securities prior to a De-SPAC Transaction to Professional Investors ("PIs") is a unique feature of the HKEX SPAC framework and underpins the logic and rationale of the entire proposed framework. We see its purpose as maintaining a delicate balance between business development on the one hand, and the protection of investor interests and Hong Kong's reputation on the other.

In Hong Kong, retail investors form a large contingent of equity traders[7], bringing liquidity and vibrancy to the market. Shutting them out of a new product category that purports to provide opportunities like those of private equity[8] could be seen as excessive. The sophistication and knowledge of retail investors in Hong Kong varies a great deal. They enjoy access to other markets and products, and even if they don't trade SPACs in Hong Kong, they may be trading other exotic instruments, such as crypto-assets or SPACs listed in other markets. By limiting SPAC trading to PIs only, HKEX risks that new SPAC business will go elsewhere.

Notwithstanding the above, we concur with the cautious approach taken by HKEX on this important issue. In roundtable discussions on SPACs that CFA Institute and CFA Society Hong Kong hosted in April and September 2021, the level of complexity and financial engineering embodied in SPACs raised serious concerns among participants.[9] There was much doubt as to whether retail investors would truly understand the features of a SPAC, and whether without such understanding they could make informed decisions. SPAC structures are new to the Hong Kong market. The way they are introduced will send an important signal of HKEX's determination to uphold market integrity while being innovative.

It is important to note that PIs are a diverse group with a high degree of variation in their technical skills and level of sophistication. Some individual PIs may have significant pools of investable assets, but may still struggle with the complexity of a SPAC, and the concerns raised above over retail investors could still be relevant. We would welcome further guidance from the Securities and Futures Commission ("SFC") on suitability requirements with relation to SPACs for individual PIs. In addition, investor education will be critical even for individual PIs, such that they are aware of the risks, their rights, as well as responsibilities as shareholders to vote their proxies, attend meetings and make informed decisions.

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[7] For example, Hong Kong ranked 1st out of 16 countries for share trading with 57% saying they currently owned stocks. and 53% bought shares in the previous 12 months, according to a 2021 global survey of nearly 23,000 participants by Finder, a US personal finance site. https://www.finder.com/hk/share-trading-statistics.

[8] Rodrigues and StegeMoller. "Exit, Voice, and Reputation: The Evolution of SPACS. 2013." https://digitalcommons.law.uga.edu/fac_artchop/923/

[9] See for example "HK Roundtable on SPACs", 2021. https://www.arx.cfa/-/media/regional/arx/article/CFA-SPAC-HK_Roundtable_WEB.ashx. Participants included financial services industry professionals involved in SPAC deals as investors, investment banking professionals, securities lawyers, and other intermediaries.

Much of the current proposed framework is based upon limiting the subscription and trading of SPACs to PIs only. In the event that as part of the current consultation, HKEX decides to remove such limitations, we strongly urge HKEX to develop a new proposal and consult the market again. If restrictions on retail participation are removed, the package of safeguards must be re-designed and re-evaluated.

Question 2

If your answer to Question 1 is "Yes", do you agree with the measures proposed in paragraphs 151 to 159 of the Consultation Paper to ensure SPAC's securities are not marketed to and traded by the public in Hong Kong (excluding Professional Investors)? Please give reasons for your views.

We are in broad agreement with the proposed arrangements and would like to offer additional comments below:

- **SPAC requirements**: If the measures to prevent non-PIs from subscribing and trading SPAC's securities are robust enough, we do not see a need to impose a minimum board lot and subscription size of HK$1 million. We believe such a requirement is excessive and may further hamper the liquidity of SPAC securities.

- **Exchange Participant requirements**: We agree with the proposals. In addition, given the complexity of product features and lack of information prior to the De-SPAC Announcement about the future business operations of the Successor Company, we would argue for SPACs to be classified as Complex Products under the Complex Product regime in Hong Kong, as defined by the SFC. We would also recommend that the SFC provide further guidance on the provision of marketing and advisory services with regard to SPACs by financial intermediaries to their clients, including, for example, suitability assessment requirements, and the treatment of reverse enquiries. Many Exchange Participants do not interface with clients directly, and would require additional comfort that the orders received are from bona fide PIs. Setting clear expectations of "upstream" financial intermediaries is key to delivering the objective of the regulatory intent here.

- **Stock short name marker:** We agree that introduction of the Stock Short Name Marker to the stock short names of SPAC Shares and SPAC Warrants would help the market differentiate them from the securities of non-SPAC issuers.

Question 3

Do you consider it appropriate for SPAC Shares and SPAC Warrants to be permitted to trade separately from the date of initial listing to a De-SPAC Transaction? If not, do you have any alternative suggestions? Please give reasons for your views

Yes. The separate trading of SPAC Shares and SPAC Warrants can provide flexibility for investors to decide how they participate in these opportunities – via shares or warrants or both. This is a core feature of SPAC regimes worldwide and a deviation from it will likely lead to significantly diminished interest. SGX, in its own responses to comments on the

consultation paper on SPACs, notes that warrants serve as a risk premium that SPAC IPO investors require in return for locking up their funds in the SPAC for up to 36 months.[10]

Question 4

If your answer to Question 3 is "Yes", would either Option 1 (as set out in paragraph 170 of the Consultation Paper) or Option 2 as set out in paragraph 171 to 174 of the Consultation Paper) be adequate to mitigate the risks of extraordinary volatility in SPAC Warrants and a disorderly market? Do you have any other suggestions to address the risks regarding trading arrangements we set out in the Consultation Paper?

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

We consider Option 2 adequate. The proposed Volatility Control Mechanism ("VCM") with a cooling-off period should be sufficient to mitigate the risk of extraordinary volatility in SPAC Warrants as these products are available for PIs only. Imposing manual trading process will reduce the trading efficiency and increase costs.

Question 5

Do you agree that, at its initial offering, a SPAC must distribute each of SPAC Shares and SPAC Warrants to a minimum of 75 Professional Investors in total (of either type) of which 30 must be Institutional Professional Investors?

Please give reasons for your views.

We support the requirement of a minimum of 75 PIs to ensure the adequate breadth of ownership of the SPAC's securities. However, we have reservations on setting a minimum threshold of 30 Institutional Professional Investors ("IPIs") as it may place unnecessary constraints on the distribution. At this juncture, it is difficult to gauge the interest and appetite of IPIs for SPACs in this region. There may also be constrains in their investment mandates.

We agree that wider ownership of SPACs would improve trading liquidity but there should be more flexibility in the thresholds. While we have not conducted any investor survey regarding the threshold, we believe the minimum threshold of 15 to 20 IPIs would be sufficient.

On the issue of SPAC shareholder requirement and liquidity, the US experience is cautionary. Both Nasdaq and the New York Stock Exchange ("NYSE") imposed a 300 round-lot shareholder requirement. Nasdaq and the NYSE both found that SPACs "often have difficulty demonstrating compliance with the shareholder requirement."[11] Between October 2017 and May 2021, the exchanges engaged in a concerted and consistent campaign to reduce the number of required SPAC shareholders down from 300 to a lower number, in one instance doing away with the requirement altogether once the SPAC started trading. US SPACs are also illiquid. In 2017-18, SPAC shares listed on Nasdaq did not trade at all on

[10] SGX. Response paper on Proposed listing framework for SPACs. https://api2.sgx.com/sites/default/files/2021-09/Response%20Paper%20on%20Proposed%20Listing%20Framework%20for%20Special%20Purpose%20Acquisition%20Companies.pdf

[11] SEC. November 2017. Notice of Filing of Proposed Rule Change to Amend the Listed Company Manual for Special Purpose Acquisition Companies to Lower the Initial Holder Requirement From 300 to 150 Round Lot Holders and to Eliminate Completely the 300 Public Stockholders Continued Listing Requirement, to Require at Least $5 Million in Net Tangible Assets for Initial and Continued Listing, and to Impose a 30-Day Deadline to Demonstrate Compliance with the Initial Listing Requirements Following a Business Combination. https://www.sec.gov/rules/sro/nyse/2017/34-82180.pdf

26% of the 30 days prior to the De-SPAC announcement, based on a sample of 80 SPACs. Even during the three-day period around the announcement day, when hectic activity is expected, there were no trades on 13% of the days.[12]

Question 6

Do you agree that, at its initial offering, a SPAC must distribute at least 75% of each SPAC Shares and SPAC Warrants to Institutional Professional Investors? Please give reasons for your views.

As highlighted in our response to Question 5, we support the strong presence of IPIs at SPAC IPOs, however we have reservation on mandating an allocation of a minimum of 75% to them. We feel that it is too high and too prescriptive, and that it may limit the participation of individual PIs. We suggest adjusting the threshold to 50%, to allow for a wider spectrum of shareholders of the SPACs.

Question 7

Do you agree that not more than 50% of the securities in public hands at the time of a SPAC's listing should be beneficially owned by the three largest public shareholders? Please give reasons for your views.

Yes, as the limit can prevent over-concentration of ownership in the hands of a small number of shareholders, which may reduce the liquidity of the SPACs, and in turn lead to higher price volatility. It can also mitigate the potential risks of "cornering" of outstanding shares by large investors.

Also, as we explain in Question 48, a combination of concentrated shareholding and tying redemption to voting results, gives major shareholders "holdout" power. In effect, they could threaten to vote down a proposed De-SPAC Transaction in return for better incentives, essentially holding SPAC management hostage. The distinction between a reasonableness check on a De-SPAC Transaction and providing unduly favorable terms for a small group of shareholders to obtain approval is a fine one, and care must be taken not to inadvertently create such situations.

Question 8

Do you agree that at least 25% of the SPAC's total number of issued shares and at least 25% of the SPAC's total number of issued warrants must be held by the public at listing and on an ongoing basis?

Yes, this would help enhance the liquidity of the listed entity.

Question 9

Do you agree that the shareholder distribution proposals set out in paragraphs 181 and 182 of the Consultation Paper will provide sufficient liquidity to ensure an open market in the securities of a SPAC prior to completion of a De-SPAC Transaction or are there other measures that the Exchange should use to help ensure an open and liquid market in SPAC securities?

Please give reasons for your views.

[12] SPACs: Insider IPOs. 2021. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3906196.

Yes. Since the proposal limits the access to SPACs to PIs only, it would pose some constraints on the investor base. We agree that the current Listing Rules requirement of at least 300 shareholders may be too onerous for the offering process of a SPAC.

As stated in our responses to Questions 5 to 8, we support the strong presence of IPIs at the IPO stage, however we have reservations regarding the potential over-concentration of shares held by IPIs.

Question 10

Do you agree that, due to the imposition of restricted marketing, a SPAC should not have to meet the requirements set out in paragraph 184 of the Consultation Paper regarding public interest, transferability (save for transferability between Professional Investors) and allocation to the public?

Please give reasons for your views.

Yes, we agree to the proposed consequential exemptions for SPACs from the requirements regarding public interests, transferability, and allocation to the public, as the subscription and trading of SPAC securities prior to a De-SPAC Transaction is limited to PIs only.

Given the narrower investor base, we believe that wider participation by all eligible PIs will be more desirable, as discussed in our responses to earlier questions.

Question 11

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

Please give reasons for your views

Yes, the proposed minimum issue price of HK$ 10 can help mitigate the high price volatility sometimes associated with the trading of penny stocks.

Question 12

Do you agree that the funds expected to be raised by a SPAC from its initial offering must be at least HK$1 billion?

Please give reasons for your views.

Yes. Setting a minimum SPAC IPO size will set expectations that the De-SPAC Transactions will be sufficiently large, and that the resulting Successor Companies will more likely satisfy listing requirements, including, for example, market cap requirements.

We note that that proposed threshold of HK$1 billion is similar to that of the UK but slightly higher than in Singapore and some segments of the US market. We do not have a strong view on the exact level of the threshold, however, we expect the Exchange to review this requirement regularly to ensure that its SPAC regime remains competitive in the international marketplace. Nevertheless, we caution against setting the threshold too high, as it may not be practical, given the relatively small size of likely De-SPAC Targets in the region. Further, the larger a SPAC IPO, the larger the opportunity cost of funds being locked up before they are deployed. Even if a SPAC Promoter has an ambition to merge with a target that is multiple times of the size of the SPAC (beyond the traditional sweet spot of three to five times), the shortfall in funding can be bridged through other means of fund raising, such as PIPE investments.

Question 13

Do you agree with the application of existing requirements relating to warrants with the proposed modifications set out in paragraph 202 of the Consultation Paper?

Please give reasons for your views.

Yes, the proposed rules are in line with the international practice and could help reduce the risk of a misalignment of interests between the SPAC Promoter(s) and the SPAC shareholders. However, we would like to seek additional clarification in relation to paragraph 202(a). In addition to Exchange approval, do all shareholders, including SPAC Promoters, have the right to vote on approval of an issue or a grant of SPAC Warrants and Promoter Warrants, or will SPAC Promoters have to abstain from the vote if the issue or grant is in relation to Promoter Warrants? Our view is that to prevent the inherent conflict of interest, it may be sensible to require SPAC Promoters to abstain from voting on the issue or grant of Promoter Warrants after the SPAC IPO.

Question 14

Do you agree that Promoter Warrants and SPAC Warrants should be exercisable only after the completion of a De-SPAC Transaction?

Please give reasons for your views.

Yes. This is important as it allows for better alignment of the long-term interests of SPAC Promoters and other SPAC shareholders. Much of the SPAC Promoter's upside is in the value of the Promoter Warrants. Making them exercisable after the completion of a De-SPAC Transaction will incentivize SPAC Promoters to complete a high-quality transaction that is value-accretive to all shareholders.

Question 15

Do you agree that a SPAC must not issue Promoter Warrants at less than fair value and must not issue Promoter Warrants that contain more favorable terms than that of SPAC Warrants?

Please give reasons for your views.

Yes, this can reduce the risk of misalignment of interests between SPAC Promoters and SPAC shareholders.

Question 16

Do you agree that the Exchange must be satisfied as to the character, experience and integrity of a SPAC Promoter and that each SPAC Promoter should be capable of meeting a standard of competence commensurate with their position?

Please give reasons for your views.

Yes. We believe this is an important feature of the proposed regime. Research by Klausner and Ohlrogge[13] shows that the post-merger returns of SPACs that have high quality promoters[14] were higher than those of SPACs with non-high quality promoters. In the US, the Securities and Exchange Commission ("SEC") has cautioned investors about investing in

[13] Klusner et al. "A Sober Look at SPACs", 2020. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3720919.

[14] As defined by having assets under management of US$1 billion or more and being a former CEO or other senior officer of a Fortune 500 company

SPACs associated with celebrities. While post-merger returns are a function of many factors, setting a high bar for SPAC Promoters is essential in safeguarding the integrity of the market.

Question 17

Do you agree that the Exchange should publish guidance setting out the information that a SPAC should provide to the Exchange on each of its SPAC Promoter's character, experience and integrity (and disclose this information in the Listing Document it publishes for its initial offering), including the information set out in Box 1 of the Consultation Paper, or is there additional information that should be provided or information that should not be required regarding each SPAC Promoter's character, experience and integrity?

Please give reasons for your views.

Yes, we agree with the proposed guidance on the required disclosure of the SPAC promoter's character, experience, and integrity as set out in Box 1 of the Consultation Paper, to help investors assess the capability and suitability of the SPAC Promoter, which are critical to the success of a SPAC. In addition, HKEX may consider mandating the disclosure of the number of SPACs a SPAC Promoter is involved in concurrently, whether potential conflicts of situations may arise as a result, and how they plan to handle such conflicts of interest.

Question 18

Do you agree that the Exchange, for the purpose of determining the suitability of a SPAC Promoter, should view favorably those that meet the criteria set out in paragraph 216 of the Consultation Paper?

Please give reasons for your views.

Yes, we agree that candidates who meet the criteria set out in paragraph 216 of the Consultation Paper should be viewed favorably for the purpose of determining the suitability of a SPAC Promoter. However, these requirements should not be made mandatory, as this may set too high a barrier of entry and limit the pool of eligible SPAC Promoters.

Question 19

Do you agree that at least one SPAC Promoter must be a firm that holds: (i) a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) license issued by the SFC; and (ii) at least 10% of the Promoter Shares?

Please give reasons for your views.

Yes, the SPAC Promoter should possess strong experience in corporate finance and asset management, which are critical in the negotiation and implementation of a successful merger. The licensing requirement can empower the regulators to weed out those SPAC Promoters who are not fit and proper for this role. The requirement on the Promoter to hold at least 10% of the Promoter Shares could also better align the interests of the SPAC Promoter and the SPAC shareholders.

Question 20

Do you agree that, in the event of a material change in the SPAC Promoter or the suitability and/or eligibility of a SPAC Promoter, such a material change must be approved by a special resolution of shareholders at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting) and if it fails to obtain the requisite shareholder approval within one month of the material change, the trading of a SPAC's securities will be suspended and the SPAC must return the funds it raised from its initial offering to its shareholders, liquidate and de-list (in accordance with the process set out in paragraphs 435 and 436 of the Consultation Paper)?

Please give reasons for your views.

Yes, this is an effective mechanism to protect the interests of the SPAC shareholders.

Question 21

Do you agree that the majority of directors on the board of a SPAC must be officers (as defined under the SFO) of the SPAC Promoters (both licensed and non-licensed) representing the respective SPAC Promoters who nominate them?

Please give reasons for your views.

We agree in principle that appointing officers of SPAC Promoters as SPAC directors will help ensure that they have skills to carry out their duties on the board of the SPAC. We note, however, a potential conflict of interest between their responsibilities to the SPAC (and its shareholders) and to the SPAC Promoter, their employer. This brings to the fore the importance of appointing to the board independent non-executive directors ("INEDs") who will represent the interests of shareholders.

For the avoidance of doubt, the Listing Rule requirement to have at least three INEDs or at least one-third of the board being INEDs should apply to a SPAC at its IPO. The role of INEDs is particularly important if the De-SPAC Transaction is a connected transaction.

Question 22

Do you agree that 100% of the gross proceeds of a SPAC's initial offering must be held in a ring-fenced trust account located in Hong Kong?

Please give reasons for your views.

The concept of "skin in the game" is important in aligning the interests of SPAC Promoters with those of other SPAC shareholders. By stipulating that 100% of the gross proceeds of a SPAC's IPO must be ring-fenced, the proposed framework is effectively asking for SPAC Promoters to bear all the fees and costs that a SPAC may incur, including operating expenses, legal, underwriting, IPO Sponsor, and other professional fees. Although the intention is laudable, particularly from the perspective of investor protection, we have reservations regarding this proposal as this may be too onerous and may drive SPAC Promoters to other markets where the requirement is lower.

To allow for some flexibility while safeguarding the interests of the SPAC shareholders, we suggest reducing the amount of proceeds to be ring-fenced from 100% to 95%. Under this scenario, SPAC Promoters will still bear some of the fees and costs, and will be incentivized to run a lean and effective operation.

Question 23

Do you agree that the trust account must be operated by a trustee/custodian whose qualifications and obligations should be consistent with the requirements set out in Chapter 4 of the Code on Unit Trusts and Mutual Funds?

Please give reasons for your views.

We cannot stress enough that the new SPAC regime needs to strike the right balance between control, investor protection, and practicality.

We support the proposal that the trust account should be operated by a trustee / custodian whose qualifications and obligations are consistent with the requirements set out in Chapter 4 of the Code on Unit Trusts and Mutual Funds, as it would enable the regulator to have proper oversight of the trust account. At the same time, the Exchange should monitor market developments to ensure that the requirement is practicable.

Question 24

Do you agree that the gross proceeds of the SPAC's initial offering must be held in the form of cash or cash equivalents such as bank deposits or short-term securities issued by governments with a minimum credit rating of (a) A-1 by S&P; (b) P-1 by Moody's Investors Service; (c) F1 by Fitch Ratings; or (d) an equivalent rating by a credit rating agency acceptable to the Exchange?

Please give reasons for your views.

Yes, this would ensure proper protection of the capital of the SPAC, and sufficient liquidity to meet the completion of the De-SPAC transactions or return of capital to the SPAC shareholders when needed.

Question 25

Do you agree that the gross proceeds of the SPAC's initial offering held in trust (including interest accrued on those funds) must not be released other than in the circumstances described in paragraph 231 of the Consultation Paper?

Please give reasons for your views.

Yes, fund release other than the circumstances described in paragraph 231 of the Consultation Paper is against the purpose of a SPAC and allowing it could potentially reduce the level of investor protection.

Question 26

Do you agree that only the SPAC Promoter should be able to beneficially hold Promoter Shares and Promoter Warrants at listing and thereafter?

Please give reasons for your views.

Yes, we agree as it could strengthen the commitment of the SPAC Promoter to the ultimate success of the SPAC and align their interests with those of the SPAC shareholders.

Question 27

If your answer to Question 26 is "Yes", do you agree with the restrictions on the listing and transfer of Promoter Shares and Promoter Warrants set out in paragraphs 241 to 242 of the Consultation Paper?

Please give reasons for your views.

Yes, please see our response to Question 26.

Question 28

Do you agree with our proposal to prohibit a SPAC Promoter (including its directors and employees), SPAC directors and SPAC employees, and their respective close associates, from dealing in the SPAC's securities prior to the completion of a De-SPAC Transaction?

Please give reasons for your views.

Yes. We agree since this would prevent potential insider trading prior to the completion of a De-SPAC transaction, and safeguard the interests of the SPAC shareholders.

Question 29

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

Please give reasons for your views

We agree since this is an effective mechanism of investor protection. The trading halt and suspension policy can ensure fair disclosure of material price-sensitive information to all market participants, and prevent potential market manipulation and excessive speculation arising from rumors or improper dissemination of price sensitive information.

Question 30

Do you agree that the Exchange should apply new listing requirements to a De-SPAC Transaction as set out in paragraphs 259 to 281 of the Consultation Paper?

Please give reasons for your views.

We broadly agree with the proposals outlined in paragraphs 259 to 281. We offer the following comments and clarifications:

- **Eligibility and suitability:** In this, we are guided by the principle that there should be no regulatory arbitrage between the SPAC regime and the IPO regime. Companies that cannot meet requirements for listing via a traditional IPO should not be able to list via a SPAC.

- **Appointment of IPO Sponsor and due diligence requirements:** Regarding the proposal to mandate appointing an IPO Sponsor, as pointed out in the consultation paper, IPO Sponsors in Hong Kong SAR have extensive responsibilities and liabilities, and their role is critical in undertaking due diligence on the Successor Company that is commensurate with any other listed companies in Hong Kong. That said, IPO Sponsors are typically remunerated and incentivized by the amount of funds raised. Given that there is no secondary fund raising in the De-SPAC Transaction, it remains to be seen if much interest from leading financial institutions

will materialize. Although there is potential for the underwriter of the SPAC IPO to return and assume responsibility for due diligence at the De-SPAC, this may only partially alleviate the problem, as the mismatch between the fee potential and the level of liability remains.

In addition to due diligence performed by the IPO Sponsor, it is worth considering recommending as a best practice an independent valuation report including a fairness opinion on the target prepared by an independent valuer. Fairness opinions provide an additional level of due diligence and have become a common feature of US-based SPACs.

- **Documentary requirements:** We are also guided by the view that transparency improves market integrity and investor outcomes. We would, therefore, like to see more extensive and specific disclosure requirements regarding features unique to SPACs and De-SPAC Transactions. Such disclosures may include, among others, the effect of redemption of SPAC shares and of the exercise of outstanding warrants on the dilution of the value of SPAC investors' holdings, scenario analysis of possible dilution, transparency on all fees and costs, and on the valuation methodology of the target.

Question 31

Do you agree that investment companies (as defined by Chapter 21 of the Listing Rules) should not be eligible De-SPAC Targets?

Please give reasons for your views.

We are of the view that all companies eligible for listing should be deemed eligible targets for a De-SPAC Transaction. We agree with the proposal to exclude investment companies listed under Chapter 21 of the Listing Rules, and accept the rationale provided. We also agree that biotech and mineral companies should not be excluded.

Question 32

Do you agree that the fair market value of a De-SPAC Target should represent at least 80% of all the funds raised by the SPAC from its initial offering (prior to any redemptions)?

Please give reasons for your views.

We support establishing a minimum on the fair market value of a De-SPAC target in relation to the funds raised in the IPO to be 80%, in line with such requirements imposed by the US stock exchanges and SGX, to ensure that only businesses of sufficient size become De-SPAC targets.

Question 33

Should the Exchange impose a requirement on the amount of funds raised by a SPAC (funds raised from the SPAC's initial offering plus PIPE investments, less redemptions) that the SPAC must use for the purposes of a De-SPAC Transaction?

Please give reasons for your views.

Our view is that such a requirement is not needed. If imposed, it would restrict the amount of cash available to the Successor Company for future development. This amount should be up to the SPAC Promoter and the Target Company to negotiate, without unnecessary

constraints.

We agree that the Successor Company should meet all eligibility criteria for listing, including not constituting a "cash company". However, our view is that a minimum requirement on funds to be used for the De-SPAC Transaction is not the way to ensure it.

Question 34

If your answer to Question 33 is "Yes", should a SPAC be required to use at least 80% of the net proceeds it raises (i.e. funds raised from the SPAC's initial offering plus PIPE investments, less redemptions) to fund a De-SPAC Transaction?

Please give reasons for your views.

N/A

Question 35

Do you agree that the Exchange should mandate that a SPAC obtain funds from outside independent PIPE investors for the purpose of completing a De-SPAC Transaction?

Please give reasons for your views.

No, we do not agree that outside independent PIPE investment should be mandatory for a De-SPAC Transaction. Although in the US, the involvement of independent third-party investors is perceived as a validation of the De-SPAC Transaction and of the target's valuation, the value such involvement provides is questionable for four reasons.

First, public shareholders should not rely on due diligence done by PIPE investors, since PIPE investors do not owe them duty of care.

Second, side deals and other sweeteners provided to PIPE investors may alter their considerations to the point that the outcomes of their due diligence process are not applicable to other shareholders.

Third, the proposed requirement to mandate an appointment of an IPO Sponsor who would undertake due diligence ahead of the De-SPAC Transaction, if adopted, would render signals from PIPE investment less relevant.

Fourth, due diligence performed by PIPE investment is not a guarantee of the high quality of the transaction. An example is the case of Nikola Motor Company, which merged with a SPAC in the US in June 2020. The company managed to secure PIPE investment from prominent firms, but later it came to light that the strength of its products and the value of the company had been fraudulently inflated, resulting in criminal and civil charges against the company's CEO.

It is also worth noting that the supply of PIPE investment depends on market conditions. Since March 2021, among a large number of SPACs vying for PIPE funding in the US, PIPE financing dried up after peaking in February 2021.[15] Making PIPE financing mandatory would be an unnecessary obstacle during adverse market conditions.

With that in mind, we recommend that PIPE investment should not be a mandatory requirement but should remain a commercial arrangement. We also recommend that the

[15] SPAC Research. https://www.spacresearch.com/newsletter.

involvement of PIPE investors, or lack thereof, the size of PIPE investment, and any related considerations such as side deals and sweeteners, must be fully disclosed.

Question 36

If your answer to Question 35 is "Yes", do you agree that the Exchange should mandate that this outside independent PIPE investment must constitute at least 25% of the expected market capitalization 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 capitalization at listing of over HK$1.5 billion?

Please give reasons for your views.

N/A

Question 37

If your answer to Question 35 is "Yes", do you agree that at least one independent PIPE investor in a De-SPAC Transaction must be an asset management firm with assets under management of at least HK$1 billion or a fund of a fund size of at least HK$1 billion and that its investment must result in it beneficially owning at least 5% of the issued shares of the Successor Company as at the date of the Successor Company's listing?

Please give reasons for your views.

N/A

Question 38

If your answer to Question 35 is "Yes", do you agree with the application of IFA requirements to determine the independence of outside PIPE investors?

Please give reasons for your views.

N/A

Question 39

Do you prefer that the Exchange impose a cap on the maximum dilution possible from the conversion of Promoter Shares or exercise of warrants issued by a SPAC?

Please give reasons for your views.

Yes, warrants are a source of dilution and must be limited. Warrants make the SPAC structure attractive for SPAC Promoters and other investors, such as hedge funds, who stand to make attractive nearly risk-free returns. However, these returns come at the cost of non-redeeming investors, and investors who buy SPAC shares in the secondary market.

Question 40

If your answer to Question 39 is "Yes", do you agree with the antidilution mechanisms proposed in paragraph 311 of the Consultation Paper?

Please give reasons for your views and provide any suggestions for alternative dilution cap mechanisms that could be considered.

No, we disagree. By proposing a limit on a fully dilutive basis, the proposal treats all warrants alike, and makes little distinction based on the economics of warrants. Warrants, if structured

well (such as being priced sufficiently out-of-the-money and with long vesting periods) can align the interests of SPAC Promoters with those of post-merger shareholders.

Instead of a blanket limit, we propose (1) that SPAC Warrants and Promoter Warrants entitle the holders to no more than one-half of a share upon exercise (an increase from one-third, as proposed), (2) that all Warrants in aggregate, when exercised, result in an issuance of shares in the amount of no more than 50% of shares at the time of issue (an increase from 30%, as proposed), and (3) that the number of Promoter Warrants exercised each year be restricted in order to limit their effect on the dilution of SPAC shareholders' holdings to 20%.

For instance, if the total number of shares at the time of issue were 100, and Promoter Warrants and Shareholder Warrants were allocated so that upon dilution they will convert to 25 Promoter shares and 25 SPAC shares, then the number of Promoter Warrants exercisable each year would be limited to 20 shares. In this scenario, the SPAC Promoter will be able to convert up to 20 shares (assuming the warrants are in the money) in the first year after expiry of the lock-up on Promoter warrants. The idea is to provide flexibility in the structure and incentivize staggered exercise, while limiting potential dilution.

We would like to see disclosure requirements that are specific and decision-useful for shareholders. In paragraph 310 there is a proposal to fully disclose the dilution to non-redeeming SPAC shareholders. It would also be useful to compute such dilution under different redemption scenarios, because at the time when the circular is drawn up, it is not possible to know the level of redemptions and the final dilution. There should be transparency on all fees and costs, methods of payment, and their timing, whether borne by the SPAC Promoter or the SPAC itself.

Question 41

If your answer to Question 39 is "Yes", do you agree that the Exchange should be willing to accept requests from a SPAC to issue additional Promoter Shares if the conditions set out in paragraph 312 are met?

Please give reasons for your views.

Yes, earn-outs align the interests of SPAC Promoters with those of shareholders.

Question 42

Do you agree that any anti-dilution rights granted to a SPAC Promoter should not result in them holding more than the number of Promoter Shares that they held at the time of the SPAC's initial offering?

Please give reasons for your views.

Yes. Any anti-dilution rights granted to SPAC Promoters should have no dilutive effect on the holdings of SPAC Shareholders.

Question 43

Do you agree that a De-SPAC Transaction must be made conditional on approval by the SPAC's shareholders at a general meeting as set out in paragraph 320 of the Consultation Paper?

Please give reasons for your views.

Yes. SPAC Promoters have a large incentive to close the deal at any costs, otherwise, they are at the risk of losing their investment. Shareholders must have the right to reject transactions that are not value-additive.

General meetings and shareholder voting are critical elements of the De-SPAC Transaction. There must be an emphasis on the Q&A process at general meetings, and the voting process should allow voting after the Q&A session (at least for a few hours), so that shareholders have an opportunity to ask questions and form their views at the meeting.

Question 44

If your answer to Question 43 is "Yes", do you agree that a shareholder and its close associates must abstain from voting at the relevant general meeting on the relevant resolution(s) to approve a De-SPAC Transaction if such a shareholder has a material interest in the transaction as set out in paragraph 321 of the Consultation Paper?

Please give reasons for your views.

Yes. As we described above, SPAC Promoters have a conflict of interest and are incentivized to do any deal before the deadline. Also, the SPAC Promoter's Promote Shares are essentially free. The Promote aligns the SPAC Promoter's economic interest with that of other shareholders, but it should not give SPAC Promoters the right to vote for a transaction they identified and negotiated in the first place.

Question 45

If your answer to Question 43 is "Yes", do you agree that the terms of any outside investment obtained for the purpose of completing a De-SPAC Transaction must be included in the relevant resolution(s) that are the subject of the shareholders vote at the general meeting?

Please give reasons for your views.

Yes. Despite the concerns outlined in Question 35, PIPE investments generally increase the credibility of the deal, and the chances of a De-SPAC Transaction obtaining approval. However, if the terms are too generous, or if there are hidden terms (e.g. a promise to provide future PIPE investment to the PIPE provider's SPAC in return, or quid pro quo deals), such involvement could mislead investors. We would like to reiterate the importance of having all the terms of any outside investments made public.

Question 46

Do you agree that the Exchange should apply its connected transaction Rules (including the additional requirements set out in paragraph 334) to De-SPAC Transactions involving targets connected to the SPAC; the SPAC Promoter; the SPAC's trustee/custodian; any of the SPAC directors; or an associate of any of these parties as set out in paragraphs 327 to 334 of the Consultation Paper?

Please give reasons for your views.

Yes. An independent valuation is critical, and the additional disclosures would provide public shareholders with the additional comfort that the transaction is a bona fide one and not a manufactured exit. There is also additional complexity and sensitivity if the De-SPAC Target is part of a separate listed company.

We also recommend that an independent valuation be provided for non-connected transactions as a voluntary best-practice guidance.

Lastly, clarity is needed on the information that needs to go out to SPAC shareholders for their evaluation and approval (or otherwise) of the De-SPAC Transaction.

The way the clauses are currently drafted, if the De-SPAC Transaction is a connected transaction, additional disclosures are required in the circular to shareholders regarding the De-SPAC Transaction (paragraphs 332 and 334). Our suggestion would be for such disclosures to be included in the Listing Document, such that the circular to shareholders and the Listing Document are one and the same, to prevent any information arbitrage between the two. Save for procedural matters, there should be no reason for the circular to shareholders on the De-SPAC Transaction to be different to the Listing Document. The same information should be provided.

Question 47

Do you agree that SPAC shareholders should only be able to redeem SPAC Shares they vote against one of the matters set out in paragraph 352?

Please give reasons for your views.

Yes. SPAC shareholders typically approve the transaction, even if they redeem their shares, so that the transaction goes through, and they retain their warrants. But such redemptions and resulting "empty" warrants increase the dilution for the non-redeeming shareholders. Tying the redemption to vote would reduce such dilution. However, the logistics of implementation must be considered - it is not easy to link the systems together.

The history of US SPAC regulation provides some context. Prior to 2010, US SPACs had a redemption threshold of 40% beyond which the deal would not go through. During the 2008 Global Financial Crisis, SPACs' robust investor protections became a liability, as hedge funds began buying up SPAC shares and threatening to vote down any proposed merger unless they received concessions, such as additional shares or cash. This so-called "greenmailing" was quite effective because SPAC managers are eager to close a deal and secure a payday. SPAC sponsors sought relief from this greenmailing threat, and the SEC obliged by removing the thresholds.

Even so, we believe there should be no "empty voting" (voting without economic interest), and support HKEX's proposal to link voting with redemption.

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. The ability to redeem shares if investors don't like the deal, or when the situation changes, is a core feature of SPACs. Without it, SPAC investors face higher risks, especially considering their opportunity costs (not earning market returns for the period of investment).

Question 49

Do you agree a SPAC should be prohibited from limiting the amount of shares a SPAC shareholder (alone or together with their close associates) may redeem?

Please give reasons for your views.

Yes. See above.

Question 50

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

Please give reasons for your views.

Yes. In our view, the proposed redemption procedure will ensure that SPAC shareholders can redeem their shares in a fair and efficient manner.

Question 51

Do you agree that SPACs should be required to comply with existing requirements with regards to forward looking statements (see paragraphs 371 and 372 of the Consultation Paper) included in a Listing Document produced for a De-SPAC Transaction?

Please give reasons for your view.

Yes. There are no compelling arguments to lower the existing requirements on forward looking statements for SPACs. As a principle, there should not be any regulatory arbitrage for companies seeking a public listing regardless of the route they take, i.e., whether it is via a traditional IPO or via a merger with a SPAC. In particular, SPACs should be subject to Rule 11.16 of the Listing Rules regarding profit forecasts.

Note that in US IPOs, there are no explicit prohibitions on forward looking statements being made in S-1 or during the roadshow. However, as a matter of practice, investment banks prohibit it. This de-facto prohibition has to do with the liability investment banks face during the IPO.[16]

The IPO Sponsor regime proposed in the HKEX consultation paper, would likely result in a salutary effect on egregious projections or claims in the Listing Document.

Question 52

Do you agree that a Successor Company must ensure that its shares are held by at least 100 shareholders (rather than the 300 shareholders normally required) to ensure an adequate spread of holders in its shares?

Please give reasons for your views.

From an investor's perspective, the higher the number of shareholders, the higher the probability there will be a liquid and open market. Even with 300 shareholders, liquidity may be challenging for a listed company. That said, we recognize that there are practical challenges in achieving a large number of shareholders immediately after the De-SPAC Transaction, given that retail shareholders are not allowed to participate in the SPAC IPO or trade in shares of the SPAC. A rush to get 300 shareholders immediately following the De-SPAC Transaction may mean pushing a stock with little track record to less sophisticated investors. However, despite the above, we believe 300 is a more desirable number, and the HKEX can consider giving the Successor Company a preset timeframe (say three or six months) to attain this.

[16] Rodrigues, U. & Stegemoller, M. (2021). SPACs: Insider IPOs. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3906196. Page 18.

Question 53

Do you agree that the Successor Company must meet the current requirements that (a) at least 25% of its total number of issued shares are at all times held by the public and (b) not more than 50% of its securities in public hands are beneficially owned by the three largest public shareholders, as at the date of the Successor Company's listing?

Please give reasons for your views.

We believe the existing open market requirements (at least 25% free float and not more than 50% held by the largest three public shareholders) should apply at all times. Following the De-SPAC Transaction, the Successor Company should be treated on par with any other listed company and be subject to the same rules.

Question 54

Are the shareholder distribution proposals set out in paragraphs 380 and 382 of the Consultation Paper sufficient to ensure an open market in the securities of a Successor Company or are there other measures that the Exchange should use to help ensure an open market?

Please give reasons for your views.

We suggest that SPAC Promoters be required to conduct stabilization activities during the period following the De-SPAC Transaction, similar to a traditional IPO, to ensure an orderly transition.

Question 55

Do you agree that SPAC Promoters should be subject to a restriction on the disposal of their holdings in the Successor Company after the completion of a De-SPAC Transaction?

Please give reasons for your views.

Yes. One major source of conflict of interest between SPAC Promoters and other shareholders is that SPAC Promoters are strongly incentivized to complete the deal, sometimes without regard to the underlying merits of the deal from the perspective of shareholders as a whole. Subjecting SPAC Promoters to a lock-up after the De-SPAC Transaction will result in a better alignment of interests between SPAC Promoters and public shareholders.

Question 56

If your answer to Question 55 is "Yes", do you agree that:
(a) the Exchange should impose a lock-up on disposals, by the SPAC Promoter, of its holdings in the Successor Company during the period ending 12 months from the date of the completion of a De-SPAC Transaction; and (b) Promoter Warrants should not be exercisable during the period ending 12 months from the date of the completion of a De-SPAC Transaction?

Please give reasons for your views.

We agree to a lockup on disposals for SPAC Promoters and a moratorium for exercising Promoter Warrants in the first 12 months after the De-SPAC Transaction, to better align the interests of SPAC Promoters and public shareholders.

We believe there is room to go one step further and require a staggered timeline for exercising of the Promoter Warrants to align promoters' long-term interests with those of shareholders beyond one year. A potential option is to allow the exercise of up to a defined number of warrants each year over a three-year period. Another variation would be for the shares issued via the exercise of Promoter Warrants to be subject to a lock-up of 12 months following the exercise. That will also contribute to the maintenance of an orderly market.

Question 57

Do you agree that the controlling shareholders of a Successor Company should be subject to a restriction on the disposal of their shareholdings in the Successor Company after the De-SPAC Transaction?

Please give reasons for your views.

Yes, we agree. Our view is that there should not be any regulatory arbitrage that will provide controlling shareholders any advantages or disadvantages (in the form of a shorter or longer lock up) as a result of their choice of the route to market.

Question 58

If your answer to Question 57 is "Yes", do you agree that these restrictions should follow the current requirements of the Listing Rules on the disposal of shares by controlling shareholders following a new listing (see paragraph 394 of the Consultation Paper)?

Please give reasons for your views.

Yes. See above.

Question 59

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

Please give reasons for your views.

Yes, as a matter of principle, when there is a change of control in a listed company, the Takeovers Code should apply. However, more clarity may be desirable in defining what a change of control means in the context of a SPAC. In a normal (non-SPAC) situation, a change of control typically means an accumulation of a shareholding of 30% or more. In the SPAC context, there should be additional conditions such as (1) change of control over the board, and (2) an ability to block a De-SPAC resolution.

Question 60

Do you agree that the Takeovers Executive should normally waive the application of Rule 26.1 of the Takeovers Code in relation to a De-SPAC Transaction, the completion of which would result in the owner of the De-SPAC Target obtaining 30% or more of the voting rights in a Successor Company, subject to the exceptions and conditions set out in paragraphs 411 to 415 of the Consultation Paper?

Please give reasons for your views.

Yes. The final shareholding of the owner of the De-SPAC Target will be a function of the transaction value, the availability of PIPE financing, and the final level of redemptions. In the US, redemptions have been high and PIPE financing has dried up during 2021, leading to many targets waiving their minimum cash requirements (sometimes in return for a larger equity stake). Allowing the owner to retain a stake of over 30% will provide additional flexibility in times when financing is not plentiful. Secondly, the whole De-SPAC Transaction is already subject to the approval of independent shareholders with no involvement by the seller of the De-SPAC Target. For the avoidance of doubt, there should be no automatic waiver of the 2% creeper provisions and a normal approval process would be necessary in accordance with the Takeovers Code.

Question 61

Do you agree that the Exchange should set a time limit of 24 months for the publication of a De-SPAC Announcement and 36 months for the completion of a De-SPAC Transaction (see paragraph 423 of the Consultation Paper)?

Please give reasons for your views.

We agree. These terms are in line with those adopted by other exchanges and with business practices in other markets where SPACs are allowed.

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)?

Please give reasons for your views.

We agree. This follows naturally from setting the deadlines, and ensures that shareholder capital is promptly returned if the SPAC Promoter fails to identify a target.

Question 63

Do you agree that a SPAC should be able to make a request to the Exchange for an extension of either a De-SPAC Announcement Deadline or a De-SPAC Transaction Deadline if it has obtained the approval of its shareholders for the extension at a general meeting (on which the SPAC Promoters and their respective close associates must abstain from voting) (see paragraphs 426 and 427 of the Consultation Paper)?

Please give reasons for your views.

We agree. It allows SPAC Promoters some breathing room in case of unforeseen circumstances.

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) within one month of the material change, the Exchange will suspend the trading of a SPAC's shares and the SPAC must, within one month of such suspension return to its shareholders (excluding holders of the Promoter Shares) 100% of the funds it raised from its initial offering, on a pro rata basis, plus accrued interest?

Please give reasons for your views.

We agree. A timeline for the return of shareholder capital needs to be specified. However, since we suggested that 95% of the gross proceeds of the SPAC IPO must be held in a ring-fenced trust account, instead of the proposed100% (Question 22), we propose that the language be modified as "the SPAC must […] return to its shareholders […] all remaining funds in the trust, on a pro rata basis, including accrued interest".

Question 65

If your answer to Question 64 is "Yes", do you agree that (a) a SPAC must liquidate after returning its funds to its shareholders and (b) the Exchange should automatically cancel the listing of a SPAC upon completion of its liquidation?

Please give reasons for your views.

We agree. Once the capital is returned, the SPAC ceases to exist.

Question 66

Do you agree that SPACs, due to their nature, should be exempt from the requirements set out in paragraph 437 of the Consultation Paper?

Please give reasons for your views.

We agree. The exemptions listed in paragraph 437 are justified for newly-formed cash companies with no business operations.

Question 67

Do you agree with our proposal to require that a listing application for or on behalf of a SPAC be submitted no earlier than one month (rather than two months ordinarily required) after the date of the IPO Sponsor's formal appointment?

Please give reasons for your views.

We agree. One month is enough time for the IPO Sponsor to conduct the due diligence on the SPAC and to check its compliance with the Listing Rules prior to the SPAC IPO, as it is a cash company with no business operations.

Question 68

Should the Exchange exempt SPACs from any Listing Rule disclosure requirement prior to a De-SPAC Transaction, or modify those requirements for SPACs, on the basis that the SPAC does not have any business operations during that period?

Please give reasons for your views.

We agree with modifying those requirements for SPACs, but disagree with a complete exemption from disclosure requirements. Periodic corporate governance disclosures and audit reports on the trust account would be necessary. For example, SPAC Promoters may use related parties for operating expenses, which should be disclosed as part of a SPAC's corporate governance reports.