

HKEX GUIDANCE LETTER

HKEX-GL113-22 (January 2022)

Subject	Guidance on Special Purpose Acquisition Companies
Listing Rules and Regulations	Main Board Chapter 18B

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 for special purpose acquisition companies (“**SPACs**”) with, or seeking, a listing on the Exchange pursuant to Chapter 18B of the Main Board Listing Rules (“**Rules**”).
2. The definitions used in this guidance letter are the same as those set out in the Rules.

Relevant Listing Rules and Laws

3. Main Board Chapter 18B for SPACs and Successor Companies with, or seeking, a listing.
4. Rule 10.04 on restrictions on existing shareholders’ purchase and subscription and the Existing Shareholders Conditions as referred to in the HKEX Guidance Letter HKEX-GL85-16.
5. Main Board Chapter 14A on connected transactions.
6. Requirements relating to prospectuses contained in the Companies (Winding up and Miscellaneous Provisions) Ordinance (Cap. 32) (“**C(WUMPO)**”).

Guidance

A. Suitability of SPAC Promoters

7. Rule 18B.10 provides that, at the listing of the SPAC and on an ongoing basis for the lifetime of the SPAC, the Exchange must be satisfied as to the character, experience and integrity of a SPAC Promoter and that it is capable of meeting a standard of competence commensurate with its position. For the purpose of demonstrating the above, a SPAC must ensure that:
- (a) at listing and on an ongoing basis, at least one of its SPAC Promoters is a firm that holds a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) licence issued by the Commission (“**Licensing Requirement**”); and
 - (b) it provides the Exchange with the information that the Exchange requests in accordance with guidance published on the Exchange’s website and amended from time to time.

Character, experience and integrity

8. A SPAC Promoter must provide the Exchange with the following information to demonstrate it has the character, experience, integrity and the standard of competence commensurate with the role.

SPAC Promoter Experience

- (a) Their experience as a SPAC Promoter including the role they took on, their level of involvement, the number of years they have held that role and the names of the SPACs they have previously established and/or are now interested in as a SPAC Promoter.
- (b) For each of the SPACs referred to in (a):
 - (i) the amount of funds raised at its initial offering;
 - (ii) a description of the types of target sought for De-SPAC Transaction (e.g. size and sector);
 - (iii) the size and terms of the Promoter Shares;
 - (iv) the time that elapsed between the date of the SPAC’s initial offering and the date of the completion of any De-SPAC Transaction;
 - (v) the amount of funds raised in any independent third party investment as part of any De-SPAC Transaction;
 - (vi) a summary description of the De-SPAC Target that was the subject of any De-SPAC Transaction (including, for example, sector and geographical location, market share, brief historical financial data and its management);
 - (vii) details of the terms of any De-SPAC Transaction (including valuation, conditions to completion, parties involved and any other salient terms);

- (viii) the percentage of SPAC shareholders that redeemed their shares in connection with any De-SPAC Transaction;
- (ix) the percentage of SPAC shareholders that voted against any De-SPAC Transaction;
- (x) the percentage of any value dilution to non-redeeming SPAC shareholders upon exercise of all SPAC Warrants and conversion of all Promoter Shares and all Promoter Warrants in the Successor Company;
- (xi) the market capitalisation of the Successor Company following any De-SPAC Transaction;
- (xii) performance indicators of the Successor Company since any De-SPAC Transaction occurred (absolute performance indicators and performance relative to that of relevant indexes); and
- (xiii) whether the SPAC was liquidated and/or required to return its funds to SPAC Investors.

Investment Management Experience

- (c) Any experience in the professional management of investments on behalf of third party investors and/ or provision of investment advisory services to professional/ institutional investors, including, for each role, a description of:
 - (i) the role and its responsibilities;
 - (ii) the types and geographical coverage of the investments managed;
 - (iii) the fund size;
 - (iv) the fund's investment objectives and policies; and
 - (v) performance indicators such as the net asset value of the managed funds; their absolute performance; and their relative performance compared to that of other major managed funds and relevant indexes.

Other Relevant Experience

- (d) Any other experience relevant to the role of SPAC Promoter for the SPAC seeking a listing (e.g. managing businesses in the sectors in which the SPAC aims to identify targets) with an explanation of how this work experience is relevant to a SPAC Promoter role.

Other Information to be provided

- (e) Details of licences held, including the year they were obtained and the granting institutions.
- (f) Any business interests of the SPAC Promoter that compete or are likely to compete either directly or indirectly with the SPAC for prospective De-SPAC Targets with details of the nature of the competition.

- (g) Any breaches of laws, rules and regulations and any other matters that have a bearing on the integrity and/ or competence of the SPAC Promoter.
- 9. A SPAC must include the information set out in paragraph 8 above in the listing document it produces for the purpose of its listing, updated to the latest practicable date.
- 10. For the purpose of paragraph 8(f) above, existing Rule requirements and relevant guidance¹ on competing interests will apply to SPACs, with references to “controlling shareholders” in those materials being deemed to include “SPAC Promoters”.

Matters that the Exchange will view favourably

- 11. We will view favourably SPAC Promoters that can demonstrate that they have experience:
 - (a) managing assets with an average collective value of at least HK\$8 billion over a continuous period of at least three financial years; or
 - (b) holding a senior executive position (e.g. Chief Executive or Chief Operating Officer) at an issuer that is or has been a constituent of the Hang Seng Index or an equivalent flagship index.
- 12. For the purpose of paragraph 11(b), we will consider a leading and well referenced index, within a particular market, as an equivalent flagship index. For example, the S&P 500 (SPX), NSDAQ-100 Index (NDX) and Dow Jones Industrial Average (DJI) in the US, and FTSE 100 (UKX) in the UK.

Exchange’s approach when considering the suitability of a SPAC Promoter

- 13. It should be noted that the factors set out in paragraphs 8 and 11 above are neither exhaustive nor binding. The Exchange will exercise its discretion on a case-by-case basis, and adopt a holistic approach taking into account all the information provided and all relevant circumstances to determine whether it is satisfied as to the suitability and eligibility of the SPAC Promoter.
- 14. The Exchange reserves the right to request that a SPAC provide further information regarding a SPAC Promoter’s character, experience and integrity for the purpose of compliance with Rule 18B.10.

Licensing Requirement

- 15. The Exchange will consider modifying or waiving the SPAC Promoter Licensing Requirement of Rule 18B.10(1), on a case-by-case basis, if a SPAC Promoter has overseas accreditation issued by a relevant regulatory authority that the Exchange considers to be equivalent to a Type 6 and/or Type 9 licence issued by the Commission.

¹ Rule 8.10; paragraph 27A of Appendix 1 to the Listing Rules; and HKEX Guidance Letter HKEX-GL100-19.

16. A SPAC seeking such a modification or waiver must provide the Exchange with the relevant documentary evidence that the SPAC Promoter has obtained such accreditation. The SPAC must also provide details of the initial and ongoing requirements that the SPAC Promoter must fulfil for the purpose of this overseas accreditation and provide a comparison against the corresponding requirements for a Type 6 and/or Type 9 licence issued by the Commission.

Compliance through SPAC Promoter's controlling shareholder

17. The Exchange will consider a SPAC Promoter that does not hold the requisite SFC licence to have met the requirement of Rule 18B.10(1), if its controlling shareholder satisfies the requirement.
18. This is subject to the condition that: (a) the SPAC demonstrates to the Exchange that sufficient safeguards and/or undertakings are put in place to ensure the controlling shareholder's oversight of the SPAC Promoter's responsibilities; and (b) the controlling shareholder gives an undertaking to the Exchange that they will ensure the SPAC Promoter's compliance with applicable Listing Rules.
19. Rules 18B.32 to 18B.34 would apply if there is a material change in such a controlling shareholder.

B. Listing Applications

20. A SPAC (for its initial listing) and a Successor Company (for a De-SPAC Transaction) must file a new application for listing (Form A1) in accordance with Chapter 9 of the Listing Rules. For a list of documents required to be filed with the Exchange together with the respective listing applications, please refer to the Checklists and Forms for New Applicants available on the Exchange's [website](#).

C. Prospectus and Disclosure Requirements for SPAC Listings and De-SPAC Transactions under C(WUMP)O

At initial listing

21. A SPAC should seek legal advice on the extent to which its listing document must comply with the prospectus requirements of C(WUMP)O.

At De-SPAC Transaction

22. The Exchange will view a De-SPAC Transaction as equivalent to an offering to the public and accordingly, we will vet the listing document issued for the De-SPAC Transaction on the basis that it must meet the relevant prospectus requirements of C(WUMP)O in full.

D. Stock Marker

23. The listed securities of SPAC will be assigned a special stock short name marker. The stock short names of SPAC Shares will end with the marker “Z” and the stock short names of SPAC Warrants will end with the marker “Z Y Y M M” or “Z Y Y” (with YY representing the expiry year and MM representing the expiry month of the SPAC Warrants). This information is also displayed on the HKEX website ([link](#)).

E. Funds in escrow account - meaning of cash equivalent

24. Rule 18B.18 requires the proceeds from a SPAC’s initial offering to be held in the form of cash or cash equivalent.
25. 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.

F. Financial Information and Accounting Matters

Disclosure of Significant Accounting Policies and Judgements

26. SPACs with, or seeking, a listing on the Exchange are advised to consult their reporting accountants (and other professional advisers, as appropriate) to evaluate the accounting implications for complex areas arising from SPAC transactions (such as the issuance of shares and warrants) with reference to applicable financial reporting standards.
27. Significant accounting policies and judgements for SPAC transactions and material events that occurred subsequent to the balance sheet date, which have a significant effect on the amounts recognised in the financial statements and/or are relevant to an understanding of the financial information included in the SPAC’s listing document, should be disclosed in the accountants’ report as required under the applicable accounting standards. In particular, in the context of initial listing of SPAC, those disclosures should also cover accounting policies for transactions entered into subsequent to the balance sheet date.

Pro Forma Net Tangible Assets/Liabilities

28. A SPAC’s pro forma net tangible assets/liabilities (as required by paragraph 21 of Appendix 1A to the Rules) must provide sufficient information in accordance with Rule 4.29 to illustrate the potential financial impact arising from a SPAC’s initial listing (including but not limited to the effects of the shares and other financial instruments issued or to be issued by SPACs) by way of pro forma adjustments and notes, where appropriate, so that investors can understand the accounting implications of the shares and financial instruments.

Statement of Working Capital Sufficiency

29. Rule 8.21A requires, among other things, a new applicant to include a working capital statement in its listing document. This also applies to SPACs and the listing document of a SPAC should disclose the basis of the directors' view on its working capital sufficiency as required under paragraph 36 of Appendix 1A to the Rules and the basis upon which the sponsor concurs with the directors' view. For the purpose of this requirement, the relevant cash flow forecast should focus on the working capital needed to cover the operating expenses prior to the De-SPAC Transaction and exclude any amounts of the initial offering proceeds that are subject to redemption or amounts that are expected to be used to fund a De-SPAC Transaction.

G. Sophisticated Independent Third Party Investors

30. Rule 18B.42 states that the independent third party investment referred to in Rule 18B.41 must include significant investment from sophisticated investors, as defined by the Exchange in guidance published on the Exchange's website as amended from time to time.
31. The Exchange will consider this requirement to be met if at least 50% of the value of the independent third party investment referred to in Rule 18B.41 is contributed by no fewer than three investors that demonstrate one of the following characteristics. These investors must either be:
 - (a) an asset management firm with assets under management of at least HK\$8,000,000,000; or
 - (b) a fund with a fund size of at least HK\$8,000,000,000.
32. The SPAC must provide the Exchange with information to demonstrate that the third party investors satisfy the characteristics referred to in paragraph 31.
33. A fund managed by a fund manager that has assets under management of an amount that meets the threshold set out in paragraph 31 would qualify as a sophisticated investor for the purpose of Rule 18B.42.
34. A SPAC must demonstrate to the Exchange that the independent third party investment required under Rules 18B.41 and 18B.42 (i.e. including the investment by the investors referred to in paragraph 31) have been committed by the time of the De-SPAC Announcement.

H. Content of the Announcement of De-SPAC Transaction

35. Rule 18B.39 requires a De-SPAC Target to have a fair market value representing at least 80% of the funds raised by the SPAC from its initial offering.
36. Rules 18B.44 to 18B.48 sets out the requirements relating to the announcement of De-SPAC Transaction ("**De-SPAC Announcement**"). Rule 18B.45 states that the Exchange may issue guidance on the Exchange's website, as amended from time to time, on requirements for the contents of the De-SPAC Announcement.

37. In addition to the requirements set out in Listing Rules 18B.44 to 18B.48, a De-SPAC Announcement must also include:
- (a) a description of all the independent third party investors referred to in Rule 18B.41 (including the sophisticated independent third party investors referred to in paragraph 31 of this letter), and the principal terms of their investments;
 - (b) the identities of, and amounts committed by, the independent third party investors referred to in Rule 18B.41;
 - (c) the negotiated value of the De-SPAC Target and the basis upon which such value was determined;
 - (d) the board of directors' opinion confirming the satisfaction of the requirement in Rule 18B.39 and the basis of such opinion (in a form acceptable to the Exchange); and
 - (e) the material terms of any earn-out rights referred to in Note 1 to Rule 18B.29(1).

I. “Fair Market Value” for the purpose of Rule 18B.39

38. When assessing the board of directors' opinion on the satisfaction of the “fair market value” requirement of Rule 18B.39, the Exchange will adopt a holistic approach and take into account factors such as (a) the basis of the opinion, (b) the negotiated value of the De-SPAC Target as agreed by parties; (c) the sponsor's opinion; (d) the amount committed by, and involvement of and validation by the independent third party investors; and (e) the valuation of comparable companies.

J. Participation by a SPAC Promoter in a SPAC's initial offering and De-SPAC Transaction

39. The Existing Shareholders Conditions referred to in HKEX Guidance Letter HKEX-GL85-16 are dis-applied to permit a SPAC Promoter to participate in: (a) an offering of SPAC Shares at the initial listing of a SPAC; and/or (b) the financing of a De-SPAC Transaction, subject to the conditions below, which may be modified as the Exchange considers necessary:
- (a) the SPAC Promoter meets the definition of a Professional Investor;
 - (b) the SPAC or the Successor Company (as the case may be) complies with all applicable open market requirements, including Rule 18B.05 or 18B.65 (as applicable);
 - (c) the price and terms of subscription of shares by the SPAC Promoter must be substantially the same as, or are not more favourable to the SPAC Promoter, than those available to other investors who are investing in the SPAC or the Successor Company (as the case may be) at the same time as the SPAC Promoter, and any such participation increases the SPAC Promoter's “capital at risk” to align its interests more closely with the interest of ordinary shareholders;

- (d) the SPAC or the Successor Company (as the case may be) and the relevant sponsor must confirm to the Exchange that no preferential treatment has been, nor will be, given to the SPAC Promoter other than the preferential treatment of assured entitlement; and
- (e) the participation is disclosed prominently in the listing document produced for the purpose of the SPAC's listing or the De-SPAC Transaction (as the case may be).

K. Forward Purchase Agreements

- 40. In the US, a SPAC may enter into a forward purchase agreement with the SPAC Promoters or other institutional investors before the initial listing of the SPAC, under which the purchaser would commit to subscribe, and the SPAC would commit to issue, equity in connection with the De-SPAC Transaction at a specified amount. The forward purchase agreement may also contain an option for the purchaser to subscribe for additional equity for up to a specified amount, exercisable at the discretion of the purchaser.
- 41. As a SPAC Promoter would be a connected person of a SPAC², any such forward purchase agreement entered into by the SPAC Promoter or its associate with a SPAC would constitute a connected transaction under the Rules.
- 42. A SPAC wishing to apply for a modification or waiver of these Rules for the purpose of entering into such a forward purchase agreement before the initial listing must provide the Exchange with full details of the proposed agreement at the earliest opportunity. The Exchange will consider such applications on a case-by-case basis based on the individual merits of the case.

L. Loans granted by a SPAC Promoter to a SPAC

- 43. In the US, it is common practice for a SPAC to be advanced loans by its SPAC Promoter to meet the SPAC's working capital needs, normally through promissory notes.

Prohibition of loan which allows conversion at the discretion of a SPAC or a SPAC Promoter

- 44. The Exchange will prohibit such a loan if its terms permit settlement (in full or in part) through conversion of the loan into SPAC securities at the discretion of the SPAC or SPAC Promoter. This is to ensure that a SPAC Promoter is not able to avoid the risk of non-completion of a De-SPAC Transaction that is normally borne by the beneficial owners of SPAC securities.

² See Rule 18B.01.

Application of existing requirements

45. If the terms of a loan to a SPAC state that it will be settled by the issuance of the securities of the SPAC (without the discretion referred to in paragraph 44), those terms of settlement must comply with all requirements relating to the issue of the relevant SPAC securities (e.g. restrictions on terms and issue price) as set out in Chapter 18B³. The SPAC securities to be issued to settle the loan will also be counted in the relevant dilution cap⁴. Please note that Section J of this letter may also apply.
46. As a SPAC Promoter is a connected person of a SPAC⁵, loans granted by SPAC Promoters to a SPAC would be subject to the connected transaction requirements of Chapter 14A of the Rules. Accordingly:
 - (a) if the loan will not be settled by the securities of the SPAC, such a loan will be fully exempt from the connected transaction requirements only if such financial assistance is: (a) conducted on normal commercial terms or better; and (b) not secured by the assets of the listed issuer's group⁶; or
 - (b) if the loan will be settled by the securities of the SPAC, such a loan will be subject to compliance with all applicable connected transaction requirements under Chapter 14A of the Listing Rules, including the requirements relating to independent shareholder approval⁷. Listed issuers are also reminded to consider other Rule implications (including those of Chapter 13 and Chapter 15) in relation to the issuance of such securities.

³ Including Rules 18B.07, 18B.22, 18B.30 and 18B.31.

⁴ Rule 18B.23 (with respect to warrants) and Rule 18B.29 (with respect to Promoter Shares).

⁵ Rule 18B.01.

⁶ See Rule 14A.90.

⁷ See Rules 14A.36 to 14A.39.