

[REDACTED]

BY HAND

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The Stock Exchange of Hong Kong Limited

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

Attention: **Ms. Bonnie Chan**
Head of Listing, Listing Department

October 21, 2021

Dear Madam:

Consultation Paper in relation to Special Purpose Acquisition Companies published by The Stock Exchange of Hong Kong Limited (the “Exchange”) on September 17, 2021 (the “Consultation Paper”)

INTRODUCTION

1. [REDACTED]

2. We are making this submission on behalf of [REDACTED] in response to certain questions posed in the Consultation Paper as set out below. Unless otherwise defined, capitalised terms used herein shall have the same meanings as defined in the Consultation Paper.
- [REDACTED]



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DISTRIBUTION OF HOLDERS

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?*

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?*

3. **Our response:** We respectfully submit that the proposed requirements to distribute each of the SPAC Shares and SPAC Warrants to a minimum number of Professional Investors and Institutional Professional Investors at listing (the “**Minimum PI Requirement**”) and to distribute at least 75% of SPAC Shares and SPAC Warrants to Institutional Professional Investors (the “**Minimum IPI Requirement**”) should not be necessary for the following reasons:
- a. The proposed requirement that only Professional Investors are qualified to be SPAC shareholders until completion of the De-SPAC Transaction (the “**PI Requirement**”) will to certain extent already have limited the liquidity of the SPAC securities. Given the defined group of prospective Professional Investors in the market that may be interested in the industry focus of a particular SPAC, the Minimum PI Requirement may have substantially exhausted such group of Professional Investors at listing of such SPAC. Coupled with the prescribed threshold that only a limited number of investors could qualify as an Institutional Professional Investor, and the proposed minimum board lot size of SPAC Shares, the Minimum PI Requirement and Minimum IPI Requirement will overly restrict the maximum stake size that each Professional Investor may acquire at the SPAC listing (the “**Listing**”) and the liquidity of the SPAC securities on an ongoing basis.
 - b. If it is envisaged that there will be a vast number of SPAC listings on the Exchange, but there is only a defined pool of Professional Investors that are qualified to invest in SPACs before completion of the De-SPAC Transaction, the Minimum PI Requirement could lead to an exhaustion of the number of Professional Investors (and their financial resources) available for investment in the Hong Kong capital markets, considering that Professional Investors also have investment options other than SPACs. In the long-run, this would impact the feasibility of potential SPAC listings on the Exchange if SPACs are unable to locate sufficient number of Professional Investors and/or Institutional Professional Investors to meet the Minimum PI Requirement and Minimum IPI Requirement.
 - c. As for the vast majority of other listed securities, the distribution spread of SPAC shareholders will improve once secondary trades in the SPAC securities commence after



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Listing. The proposed 25% public float requirement and the maximum stake size that can be held by the three largest SPAC shareholders will also provide sufficient liquidity measures to ensure an open market to the SPAC securities before the De-SPAC Transaction and on an ongoing basis.

- d. There is no PI Requirement, Minimum PI Requirement nor Minimum IPI Requirement in the respective SPAC regimes of the U.S. and U.K. It is our view that the Hong Kong SPAC regime with these proposed requirements will be inherently less competitive and attractive to experienced Promoters and high quality De-SPAC Targets.

APPLICATION OF NEW LISTING REQUIREMENTS

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?*

- 4. **Our response:** We respectfully submit that an alternative set of listing requirements and procedures as set out below should be applicable to De-SPAC Transactions for the following reasons:
 - a. We noted that the purpose of the Hong Kong SPAC listing regime is to offer De-SPAC Targets the benefits of shorter lead-time and greater price certainty than a traditional Hong Kong listing. Under the proposed Hong Kong SPAC regime, the De-SPAC Transaction already will be subject to approval by the SPAC shareholders and the exercise of their redemption rights. If all the listing requirements and procedures applicable to an ordinary listing on the Exchange are also imposed upon a De-SPAC Transaction, a proposed listing of a De-SPAC Target through the SPAC regime would essentially be subject to more stringent and burdensome listing requirements as well as a longer timetable than an ordinary listing. These factors will make the proposed Hong Kong SPAC regime substantially less attractive, or to certain extent redundant, to De-SPAC Targets and Promoters.
 - b. Once listed, the SPAC will be substantially subject to the same set of notifiable transaction and reverse takeovers (“RTO”) requirements under the Listing Rules. For a potential RTO transaction of any company listed on the Exchange, it is subject to consideration by the Exchange in accordance with the parameters set out in HKEx Guidance Letter HKEx-GL78-14 (the “GL78-14”) on whether it will be subject to all new listing requirements and procedures. Given a potential RTO would not by default be subject to all of the new listing requirements and procedures before review by the Exchange, a De-SPAC Transaction should be accorded with similar treatment and procedures.

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- c. Unlike a company aiming for a prospective listing on the Exchange under the ordinary route where such company can extend its listing timetable until it is able to meet the existing listing requirements, a SPAC listed on the Exchange is subject to the time constraints under the proposed regime to announce and complete the De-SPAC Transaction respectively. The success of a SPAC is primarily driven by the Promoters and their ability to locate potential high quality De-SPAC Targets and complete the De-SPAC Transactions within the prescribed timeframe. Therefore, alternatives from the existing listing requirements and procedures under the Listing Rules should be offered to the SPACs and Promoters so that the choice of high quality De-SPAC Targets available for the Promoters to complete the De-SPAC Transactions within the prescribed timeframe would not be limited to those that are able to strictly comply with the existing listing requirements and procedures.

5. **Our proposal:** While we support the Exchange's view that the proposed SPAC regime should not become a venue for sub-standard businesses or assets to circumvent the listing standards upheld by the Exchange, we propose that where the De-SPAC Transaction and Successor Company are able to meet:

- a. the applicable financial eligibility, three-financial-years management continuity and one-financial-year ownership continuity requirements under the Listing Rules;
- b. satisfactory due diligence by IPO Sponsor(s); and
- c. a satisfactory qualitative review by the Listing Committee of the Exchange as to the suitability of the De-SPAC Target for a listing (as in the case of an "extreme VSA" under GL78-14),

then only a transaction circular under an enhanced disclosure and vetting approach coupled with the required disinterested shareholders' approval, rather than all the new listing procedures and filings, should be applicable to the De-SPAC Transaction.

MINIMUM INDEPENDENT THIRD PARTY INVESTMENT

Question 36: *Do you agree that the Exchange should mandate that this outside independent PIPE investment must constitute at least 25% of the expected market capitalisation of the Successor Company, with a lower percentage of between 15% and 25% being acceptable if the Successor Company is expected to have a market capitalisation at listing of over HK\$1.5 billion?*



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6. **Our response:** We respectfully submit that the proposal for an independent third party PIPE investment to constitute at least 25% of the expected market capitalisation of the Successor Company (or at least 15% if the expected market capitalisation is at least HK\$ 1.5 billion) at completion of the De-SPAC Transaction is a considerably high threshold. This would become a barrier to complete a De-SPAC Transaction, particularly in the case when the Promoters and the De-SPAC Target are able to agree on the minimum cash required to complete the De-SPAC Transaction and the related commercial terms for the benefits of the SPAC shareholders but fail to locate independent third party investors that are willing to take up the proposed required substantial stakes in the Successor Company due to commercial reasons and prevailing market conditions.

We are of the view that a rigid minimum investment stake by independent third part(ies) should not be imposed for the following reasons:

- a. While an independent validation of the valuation of the De-SPAC Target is important to substantiate that it is able to meet the minimum expected market capitalisation listing requirement, adequate safeguard as to a fair evaluation of the De-SPAC Target by the SPAC shareholders will have been afforded by the required shareholders' approval for (and their redemption rights triggered by) the De-SPAC Transaction. While a sizeable independent third party PIPE investment could be an objective valuation of the De-SPAC Target, reliance on such indication as a dominant factor may not be desirable because an independent third party PIPE investor could be overly optimistic in the prospects of the De-SPAC Target or the industry that it operates, leading to over-valuation of the De-SPAC Target that the SPAC shareholders may rely on in considering whether to approve the De-SPAC Transaction.
- b. The size of the independent third party PIPE investment is by nature a commercial decision to be negotiated between the Promoters and the owners of the De-SPAC Target, which is primarily driven by the minimum amount of cash required to complete the De-SPAC Transaction and to then grow the Successor Company. Such decision of the Promoters would be cross-checked by the SPAC shareholders that are able to redeem their SPAC securities if they disagree the Promoter's view that the costs for De-SPAC Transaction is beneficial to the SPAC and its shareholders. In such case, the Promoters will be prompted to secure further PIPE investments to bridge the funding gap for completing the De-SPAC Transaction caused by the redemption. A prescribed minimum PIPE investment stake by independent third parties will likely disturb the operation and efficacy of the above sequence of commercial decisions and fund-flow for the interest of the SPAC.

- c. The ability of the SPAC to meet the De-SPAC Transaction announcement and completion deadlines of 24 months and 36 months, respectively, from the Listing (or the De-SPAC Transaction timetable generally), could be unduly delayed due to the inability of the SPAC to locate sufficient independent PIPE investments to meet such minimum PIPE size requirement. In the worst case, this could lead to liquidation and delisting of the SPAC. As the respective SPAC regimes of the U.S. and the U.K. do not have such requirement and inherent consequential risk, this could deter Promoters and/or owners of De-SPAC Targets to embark on a Hong Kong SPAC process.
- d. The proposed minimum 15% to 25% of the expected market capitalisation of the Successor Company to be represented by the independent PIPE investment could lead to unnecessary dilution of the stakes of the then existing SPAC shareholders and the Promoters, particularly where the SPAC has sufficient financial resources to fund the De-SPAC Transaction. Such requirement also fails to take into account the amount of cash that the De-SPAC Target/Successor Company will need post completion of the De-SPAC Transaction, in that the mandated minimum independent third party PIPE investments would push the funds available in the market for investment in the Successor Company to the pre-completion stage of the De-SPAC Transaction.

DILUTION CAP

Question 40: *Do you agree with the antidilution mechanisms proposed in paragraph 311 of the Consultation Paper?*

Under paragraph 311(b) of the Consultation Paper, a SPAC is prohibited from issuing SPAC Warrants or Promoter Warrants that entitle the holders to more than a third of a share upon their exercise.

7. **Our response and proposal:** While we agree that a cap should be imposed on the maximum dilution possible from the conversion of warrants issued by a SPAC, we propose that the cap on warrant ratio should be relaxed such that a warrant should entitle the holder to at least one half of a SPAC Share upon exercise for the following reasons:
- a. SPAC Warrants are essentially incentives offered by the SPAC to compensate IPO investors for lack of return on their investments in the SPAC and the inherent uncertainty in connection with a De-SPAC Transaction. The warrant ratio should be driven by the commercial and marketing decisions of the SPAC and the underwriters in the SPAC Listing. Our proposed warrant ratio would offer flexibility for Promoters and SPACs to

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market the offering with SPAC Units that align with similar securities in the U.S. and U.K. SPAC markets, where no such cap is imposed.

- b. The Promoter Warrants are part of the incentives to attract experienced and reputable Promoters to initiate SPACs in Hong Kong and locate high quality De-SPAC Targets. The Promoter Warrants (under the private placement) also serve the function of prompting and providing a return for the Promoters to fund the initial expenses of the SPAC. A warrant ratio cap of one-third of a SPAC Share that may not reflect the market conditions at the time of the SPAC Listing could discourage Promoters from initiating a SPAC in Hong Kong.
- c. Warrants issued by the SPAC are only exercisable after completion of the De-SPAC, and the proposed Hong Kong SPAC regime already has other anti-dilution mechanisms (i.e. no further anti-dilution rights to securities held by the Promoters) to compensate our proposed adjustment to the cap on the warrant ratio, which will have limited dilution impact.

ALIGNMENT OF VOTING WITH REDEMPTION

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?*

8. **Our response:** We respectfully submit that, as in the respective SPAC regimes of the U.S. and U.K., SPAC shareholders should be able to exercise the redemption rights attached to their SPAC Shares regardless of whether they vote in favour of or against the De-SPAC Transaction for the following reasons:
- a. SPAC shareholders are by nature similar to pre-IPO investors in an ordinary Hong Kong IPO, where such pre-IPO investors are entitled to vote in favor of a proposed listing but at the same time redeem their shares if the relevant investment terms permit them to do so. A shareholder's right to redeem its shares/investment is, to a large extent, a commercial decision and should not be tied to or dictated by its ability to vote in favor or against a listing.
 - b. The proposed requirement that only SPAC shareholders voting against a De-SPAC Transaction are entitled to exercise their redemption rights could lead to a distorted impact on the trading price and/or volume of the SPAC Shares, where such SPAC shareholders may prefer to dispose of their SPAC Shares on the market for a speedy liquidation, instead of waiting for the general meeting to vote against the De-SPAC Transaction and going through the redemption procedures.

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- c. There should not be a presumption that SPAC shareholders exercising their redemption rights inevitably means that they disagree with the fairness and reasonableness of the terms of the De-SPAC Transaction. If a SPAC shareholder wishes to redeem its SPAC Shares for reasons other than disapproval of the De-SPAC Transaction, and the only way to facilitate the redemption is to vote against the De-SPAC Transaction, the proposed requirement would indiscriminately increase the shareholders' disapproval rate, and in the worst case lead to a failure, of the De-SPAC Transaction.
- d. The additional restrictions on the exercise of redemption rights attached to SPAC Shares would further impact the marketability of SPAC Shares at Listing, and increase the risk of the SPAC in failing to seek shareholders' approval to complete the De-SPAC Transaction.

We, [REDACTED] and its founders welcome the opportunity to provide feedbacks to the Exchange's proposals in the Consultation Paper and look forward to participating in the upcoming Hong Kong SPAC regime. In parallel, we have submitted the above comments via the on-line questionnaire attached to the Consultation Paper. Please note that we and [REDACTED] do not wish to disclose our identities to the members of the public for the purpose of our responses to the Consultation Paper set out above.

If you have any questions on our responses or proposals, please feel free to contact [REDACTED] (Tel: [REDACTED] or email: [REDACTED]) or [REDACTED] of our office (Tel: [REDACTED] or email: [REDACTED]).

Yours sincerely

[REDACTED]