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Special Purpose Acquisition Companies (SPACs): A Discordant Tale of Two Asian Financial Centres

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ABSTRACT

Special purpose acquisition companies (SPACs) are essentially cash shell entities that raise finances through an initial public offering of securities with the sole purpose of combining, within a limited timeframe, with an unlisted target company. SPAC activity witnessed phenomenal growth since 2020, driven largely by the US markets. Several other jurisdictions, including the two Asian financial centres of Singapore and Hong Kong, have followed suit to establish regulatory regimes for facilitating SPACs. The principal findings of this paper are that, despite strongly competing for the same piece of the pie, the two financial centres have adopted rather divergent approaches to the regulation of SPACs. While Singapore adheres to the US practice quite closely, the Hong Kong regime is far more restrictive. Apart from commercial considerations, this somewhat yawning gap in the regulatory strategies is also attributable to differing regulatory philosophies as well as historical events that have coloured the regulatory thought process.

Key words: special purpose acquisition companies; securities regulation; mergers & acquisitions; IPO; stock markets

I. INTRODUCTION

Special purpose acquisition companies (SPACs) have taken the capital markets by storm lately. Operating at the intersection between securities regulation and the law relating to mergers and acquisitions (M&A), SPACs are essentially cash shell entities that raise finances through an initial public offering (IPO) of securities. They do so with the sole purpose of scouting, within a limited timeframe, for an appropriate target company with which it would combine in a transaction popularly referred to as a 'de-SPAC'.[1] This way, the private target

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[1] Such a combination may occur through any form of M&A transaction, including 'merger, share exchange, asset acquisition, share purchase, reorganisation, or such other business combination methods'. See SGX Mainboard Rules, Definitions and Interpretation.

company with an operating business could achieve a listing of its securities without undertaking a traditional IPO.[2]

To be sure, SPACs have been in existence in their current incarnation since the early 1990s.[3] They received considerable attention in the ensuing years, until their importance temporarily diminished in the wake of the global financial crisis of 2008.[4] While there has since been a resurgence of SPACs, from 2020 their role in raising funds from the capital markets has taken on an order of magnitude hitherto unimaginable.[5] Due to the market volatility caused by the Covid-19 pandemic, companies seeking equity financing from public investors have found it more prudent to adapt the SPAC route, which is considered less subject to the vicissitudes of the market as compared to a conventional IPO.[6] Moreover, a SPAC is also an attractive method for companies that otherwise find it difficult to access the capital markets, including for early stage ventures whose technologies are yet to be fully proven.[7] Table 1 evidences the uncharacteristic growth of SPACs since 2020.

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2 See JC Coates, 'SPAC Law and Myths' (2022) 4 <https://ssrn.com/abstract=4022809> accessed 2 April 2022; AR Brownstein, AJ Nussbaum and I Kirman, 'The Resurgence of SPACs: Observations and Considerations' Harvard Law School Forum on Corporate Governance (22 August 2020) <https://corpgov.law.harvard.edu/2020/08/22/the-resurgence-of-spacs-observations-and-considerations/> accessed 15 November 2021.

3 DS Riemer, 'Special Purpose Acquisition Companies: SPAC and SPAN, or Blank Check Redux?' (2007) 85 Wash UL Rev 931, 944-947; JKC Koh and V Leong, 'Spotlight on SPACs: Key Trends and Issues' (2021) 22 Business Law International 279, 288.

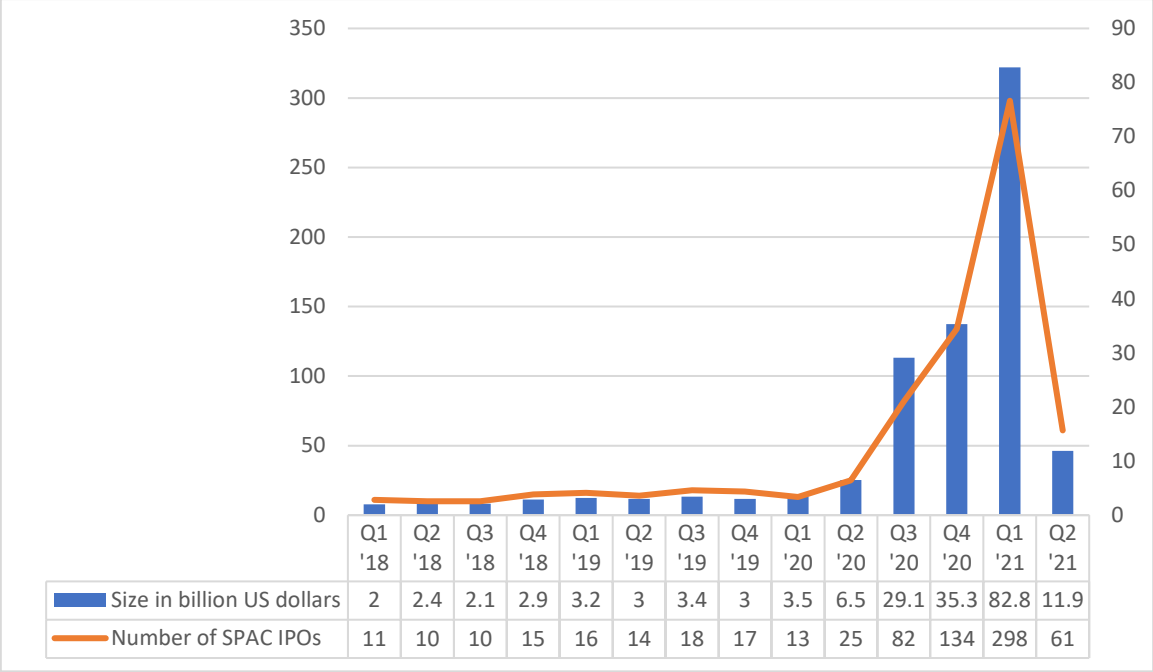
4 Gül Okutan Nilsson, 'Incentive Structure of Special Purpose Acquisition Companies' (2018) 19 Eur Bus Org Law Rev 253, 254.

5 See J Bai, A Ma and M Zheng, 'Segmented Going-Public Markets and the Demand for SPACs' (2021) 5 <https://ssrn.com/abstract=3746490> accessed 5 February 2022; M Klausner, M Ohlrogge and E Ruan, 'A Sober Look at SPACs' (2022) 39 Yale J Reg 228, 230-231; Gary Gensler, 'Remarks Before the Healthy Markets Association Conference' (9 December 2021) <https://www.sec.gov/news/speech/gensler-healthy-markets-association-conference-120921> accessed 15 February 2022.

6 A Ramkumar and M Farrell, 'When SPACs Attack! A New Force is Invading Wall Street' *The Wall Street Journal* (23 January 2021); NF Newman and LJ Trautman, 'Special Purpose Acquisition Companies and the SEC' Texas A&M University School of Law Legal Studies Research Paper No. 21-49 (2021) 13 <https://ssrn.com/abstract=3905372> accessed 17 January 2022; M Solum and G Mascioli, 'Legal Scrutiny for SPACs on the Rise', Bloomberg Law (April 2021) <https://www.kirkland.com/publications/article/2021/04/legal-scrutiny-for-spacs> accessed 31 January 2022.

7 Klausner, Ohlrogge and Ruan (n 5) 270-271; Bai, Ma and Zheng (n 5) 4; J Kolb and T Tykova, 'Going public via special purpose acquisition companies: Frogs do not turn into princes' (2016) 40 J Corp Fin 80, 80.

Table 1: Number of SPAC IPOs and Proceeds (in US Dollar Billions) Globally on a Quarterly Basis from Q1 2018 to Q2 2021[8]



	Q1 '18	Q2 '18	Q3 '18	Q4 '18	Q1 '19	Q2 '19	Q3 '19	Q4 '19	Q1 '20	Q2 '20	Q3 '20	Q4 '20	Q1 '21	Q2 '21
Size in billion US dollars	2	2.4	2.1	2.9	3.2	3	3.4	3	3.5	6.5	29.1	35.3	82.8	11.9
Number of SPAC IPOs	11	10	10	15	16	14	18	17	13	25	82	134	298	61

As Table 2 indicates, the United States (US) has driven this growth almost singlehandedly, with only a smattering of contributions coming in from other jurisdictions.

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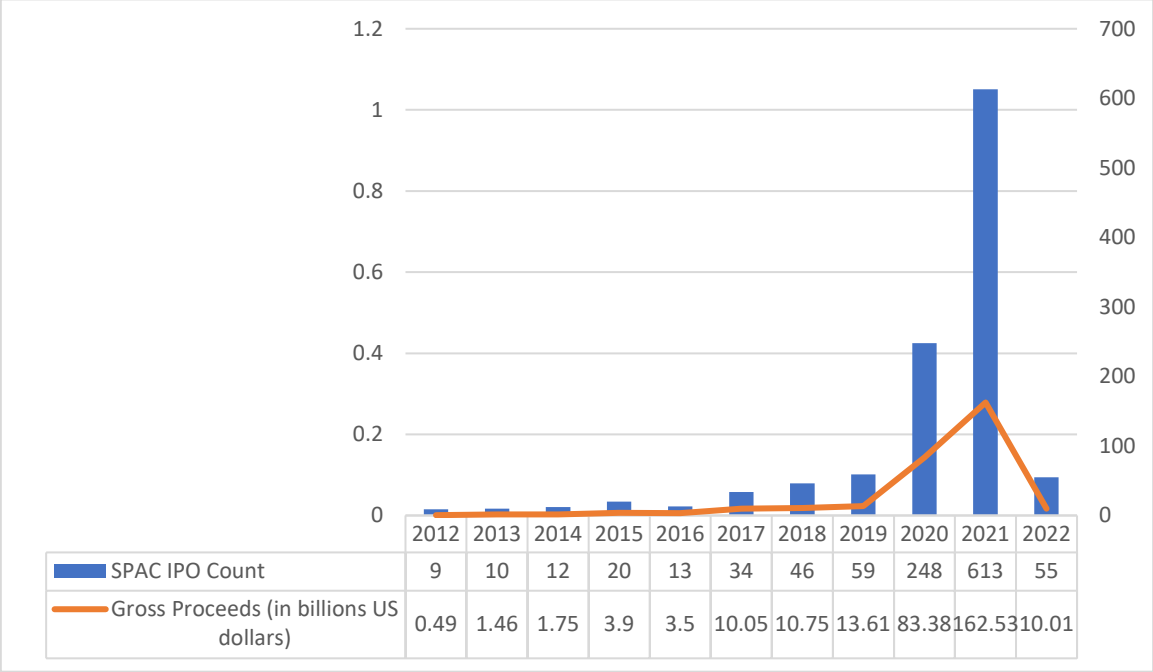
[8] Source: Number of special purpose acquisition company (SPAC) IPOs worldwide from Q1 2018 to Q2 2021 <https://www.statista.com/statistics/1250551/number-spac-ops-quarterly/> accessed 4 March 2022; Proceeds of special purpose acquisition company (SPAC) IPOs worldwide from Q1 2018 to Q2 2021 <https://www.statista.com/statistics/1250653/size-spac-ipos-quarterly/> accessed 4 March 2022.

Table 2: Summary of SPAC IPOs in the US by Year[9]



	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
SPAC IPO Count	9	10	12	20	13	34	46	59	248	613	55
Gross Proceeds (in billions US dollars)	0.49	1.46	1.75	3.9	3.5	10.05	10.75	13.61	83.38	162.53	10.01

As is clear from Table 1, there was a drastic drop in SPAC listings in the second quarter of 2021, driven largely by regulatory concerns among the market participants due to certain pronouncements made by the Securities and Exchange Commission (SEC).[10] However, SPACs staged a recovery in the third and fourth quarters to reveal a global number of 679 SPAC IPOs in 2021.[11]

The clamour for SPAC listings in the US did not go unnoticed elsewhere. Several other jurisdictions took note of these developments and began reviewing their own legal regimes to facilitate SPACs. Among others, the Financial Conduct Authority in the United Kingdom (UK) revised its legal regime to enable easier listing of SPACs in the UK.[12] Similarly, SPACs quickly arrived on Asian shores. Although countries like Korea and Malaysia already had prevailing legal regimes for SPACs, listings were few and far

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9 Source: SPAC Insider < https://spacinsider.com/stats/> accessed 4 April 2022. The information is current as of 3 April 2022. The amounts mentioned include the proceeds of over-allotment options.

10 M Gahng, JR Ritter and D Zhang, 'SPACs' (2021) 36 <https://ssrn.com/abstract=3775847> accessed 12 February 2022.

11 JH Hu, J Parry and JL Rubinstein, '2021: A Spectacular Year for SPACs' Harvard Law School Forum on Corporate Governance (17 February 2022) <https://corpgov.law.harvard.edu/2022/02/17/2021-a-spectacular-year-for-spacs/> accessed 15 March 2022.

12 FCA Policy Statement PS21/10, 'Investor protection measures for special purpose acquisition companies: Changes to the Listing Rules' (July 2021) 1, 8. For a detailed analysis of the UK SPAC regime, see BV Reddy 'Warning the UK on Special Purpose Acquisition Companies (SPACs): great for Wall Street but a nightmare on Main Street' (2022) JCLS, DOI: <10.1080/14735970.2022.2036413> accessed 2 April 2022; JKS Ho, 'Reforming the Listing Rules on Special Purpose Acquisition Companies in the United Kingdom' (2022) JBL, forthcoming <https://ssrn.com/abstract=3941478> accessed 14 February 2022.

between.[13] Attention, therefore, quickly shifted to the two leading Asian financial centres of Singapore and Hong Kong. An examination of the developments in these two jurisdictions is interesting for a number of reasons. First, they reacted with alacrity to the recent US developments to capture a part of the market share for SPAC listings. Second, Singapore and Hong Kong have historically competed to attract listings on their stock exchanges, including by introducing new products, with a recent high-profile illustration being the admittance of the dual class share structure.[14] Third, there continue to be considerable similarities in the legal treatment of capital markets transactions in the two jurisdictions due to their common legal heritage.[15]

Both Singapore and Hong Kong initiated market reforms to facilitate the listing of SPACs on their stock exchanges. The Singapore Exchange (SGX) began a consultation process in March 2021[16] and established a framework by September 2021;[17] the Hong Kong Exchanges and Clearing Limited (HKEX) followed shortly thereafter by initiating its consultation process in September 2021[18] and putting in place a listing regime for SPACs by December 2021.[19] It is noteworthy that Singapore's reform efforts began in the midst of the SPAC boom in US, while Hong Kong's initiatives commenced after the US market had begun experiencing a dip. In any event, the market has embraced the legal initiatives; as of this writing, three SPACs have already listed in Singapore, with one listing in Hong Kong (and ten others having filed their documents for registration).[20] Appendix 1 contains information about the SPACs in Singapore and Hong Kong.

The swift reaction by the regulators in the two Asian financial centres is clearly focused on creating a catchment area for listings by Asian companies or for the establishment of SPACs by Asian sponsors. For example, the Greater China region and Southeast Asia are

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13 S Velezmoro, 'Changes to Singapore's Spac framework to draw regional interest' *Asian Investor* (19 September 2021) <https://www.asianinvestor.net/article/changes-to-singapores-spac-framework-to-draw-regional-interest/472525> accessed 13 March 2022.

14 See NP Ho, 'A Tale of Two Cities: Business Trust Listings and Capital Markets in Singapore and Hong Kong' (2012) 11 JIBL 311; RH Huang, W Zhang and SC Lee, 'The (re)introduction of dual-class share structures in Hong Kong: a historical and comparative analysis' (2020) 20 JCLS 121; PW Lee, 'Dual-Class Shares in Singapore: Where Ideology Meets Pragmatism' (2018) 15 Berkeley Bus LJ 440.

15 KH Ng and B Jacobson, 'How Global Is the Common Law? A Comparative Study of Asian Common Law Systems – Hong Kong, Malaysia, and Singapore' (2017) 12 Asian J Comp L 209.

16 Singapore Exchange, 'Consultation Paper: Proposed Listing Framework for Special Purpose Acquisition Companies' (31 March 2021) [hereinafter the 'SGX Consultation Paper'].

17 Singapore Exchange, 'Responses to Comments on Consultation Paper: Proposed Listing Framework for Special Purpose Acquisition Companies' (2 September 2021) [hereinafter the 'SGX Response to Comments'].

18 HKEX, 'Consultation Paper: Special Purpose Acquisition Companies' (September 2021) [hereinafter the 'HKEX Consultation Paper'].

19 HKEX, 'Consultation Conclusions: Special Purpose Acquisition Companies' (December 2021) [hereinafter the 'HKEX Consultation Conclusions'].

20 Information (as of 31 March 2021) obtained from the websites of the SGX <https://www.sgx.com/securities/ipo-prospectus> and the HKEX < https://www.hkexnews.hk>. See also, C Zhou and D Loh, 'Hong Kong, Singapore investors tread carefully on Spac listings', Financial Times (1 April 2022).

home to an active start-up sector, which also house a number of unicorns.[21] In the absence of an effective listing option for using SPACs, companies from this region have hitherto been accessing the SPAC universe in the US for listing their securities.[22] A high-profile example relates to Grab, a leading Southeast Asian ridesharing platform, which merged with a US-based SPAC, Altimeter, in one of the largest ever de-SPAC transactions.[23] There is also evidence of Asia-based sponsors taking advantage of liquidity to set up SPACs in the US.[24] Moreover, the use of SPACs is also a measure to boost the overall listings on the two exchanges, which have witnessed a decline due to uncertain market conditions in the wake of the pandemic and also a clampdown on Chinese companies undertaking listings.[25]

In this background, the goal of this paper is to examine the legal frameworks established by Singapore and Hong Kong to regulate SPACs. It does so by analysing the key features of SPAC regulation, not only in comparison with each other but also by using the US practice as a frame of reference. The principal findings of this paper are that, despite strongly competing for the same piece of the pie, the two financial centres have adopted rather divergent approaches to the regulation of SPACs. While Singapore aims to adhere to the US practice quite closely, apart from imposing additional guardrails for the protection of public shareholders,[26] the Hong Kong regime is far more restrictive and consciously steers clear of the US approach with a view to remaining faithful to the local needs and realities. Apart from commercial considerations, this somewhat yawning gap in the regulatory strategies is also attributable to differing regulatory philosophies as well as historical events that have coloured the regulatory thought process. For example, in Hong Kong, some insalubrious experiences in dealing with cash shell entities and reverse takeovers have been at the forefront of the framework design that has introduced a great deal of rigidity.[27]

Part II of this paper outlines the main characteristics of SPACs and the transaction structure. It also elaborates on the modes of regulation of SPACs in the US, Singapore and Hong Kong, and the key objectives that regulation seeks to achieve. Part III examines the suitability of various types of investors in SPACs and also the requisite qualifications of sponsors and directors in SPACs in Singapore and Hong Kong. Part IV analyses the various conflicting interests that emanate in the SPAC transaction structure, both between sponsors and public shareholders as well as among different types of public shareholders. Part V looks at the de-SPAC transaction and the various facets thereof, with the key risk being one of

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21 HKEX Consultation Paper (n 18) 1; Koh and Leong (n 3) 281; SJ Hwang, 'Asia's SPAC race is over; the hard work is just beginning' The Business Times (26 January 2022) (finding that 'South-east Asia added 15 unicorns … in 2021').

22 O Subhani, 'What a Spac is and how it works' The Straits Times (20 January 2022) (noting that 'seven Singapore-based companies went abroad to de-Spac [in 2021]').

23 J Yang and M Farrell, 'Grab to Go Public in Record-Breaking SPAC Merger', The Wall Street Journal (13 April 2021).

24 F Kan, 'A new avenue for fund raising' The Business Times (13 October 2021).

25 O Subhani, 'Singapore well placed to grow as an Asian Spac hub, analysts say' The Straits Times (12 January 2022).

26 For purposes of this paper, 'public shareholders' refers to shareholders in a SPAC, other than the sponsors, managements and their related persons. They are also sometimes referred to as 'independent shareholders'.

27 See nn 71-72 and accompanying text.

dilution that public shareholders might suffer. Part 6 concludes with a discussion on the way forward for SPACs in Hong Kong and Singapore.

II. SPAC: TRANSACTION STRUCTURE AND ITS REGULATION

This part begins with a discussion of the SPAC transaction structure in light of the practice that has developed in the US. It thereafter explores the various regulatory considerations and the manner in which SPACs came to be regulated in the US. This provides a useful platform on which to analyse the evolution of the legal regimes relating to SPACs in Singapore and Hong Kong.

A. Main Characteristics of SPACs

SPACs are initially established by sponsors as shell entities that are devoid of operations or operating assets.[28] They are incorporated either in Delaware or in any other tax friendly jurisdiction.[29] Sponsors are usually experienced individuals or entities from the financial sector, although they sometimes tend to be individuals with no such experience.[30] In consideration for their contribution, the sponsors receive about 20 per cent of the post IPO equity, which is popularly referred to as the 'promote'.[31]

A SPAC undertakes an IPO by filing a registration statement with the SEC.[32] The offering commonly consists of a basket of securities, being 'units', to the public. Each unit, being a hybrid instrument, comprises a share that is typically priced at USD 10 per share, and a warrant (or a fraction thereof) which would entitle the warrant holder, upon exercise, to receive shares at a uniform price of USD 11.50 per share.[33] In addition to receiving the promote, it is common for the sponsors to subscribe to shares or warrants (or both) at about the IPO price, being their 'at-risk' capital,[34] the proceeds of which are usually deployed to defray the initial expenses of the SPAC.[35] The sponsors can lay their hands on the shares representing the promote only upon successful completion of the de-SPAC transaction,[36] and

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[28] AM Rose, 'SPAC Mergers, IPOs, and the PSLRA's Safe Harbor: Unpacking Claims of Regulatory Arbitrage' (2021) 2 <https://ssrn.com/abstract=3945975> accessed 2 April 2022; M Ellis, et al, 'Client Alert: Is 2021 the Year of SPACs in Asia? What You Need to Know' *Morrison & Foerster* (4 March 2021) <https://www.mofo.com/resources/insights/210304-year-of-spacs-in-asia.html> accessed 17 March 2022.

[29] Ellis, et al (n 28) (noting that SPACs with Asian sponsors are generally incorporated in offshore jurisdictions such as the Cayman Islands).

[30] Sponsors are sometimes referred to as 'promoters'.

[31] Brownstein, Nussbaum and Kirman (n 2).

[32] Due to the fact that the SPAC is a shell entity, the registration statement would be a fairly straightforward document with limited disclosures. Ellis, et al (n 28); UR Rodrigues and M Stegemoller, 'Redeeming SPACs', University of Georgia School of Law Legal Studies Research Paper No. 2021-09 11 <https://ssrn.com/abstract=3906196> accessed 2 April 2022.

[33] Brownstein, Nussbaum and Kirman (n 2).

[34] Ellis, et al (n 28).

[35] Brownstein, Nussbaum and Kirman (n 2).

[36] Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 8.

all the shares and warrants held by the sponsors are subject to lock-in requirements that operate for a period after the de-SPAC.[37]

The warrants are considered to be a 'sweetener' to attract investors to place their funds in a company that does not have operations yet, and when the ability of the shareholder to earn returns is delayed until a de-SPAC transaction takes place.[38] The warrants typically get detached from the shares and trade separately about 52 days from the closing of the IPO.[39] The exercise of the warrants, though, is possible only upon the completing of a de-SPAC transaction, failing which the warrants will lapse.[40]

Upon completion of the IPO, its proceeds are required to be held an escrow or trust account, which is then invested into government securities, pending its ultimate utilisation for a de-SPAC transaction.[41] The sponsors then have about 24 months to identify a suitable target to combine with. Through such a combination, the target company will either be merged with, or be taken over by, the SPAC, wherein the target shareholders will receive shares in the SPAC (or, less commonly, cash). Under the listing rules, the fair market value of the target must be at least 80 per cent of the funds held in the trust account of the SPAC.[42] If the sponsors are successful in their endeavours in locating a suitable target, the de-SPAC transaction must be taken to the shareholders of the SPAC for their approval by way of a shareholder resolution.[43] If either the shareholders do not approve the de-SPAC or if the sponsors do not identify a suitable target within the time granted, the SPAC must liquidate and redeem the shares at the issue price together with accrued interest from the investments held in its trust account.[44]

One of the unique features of modern-day SPACs is that even if a shareholder votes in favour of a de-SPAC transaction, it can nevertheless choose to redeem its shares.[45] In that sense, the ability of a shareholder to redeem shares is decoupled from the shareholders' voting decision in relation to a de-SPAC.[46] This leaves the SPAC vulnerable to a situation in which a large number of shareholders who approve the transaction end up redeeming their shares, thereby creating a shortfall in the available funds for payment of consideration for the de-SPAC transaction.[47] In order to fill such a financing gap, it is customary for the sponsors to invite institutional investors through a private investment in public equity (PIPE) transaction, wherein the PIPE investors are issued shares in the SPAC.[48] To provide for such

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37 Nilsson (n 4) 263-264; Reddy (n 12) 10.
38 Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 9; Klausner, Ohlrogge and Ruan (n 5) 289.
39 Ellis, et al (n 28).
40 R Berger, 'SPACs: An Alternative Way to Access the Public Markets' (2008) 20 J App Corp Fin 68, 70.
41 Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 9.
42 Ellis, et al (n 28).
43 Nilsson (n 4) 258; U Rodrigues and M Stegemoller, 'What all-cash companies tell us about IPOs and acquisitions' (2014) 29 J Corp Fin 111, 112.
44 Rose (n 28) 2; Gahng, Ritter and Zhang (n 10) 2.
45 Ellis, et al (n 28).
46 Coates (n 2) 49.
47 Klausner, Ohlrogge and Ruan (n 5) 253.
48 Rose (n 28) 3.

an eventuality, at the time of the IPO, it is also possible for SPACs to enter into forward purchase agreements (FPAs) with institutional investors who may commit to appropriate funding needed to complete the de-SPAC transaction.[49]

Following the de-SPAC transaction, the combined entity will continue as an operating company with the expectation that the sponsors and public shareholders will be in a position to realise the gains from such a structure.[50] In some cases, the sponsors' promote will be realisable only on a staggered basis following the de-SPAC transaction depending upon the performance of the combined entity.[51] Such a form of earnout would ensure that the fortunes of the sponsors are tied to the continued commercial viability of the entire SPAC process.

As evident from this description, the contractual structure of SPACs is not only complex, but it also carries the risk of misaligned incentives and of potential dilution that public shareholders may suffer.[52] Hence, the regulatory frameworks governing SPACs take on a significant role, to which this paper now turns.

B. Regulatory Approaches for SPACs

The regulatory philosophy surrounding SPACs would be concerned with the dual objectives of providing more optimal avenues for companies to raise funds on the one hand and to protect the interests of the investors and preserve market integrity on the other.[53] The SPAC structure tends to be thorny in that it splits the process of taking a company public into two segments. The first is the SPAC IPO, which is a relatively simple process in comparison with a traditional IPO. The second comprises the de-SPAC transaction that is governed essentially under the law relating to M&A with more limited investor protection mechanisms than a conventional IPO.[54] Such a structure generates regulatory arbitrage opportunities that may militate against the interests of the public investors.[55]

Given this tension, the regulation of SPACs has witnessed a chequered history. In the US, 'rampant fraud and manipulation of investors' relating to a previous embodiment of SPACs in the form of 'blank check' companies caused the Congress to enact the Securities Enforcement Remedies and Penny Stock Enforcement Act of 1990 (PSRA).[56] Through this

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49 Koh and Leong (n 3) 285.

50 D Cumming, LH Haß and D Schweizer, 'The fast track IPO – Success factors for taking firms public with SPACs' (2014) 47 J Banking Fin 198, 201.

51 ibid; M Klausner and M Ohlrogge, 'SPAC Sponsor Compensation Evolving? A Sober Look at Earnouts' (2022) < https://ssrn.com/abstract=4022611> 14 February 2022.

52 For a detailed analysis regarding dilution, see Klausner, Ohlrogge and Ruan (n 5).

53 R Eng, C Ong and ZH Peh, Introducing SPACs: The case for Special Purpose Acquisition Companies in Singapore' Eng and Co. LLC (April 2021) < https://www.engandcollc.com/assets/documents/introducing-spacs.pdf> accessed 27 November 2021.

54 Coates (n 2) 9.

55 H Halbhuber, 'An Economic Substance Approach to SPAC Regulation' (2022) 3 <https://ssrn.com/abstract=4005605> accessed 31 January 2022; MR Heisner, 'Breaking the Bubble: Top Risks to the SPAC Surge' Bloomberg Law (28 April 2021).

56 T Castelli, 'Not Guilty by Association: Why the Taint of Their Blank Check Predecessors Should Not Stunt the Growth of Modern Special Purpose Acquisition Companies' (2009) 50 BCL Rev 237, 248.

enactment, blank check offerings came under severe scrutiny and attracted stringent conditions imposed under rule 419 issued by the SEC.[57] Through creative lawyering, a later generation of SPACs ensured that they fell outside the definition of a 'penny stock' that made rule 419 inapplicable to them.[58] Nevertheless, these entities substantively complied with the restrictions imposed by the rule, thereby giving rise to the contractual structure witnessed in SPACs since then. By way of private ordering, US SPACs have sought to minimise the impact of blunt regulation such as the PSRA and rule 419.

More recently, however, in light of the SPAC boom witnessed until early 2021 the SEC indicated its intention to consider imposing more stringent regulation by placing SPACs under its rulemaking agenda for 2022.[59] Market observers have since begun expecting tighter curbs on SPACs.[60] This is also to be viewed in light of burgeoning litigation initiated by investors against SPACs in the US, particularly because several of them have underperformed financially.[61]

It is in these circumstances that both Singapore and Hong Kong began reviewing the regulatory frameworks relating to SPACs. In terms of timing, Singapore had a slight head start.[62] Both jurisdictions began from an extreme position in that the initial consultation proposals contained stringent regulations and sought to mitigate some of the concerns witnessed in the US. For example, both Singapore and Hong Kong proposed measures to prevent a misalignment of interests in a SPAC and also to mitigate dilution that public shareholders suffer. These included the fact that the shares and warrants must be attached to each other and cannot be treated separately, and also that only shareholders who voted against a de-SPAC transaction would be allowed to redeem their shares.[63] However, there was considerable pushback from industry, and both Singapore and Hong Kong dropped these proposals to continue to align with the US practice of detachable warrants and the decoupling of voting and redemption.[64]

However, judging by their regulatory philosophies, the approaches of Singapore and Hong Kong have displayed considerable divergence. In Singapore, the SGX has sought to adhere the US practice very closely while establishing its framework.[65] This is particularly evident in the responses from the industry to the initial consultation proposals, whereby the

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57 ibid 250-252.

58 DK Heyman, 'From Blank Check to SPAC: The Regulator's Response to the Market, and the Market's Response to the Regulation' (2007) 2 Entrepreneurial Bus LJ 531, 540.

59 Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 43.

60 ibid.

61 JR Ablan, PO Brandes and BJ Massengill, 'Chancery Court Allows deSPAC Litigation to Proceed' Harvard Law School Forum on Corporate Governance (30 January 2022) < https://corpgov.law.harvard.edu/2022/01/30/chancery-court-allows-despac-litigation-to-proceed/> accessed 15 March 2022; RE Barton, 'Caution ahead: SPAC litigation trends provide a road map for directors and officers' *Reuters* (3 September 2021); Solum and Mascioli (n 6).

62 See text accompanying nn 16-19.

63 SGX Consultation Paper (n 16) 17-19; HKEX Consultation Paper (n 18) 37, 76-77.

64 SGX Responses to Comments (n 17) 46, 50; HKEX Consultation Conclusions (n 19) 11, 60.

65 This is palpable in the tenor of the SGX Responses to Comments (n 17).

market has strongly advocated for a US based approach due to the familiarity of the participants with that practice.[66] This plea from the market participants resonated with the regulator given its intention to lure some SPACs and their participants away from the US markets towards Singapore, and also to target companies that could potentially be involved in de-SPAC transactions.[67] Commentators have observed that the SGX has had a close ear to the market pulse and adopted a 'commercial attitude' in devising a scheme for SPACs.[68]

Hong Kong, on the other hand, has steadfastly sought to distance itself from the US approach. This is emblematic in the language of the HKEX's consultation paper:

> We must also bear in mind the major differences between US and Hong Kong markets. There is proportionately higher retail market participation in Hong Kong than in the US. Also, the US regulatory regime places more emphasis upon investors' ability to take private litigation action to curb abusive behaviour. Therefore, a straight forward transplantation of the US regime to Hong Kong may not be appropriate or conducive to the maintenance of market quality in Hong Kong.[69]

The HKEX then went on to concede that its 'proposals would result in a SPAC listing regime that is more stringent than that of the US.'[70] Owing perhaps to its timing of consultation, the HKEX also pays heed to the developments in the US during mid-2021, which witnessed a slowdown in SPAC listings. More specifically, Hong Kong's regulators had only recently introduced checks and balances to prevent the misuse of shell entities to effect reverse takeovers and backdoor listings.[71] Concerns included possible avoidance of the exchange's suitability requirements and potential insider trading concerns emanating from rumours and speculation regarding potential targets.[72] Commentators have referred to Hong Kong's approach as one that looks 'for quality over quantity'.[73]

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66 J Yang, 'Singapore to Host SPAC Listings, in a First Among Asian Financial Hubs' Wall Street Journal (2 September 2021) (observing that 'Singapore's framework formalizes some common U.S. market practices into rules that attempt to protect investor interests.')

67 L Lu and L Zhang, 'Singapore's SPAC Listing Regime: A Game Changer Or A Gap Filler?' (2022) 50 Securities Regulation Law Journal (forthcoming) 17, 19 < https://ssrn.com/abstract=3929493> accessed 25 November 2022.

68 Velezmoro (n 13).

69 HKEX Consultation Paper (n 18) 2. The HKEX goes on to clarify that it has 'not attempted to replicate the US SPAC regime' and that it has instead proposed 'a regime tailored to the particular risks and requirements of the Hong Kong market.' ibid 32.

70 ibid 2

71 ibid 26-28; J Yang, 'U.S. SPAC Frenzy Inspires a Reboot in Asia' The Wall Street Journal (14 October 2021); L Lee, et al, 'SPACs listings in Hong Kong – a comparison among different jurisdictions' Allen & Overy (20 December 2021) < https://www.allenovery.com/en-gb/global/news-and-insights/publications/spacs-listings-in-hong-kong-a-comparison-among-different-jurisdictions> 15 February 2022 (noting that the 'HKEX has been reluctant to allow backdoor listings and has recently tightened the listing rules to prevent the listing of low-quality assets').

72 HKEX Consultation Paper (n 18) 26-28.

73 J Breen, 'Spac-tacular! HK, Singapore welcome first deals' Global Capital Asia (20 January 2022) < https://www.globalcapital.com/asia/article/29lu2i3tl3rfq0f8b9uyo/asia-equity/asia-ipos/spac-tacular-hk-singapore-welcome-first-deals> accessed 20 March 2022.

Despite the differing regulatory philosophies, it might be that each of the two jurisdictions is looking at 'playing to its strengths in creating a unique and differentiated proposition for businesses and investors.'[74] However, market participants have raised concerns that Hong Kong's regulatory regime for SPACs is 'too onerous and will not make the city competitive',[75] especially in relation to New York and Singapore.[76] At the same time, it is believed that Hong Kong's SPACs, despite their stringency, provide a viable alternative for Chinese companies that have historically listed in the US, but have begun to display hesitancy due to the strained commercial relations between the two countries.[77]

Even though Singapore's SPAC regime appears laxer, market developments have added layers of robustness to the process. For instance, the terms of the three SPAC IPOs completed thus far include contractual protections that the SPACs and their sponsors have offered to the investors, which are more favourable to the public shareholders than that required by the listing rules.[78] Moreover, the initial SPACs in Singapore have received strong government backing, in that the state owned investor, Temasek, has taken a stake in two of the three SPACs.[79] Temasek is a large investor with a stable of portfolio companies, several of which could be potential de-SPAC targets for Singapore based SPACs.[80] Such measures lend greater market credibility to fill a perceived regulatory gap.

With this background of the transaction structure and regulatory approaches towards SPACs in the two Asian financial centres, the paper now moves on to deal with the specific aspects of SPAC regulation in Singapore and Hong Kong by adopting a comparative approach.

III. THE SUITABILITY OF MARKET PLAYERS

An area of significant debate is whether the market for SPACs ought to be open to varying kinds of investors and sponsors, or whether it must be selective in nature. This has generated a wide gulf between the approaches adopted by the two Asian financial centres. Singapore has opened SPAC investments to retail investors and resisted from prescribing any qualification requirements for sponsors and members of the SPAC management. However,

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74 D Liu, D Lu and S Gopal, 'Hong Kong SPAC Proposal and Singapore SPAC Launch Provide Something for Everyone to Global Markets' Kroll (28 October 2021) <https://www.kroll.com/en/insights/publications/hong-kong-spac-proposal-singapore-spac-launch> accessed 4 March 2022.

75 S Murdoch and A John, 'Investment banks argue Hong Kong's proposed SPAC rules are too rigid' Reuters (27 October 2021).

76 C Bray and E Yiu, 'Spac listing rules may help HK lure Chinese tech firms' South China Morning Post (27 September 2021).

77 ibid.

78 See text accompanying nn 196-198.

79 A Ng, 'Singapore's first SPAC debuts four months after rule change, closes 1% higher' CNBC (20 January 2022); 'Singapore bets on niche SPAC listings to capture tech boom' The Business Times (7 February 2022).

80 Velezmoro (n 13).

Hong Kong has taken a diametrically opposing view by shutting retail investors out of the market and imposing qualification and licensing requirements on sponsors and managers.

A. Investor Suitability

SPACs have been touted as the 'poor man's private equity',[81] as they perform the role of 'democratizing capitalism'[82] by providing retail investors access to the high growth sectors of the economy and thereby 'dismantling the traditional capital markets'.[83] To that extent, regulators may be in favour of granting retail investors access to such 'extensive private equity-style returns'[84] rather than retaining access to the vehicle within the exclusive domain of institutional investors.[85] Although regulators may consider wielding the blunt tool of prohibiting retail investors from the SPAC markets altogether, it would run counter to the regulatory goals of market development.[86]

At the same time, critics have strongly cautioned against retail investor participation in SPACs. First, 'the complexity, opacity, and mechanics of the process and the slimmed down protections work to the detriment of retail investors and the benefit of the sophisticated parties involved in these transactions.'[87] Second, and relatedly, features of SPACs such as the decoupling of voting and redemption may lead unsophisticated retail investors to 'misinterpret the approval of the transaction by the majority of the shareholders' vote as a sign that sophisticated investors support the transaction',[88] even though the sophisticated investors may also redeem the shares, leaving the retail shareholders to bear the burden of dilution and any losses.[89] Third, since transactions are largely driven by sophisticated investors such as hedge funds, these unique features of SPACs could augur to their benefit to the detriment of retail investors.[90] Empirical evidence also shows an oversized participation of institutional shareholders that militates against the assertion that SPACs inure to the benefit of the retail market.[91] Fourth, overly rosy projections and optimistic revenue forecasts

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81 L Dimitrova, 'Perverse incentives of special purpose acquisition companies, the "poor man's private equity funds"' (2017) 63 J Acc & Econ 99; R Lim, 'Things to know before diving into Singapore SPACs' The Business Times (14 January 2022).

82 Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 2.

83 C Duhigg, 'The Pied Piper of SPACs' The New Yorker (7 June 2021).

84 Reddy (n 12) 7.

85 ibid.

86 ibid 35-36.

87 HM Peirce, 'Inside Chicken: Remarks before Fordham Journal of Corporate and Financial Law Conference: "Here to Stay: Wrestling with the Future of the Quickly Maturing SPAC Market"' (22 October 2021) < https://www.sec.gov/news/speech/peirce-remarks-fordham-journal-102221> accessed 19 November 2021.

88 M Ganor, 'The Case for Non-Binary Contingent, Shareholder Action' (2021) 23 U Penn J Bus L 392, 414.

89 ibid.

90 Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 30-31; Reddy (n 12) 26.

91 Klausner, Ohlrogge and Ruan (n 5) 241-243. This study also notes that SPAC investments are dominated by 'a group of repeat-playing hedge funds known colloquially in the SPAC sector as the "SPAC Mafia."' ibid 242.

during de-SPAC shareholders are likely to harm the interests of uniformed retail investors than they do sophisticated institutional investors.[92]

Given this dichotomy between facilitating wider access to the SPAC market and mitigating the risks arising therefrom, Singapore and Hong Kong have approached the issue from opposite ends of the spectrum. Based on feedback received during consultation, the SGX found it to 'be disproportionate to restrict retail access to SPACs at this stage'[93] and took the 'view that the SPACs will provide investors with a wider choice of investment products on the SGX.'[94] The Singapore bourse's preference, instead, is to leave it to individual investors to carry out their own due diligence and determine their suitability for investment.[95] Its strategy is 'to step up efforts to strengthen investors' education on SPACs investments to enhance the maturity and sophistication of Singapore retail investors and their ability to understand the structure and risks of SPACs.'[96] Even the Securities Investors Association (Singapore), an organised investor group, has called upon retail investors to acquaint themselves with the risks arising from this novel investment category.[97] The Singapore regime, therefore, displays a preference towards investor accessibility and the democratisation of the capital markets, with additional support through investor education measures.

Hong Kong, on the other hand, has adopted a restrictive approach by limiting SPAC investments to professional investors, and excluding retail investors.[98] SPACs are required to convince the stock exchange of arrangements to ensure that their securities are not marketed to retail investors, who are precluded from accessing the offering.[99] During the consultation period, the HKEX received strong feedback against providing access to retail investors owing to the novelty of SPACs in Hong Kong, especially because 'retail investors are unlikely to be aware of the risks associated with them, and would be more susceptible to market rumour and price volatility' as compared to professional investors.[100] While Hong Kong's approach militates against one of the avowed objectives of SPACs, which is to expand the retail investor base, it has considered the risks to such investors to be significant enough to be uncompromising about its stance.[101]

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92 M Dambra, O Even-Tov and K George, 'Should SPAC Forecasts be Sacked?' (2022) 22 <https://ssrn.com/abstract=3933037> accessed 4 March 2022.
93 SGX Responses to Comments (n 17) 4.
94 ibid 3.
95 ibid 3;
96 ibid 4.
97 D Gerald, 'Commentary: 5 Things to Note About SPACs' The Straits Times (22 November 2021).
98 HKEX Consolidated Mainboard Listing Rules, r 18B.03 [hereinafter the 'HKEX Rules']. Professional investors could be either institutional professional investors or non-institutional professional investors as set out in Schedule 1 of the Securities and Futures Ordinance. The professional investor regime in Hong Kong is akin to the accreditor investor scheme in the US. HKEX Consultation Conclusions (n 19) 8.
99 HKEX Rules, r 18B.03.
100 HKEX Consultation Conclusions (n 19) 7-8.
101 P Guy, 'SPACs are yet another hurdle for Hong Kong exchange', Citywire Asia (16 September 2021).

Clearly, the development of its capital markets has been a matter of higher priority for Singapore. On the other hand, Hong Kong has adopted a risk averse strategy to shut retail investors out of the SPAC market altogether. It is necessary to await empirical evidence to determine the appropriateness of either approach. If the findings of research from the US are indicative, the interest of retail shareholders are said to suffer a detriment at the hands of the more sophisticated investors.[102] In Singapore's case, much would depend upon the nature and extent of the promised support that the SGX and other players such as the SIAS have offered.

B. Sponsor and Management Suitability

Due to the structure of a SPAC, the sponsors can have a significant influence over its management.[103] Hence, the identity of the sponsors becomes an important factor for the investors to take into account.[104] In the US, the SPAC boom witnessed celebrity backers such as tennis stars Serena Williams and Andre Agassi, NFL quarterback Colin Kaepernick, basketball star Shaquille O'Neal and politician Paul Ryan, who have all launched this own SPACs.[105] This is despite their lack of financial expertise or experience, which is disconcerting given the inherent complexity in SPACs as investment vehicles.[106] These endorsements are evidently targeted at retail investors who may likely be taken in.[107] However, experience has shown that such celebrity involvement bears the risk of generating poor returns to investors.[108] Hence, in March 2021 the SEC issued an investor alert advising the public that it 'is never a good idea to invest in a SPAC just because someone famous sponsors or invests in it or says it is a good investment.'[109]

Similarly, there could be concerns regarding the qualifications and experience of the management team, including the board of directors of the SPAC. This is particularly because directors and managers 'perform the role of gatekeepers' when it comes to identifying and combining with a de-SPAC target, and bear fiduciary responsibilities.[110] At the same time, evidence is mixed as to the nature of the credentials of management. One study indicates that the financial expertise of the CEO matters in enhancing the attractiveness of a SPAC offering, while another suggests 'that greater managerial and board member experience does not improve the probability of a successful SPAC.'[111]

In response to sponsor and management suitability requirements too, Singapore and Hong Kong have adopted varying approaches. The SGX has 'acknowledged that there will be

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[102] See n 90 and accompanying text.
[103] Nilsson (n 4) 256.
[104] ibid.
[105] Reddy (n 12) 1; Newman and Trautman (n 6) 14; Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 6-7.
[106] Peirce (n 87).
[107] Reddy (n 12) 41.
[108] See Coates (n 2) 4.
[109] US Securities and Exchange Commission, 'Celebrity Involvement with SPACs – Investor Alert' (10 March 2021).
[110] Peirce (n 87).
[111] Cumming, Haß and Schweizer (n 50) 199.

practical difficulty in prescribing a set of quantitative and objective criteria.'[112] Therefore, it has opted to make a 'holistic' assessment of various suitability factors while entertaining applications for registration of SPACs.[113] In doing so, the SGX would consider 'the profile including the track record and repute of the founding shareholders and experience and expertise of the management team of the issuer'.[114] This involves a case-by-case analysis of suitability requirements.

Hong Kong has, instead, adopted a rather prescriptive approach. Although the HKEX too subscribes to a 'holistic approach' in determining sponsor suitability,[115] it goes ahead to impose licensing requirements. It stipulates that at least one of the sponsors must be 'a firm that holds a Type 6 (advising on corporate finance) and/or a Type 9 (asset management) licence issued' by Hong Kong's Securities and Futures Commission (SFC).[116] Moreover, in order to ensure substantial compliance with this requirement, the HKEX goes on to state that such a licensed sponsor must be the holder of at least 10 per cent of the sponsor shares issued by a SPAC.[117] In order to soften the rigidity of such a stance, the HKEX does recognise the value of 'high quality' sponsors, particularly overseas entities holding accreditations in their home jurisdictions without being registered with the SFC, operating in the Hong Kong SPAC market.[118] Hence, it has indicated its willingness to grant waivers in such scenarios. A licensing requirement also extends to board members of SPACs. At least two directors of the SPAC must be individuals licensed by the SFC to carry out the asset management or corporate finance activities under the categories mentioned above.[119] Clearly, the Hong Kong regulators are keen to include objective criteria for determining the suitability of sponsors and directors of SPACs to weed out sponsors such as celebrities who may not have the appropriate expertise or experience.[120]

In all, there is clearly disparity in the regulatory focus of the two Asian financial centres. Singapore has trained its focus on expanding market access to SPACs and in minimising the regulatory prescription on the qualifications and experience of sponsors and SPAC management. Hong Kong, on the other hand, has opted to keep the SPAC market fairly circumscribed to professional investors who are better able to absorb the risks and complexities, and to maintain a firm grip on sponsors and managers through specific licensing requirements, with investor protection forming the mainstay.

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[112] SGX Responses to Comments (n 17) 14.
[113] ibid 15.
[114] SGX Practice Note 6.4 Requirements for Special Purpose Acquisition Companies, para 2.1(a).
[115] HKEX Consultation Conclusions (n 19) 23.
[116] HKEX Rules, r 18B.10.
[117] ibid, r 18B.11.
[118] HKEX Consultation Conclusions (n 19) 24.
[119] HKEX Listing Rules, r 18B.13.
[120] Guy (n 101).

IV. ALIGNMENT OF INTERESTS

The transaction structure of SPACs is bound to give rise to conflicts of interest and misaligned incentives, thereby generating agency costs.[121] First, it creates agency problems between the interests of the sponsors on the one hand and public shareholders on the other. Second, it also creates conflicts between the interests of various groups of public shareholders themselves. This part deals with each in turn.

The misalignment of incentives between sponsors and public shareholders comes to the forefront when a SPAC is pursuing a potential combination within the specified time period following the IPO. For instance, the promote and warrants held by the sponsors will generate value only if a de-SPAC transaction is completed.[122] Failing this, if the SPAC is liquidated, the sponsors' promote and warrants become worthless.[123] Hence, there could be significant conflicts of interest when sponsors pursue de-SPACs. They may be motivated to complete a de-SPAC transaction merely to ensure that they can exercise their promote and warrants, even if the deal does not generate value to the public shareholders. A similar effect operates on the motivations of managers or intermediaries (such as underwriters) whose returns are subject to the completion of a de-SPACs transaction, who may fail to carry out the requisite planning and due diligence.[124]

Empirical evidence suggests that such structural misalignment of incentives is responsible for SPACs entering into value destroying de-SPAC transactions.[125] By depriving the ability to discern the quality of SPACs, these agency problems have the effect of sullying the reputation of the SPAC market.[126] As one study notes:

> I find strong evidence that much of SPAC value destruction through bad acquisitions is a result of certain contractual features that give SPAC managers incentives to pursue any acquisition over no acquisition. For instance, performance is worse when deals are completed just before the contractually specified deadline for a SPAC acquisition. The finding suggests that, as the deadline approaches, SPAC managers become desperate to do any acquisition, even a bad one, to avoid missing the deadline and having to liquidate the SPAC.[127]

Such conflicts of interest that motivate a SPAC's sponsors and managers to complete a de-SPAC as the deadline looms, regardless of the commercial merits of the transaction, also has

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[121] Klausner, Ohlrogge and Ruan (n 5) 232. For agency costs generally, see M Jensen, 'The agency cost of free cash flow, corporate finance, and takeovers' (1986) 76 (2) American Economic Review 323.
[122] Rose (n 28) 10.
[123] ibid.
[124] Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 5, 21-22.
[125] T Jenkinson and M Sousa, 'Why SPAC Investors Should Listen to the Market' (2011) 1 J App Fin 38, 38; Gahng, Ritter and Zhang (n 10) 34.
[126] Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 1.
[127] Dimitrova (n 7) 99.

the effect of giving rise to legal claims.[128] In order to guard against this risk, parties have devised a number of contractual mechanisms that mitigate the conflicts between the sponsors and public shareholders. Some of these contracting structures have been incorporated by regulation in Singapore and Hong Kong. While there is some similarity on this account between these two jurisdictions, there are significant differences as well.

A. Sponsor Contributions: 'Skin in the Game'

One way to align the incentives of the sponsors and the public shareholders is to require the sponsors to invest a minimum amount of at-risk capital so that the sponsors have a sufficient 'skin in the game'.[129] While this method has been adopted contractually in several US SPACs,[130] it has been mandated by regulation in Singapore.[131] The SGX noted that this is an important means by which it can 'signal the fundamental importance of sponsor's alignment of interests with other independent shareholders'.[132] According to the SGX's rules, sponsors and the management team must 'subscribe for a minimum value of equity securities (based on the subscription price at IPO)' of anywhere between 2.5 per cent and 3.5 per cent depending upon the market capitalisation of the SPAC.[133] At the same time, the SGX appears to confer sufficient flexibility to sponsors and management when it comes to the modes by which the minimum participation requirement can be fulfilled. For example, the sponsors and management can accomplish the condition through subscription to units, shares or warrants at the IPO, by providing an irrevocable commitment at the IPO to so subscribe to such securities at the time of the de-SPAC transaction, or through a combination of the two.[134] Interestingly, the SGX has relied on the minimum equity participation requirement as the pivot on which it has declined to include other protective measures such as the disenfranchisement of the sponsors.[135]

On the other hand, Hong Kong has refrained from imposing an overall minimum participation on sponsors and management as a proportion of the value of the total equity securities issued by a SPAC. Instead, the only stipulation is that at least one of the SFC-licensed sponsors of the SPAC must hold at least 10 per cent of the total shares held by the sponsors.[136] This is perhaps one of the few areas where the SPAC regulation in Singapore is more stringent than in Hong Kong with the understanding that a higher shareholding by the

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[128] PC Huskins, 'Why More SPACs Could Lead to More Litigation (and How to Prepare)' American Bar Association: Business Law Today (25 June 2020) <https://www.americanbar.org/groups/business_law/publications/blt/2020/07/spacs-litigation/> accessed 13 November 2021; Solum and Mascioli (n 6); Barton (n 61).

[129] S Chatterjee, NK Chidambaram and G Goswami, 'Security design for a non-standard IPO: The case of SPACs' (2016) 69 J Int'l Money & Fin 151, 153.

[130] ibid 156.

[131] Singapore is somewhat unique among SPAC jurisdictions in this regard. Koh and Leong (n 3) 293.

[132] SGX Responses to Comments (n 17) 33.

[133] SGX Mainboard Listing Rules, r 210(11)(e) [hereinafter the 'SGX Rules']. The higher the market capitalisation, the lower the required minimum equity subscription for sponsors and management.

[134] SGX Rules, r 210(11)(e).

[135] See part IVB below.

[136] See text accompanying n 117.

sponsors and management will better align their incentives with those of the public shareholders. Nevertheless, there is a belief among market participants and their advisors that such a minimum participation requirement may be insufficient to mitigate the tension between SPAC insiders and the public shareholders.[137]

Other measures by which the interests of the sponsors and public shareholders may be aligned include the imposition of lock-in requirements on sponsor shares, and the use of earn out mechanisms. The SPAC regimes of both Singapore and Hong Kong provide for sponsor securities to be locked in for a period until after the completion of the de-SPAC transaction.[138] Another mechanism is the use of earn out provisions by which sponsors' returns are linked to the long-term performance of the combined company following the de-SPAC transaction.[139] The expectation is that such an arrangement will curb the potential for short-termism on the part of the sponsors and management of a SPAC.[140] There is evidence to suggest that SPACs are increasingly beginning to use such an earnout mechanism.[141] Although neither Singapore nor Hong Kong requires such an earn out mechanism, and there has been no mention of it in their respective consultation process, Singapore has begun witnessing earn out trends in its initial SPAC listings through which sponsors have agreed to receive their promote shares only when the combined company achieves certain performance milestones in the period after the de-SPAC transaction.[142]

B. Disinterested Shareholder Voting

The requirement of voting to effect a de-SPAC transaction, or to delay such a transaction beyond the stipulated deadline, is intended to operate as an effective corporate governance mechanism. However, given that the sponsors suffer from a misalignment of interests in comparison with public shareholders, a key question arises whether sponsors must be allowed to cast their vote or whether they must be disenfranchised. There are varied approaches among jurisdictions. While there is no prohibition on sponsors exercising their votes in US-listed SPACs, they sometimes contractually agree to waive their voting rights.[143] The UK, on the other hand, adopts a strict approach by prohibiting the sponsor or management from

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[137] Drew & Napier, 'Litigation Risks Relating to Special Purpose Acquisition Companies' (13 October 2021) 5 <https://www.drewnapier.com/DrewNapier/media/DrewNapier/13Oct2021_Litigation-Risks-relating-to-SPACs.pdf> accessed 5 March 2022.

[138] For Singapore, see SGX Rules, r 210(11)(h); Reed Smith, 'SPAC Listings in Hong Kong and Singapore' (31 December 2021) < https://www.reedsmith.com/en/perspectives/2021/12/spac-listings-in-hong-kong-and-singapore> accessed 17 January 2022 (wherein a moratorium until six months after the completion of the de-SPAC transaction applies). For Hong Kong, see HKEX Rules, r 18B.66; Reed Smith, ibid (wherein the lock-in applies for 12 months after de-SPAC).

[139] Bai, Ma and Zheng (n 5) 33.

[140] ibid 35.

[141] Nilsson (n 4) 268; M Klausner and M Ohlrogge, 'Is SPAC Sponsor Compensation Evolving? A Sober Look at Earnouts' (2022) < https://ssrn.com/abstract=4022611> accessed 5 March 2022.

[142] R Lim, 'First SPACs take steps to go beyond SGX's minimum requirements' Business Times (13 January 2022).

[143] Clifford Chance, 'HKEX's Listing Framework for SPACs' (December 2021) 9 <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/12/Clifford%20Chance%20Guide%20-%20HKEX%27s%20Listing%20Framework%20for%20SPACs.pdf> accessed 15 February 2022.

voting on such a resolution.[144] Such a divergence of approaches has translated to the treatment of this issue by Singapore and Hong Kong as well.

In Singapore, the original consultation paper provided for voting by 'independent shareholders' for approval of the de-SPAC transaction or for extension of the timeline.[145] During the consultation process, a 'slight majority' of the respondents agreed with the proposal to exclude the sponsors and related persons from the voting process.[146] However, the SGX also considered a number of objections, including that the minimum equity participation will align the interests of the sponsors with the public shareholders, that giving sponsors voting rights will encourage them to obtain a greater stake in SPACs, and that conferring decision-making altogether in the hands of the independent shareholders (who are not as well informed as the sponsors) may be counterproductive.[147] Hence, the SGX proceeded to allow all shareholders, including sponsors, the management and their respective shareholders to cast their votes on shares they hold (except the promote which is offered nominally to them).[148]

Hong Kong, on the other hand, has adopted a stricter stance akin to the UK. It relied on 'a long standing principle' under its listing rules that any person with a material interest in a transaction must abstain for voting at a shareholders' meeting considering such transaction.[149] Given the misaligned interests between the sponsors and the public shareholders whereby the sponsors may be inclined to vote in favour of a value reducing transaction, if only to ensure the exercise of their promote and warrants, there is a need to treat sponsors and close associates as having a material interest in the transaction, which would prevent them to voting.[150] Such a prohibition on voting applies to all shares held by sponsors in the SPAC, whether they represent the promote or at-risk investment.

Hence, Hong Kong's approach is rather strict and disenfranchises the sponsors altogether in any shareholder meeting to consider matters relating to a de-SPAC transaction. Singapore, on the other hand, values the sponsor vote as integral to commercial decision-making on the de-SPAC process, regardless of the conflicts of interest involved, which it seeks to address through other means. In that sense, public shareholders in Singapore continue to be prone to sponsors' incentives that could lead to the completion of potentially value reducing de-SPAC transactions. Moreover, the limited investment trends available in relation to Singapore SPACs indicate that sponsors have invested significantly more in their equity than the minimum participation required. For instance, in both Vertex Venture and Pegasus Asia, the sponsor shareholding is about 15 per cent of the total market capitalisation,[151] which is substantially higher than the prescribed minimum of 2.5 per cent to

[144] UK Financial Conduct Authority Listing Rules, r 5.6.18A(5)(b); Reddy (n 12) 25-26.
[145] SGX Consultation Paper (n 16) 13, 17.
[146] SGX Responses to Comments (n 17) 39.
[147] ibid 40.
[148] ibid 42; SGX Rules, r 210(m)(ii). See also Koh and Leong (n 3) 295.
[149] HKEX Consultation Conclusions (n 19) 55.
[150] ibid. HKEX Rules, r. 18B.54.
[151] Lim (n 142).

3.5 per cent, thereby giving them significant influence in shareholder decision-making. Further, even where the sponsor shareholdings are low, there is always the possibility of sponsors acquiring more shares to ensure the passage of a shareholder vote in favour of a de-SPAC transaction under consideration.[152]

C. The Empty Voting Paradox

Finally, agency problems may arise among different groups of public shareholders, principally among the shareholders who decide to redeem their shares prior to the de-SPAC transaction and those who remain in the combined company thereafter. Originally, the redemption right of shareholders in the US was closely tied to the vote they exercised in a de-SPAC. Only shareholders who voted against the transaction were entitled to redeem their shares.[153] Furthermore, if a large number of shareholders beyond the prescribed threshold percentage exercise their redemption rights, the de-SPAC transaction was not allowed to proceed.[154] However, this gave rise to a holdout problem, where by a group of shareholders such as hedge fund arbitrageurs could stall the deal.[155] There was, therefore, a rapid shift in the contractual and regulatory structures relating to redemption. First, the redemption right and the shareholder votes were decoupled, enabling shareholders who voted in favor of the transaction to nevertheless redeem their shares. Second, conversion thresholds were either removed or set at a very high percentage (for example the requirement that at least 88% of shareholders exercise their redemption right), which effectively eliminated them.[156]

Empirical evidence suggests that SPAC shareholders exercise their redemption rights quite generously. For example, Klausner, et al, find that among their data set of SPAC transactions effected in 2019- 2020, the mean and median redemption rates were 58% and 73% respectively.[157] In other words, a substantial number of shareholders who invest in the SPAC IPO no longer continue to participate in the combined company after the de-SPAC transaction. They are effectively short-term investors who seek to gain a return effectively from a cash shell.

Such a disposition creates perverse incentives for shareholders to approve a de-SPAC transaction regardless of its commercial merits. After all, the shareholders who approved the transaction need not necessarily bear the consequences of their decision as they very well continue to enjoy exit rights.[158] As some scholars note: 'Empty voting, the decoupling of the vote from economic interest, is the most common way that modern SPACs have effectively

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[152] See Berger (n 40) 74; Dimitrova (n 7) 113.
[153] U Rodrigues and M Stegemoller, 'Exit, Voice, and Reputation: The Evolution of SPACs' (2013) 37 Del J Corp L 849, 856.
[154] Such a percentage was referred to as the 'conversion threshold'. ibid, 856.
[155] ibid 856, 874.
[156] ibid 856.
[157] Klausner, Ohlrogge and Ruan (n 5) 243.
[158] Ganor (n 88) 391. See also, Halbhuber (n 55) 13 (observing: 'Shareholders have the choice between investing and redeeming only if the merger is approved, incentivizing all holders to vote in favor.')

neutered the shareholder vote, making the result a foregone conclusion'.[159] Such misaligned incentives enable shareholders to vote for a de-SPAC transaction even though it may be a value reducing one. Available trends indicate that de-SPAC transactions are overwhelmingly approved by shareholders, and that there are hardly any transactions, if at all, that are rejected by shareholders.[160] One study of a sample of SPAC deals between 2010 and 2019 shows that no transaction in that data set was voted down.[161]

The controversy surrounding redemption rights flowed into the regulatory process in Singapore and Hong Kong as well. In their original consultation, both jurisdictions were categorical in tying redemption rights to the direction in which the shareholders have voted. This is to ensure that only dissenting shareholders are able to enjoy redemption rights. However, there was considerable opposition from market players during the consultation process, highlighting the risks such as the inability to complete a de-SPAC transaction due to holdouts, and the hesitation of investors to invest in SPACs if there is undue uncertainty regarding the completion of such a transaction.[162] Given the considerable opposition from the market, both Singapore and Hong Kong, acting consistently on this account, decided to drop the proposal and to allow the decoupling of redemption from voting rights.[163]

While this may have resolved the holdout problem, it does nothing to address the misalignment of incentives between two sets of shareholders, one who redeem their shares before a de-SPAC, and the other being long-term shareholders, who continue to remain following the combination to participate in the combined entity. This is also bound to create a class of short-term investors or arbitrageurs who may seek to obtain returns between the time that a SPAC undertakes an IPO and when it combines with an entity as part of a de-SPAC. Evidence from the US suggest that sophisticated shareholders such as institutional investors and hedge funds are more likely to exercise the redemption right and minimise any potential losses, leaving the less sophisticated retail shareholders to bear them.[164]

Even though misaligned incentives and conflicts of interest are inherent in the SPAC structure, commercial necessities have driven both Singapore and Hong Kong to avoid disrupting the well-established US practices such as decoupling the voting decision from the redemption right. While Hong Kong has relied on stringent measures such as disenfranchising the insiders on important decision-making matters, Singapore has instead sought to enhance sponsor participation through minimum equity requirements. In the end, the objective of both somewhat contrasting measures remains to seek an alignment of various conflicting interests among SPAC shareholders.

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[159] Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 28.
[160] Halbhuber (n 55) 11.
[161] Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 25.
[162] SGX Responses to Comments (n 17) 43; HKEX Consultation Conclusions (n 19) 59.
[163] SGX Responses to Comments (n 17) 46-47; HKEX Consultation Conclusions (n 19) 60.
[164] Ganor (n 88) 414; Klausner, Ohlrogge and Ruan (n 5) 243.

V. DE-SPAC: DILUTION AND OTHER MATTERS

In addition to the misaligned incentives that the SPAC structure creates, it also gives rise to dilution experienced by SPAC shareholders who continue to stay invested following a de-SPAC transaction.[165] Empirical studies have demonstrated that there is considerable divergence in the fortunes of shareholders who subscribe to a SPAC IPO and then sell or redeem their shares prior to the de-SPAC (thereby realising returns), and those who remain invested and likely suffer losses.[166] Hence, short term investors benefit at the cost of long-term investors.[167] The studies highlight that one of the sources of poor performance following a de-SPAC is the dilution suffered by the investors who remain in the combined entity.[168] Such a dilution is inherent in the SPAC structure due to the assortment of instruments and techniques that enables the holders thereof to extract value at the expense of other shareholders. Dilution occurs, among others, due to the realisation of the sponsors' promote, exercise of warrants by the holders thereof, and the utilisation of redemption rights by shareholders. While the US SPAC regime largely leaves it to the market to decide on issues relating to dilution, the regulatory regimes in Singapore and Hong Kong introduce some restrictions to protect the interests of the investors, especially those who remain invested in the long term.

A. Dilution and its Mitigants

The first form of dilution that public shareholders suffer arises from the realisation of promote by the sponsors upon completion of a de-SPAC transaction (or at a subsequent date if there are performance-based earnout provisions). This is because the promote shares are issued for no (or nominal) cash consideration. The possibility that sponsors could gain an advantage through such dilution has been on top of the minds of the regulators in both Singapore and Hong Kong. The SGX caps the promote issued to sponsors and managers of a SPAC at 20 per cent of the total share capital of the SPAC (on a fully diluted basis) immediately upon the closing of the IPO.[169] Hong Kong similarly places a 20 per cent restriction on the promote.[170] However, the HKEX is willing to consider case-by-case requests by SPACs to issue an additional promote (representing earn out rights) as long as the initially granted shares together with the earnout do not exceed 30 per cent of the SPAC shares at the time of its IPO.[171] Hence, apart from the additional 10 per cent latitude available to Hong Kong SPACs, the two jurisdictions are on par in their treatment of promote and their efforts in limiting its dilutive effect.

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[165] SGX Consultation Paper (n 16) 4.
[166] Klausner, Ohlrogge and Ruan (n 5) 243.
[167] S Banerjee and M Sydlowski, 'Harnessing the Overconfidence of the Crowd: A Theory of SPACs' (2012) 2 <https://ssrn.com/abstract=3930346> accessed 15 January 2022.
[168] Klausner, Ohlrogge and Ruan (n 5) 261; Nilsson (n 4) 286.
[169] SGX Rules, r 210(11)(f).
[170] HKEX Rules, r 18B.29(1).
[171] HKEX Rules, r 18B.29(1), Note 1.

The second mode of dilution emanates from warrants, in particular because they can be detached from the shares. The detachability of warrants creates distorted incentives to shareholders as they may be inclined to approve value reducing de-SPAC transactions, which will nevertheless allow them to minimise their downside by redeeming the shares while, at the same time, continuing to hold warrants.[172] A study even demonstrates that the shares of the combined entity following a de-SPAC transaction 'perform worse when there are more warrants and rights outstanding.'[173] One measure, albeit severe, to address this concern is to prohibit the detachability of the shares and warrants issued by a SPAC so that the interests of the holders do not suffer a misalignment.[174]

However, both Singapore and Hong Kong, which began their initial consultation from a stance displaying their intention to impose a prohibition, later ceded ground to permit detachability due to the fear that an extreme position may fail to attract investors to take up a stake in SPACs.[175] However, both jurisdictions stipulate that the total dilution arising from the exercise of the warrants shall not exceed 50 per cent of the share capital of the SPAC at the time of their issue.[176] As the SGX notes, 'stipulating a maximum cap on warrants dilution will play a part in ensuring … that the maximum percentage limit of dilution with respect to conversion of warrants is appropriate and acceptable to the market.'[177] While both Singapore and Hong Kong on the one hand opted for a market-friendly measure to permit the detachability of warrants from the shares, they have adopted a uniform approach in regulating the maximum dilution to protect the interests of the SPAC shareholders who continue to hold shares in the combined entity after the de-SPAC transaction.

The third incidence of dilution to continuing shareholders arises when some shareholders (regardless of how they voted in relation to the de-SPAC transaction) decide to redeem their shares. In such a case, the redeeming shareholders tend to pass on any risks and costs to the shareholders who continue to hold shares after the de-SPAC.[178] Although any cash deficit created due to redemptions are replenished by further infusion through PIPE investments, there is always the possibility that such investments are made at a price lower than the initial IPO price and on terms unfavourable to the remaining public shareholders.[179] Here too, both Singapore and Hong Kong approached the issue from an extreme standpoint of tying redemptions only to shareholders who dissent to a de-SPAC. However, the likelihood of holdouts and the commercial unviability of such a proposal evident from the consultation processes forced the respective regulators to permit redemptions without having regard to the shareholders' voting decisions.[180]

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[172] Gahng, Ritter and Zhang (n 10) 34.
[173] ibid 5.
[174] See text accompanying n 63.
[175] See text accompanying n 64.
[176] SGX Rules, r 210(11)(k); HKEX Rules, r 18B.23.
[177] SGX Responses to Comments (n 17) 50. See also, Koh and Leong (n 3) 294.
[178] Klausner, Ohlrogge and Ruan (n 5) 255; Nilsson (n 4) 268.
[179] Klausner, Ohlrogge and Ruan (n 5) 238.
[180] See text accompanying nn 162-163.

One method to mitigate the effect of dilution, though, is to impose limits on redemption. However, both Singapore and Hong Kong consider redemption as a holy grail for the protection of interests of public shareholders and hence resisted the imposition of an absolute limit on the number of shares a SPAC shareholder can redeem.[181] At the same time, there are some minor differences in the treatment of the issue by the two jurisdictions. The SGX has decided to leave it to SPACs to contractually determine the limits for the maximum number of shares that a public shareholder (together with associates or persons acting in concert) can redeem, which is representative of the practice in the US.[182] Not only must this limit be disclosed in the SPAC offer documentation, but the SGX has prescribed that such a limit cannot be lower than 10 per cent of the shares issued at IPO.[183] Such an arrangement, colloquially referred to as a 'bulldog provision' is to ensure that large shareholders are not incentivised to redeem a bulk of their shareholding, while at the same time preserving the exit option for smaller shareholders.[184] Subject to this condition, the SGX has effectively empowered SPACs to determine redemption limits, making its position consistent with the practice witnessed in the US.

On the other hand, the HKEX has placed an embargo on SPACs from imposing any redemption limits, thereby recognising the importance of redemption as a measure of shareholder protection for the exiting investors regardless of the dilution it may cause to the continuing shareholders.[185] Unlike Singapore, Hong Kong has deemed it unsuitable to confer the discretion to individual SPACs to determine the extent of redemption by shareholders.

As this analysis indicates, there is broad parity in the approaches of Singapore and Hong Kong when it comes to dealing with matters of dilution. Both jurisdictions have steered clear of imposing stringent restrictions on dilution due to the fear that such a regime could be unattractive to SPAC investors. To that extent, some of the concerns relating to dilution evident from the US experience might likely flow on to the two Asian financial centres as well. One way to assuage the interests of the shareholders who remain in the combined company after the de-SPAC transaction is to ensure robust PIPE transactions that not only fill gaps in funding requirements but also have the effect of endorsing the credibility of the de-SPAC. It is to this that the paper now turns.

B. The Role of PIPEs

PIPE transactions form an integral part of the structure at the stage of the de-SPAC. In such deals, a group of institutional shareholders invests in the combined company, predominantly to make up for any deficit in the cash pool of the SPAC arising on account of redemptions.[186]

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[181] SGX Responses to Comments (n 17) 46; HKEX Consultation Conclusions (n 19) 62.
[182] SGX Responses to Comments (n 17) 46.
[183] Ibid; SGX Rules, r 210(11)(m)(x).
[184] Reddy (n 12) 34; Rodrigues and Stegemoller, 'Exit, Voice, and Reputation' (n 153) 912; DACurtiss, 'Market Trends 2020/21: Special Purpose Acquisition Companies (SPACs)' Practical Guidance (2021) <https://www.paulweiss.com/media/3981062/market-trends-spacs.pdf> accessed 28 March 2022.
[185] HKEX Rules, r 18B.60.
[186] Gahng, Ritter and Zhang (n 10) 38.

Such PIPE deals serve to operate as a stamp of approval to the de-SPAC, as the PIPE investors are placing faith in the ability of the sponsors and managers to make the combination generate value for the shareholders.[187] Some studies show that SPACs with larger PIPE transaction attracting more credible investors are likely to perform better.[188] However, there is also the risk that PIPE transactions can erode value for the post-de-SPAC public shareholders, especially when the shares are issued to the PIPE investors at a price lower than that issued to the public shareholders.[189] Moreover, PIPE investors tend to have an informational advantage, as they invest only after the identity of the target becomes known and they are able to conduct due diligence.[190] Other studies, therefore, are somewhat critical in demonstrating that 'while PIPE financing in a SPAC transaction is often interpreted as being favourable to retail investors, we show that this can actually leave such investors worse off.'[191]

In these circumstances, neither Singapore nor Hong Kong seeks to regulate the terms of PIPEs, for instance by insisting that the issue of shares to PIPE investors must be on terms that are no more favourable than those offered to the shareholders of the SPAC in its IPO. Apart from this, though, both jurisdictions view PIPEs very differently. Under the SGX regime, PIPEs become relevant only to the mode of valuation of the target in a de-SPAC transaction. If there is a PIPE transaction to institutional or accredited investors carried out contemporaneously with a de-SPAC transaction, there is no need to appoint an independent valuer to value the business and assets of the target.[192] In that sense, the existence of a PIPE transaction lends an imprimatur to the valuation of the de-SPAC.

On the other hand, Hong Kong lends greater sanctity to the PIPE transaction and has gone to the extent of mandating it, that too to specific categories of investors. The HKEX treats PIPEs as an important safeguard in the price discovery process for the de-SPAC, particularly because 'the valuation of a de-SPAC Target is not determined by underwriters using book building to gauge market demand from a large number of outside investors.'[193] In Hong Kong, PIPE investment is mandated within the range of 7.5 per cent and 25 per cent of the negotiated de-SPAC value depending upon its magnitude.[194] More importantly, PIPE investments must be from professional investors, which includes 'significant investment from sophisticated investors, as defined by the Exchange in guidance published on the Exchange's website'.[195] Given the signalling effect that PIPE investors have on the de-SPAC transaction,

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187 ibid.
188 See K LaCroix, 'SPACs and De-SPACs: Just the Facts' The D&O Diary (31 January 2022) < https://www.dandodiary.com/2022/01/articles/director-and-officer-liability/spacs-and-de-spacs-just-the-facts/> accessed 31 March 2022.
189 Reddy (n 12) 31 (alluding to the possibility that PIPE investors obtain 'sweet heart' deals).
190 Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 20.
191 Banerjee and Sydlowski (n 167) 37.
192 SGX Rules, r 210(11)(m)(vi).
193 HKEX Consultation Conclusions (n 19) 42.
194 HKEX Rules, r 18B.41.
195 HKEX Rules, r 18B.42.

the HKEX has chosen to closely regulate the nature and identify of such PIPE investors, rather than to leave it to the market (as Singapore has chosen to do).

In sum, both the Asian financial centres have sought to intervene to a limited extent in addressing the dilution arising from matters such as promote, warrants and redemption. To that extent, they have adopted an interventionist approach regarding dilution in comparison with the US where anti-dilution measures are left to the parties to determine by contract. Hong Kong's zeal to preserve a close scrutiny over the de-SPAC process has led to its even mandating PIPE investment by professional investors, while Singapore has fashioned its stance along the lines of the US where the necessity and design of PIPEs are left for market determination.

VI. CONCLUSION: THE WAY FORWARD

The rage surrounding SPACs in the US beginning early 2020 has caught on in other parts of the world, not least in several Asian jurisdictions. While SPACs provide both issuer companies and investors with attractive listing and investment options respectively, they also carry several risks. Apart from investment and business risks, investors face challenges that are inherent in the structure of the SPACs and its complexity. Despite strong concerns, both Singapore and Hong Kong have wholeheartedly embraced SPACs as a means to boost listings on their respective stock markets. Curiously, both these jurisdictions have adopted rather different strategies to regulate SPACs, with Hong Kong taking a considerably conservative approach compared to Singapore.

At the same time, the SPAC market appears to have adjusted itself to address any perceived laxity in the regulatory outlook. For instance, two of the SPACs listed in Singapore (being Vertex and Pegasus) have contractually stipulated measures that are in excess of the legal requirement. They have voluntarily taken measures to secure a greater alignment of interest among various shareholders, thereby relying on market incentives more than regulatory directives. Apart from complying with a much higher minimum sponsor participation,[196] these SPACs have placed 100 per cent of their funds in escrow (although the regulations require only 90 per cent funds to be so placed) and linked the sponsors' promote to the achievement of specific milestones following the de-SPAC transaction (thereby adopting an earnout structure).[197] One of the significant features of the Vertex transaction structure is that, in addition to warrants, shareholders have received an additional right to receive a warrant. Such an additional right is given only to shareholders who do not redeem their share at the time of the de-SPAC transaction.[198] This incentivises shareholders to take a long-term position in the SPAC instead of seeking purely short term gains. The market has sought to minimise the regulatory gap, at least to some extent.

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[196] See n 151 and accompanying text.
[197] Lim (n 142).
[198] ibid.

Depending upon the performance of SPACs in Singapore and Hong Kong, and the structural issues they may generate in the future, the respective stock exchanges would do well to make appropriate adjustments to their regulation periodically. If the misaligned incentives and conflicts of interests continue to mar investor sentiment, there could be a need for a reconsideration of certain fundamental structural issues. These include the possibility of reattaching warrants to shares to ensure an alignment of interest between the shareholders and warrant holders.[199] Furthermore, there could be a recoupling of voting decisions with the exercise of redemption options.[200] In case there are concerns about holdouts in such circumstances, certain halfway approaches could be considered. For example, there could be a stipulation that if more than a certain number of shareholders (say those who hold 50 per cent shares in the SPAC) redeem their shares, then the de-SPAC transaction will not proceed.[201] These measures would ensure a substantial realignment of the interests of various shareholders that would possibly guard the SPAC against effecting value destructive de-SPAC transactions.

Specifically in the case of Singapore, other possible measures include restricting the availability of SPACs to sophisticated investors, and disenfranchising sponsors and management shareholders from voting in relation to the de-SPAC transactions. Surely, this would require a significant turnabout from the consultation process, but regulatory reforms may be necessary in dynamic market conditions.

Given that both Singapore and Hong Kong have closely observed the US experience (although they have adopted it to varying extents), any further regulatory reforms in the US would arguably have an impact on the trajectory of SPAC structures in the two Asian financial centres. On 30 March 2022, the US SEC proposed wide-ranging reforms to enhance disclosure requirements for SPAC IPOs and de-SPAC transaction as well as to ensure greater investor protection.[202] Although the final shape of the rules would depend upon the outcome of the consultation process, it is clear the regulatory noose is tightening around SPACs in the US. Any regulatory arbitrage that the SPAC structure provides is likely to be minimised, if not eliminated, by these measures. The regulators in Singapore and Hong Kong would do well to watch these developments closely, in addition to the experience gathered in the SPACs market in the two financial centres.

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[199] Reddy (n 12) 35.

[200] Rodrigues and Stegemoller, 'Redeeming SPACs' (n 32) 5.

[201] ibid 47-49 (also recommending a conversion threshold of 50 per cent, whereby if shareholders holding more than that seek a redemption of their shares, the de-SPAC transaction must not be allowed to proceed). Another proposal suggests that a shareholder must be in a position to redeem their shares only if a specified proportion of shareholders have exercised their redemption rights unconditionally. See Ganor (n 88) 391. Such a contingent shareholder action is expected to enable unsophisticated retail shareholders to ride off the decision-making of the more sophisticated investors. Ganor (n 88) 408, 427.

[202] US Securities and Exchange Commission, 'SEC Proposes Rules to Enhance Disclosure and Investor Protection Relating to Special Purpose Acquisition Companies, Shell Companies, and Projections' (30 March 2022).

Appendix

Status of SPAC Listings in Singapore and Hong Kong (as of 31 March 2022)[203]

	Singapore	Hong Kong
Listed	• Vertex Technology Acquisition Corporation Ltd • Pegasus Asia • Novo Tellus Alpha Acquisition	• Aquila Acquisition Corporation
Pending Listing	None	• Tiger Jade Acquisition Company • Trinity Acquisition Holdings Limited • Interra Acquisition Corporation • Ace Eight Acquisition Corporation • Vision Deal HK Acquisition Corp. • Vivere Lifesciences Acquisition Corp. • HK Acquisition Corporation • Pisces Acquisition Corporation • A SPAC (HK) Acquisition Corp. • Black Spade Asia Acquisition Co

[203] See n 20.