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SPAC REGULATION IN SINGAPORE AND HONG KONG: DESIGNING A REGULATORY FRAMEWORK FOR NEW SPAC MARKETS

Walter Wan*

Special Purpose Acquisition Companies, or SPACs, have become popular investment vehicles in 2020–2021. In response to this recent growth in popularity, regulators in Singapore and Hong Kong have introduced new listing rules permitting the listing of SPACs in their jurisdictions. In doing so, they have generally referred to the regulations and market practices in the US. These represent a set of norms which have been negotiated between regulators, SPAC managers and investors over decades of transactions. Regulators in Singapore and Hong Kong have innovated on these basic rules in response to recent criticisms of the SPAC structure and to accommodate local market factors and regulatory aims. This paper will examine how the regulators have, in the process of setting up SPAC markets locally, leveraged on the regulations and practices in the US as a starting point and how the consultation process allowed them to fine-tune their proposals.

I. Introduction

As their names suggest, Special Purpose Acquisition Companies, otherwise known as "SPACs", are incorporated with the aim of raising equity on the public market before merging with a private company. They have recently received unprecedented levels of attention as a means of raising equity and taking a company public. In 2020, there were 248 initial public offerings ("IPOs") involving SPACs in the United States ("US") raising a total of US$80.9 billion.[1] This increased to 583 SPAC IPOs in 2021, raising a total of US$152.5 billion.[2] In both years, SPAC IPOs exceeded traditional IPOs in the US in number of IPOs and total proceeds raised.[3] Accordingly, SPACs came to be seen as a viable means of accessing public equity.[4]

* Teaching Assistant, National University of Singapore, Faculty of Law. I would like to thank Lan Luh Luh, Lin Lin, Christal Lim, Petrina Tan, Carina Tay, Hans Tjio, Umakanth Varottil, and the anonymous referees for their comments and taking the time to discuss the contents of this paper. I would also like to acknowledge the EW Barker Centre for Law & Business for the support I have received with respect to this piece. All errors remain mine.

1 Ernst & Young Global Limited, "Global IPO trends: Q4 2020" (2021) <https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/growth/ey-global-ipo-trends-2020-q4-v2.pdf> at 15.

2 Ernst & Young Global Limited, "2021 EY Global IPO Trends report" (2022) <https://assets.ey.com/content/dam/ey-sites/ey-com/en_gl/topics/ipo/ey-2021-global-ipo-trends-report-v2.pdf> at 26.

3 *Ibid*.

4 See, for example, Max H Bazerman & Paresh Patel, "SPACs: What You Need to Know" (July-August 2021) <https://hbr.org/2021/07/spacs-what-you-need-to-know>.

In an attempt to get a piece of the SPAC pie, regulators in the Asian financial centres of Singapore and Hong Kong have amended their listing rules to permit the listing of SPACs on the Singapore Exchange ("SGX") and the Stock Exchange of Hong Kong ("HKEx") respectively. The SGX completed its consultation and finalised the amendments to its listing rules to permit the listing of SPACs (the "Singapore Framework") on 3 September 2021.[5] The HKEx followed soon after, adopting changes to its own listing rules (the "HK Framework") with effect from 1 January 2022.[6]

Both the SGX and HKEx pointed to heavy market interest to justify the introduction of SPACs.[7] The HKEx noted that 12 companies in the region (Hong Kong, China and Southeast Asia) have entered into mergers with US SPACs.[8] Indeed, such mergers have been a trend amongst regional tech unicorns. In Singapore, ride-hailing and fintech company Grab Holdings Limited went public in December 2021 by merging with a SPAC listed on the Nasdaq in a deal which valued the company at nearly US$40 billion.[9] Turning to Greater China, biotech firm Prenetics has announced a SPAC merger with a valuation of US$1.7 billion.[10] By introducing the Singapore and HK Frameworks, the regulators hoped to compete with the US market, enticing SPACs and unicorns to list locally instead.[11]

The Singapore and HK Frameworks have been introduced at a time where SPACs have come under increased scrutiny from market regulators. In the US, staff of the Securities and Exchange Commission ("SEC") have raised concerns, warning that SPACs expose investors to risks such as conflicts of interests and extensive dilution.[12] These warnings about the risks inherent to the structure of the SPAC

5 SGX, News Release, "SGX introduces SPAC listing framework" (2 September 2021) <https://www.sgx.com/media-centre/20210902-sgx-introduces-spac-listing-framework> [SGX Announcement].

6 HKEx, Regulatory Announcement, "New Listing Regime For Special Purpose Acquisition Companies" (17 December 2021) <https://www.hkex.com.hk/News/Regulatory-Announcements/2021/211217news?sc_lang=en> [HKEx Announcement].

7 SGX, *Proposed Listing Framework for Special Purpose Acquisition Companies* (Consultation Paper) (SGX, 31 March 2021) at [2.2] of Part I [SGX Consultation]; HKEx, *Special Purpose Acquisition Companies* (Consultation Paper) (HKEx, September 2021) at [4], [5] [HKEx Consultation].

8 HKEx Consultation, *supra* note 7 at [109]. See also Selena Li & Samuel Shen, "Chinese startups' SPAC listings gather pace as tougher offshore IPO rules loom", *Reuters* (11 March 2022) <https://www.reuters.com/markets/deals/chinese-startups-spac-listings-gather-pace-tougher-offshore-ipo-rules-loom-2022-03-10/>; Saheli Roy Choundhury, "SPACs are targeting Southeast Asia's start-ups, and investors are taking note", *CNBC* (15 July 2021) <https://www.cnbc.com/2021/07/16/spacs-are-targeting-southeast-asias-start-ups-and-investors-are-taking-note.html>.

9 Yoolim Lee, "Grab Heads for Public Market as Investors Approve SPAC Deal" *Bloomberg* (1 December 2021) <https://www.bloomberg.com/news/articles/2021-11-30/grab-heads-for-public-market-after-investors-approve-spac-merger>.

10 Kane Wu & Farah Master, "Hong Kong COVID testing firm Prenetics to go public via $1.7 billion SPAC deal" *Reuters* (16 September 2021) <https://www.reuters.com/article/prenetics-ipo-idUKKBN2GC03N>.

11 SGX Consultation, *supra* note 7 at Part I; SGX, *Proposed Listing Framework for Special Purpose Acquisition Companies* (Responses to Comments on Consultation Paper) (SGX, 2 September 2021) at [1.1] of Part II [SGX Response]; HKEx Consultation, *supra* note 7 at [107]–[113].

12 See, for example, SEC, Statement by Acting Director, Division of Corporation Finance, John Coates, "SPACs, IPOs and Liability Risk under the Securities Laws" (8 April 2021) <https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws> [Coates Statement]; SEC, Investor Alerts and Bulletins, "What You Need to Know About SPACs – Updated Investor Bulletin"

have also been echoed by academic commentators, who have suggested that stricter disclosure requirements should be introduced.[13] Indeed, regulators in the US have hinted that tightened regulations on SPACs are being studied and may be implemented soon.[14]

In addition to the recent discussion by the SEC and academics in respect of US SPACs, the SGX and HKEx also studied and took reference from existing regulations and market practices in the US.[15] These regulations and market practices encompass decades of negotiation and development between regulators and market participants in the US SPAC market, which can be traced back to blank check companies listed in the 1980s in the US as penny stocks and were used to facilitate pump-and-dump schemes.[16] By looking to the US, the SGX and HKEx were able to adopt regulations that were generally familiar to the market and met the baseline expectations of market participants.

Nevertheless, it would be inaccurate to suggest that the SGX and HKEx have imported existing regulations and practices from the US wholesale. Rather, they have sought to tune the respective frameworks to take into account local market conditions and regulatory aims.[17] Criticisms raised by the SEC and commentators on dilution risks and conflicts of interests inherent in SPACs were also considered and dealt with.[18] Generally, both the Singapore and HK Frameworks have been designed to facilitate the use of SPACs while also providing a higher level of investor protection. Key to this was a comprehensive consultation process where the market's views on various proposals were sought and carefully considered.

This paper will provide an overview of the Singapore and HK Frameworks and discuss the rationale for and effectiveness of key measures that were introduced by the SGX and HKEx, such as licensing requirements, stricter due diligence and disclosure requirements, and requiring independent valuation of the SPAC's target. It will then examine the design process that the SGX and HKEx took. We shall see that the SGX and HKEx have not just simply transplanted existing regulations into their respective regulatory frameworks. Rather, they have used a market-familiar approach as a baseline and consulted on significant deviations from it. The

(25 May 2021) <https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin> [SEC Alert].

13 Michael Klausner, Michael Ohlrogge & Emily Ruan, "A Sober Look at SPACs" (2022) 39 Yale J Reg 228; Usha Rodrigues & Michael Stegemoller, "Redeeming SPACs" (19 August 2021) University of Georgia School of Law Legal Studies Research Paper No 2021-09 [Rodrigues & Stegemoller, "Redeeming SPACs"].

14 SEC, Speech by Chair Gary Gensler, "Remarks Before the Healthy Markets Association Conference" (9 December 2021) <https://www.sec.gov/news/speech/gensler-healthy-markets-association-conference-120921> [Gensler Speech]. See also, SEC, Press Release, "SEC Proposes Rules to Enhance Disclosure and Investor Protection Relating to Special Purpose Acquisition Companies, Shell Companies, and Projections" (30 March 2022) <https://www.sec.gov/news/press-release/2022-56> [SEC Proposal].

15 See the discussion of the US regulations and market practice by the SGX and HKEx: SGX Consultation, *supra* note 7 at ch 1; HKEx Consultation, *supra* note 7 at ch 5.

16 See generally, Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at Part II; Daniel Riemer, "Special Purpose Acquisition Companies: SPAC and SPAN, or Blank Check Redux?" (2007) 85(4) Washington University Law Review 931 at 943–950.

17 See, for example, HKEx Consultation, *supra* note 7 at [8].

18 SGX Consultation, *supra* note 7 at [4] of Part I; HKEx Consultation, *supra* note 7 at [7]–[12], ch 4.

consultation process allowed the regulators to identify which aspects of SPAC regulation market participants regard as being key protections and, as a result, they were better equipped to design a regulatory framework that facilitates the creation of a SPAC market while also bolstering protection for SPAC investors.

II. The Spac Structure

Generally speaking, a SPAC functions by raising funds through an IPO, identifying a suitable private company (or a "Target") and carrying out a merger with the Target using the funds raised (the "De-SPAC Transaction"). This set-up relies heavily on the ability of the SPAC's controller, who is otherwise known as the sponsor or promoter of the SPAC (the "Sponsor"),[19] to identify a suitable Target and guide the SPAC to completion of the De-SPAC Transaction. In this way, the SPAC is functionally similar to a private equity fund, with the Sponsor acting as the fund manager raising funds and playing an active role in identifying the Target and negotiating the terms of the SPAC's investment in it. These similarities have led to SPACs being described as "poor man's private equity funds",[20] and the SGX has identified the possibility of allowing retail investors to co-invest alongside experienced Sponsors through SPACs as a benefit of allowing SPACs to list in Singapore.[21] This part will describe how the SPAC progresses from incorporation to the completion of the De-SPAC Transaction, making a privately-held Target a publicly traded company in the process.

The SPAC begins as a company incorporated by its Sponsor. The Sponsor is typically a special purpose entity incorporated and controlled by parties that have specialist business and/or investment expertise, such as private equity funds, venture capital funds, hedge funds, or prominent business executives.[22]

The Sponsor receives, for nominal consideration, a block of shares in the SPAC known as the promote ("Promote") which typically amounts to 20% of the SPAC's post-IPO share capital. The Promote serves as the Sponsor's main source of compensation for successfully guiding the SPAC through the De-SPAC Transaction. This method of compensation has drawn comparisons with the carried interest mechanism by which private equity fund managers receive compensation out of the gains realised from the fund's investments.[23]

The SPAC raises funds by carrying out an IPO, becoming a listed company in the process. Investors who subscribe to the SPAC's IPO will typically receive a share and a warrant ("Warrant"). The Warrant gives investors a right to acquire additional

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19 With respect to the SGX, the concept of a sponsor of a SPAC should not be confused with that of a sponsor of a company listed on the Catalist Board. While the former runs and controls the SPAC, the latter functions as a quasi-regulator to ensure compliance with the listing rules by the Catalist-listed company. See also Ch 2 of the SGX Catalist Rules.

20 Lora Dimitrova, "Perverse Incentives of Special Purpose Acquisition Companies, the 'Poor Man's Private Equity Funds'" (2017) 63(1) J Accounting & Economics 99.

21 SGX Consultation, *supra* note 7 at [3.3] of Part I.

22 Bazerman & Patel, *supra* note 4.

23 Usha Rodrigues & Michael Stegemoller, "Exit, Voice and Reputation: The Evolution of SPACs" (2012) 37 Del J Corp L 849 at 891–895 [Rodrigues & Stegemoller, "Exit, Voice and Reputation"].

shares in the SPAC at a price which is usually slightly above the SPAC's IPO price. For example, in the US, the IPO price is typically US$10 and the exercise price of the Warrant is US$11.50 per share.[24] At this time, the SPAC is purely a cash company; it is a newly incorporated company which does not have an existing business and its assets consist solely of cash. As a result, the SPAC's IPO process is relatively simple and can proceed on an expedited basis. In fact, most SPAC IPOs can be completed in around 8 weeks.[25]

The proceeds raised by the SPAC are placed in an escrow or trust account and held as cash or cash-equivalent securities. These proceeds are generally disbursed only in three scenarios. Firstly, they are paid in connection with the De-SPAC Transaction. Secondly, they are returned to shareholders upon the liquidation of the SPAC. And, lastly, they are returned to shareholders who exercise their right to require redemption of their SPAC shares.

The SPAC typically has a timeline of two years to complete the De-SPAC Transaction.[26] If it fails to do so, it must be liquidated and the IPO proceeds returned to its shareholders. This ensures that the SPAC's investors are not locked up indefinitely if the De-SPAC Transaction does not occur. Liquidation would also mean that the Promote is rendered worthless and the Sponsor loses any up-front capital it has put up to fund the SPAC's IPO and operations. This provides the Sponsor with a strong incentive to ensure that a De-SPAC Transaction is completed.[27]

On the other hand, if the SPAC identifies a suitable Target, it will carry out due diligence and negotiate the terms of the De-SPAC Transaction directly with the Target. The finalised terms are subject to scrutiny by the SPAC's shareholders before it can proceed to completion. This scrutiny manifests in two ways. Firstly, the SPAC's shareholders have to pass a general resolution approving the De-SPAC Transaction. In addition, they also have the right to require the SPAC to redeem their shares at the IPO subscription price. Being able to recover their initial capital investment through redemption guarantees investors who disagree with the De-SPAC Transaction or otherwise do not wish to invest in the Target a meaningful exit right, especially if the SPAC's shares are currently trading below the IPO price.

It is also common for SPACs to approach third-party investors, commonly private equity funds, to co-invest in the De-SPAC Transaction. This is known as a private investment in public equity ("PIPE"). The participation of the PIPE investor helps to verify the terms of the De-SPAC Transaction. The fact that the PIPE investor has carried out their own due diligence and is willing to co-invest is a signal that the terms of the De-SPAC Transaction are reasonable, and that the Target's business

[24] Clifford Chance LLP, "Guide to Special Purpose Acquisition Companies" (2021) <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2021/09/guide-to-special-purpose-acquisition-companies.pdf>.

[25] *Ibid*.

[26] The term "merger" here is used loosely to describe the De-SPAC Transaction as other corporate mechanisms such as share swaps, share purchases or business purchases may be used to consummate the transaction. See the definition of "business combination" in the SGX Mainboard Rules and the definition of "De-SPAC Transaction" in Ch 18B of the HKEx Main Board Listing Rules.

[27] Klausner, Ohlrogge & Ruan, *supra* note 13 at 246, 247; Dimitrova, *supra* note 20.

is viable.[28] Additionally, the injection of capital from the PIPE investor can also mitigate the impact of any redemptions, ensuring that sufficient funds are present for the SPAC to complete the De-SPAC Transaction.[29]

Once the De-SPAC Transaction completes, the SPAC and the Target form a single entity ("Merged Entity"). This simultaneously bestows the Target with the SPAC's listed status and gives the SPAC's investors economic interests in the Target.

III. The Singapore and HK Frameworks

The SGX and HKEx have introduced listing rules to permit and regulate the listing of SPACs on their respective boards. Prior to doing so, both the SGX and HKEx carried out detailed consultations as to whether SPACs should be allowed in their respective jurisdictions, and to seek feedback on the Singapore and HK Frameworks.

Three key observations can be made of these consultations. Firstly, both regulators appear to have drawn heavily from US practice by referencing the regulations prescribed by the New York Stock Exchange ("NYSE") and Nasdaq as well as the market practice in the US.[30] As a result, the general structure of the Singapore and HK Frameworks appear to, on an initial cursory examination, have been generally transplanted from the US.

Secondly, the SGX and HKEx also consulted on numerous proposals to deal with concerns arising from the typical structure of a SPAC. These include, among other issues, the risk of dilution and conflicts of interests arising out of the redemption of shares and the issuance of Warrants.[31]

Furthermore, the regulators also accounted for differences between the US and local markets in designing the respective frameworks. For example, the HKEx highlighted factors such as higher levels of retail investor participation on the HKEx, the lower prevalence of shareholder litigation in Hong Kong[32] and the HKEx's history of combating regulatory arbitrage by shell companies.[33] These differences also extend to differences in regulatory views as to the usefulness of SPACs to retail investors. In this respect, the SGX's view that SPACs serve as a means of providing diversified investment options for retail investors stands in contrast to the HKEx's more conservative policy which favours protecting retail investors.[34] This manifests in how the Singapore Framework appears to be more facilitative compared to

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28 Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 26; Klausner, Ohlrogge & Ruan, *supra* note 13 at 251–255.

29 Klausner, Ohlrogge & Ruan, *supra* note 13 at 244–246.

30 The SGX also examined requirements on the Toronto Stock Exchange and Bursa Malaysia. SGX Consultation, *supra* note 7 at [5.1] of Part I. The HKEx also referred to the Singapore Framework and the requirements of the London Stock Exchange. HKEx Consultation, *supra* note 7 at [57]–[68].

31 SGX Consultation, *supra* note 7 at [4.3] of Part I.

32 HKEx Consultation, *supra* note 7 at [8].

33 HKEx Consultation, *supra* note 7 at [114]–[118], Annex B.

34 HKEx Consultation, *supra* note 7 at [143]–[149]; *cf* SGX Response, *supra* note 11 at [1.6]–[1.9] of Part II.

the HK Framework which restricts investments in SPACs to professional investors only.[35]

This part provides a jurisdictional comparison of the key regulatory requirements found in the Singapore and HK Frameworks, as well as in the US. This exercise aims to demonstrate the extent to which the Singapore and HK Frameworks reflect existing US practice, and to highlight the areas in which they have adopted different rules.

A. *IPO Prices*

The IPO prices of SPACs in the US has been set by a mixture of regulation and market practice. While there is no mandatory price floor, US securities law and regulations impose onerous requirements on companies that fall within the definition of "blank check companies", which generally apply to shell companies that issue IPO shares at below US$4 per share. To avoid being regulated as "blank check companies", SPACs in the US have priced their IPOs above the US$4 mark, eventually settling on a market norm of US$10 per share.[36]

Both the SGX and HKEx introduced controls over the SPAC's IPO price, setting similar price floors. The SGX introduced a minimum IPO price of S$5 (approximately US$3.75) per share.[37] The HKEx set a benchmark of HK$10 (approximately US$4) per share.[38] Generally, both regulators reasoned that a high minimum issue price would help to distinguish a SPAC IPO, serving as a warning to investors and limiting the risk of price volatility.[39]

B. *IPO Subscribers*

Amongst the regulatory frameworks covered, the HK Framework is the only one to place limits on which investors may invest in SPACs. Under the HK Framework, the subscription and trading of a SPAC's securities prior to the completion of the De-SPAC Transaction is limited only to professional investors such as institutional investors and certain high net-worth individuals.[40] In the HKEx's view, professional investors are better placed to assess, monitor and mitigate the risks related to SPACs.[41] This appears to be a view shared by legislators in the US Congress who have proposed that retail investors should be restricted from investing in SPACs.[42]

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[35] HKEx Main Board Listing Rule 18B.03.

[36] Riemer, *supra* note 16; Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 875–877.

[37] SGX Mainboard Rule 210(11)(*d*).

[38] HKEx Main Board Listing Rule 18B.07.

[39] SGX Response, *supra* note 11 at [2.41] of Part II; HKEx Consultation, *supra* note 7 at [9]–[11], [187].

[40] HKEx Main Board Listing Rule 18B.03; HKEx Consultation, *supra* note 7 at [143]–[149].

[41] HKEx, Special Purpose Acquisition Companies (Consultation Conclusions) (HKEx, December 2021) [HKEx Response] at [17], [18].

[42] Protecting Investors from Excessive SPACs Fees Act, HR 5913, 117th Cong (2021).

During the consultation process, the SGX also received and considered proposals to limit investments in SPACs to accredited investors only. However, the SGX eventually decided not to do so as they believed that allowing retail investment in SPACs would benefit investors by broadening their choices. Instead, they have chosen to focus on education efforts in conjunction with the Securities Investors Association (Singapore) to help retail investors make better investment decisions.[43]

The different approaches reflect a difference in the regulatory philosophies of the SGX and HKEx.[44] The SGX position is more facilitative and while allowing retail participation in SPACs means that retail investors are exposed to risks, it also means that they also stand to benefit from leveraging on the expertise of the Sponsor. On the other hand, the HKEx's approach might be viewed as being more paternalistic and providing stronger protection for retail investors. Their decision may also have been heavily influenced by the HKEx's historical struggles with cash companies and reverse takeovers, which was documented in its consultations.[45] In essence, this can be characterised as a choice between a more *laissez faire* approach founded on the principle of *caveat emptor* and a more paternalistic approach that seeks to protect retail investors from placing their money in an investment vehicle that they may not fully understand.

C. *The Sponsor*

The Sponsor is the key person of the SPAC and investors rely on their expertise in identifying a Target and guiding the SPAC through the De-SPAC Transaction.[46] It is little surprise then that the SGX and HKEx have focused heavily on ensuring that the Sponsor not only has the requisite experience and expertise, but also that its interests are aligned with the SPAC's shareholders'.

1. *Qualifications of the Sponsor and the SPAC's directors*

The experience and expertise of the Sponsor and the management team it puts in place is a key matrix by which investors can decide whether to entrust their funds with a Sponsor by investing with a SPAC.[47] Accordingly, it is common for regulators to carry out checks on the suitability of the Sponsor and the SPAC's directors. For example, the NYSE will review the experience and track record of the SPAC's

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43 SGX Response, *supra* note 11 at [2.42] of Part II.

44 Umakanth Varottil, "Special Purpose Acquisition Companies (SPACs): A Discordant Tale of Two Asian Financial Centres" (June 2022) European Corporate Governance Institute Law Working Paper 648/2022.

45 HKEx Consultation, *supra* note 7 at Schedule B.

46 SEC Alert, *supra* note 12; SGX Consultation, *supra* note 7 at [3.3] of Part I.

47 Andrea Pawliczek, A Nicole Skinner & Sarah L C Zechman, "Signing blank checks: The roles of reputation and disclosure in the face of limited information" (September 2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3933259>.

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management team as one of the key factors in determining whether to approve the listing of a SPAC.[48]

It is thus not surprising that both the Singapore and HK Frameworks also require the Sponsor to satisfy the relevant regulator that they are suitability qualified.[49] The SGX has provided a list of 12 relevant factors, including the profile of the Sponsor, which will be considered in assessing the suitability of a SPAC for listing.[50] This includes providing evidence that the SPAC's management team has the relevant experience and track record necessary to identify the Target and complete the De-SPAC Transaction in accordance with the strategy described in the SPAC's prospectus.[51]

The profile of the Sponsor also features heavily in the list of factors that the HKEx will scrutinise.[52] These factors include objective requirements which incorporate quantitative thresholds. For example, it will require the Sponsor to have prior experience as a professional fund manager managing assets with an average collective value of at least HK$8 billion (approximately US$1 billion).[53] In addition, the Sponsor, as well as two SPAC directors nominated by it, must also hold a licence issued by the Hong Kong Securities and Futures Commission ("SFC") to carry out Type 6 (advising on corporate finance) or Type 9 (asset management) regulated activities in Hong Kong.[54]

2. *Aligning the Interest of Sponsors with SPAC Shareholders*

Aside from imposing qualification standards, an additional regulatory tool would be to align the interests of the Sponsor with those of the SPAC's investors. This can be done by requiring the sponsor to increase their "skin in the game" by contributing equity to the SPAC. In theory, having equity interests in the SPAC helps to align the financial interests of the Sponsor with those of other investors, decreasing any risk of conflicts of interests arising and also incentivising the Sponsor to maximise the value of the SPAC's shares.[55] Concurrently, the imposition of a moratorium on the trading of the SPAC's shares by Sponsors ensures that the alignment of interest created by any minimum equity requirement persists. Lastly, where there are strong risks of conflicts of interest, restrictions on the ability of the Sponsor to vote on

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48 NYSE Listed Company Manual Rule 102.06(f).

49 SGX Mainboard Rule 210(11)(*a*); HKEx Main Board Listing Rule 18B.10.

50 SGX, Practice Note, 6.4, "Requirements for Special Purpose Acquisition Companies" (2 September 2021) at [2.1] [SGX Practice Note]; SGX Response, *supra* note 11 at [2.48]–[2.58] of Part II.

51 SGX Mainboard Rule 210(11)(*a*); SGX Practice Note, *supra* note 50 at [2.2].

52 HKEx, Guidance Letter, HKEX-GL113-22, "Guidance on Special Purpose Acquisition Companies" (January 2022) (Updated December 2022) at [7]–[19] [HKEx Guidance Letter].

53 HKEx Guidance Letter, *supra* note 52 at [8(c)], [11].

54 HKEx Main Board Listing Rules 18B.10(1), 18B.13. This requirement can also be met by the relevant parties having obtained equivalent licenses in foreign jurisdictions. See HKEx Guidance Letter, *supra* note 52 at [8(e)], [15]–[19].

55 Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 895–898, 920–922; Michael D Klausner & Michael Ohlrogge, "Is SPAC Sponsor Compensation Evolving? A Sober Look at Earnouts" (January 2022) Stanford L & Economics Olin Working Paper No 567 also proposes that a large investment by the Sponsor will also help to align its interest with that of the SPAC's investors.

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shareholder resolutions help to ensure that resolutions passed by the SPAC's shareholders reflect the views and interests of its independent shareholders.

(a) *Minimum equity interests*

The extent to which a Sponsor must hold equity stakes in the SPAC is not a matter which is covered by US regulations. Instead, additional equity investment by the Sponsor (aside from the Promote) has been described as a common means for Sponsors to demonstrate their commitment to the success of the SPAC and differentiate themselves in the market.[56]

The Singapore Framework stipulates minimum levels of equity participation by the Sponsor to strengthen the alignment of interests between the Sponsor and the SPAC's shareholders.[57] Accordingly, Sponsors in Singapore are required to commit between 2.5% to 3.5% of the SPAC's total market capitalisation.[58] No equivalent requirement is found in the HK Framework.

(b) *Moratoriums on shares held by the sponsor*

Moratoriums in the US are not required by regulation and are instead voluntarily observed by the Sponsor for up till 12 months after the De-SPAC Transaction.[59] Under the Singapore and HK Frameworks, moratoriums are prescribed instead.[60] An initial moratorium over the transfer of any equity securities (including both shares and warrants) held by the Sponsor applies from the SPAC's IPO up till the completion of the De-SPAC Transaction.[61] A further moratorium of six months in Singapore and 12 months in Hong Kong applies following the completion of the De-SPAC Transaction.[62]

(c) *Restrictions on voting by sponsors*

Sponsors in the US generally do not face restrictions on voting and vote in a singular class with other shareholders of the SPAC.[63] The Sponsor is treated differently under the Singapore and HK Frameworks. Between the two, the HK Framework is stricter by requiring the Sponsor to abstain from voting on any resolutions in which

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56 Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 895–898, 920–922.

57 SGX Consultation, *supra* note 7 at [7.1] of Part III; SGX Response, *supra* note 11 at [2.133] of Part II.

58 SGX Mainboard Rule 210(11)(e).

59 HKEx Consultation, *supra* note 7 at [385].

60 SGX Response, *supra* note 11 at [2.147]–[2.153] of Part III; HKEx Consultation, *supra* note 7 at [233]–[243].

61 SGX Mainboard Rules 210(11)(*h*)(*i*), 210(11)(*h*)(*i*)(*ii*); HKEx Main Board Listing Rules 18B.25, 18B.26.

62 SGX Mainboard Rule 210(11)(*h*)(*iii*) read with SGX Mainboard Rule 229; HKEx Main Board Listing Rule 18B.67 read with HKEx Main Board Listing Rule 10.07.

63 Ramey Layne & Brenda Lenahan, "Special Purpose Acquisition Companies: An Introduction" (6 July 2018) *Harvard Law School Forum on Corporate Governance* <https://corpgov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction>.

it has a material interest.[64] This restriction applies both in respect of the Promote as well as any ordinary shares held by the Sponsor.[65] While the Singapore Framework also has a similar restriction, it only applies to any voting rights arising from the Promote, and not other shares for which the Sponsor had paid full consideration.[66] This difference in treatment in Singapore is due to the minimum equity participation requirement imposed on Sponsors under the Singapore Framework.[67] The SGX was careful to ensure that Sponsors should not be unduly disenfranchised in respect of any shares for which they have been required to purchase at full consideration.[68]

(d) *Restriction on trading by the sponsor*

A new restriction introduced by the HKEx is a prohibition against the Sponsor dealing in any of the SPAC's securities.[69] Unlike a moratorium which only prevents disposal of interests in the SPAC, this restriction also applies to prevent the Sponsor from acquiring additional interests in the SPAC after IPO. This is not found in the Singapore Framework or US regulations and presumably would be dealt with under existing laws prohibiting insider trading.[70]

3. *Material Changes in the SPAC*

In recognition of the fundamental reliance by a SPAC's investors on the expertise of the Sponsor, both the Singapore and HK Frameworks give the SPAC's shareholders a say when there is a material change in respect of the Sponsor or the team it has put in place to manage the SPAC.[71] This appears to be an additional protection not commonly found in the US. To describe this requirement generally, when a material change occurs, the continued listing of the SPAC is subject to the approval of the shareholders in the form of a special resolution passed by the SPAC's independent shareholders *(ie* the Sponsor may not vote on this resolution).[72] If such approval is not obtained, the SPAC must be liquidated and the escrowed IPO funds returned to its shareholders.[73]

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[64] HKEx Response, *supra* note 41 at [304], [305]; HKEx Main Board Listing Rules 2.15, 2.16. In addition to the general prohibition, the restriction against voting is also specifically set out in relation to the following resolutions: the De-SPAC Transaction, extensions of time and material changes to the Sponsor. See HKEx Main Board Listing Rules 18B.32, 18B.54, 18B.71.

[65] HKEx Response, *supra* note 41 at [305].

[66] SGX Mainboard Rules 210(11)(*m*)(*ii*), 210(11)(*m*)(*viii*); SGX Practice Note, *supra* note 50 at [6.1].

[67] SGX Mainboard Rule 210(11)(*e*).

[68] SGX Response, *supra* note 11 at [2.82], [2.103], [2.168] of Part II. Note, however, that the Sponsor is still required to abstain from voting on a resolution approving the continued listing of the SPAC after the occurrence of a material change in respect of the Sponsor or the SPAC's management team. See SGX Response, *supra* note 11 at [4.5] of Part II.

[69] HKEx Main Board Listing Rule 18B.15.

[70] See, for example, Securities and Futures Act 2021, s 217.

[71] SGX Response, *supra* note 11 at [4.5]–[4.8] of Part II; HKEx Response, *supra* note 41 at [128]–[135].

[72] SGX Mainboard Rule 210(11)(*n*)(*i*); HKEx Main Board Listing Rule 18B.32(*a*).

[73] SGX Mainboard Rule 210(11)(*n*); HKEx Main Board Listing Rule 18B.34.

Generally, an event of material change occurs when there is a change of control of the Sponsor or a change in the directors of the SPAC.[74] In the context of the HK Framework, this also includes the suspension of any license issued by the SFC to a Sponsor or a director of the SPAC.[75]

The HK Framework also includes two additional shareholder protection measures when an event of material change occurs. Firstly, in addition to the approval of independent shareholders, the HK Framework also requires the approval of the HKEx to be obtained.[76] This allows the HKEx to ensure that the Sponsor continues to meet the requirements imposed under the HK Framework.[77] While the Singapore Framework does not contain a similar explicit discretion, the SGX has a general power to direct the SPAC to delist and liquidate which may be exercised in similar situations.[78] Secondly, the HK Framework also protects shareholders by requiring that they be allowed to redeem their shares when an event of material change occurs.[79]

D. *Use of IPO Funds*

The retention of the SPAC's IPO proceeds in a trust or escrow account is a key feature of the SPAC that protects the rights of its shareholders.[80] In the US, exchange rules require 90% of the SPAC's IPO proceeds to be held in an escrow account.[81] Mirroring this, the Singapore Framework also requires 90% of the IPO proceeds to be held in an escrow account,[82] and the remainder may be applied towards the SPAC's general expenses.[83] On the other hand, the HK Framework requires 100% of the IPO proceeds to be deposited.[84] The stricter requirement under the HK Framework forces the Sponsor to put up additional capital to fund the SPAC's IPO and subsequent operations, further aligning its interest with those of the SPAC's shareholders. The HKEx also noted that the practice of ring-fencing 100% of the IPO Proceeds is also common practice in the US.[85]

E. *Evaluating the Target*

Notwithstanding that the Sponsor plays a key role in identifying the Target and negotiating the De-SPAC Transaction, SPACs have been structured to ensure that

74 SGX Practice Note, *supra* note 50 at [5]; HKEx Main Board Listing Rule 18B.32, notes 1, 3.
75 HKEx Main Board Listing Rule 18B.32, notes 2, 3.
76 HKEx Main Board Listing Rule 18B.32(*b*).
77 HKEx Response, *supra* note 41 at [132].
78 SGX Mainboard Rule 210(11)(*p*).
79 HKEx Main Board Listing Rule 18B.33.
80 Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 912–915.
81 Nasdaq Stock Market LLC Rules IM-5101-2(*a*); NYSE Listed Company Manual 102.06.
82 SGX Listing Rule 210(11)(*i*)(*i*).
83 SGX Listing Rule 201(11)(*i*)(*vi*).
84 HKEx Main Board Listing Rules 18B.16, 18B.19 note.
85 HKEx Response, *supra* note 41 at [164].

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its shareholders can protect their own interests by having a say in approving the De-SPAC Transaction. The requirement of shareholder approval also plays a gatekeeping role, serving as a proxy for the market's views on the Target.

Other parties also have a role in evaluating the Target and the De-SPAC Transaction. Where PIPE investors are involved in the De-SPAC Transaction, they can also play a role in protecting the interests of the SPAC's shareholders and acting as a gatekeeper to the public markets. Their participation as a co-investor in the De-SPAC Transaction signals their approval of both the valuation ascribed to the Target and the prospects of the Target. Finally, regulators concerned about the possibility of regulatory arbitrage will also be interested in ensuring that minimum listing standards are met.

1. *Timeframes*

The NYSE and Nasdaq rules generally require a SPAC to complete the De-SPAC Transaction within 36 months of its IPO without further extensions.[86] The HKEx and SGX noted that most SPACs in the US voluntarily reduce this deadline to 24 months and have taken reference from this benchmark.[87] Under the Singapore Framework, the SPAC must complete the De-SPAC Transaction within 24 months[88] while the HK Framework requires the finalisation of the terms of the De-SPAC Transaction within 24 months, with completion to follow 12 months later.[89]

However, there may also be situations in which a SPAC may require an extension of this deadline to complete the De-SPAC Transaction.[90] For example, to complete due diligence checks even after the negotiations for the De-SPAC Transaction have reached an advanced stage. Additional flexibility was built into the Singapore Framework by allowing an automatic 12-month extension if the SPAC has entered into a legally binding agreement regarding the De-SPAC Transaction.[91] Alternatively, an extension of time may be obtained with the approval of 75% of the SPAC's shareholders and the consent of the SGX.[92] The HK Framework provides similar flexibility by allowing SPACs extensions of up to six months subject to the approval of a majority of the SPAC's shareholders and the HKEx being obtained.[93]

[86] Nasdaq Stock Market LLC Rules IM-5101-2(*b*); NYSE Listed Company Manual Rule 102.06(*e*).

[87] SGX Response, *supra* note 11 at [2.76] of Part II; HKEx Consultation, *supra* note 7 at [417].

[88] SGX Listing Rule 210(11)(*m*)(*i*).

[89] HKEx Main Board Listing Rule 18B.69.

[90] SGX Response, *supra* note 11 at [2.76]–[2.79] of Part II; HKEx Consultation, *supra* note 7 at [421]–[428]. Lora Dimitrova, *supra* note 20 documents that SPACs tend to perform relatively poorly when negotiations are affected by a looming deadline.

[91] SGX Listing Rule 210(11)(*m*)(*i*).

[92] SGX Mainboard Rule 210(11)(*m*)(*ii*).

[93] HKEx Main Board Listing Rules 18B.70–18B.72.

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2. *Initial Listing Requirements*

The SGX and HKEx both take the view that Target companies merging with a SPAC should be treated in the same way as an entity seeking to go public via an IPO and will have to meet all the initial listing requirements of the respective boards.[94] Under the SGX's and HKEx's exchange rules governing IPOs, a potential issuer is required to appoint a professional financial adviser to, among other duties, carry out due diligence on the potential issuer and generally ensure that all relevant listing rules have been complied with.[95] In line with this approach, SPACs are also required to appoint professional advisors to carry out the due diligence processes that are required in the context of an IPO and prepare a shareholder circular which meets the same standard as that required of a prospectus issued in a typical IPO.[96]

While this requirement is also found in the US market, it is not applied to every De-SPAC Transaction. For example, the NYSE only imposes full initial listing requirements if the De-SPAC Transaction is deemed to be a "backdoor listing" according to its exchange rules.[97]

3. *Approvals by Shareholders and Independent Directors*

The regulations of the US exchanges generally require shareholder approval to be obtained in respect of the De-SPAC Transaction.[98] This is mirrored in both the Singapore and HK Frameworks which require shareholder approval in the form of an ordinary resolution before the De-SPAC Transaction can proceed.[99] In addition, the Singapore Framework also requires the approval of a simple majority of the independent directors of the SPAC to be obtained.[100]

4. *Valuation Verification*

In a typical IPO, the bookbuilding process is used to test the temperature of the market sentiment and determine the issuer's valuation. On the other hand, the Target's valuation in a De-SPAC Transaction is directly negotiated between the Sponsor and the Target. This introduces the risk that the parties may, unwittingly or otherwise, agree to an inflated valuation of the Target.[101]

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[94] SGX Mainboard Rule 210(11)(*m*)(*vii*); HK Main Board Listing Rules 18B.35, 18B.36.

[95] SGX Mainboard Rule 112B(2)(*b*); HKEx Main Board Listing Rule 3A.11; The general requirements are found in SGX Mainboard Rules 111–114 and Ch 3A of the HKEx Main Board Listing Rules.

[96] SGX Listing Rule 210(11)(*m*)(*v*), 608; HKEx Main Board Listing Rules 18B.37, 18B.51(1); HKEx Guidance Letter, *supra* note 52 at [22].

[97] NYSE Listed Company Manual Rule 802.01B, "Criteria for Acquisition Companies".

[98] Nasdaq Stock Market LLC Rules IM-5101-2(*d*); NYSE Listed Company Manual Rule 102.06(*a*). While it is possible for a De-SPAC Transaction in the US to proceed without a shareholder vote, this does not appear to be a common occurrence.

[99] SGX Listing Rule 210(11)(*m*)(*viii*); HKEx Main Board Listing Rule 18B.53.

[100] SGX Mainboard Rule 210(11)(*m*)(*viii*).

[101] SGX Response, *supra* note 11 at [6.2] of Part III; HKEx Consultation, *supra* note 7 at [295]; HKEx Response, *supra* note 41 at [228], [229].

While it is not common in the US for the Sponsor to get a third-party to give a formal opinion on the valuation of the Target,[102] both the Singapore and HK Frameworks make this a mandatory requirement. As a starting point, SPACs listed in Singapore will have to appoint an independent valuer to carry out a valuation of the Target.[103] Alternatively, the SPAC may also dispense with this appointment if a PIPE investor is participating in the De-SPAC Transaction.[104]

The HK Framework relies solely on the involvement of PIPE investors to verify the Target's agreed valuation.[105] Accordingly, the SPAC must secure the participation of PIPE investors in the De-SPAC Transaction.[106] To help ensure that PIPE investors have a material interest in ensuring that the Target's valuation is accurate, the HK Framework requires PIPE investors to commit investment capital of between 7.5% to 25% of the agreed valuation of the Target.[107] As the participation of the PIPE investor may dilute the holdings of other shareholders, the HK Framework also requires the terms of the PIPE investment to be approved by the SPAC's shareholders.[108]

5. *The Regulation of Forward-Looking Disclosures*

The practice of disclosing forward-looking statements, such as profit forecasts, has been described in the US as an advantage of going public through a De-SPAC Transaction since such statements are rarely disclosed in the context of an IPO.[109] As a majority of Targets are likely to be high-growth companies that are still in relatively early stages of development, the ability to disclose forward-looking statements allows the Sponsor to better communicate the bases justifying its valuation of the Target.[110]

In the US, such statements are made during the De-SPAC Transaction in reliance on a safe harbour in the Private Securities Litigation Reform Act ("PSLRA") which limits the liability risk when such statements are made.[111] However, the use of forward-looking statements to communicate the Target's prospects remains a

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[102] Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 18, 19.

[103] SGX Mainboard Rule 210(11)(*m*)(*vi*); SGX Response, *supra* note 11 at [2.124] of Part II.

[104] SGX Mainboard Rule 210(11)(*m*)(*vi*); SGX Response, *supra* note 11 at [2.114]–[2.117], [2.123]–[2.125] of Part II. Note that the SGX retains a discretion to require an independent valuer to be appointed. An independent valuer will be required regardless if the Target is a mineral, oil or gas company or a property investment or development company. See SGX Mainboard Rule 222.

[105] HKEx Consultation, *supra* note 7 at [295]–[298]; HKEx Response, *supra* note 41 at [228]–[230].

[106] HKEx Main Board Listing Rule 18B.40.

[107] HKEx Main Board Listing Rules 18B.41, 18B.42.

[108] HKEx Main Board Listing Rule 18B.55; HKEx Response, *supra* note 41 at [312], [313].

[109] SEC Alert, *supra* note 12.

[110] Jessica Bai, Angela Ma & Miles Zheng, "Segmented Going-Public Markets and the Demand for SPACs" (23 September 2021) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3746490>.

[111] Private Securities Litigation Reform Act, HR 1058, 104th Cong (1995); Coates Statement, *supra* note 12.

double-edged sword as it may overinflate expectations, resulting in mispricing of the SPAC's and/or Merged Entity's shares.[112]

The SGX and HKEx both noted the SEC's recent commentary on the applicability of the PSLRA to forward-looking statements disclosed during the De-SPAC Transaction, and the dangers of this practice.[113] In view of these risks, both the Singapore and HK Frameworks require that forward-looking statements disclosed in the context of the De-SPAC Transaction should meet the same standards as forward-looking statements disclosed during an IPO.[114] Generally, the statement must be accompanied by an explanation of the assumptions upon which it is based and the SPAC's financial adviser must confirm that that they are satisfied that the disclosure has been made after due and careful enquiry.[115]

F. *Dilution Risks*

There are generally no regulations in the US regarding the size of the Promote or the extent to which dilution can occur in a SPAC. Academic commentary has flagged the inherent risk of dilution in the SPAC structure and how it destroys shareholder value.[116] Regulators have also started to pay attention, warning of dilution risks and considering how this issue can be regulated.[117]

To demonstrate these risks, consider a SPAC that raised US$10 per share during its IPO. One might expect that it would be able to contribute close to US$10 per share to the Merged Entity, less any costs incurred, such as fees paid to professional advisers. However, this is typically not the case. A recent study of SPACs that carried out De-SPAC Transactions between January 2021 to June 2022 found that the average net cash per share values of these SPACs during the De-SPAC Transaction were a mean of US$4.10 and a median of US$5.70 per share.[118] A significant amount of this reduction was traced to the dilutive effect of the Promote, the Warrants and redemptions by SPAC shareholders, the cost of which is largely borne by the SPAC's shareholders who remain invested in the Merged Entity.[119] In other words, the average SPAC shareholder invests US$10 per share at the SPAC's IPO only to see the value of their contributions reduced by around half when the De-SPAC Transaction occurs.

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[112] Harald Halbhuber, "An Economic Substance Approach to SPAC Regulation" (18 January 2022) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4005605> at 13, 14, 21–23; HKEx Response, *supra* note 41 at [360].

[113] SGX Response, *supra* note 11 at [4.40] of Part II; HKEx Response, *supra* note 41 at [359]–[365].

[114] SGX Response, *supra* note 11 at [4.40] of Part II; HKEx Response, *supra* note 41 at [363].

[115] SGX Mainboard Rules 1012, 1013. See also Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018, Fifth Schedule, Part 6, [13]–[17]; HKEx Main Board Listing Rules 11.16–11.19.

[116] Klausner, Ohlrogge & Ruan, *supra* note 13 at 287–288; Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 44–51.

[117] SEC Alert, *supra* note 12; SEC, Statement by Chair Gary Gensler, "Prepared Remarks Before the Investor Advisory Committee" (9 September 2021) <https://www.sec.gov/news/public-statement/gensler-iac-2021-09-09>.

[118] Klausner, Ohlrogge & Ruan, *supra* note 13 at 246–263.

[119] *Ibid*.

1. *Limits on the Promote*

The Promote is perhaps the most significant dilutive factor in a SPAC.[120] Both the Singapore and HK Framework limit the total amount of the Promote to 20% of the SPAC's total issued shares after its IPO.[121] In addition to limiting dilution, this measure was also justified on the basis of limiting the divergence of the Sponsor's interests from those of the SPAC's investors given that the Promote will be obtained at nominal consideration.[122]

The HK Framework also limits the issuance of any additional shares to the Sponsor in the form of earnouts. As a starting point, the sum of the Promote and any additional shares issued as earnouts cannot exceed 30% of the SPAC's total share capitalisation at IPO.[123] Furthermore, the issuance of such shares must be conditional on objective performance targets.[124] Lastly, all material terms regarding the earnout must be disclosed and approved by the SPAC's shareholders.[125]

2. *Limits on Warrants*

Both the Singapore and HK Frameworks require the SPAC to set a limit on the cumulative dilutive effect of all convertible securities issued by it, provided that such limit cannot exceed 50% of the SPAC's post-IPO share capital.[126] This threshold was determined with reference to the typical warrant ratio used by US SPACs.[127] To ensure that shareholders are aware of the potential dilutive effect of warrants, prominent disclosures must be made regarding their dilutive effects both at the point of the SPAC's IPO[128] and the De-SPAC Transaction.[129]

3. *The Right of Redemption*

The NYSE and Nasdaq rules generally require shareholders who have voted against the De-SPAC Transaction to be allowed to redeem their shares.[130] As a matter of practice, this right is typically offered to all shareholders, regardless of how they voted.[131] In line with this broader market convention, both the Singapore and HK Frameworks require that redemption should be offered to all independent shareholders as a matter of right when the De-SPAC Transaction is being voted on.[132]

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[120] Klausner, Ohlrogge & Ruan, *supra* note 13 at Table 5.
[121] SGX Mainboard Rule 210(11)(*f*); HKEx Main Board Listing Rule 18B.29.
[122] SGX Response, *supra* note 11 at [4.16] of Part II; HKEx Response, *supra* note 41 at [260], [262].
[123] HKEx Main Board Listing Rule 18B.29, note 1(a).
[124] HKEx Main Board Listing Rule 18B.29, note 1(b).
[125] HKEx Main Board Listing Rule 18B.29, notes 1(c), 1(e), 1(f).
[126] SGX Mainboard Rule 210(11)(*k*); HKEx Main Board Listing Rule 18B.23.
[127] SGX Response, *supra* note 11 at [3.32] to Part II; HKEx Response, *supra* note 41 at [270]–[272], [277].
[128] SGX Mainboard Rule 625(7); HKEx Main Board Listing Rule 18B.09(10).
[129] SGX Practice Note, *supra* note 50 at [7.1(l)]; HKEx Main Board Listing Rule 18B.51(3).
[130] Nasdaq Stock Market LLC Rules IM-5101-2(*d*); NYSE Listed Company Manual Rule 102.06(b).
[131] SGX Consultation, *supra* note 7 at [5.4(e)] of Part I.
[132] SGX Listing Rule 210(11)(*m*)(*x*); HK Rule 18B.57.

While there were some initial considerations to limit this right by requiring shareholders to vote against the De-SPAC Transaction, this was shortly abandoned in the face of fierce opposition from market participants who participated in the consultation process.[133]

IV. Designing a SPAC Framework

SPACs have been introduced in Singapore and Hong Kong to serve as a viable alternative route for privately-held companies to tap on the public equity market without having to carry out an IPO.[134] In particular, this would benefit privately-held companies that have business models which are not easily valued by traditional valuation methods when they participate as Targets in the De-SPAC Transaction. This includes Targets that are high-growth companies still in relatively early stages of development with little to show in the form of historical financial performance.[135] The introduction of SPACs fills a gap in the market for public equity by allowing Targets to negotiate directly with Sponsors who are better placed to evaluate their businesses as they are more likely to have specialist knowledge and also be willing to commit the time and resources to carry out detailed due diligence checks, as compared to what is possible during the traditional process of book building through roadshows.[136]

While the introduction of SPACs as a listing route might be helpful for some companies, the risks faced by investors who invest in SPACs are well-documented.[137] Aside from these structural risks, the regulators also had to account for the unique features of their local markets. For example, investors in Singapore and Hong Kong appear to be relatively less litigious than their American counterparts and are less likely to undertake private litigation actions to curb abusive corporate behaviour.[138] Nevertheless, these concerns ultimately have to be balanced against the demands and expectations of the market. A good balance would attract Sponsors to list SPACs on the SGX and HKEx, allowing these boards to compete more closely with the US markets for listings, especially for unicorns within the region, while minimising the risk investors are exposed to.[139]

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[133] SGX Response, *supra* note 11 at [3.1]–[3.20] of Part II; HKEx Response, *supra* note 41 at [323]–[331].

[134] SGX Announcement, *supra* note 5; HKEx, Regulatory Announcement, "Exchange Publishes Consultation Paper on Special Purpose Acquisition Companies" (17 September 2021) <https://www.hkex.com.hk/News/Regulatory-Announcements/2021/210917news?sc_lang=en>.

[135] Bai, Ma & Zheng, *supra* note 110.

[136] *Ibid*; Bazerman & Patel, *supra* note 4; Daniel Riemer, *supra* note 16; SGX Consultation, *supra* note 7 at [3.2] of Part I; HKEx Consultation, *supra* note 7 at [103], [104].

[137] See, for example, SEC Alert, *supra* note 12, Klausner, Ohlrogge & Ruan, *supra* note 13, Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13, Dimitrova, *supra* note 20.

[138] HKEx Consultation, *supra* note 7 at [8]. The situation in Singapore is similar: see Hans Tjio, Wai Yee Wan & Kwok Hon Yee, Principles and Practice of Securities Regulations in Singapore, 3d ed (Singapore: LexisNexis, 2017) at [8.36]. See also, Wai Yee Wan, Christopher Chen & Say Hak Goo, "Public and Private Enforcement of Corporate and Securities Laws: An Empirical Comparison of Hong Kong and Singapore" (2018) University of Hong Kong Faculty of Law Research Paper No 2018/025.

[139] SGX Consultation, *supra* note 7 at [2.2] of Part I; HKEx Consultation, *supra* note 7 at [4], [5].

This section of the paper will examine the process by which the SGX and HKEx set out to design their respective frameworks and explain how they have managed to balance the two goals of attracting listings while also upholding investor protection standards. Firstly, the regulators have referred heavily to the regulations and established practices in the largest SPAC market, the US, to establish a baseline which the market is already familiar with. The subsequent consultation process was then used to gauge the market's response to additional proposals to tighten up the regulatory framework. While most proposals found support, some were abandoned in the face of strong opposition. The goal of this discussion is to explain how this process has allowed the regulators to design a listing framework that facilitates the creation of a new market for SPACs.

A. *The Baseline: The US SPAC Market*

As a starting point, the SGX and HKEx appear to have relied heavily on the regulations and market practices in the US when designing their respective frameworks.[140] This manifests in the manner which the Singapore and HK Frameworks track the regulations found on the NYSE and Nasdaq or the general market practices in the US.[141] However, the key difference is that the rules found in the Singapore and HK Frameworks are mandatory in nature. By contrast, some issues, such as the proportion of shares included in the Promote and the moratoriums observed by the Sponsor, are only regulated by market practice and discipline in the US and these standards, while common, are not strictly mandatory. In effect, what the Singapore and HK Frameworks have done is to codify many of the rules and practices in the US. An examination of the history of SPAC regulation and practice in the US sheds further insight on the regulatory thinking behind the design of the Singapore and HK Frameworks, and the benefits of having largely based them on the rules and practices found in the US.

1. *The Development of the SPAC Regulatory Framework in the US*

The modern rules and practices in the US SPAC market can be traced back to the SEC's attempts to reign in shell companies in the 1980s as these companies had come to be associated with abuses through "pump-and-dump" schemes.[142] In response, the Securities Enforcement Remedies and Penny Stock Reform Act of 1990[143] was instituted, empowering the SEC to regulate these companies and cumulating with the introduction of Rule 419 by the SEC.[144] The SPAC market developed

[140] The SGX and HKEx referred to the US regulations and market practice extensively in their consultation papers. See, for example, SGX Consultation, *supra* note 7 at Ch 1 and HKEx Consultation, *supra* note 7 at Ch 5.

[141] As discussed in Part III, *supra*.

[142] Daniel Riemer, *supra* note 16 at 934–950; Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 875–877.

[143] Securities Enforcement Remedies and Penny Stock Reform Act, S 647, 101st Cong (1990)

[144] 17 CFR (US) § 230.419 (2011).

in response to these rules, starting with the first SPACs in 1993. The Sponsors of these early SPACs sought to avoid being regulated under Rule 419 as blank check companies.[145] However, they also structured these SPACs in a manner which largely incorporated the protections imposed by the SEC through Rule 419 in an attempt to distinguish themselves from the blank check companies of the past.[146] It was from this starting point that many of the modern regulations and practices surrounding US SPACs developed.

(a) *Striking a balance through market ordering*

Modern US SPACs have since gone through a process of evolution, further fine-tuning the SPAC's general structure. For instance, Sponsors of early SPACs did not hold any equity interests in the SPAC aside from the Promote while it is now common for Sponsors to purchase additional equity.[147]

There has also been a balance struck between the voting powers of the SPAC's shareholders and their ability to redeem. Aside from the shareholder vote at a general meeting to approve the De-SPAC Transaction, early SPACs also stipulated in their constitutional documents that the De-SPAC Transaction would not proceed if more than 20% of its shareholders opted to redeem their shares.[148] This was known as a conversion threshold and effectively served as a second vote by the shareholders on the De-SPAC Transaction. This practice was subsequently made compulsory by the NYSE and Nasdaq under their listing rules when they permitted the listing of SPACs on their boards. However, it also gave a minority of the SPAC's shareholders a hold-out right since they could effectively veto the De-SPAC Transaction. This feature of the SPAC was abused by hedge funds as a means of holding the De-SPAC Transaction hostage so as to extract concessions from the Sponsors in a process termed "greenmailing". In response, Sponsors increased the threshold at which redeeming shareholders could prevent the De-SPAC Transaction from completing.[149] Eventually, Sponsors successfully lobbied the NYSE and Nasdaq to amend their listing rules to permit SPACs to proceed with the De-SPAC Transaction regardless of how many shareholders chose to redeem.[150]

At the same time, Sponsors also generally increased the proportion of the SPAC's IPO proceeds which are placed in an escrow fund.[151] By doing so, shareholders are provided a stronger exit measure as placing more (and in some cases all) of the SPAC's IPO proceeds in escrow guarantees that they will receive a higher proportion (or all) of their initial investment when they exercise their redemption right. This has been explained as a means for Sponsors to compensate shareholders for the removal

[145] Most notably by not issuing "penny stock". See Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 875–877.

[146] Daniel Riemer, *supra* note 16 at 944–955; Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 875–877.

[147] Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 895–898.

[148] *Ibid* at 909, 910.

[149] *Ibid* at 910, 911.

[150] Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 24–28.

[151] Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 912–915.

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of the shareholder's right to block the transaction by redemption. More generally, it suggests that Sponsors and investors have determined that strong redemption rights are more important than voting rights as a means of shareholder protection in the context of the De-SPAC Transaction. As a result, they have bargained for stronger exit rights through redemption, even if it meant limiting their direct influence over the De-SPAC Transaction.[152]

(b) *Continuing evolution in the US*

The evolution of SPAC practices and regulation in the US has not stopped. The recent popularity of SPACs has been met with the involvement of a new class of Sponsor: the celebrity. While they may not necessarily have any specialist knowledge or relevant financial experience, some Sponsors have chosen to include celebrities such as pop stars, politicians and other personalities in their team to boost the profile of the SPAC and attract investors.[153] The SEC has taken note of this new trend, warning investors that the involvement of a celebrity does not necessarily translate to better performance.[154] The market has also responded by rewarding SPACs with more extensive disclosures on the Sponsor's experience, allowing these SPACs to raise more funds on average.[155] This may be an area that might attract further regulatory scrutiny in the future, or result in new market standards being set on the extent to which a Sponsor will need to disclose their relevant experience and expertise.

Another area that may see further developments in market practice and regulation is with respect to the practice of relying on forward-looking statements by US SPACs when presenting the case for the De-SPAC Transaction to its shareholders. These statements are disclosed in reliance of the PSLRA safe harbour which is regarded as effective in limiting the potential liability for any misstatements. The SEC has since warned that such statements may attract regulatory scrutiny, and the safe harbour may be removed to align the regulatory treatment of SPACs with that of companies seeking to raise funds via an IPO.[156]

2. *The Case for Mandatory Rules in the Singapore and HK Frameworks*

The reliance on the US as a benchmark allows the SGX and HKEx to ensure that the market is familiar with the regulatory framework eventually adopted.[157] Within the Singapore and HK Frameworks, they have chosen to impose detailed mandatory standards. This top-down approach of regulation stands in sharp contrast to

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[152] *Ibid*.

[153] Pawliczek et. al., *supra* note 47.

[154] SEC, Investor Alerts and Bulletins, "Celebrity Involvement with SPACs – Investor Alert" (10 March 2021) <https://www.sec.gov/oiea/investor-alerts-and-bulletins/celebrity-involvement-spacs-investor-alert>.

[155] Pawliczek et. al., *supra* note 47.

[156] Coates Statement, *supra* note 12; Gensler Speech, *supra* note 14.

[157] Market familiarity appeared to be a key consideration during the consultation process. See, for example, SGX Response, *supra* note 11 at [2.104], [2.144] of Part II.

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the rules and market practices governing US SPACs which have been developed from the ground-up by market participants. While there are some standards which were imposed by US regulators, many of these rules were voluntarily adopted by early SPACs before they were developed and fine-tuned through private ordering and, in some cases, included as mandatory requirements in the NYSE or Nasdaq listing rules. Accordingly, these standards are not just common practices in the US or arbitrary benchmarks set by market regulators. In other words, the market is not just familiar with these standards, but they also represent terms which participants in the SPAC market, particularly investors and Sponsors, have negotiated through private ordering and are likely to be willing to transact on.

This analysis sheds light on the regulators' decision to base the Singapore and HK Frameworks on the regulations and practices found in the US. SPACs in the US appear to have developed naturally as a market response to the restrictions of Rule 419 which was intended to restrict the use of shell or blank check companies.[158] Over the subsequent three decades, this eventually resulted in the modern rules and practices being developed through many rounds of private ordering. On the other hand, the aim of the SGX and HKEx was to build a market for SPACs. By turning to the US, the regulators were able to import a set of rules that they could be confident potential market participants would be willing to adopt, without having to wait for the market to scale up and develop such standards organically. Evidence of this acceptance can be seen in the high levels of support for the respective Frameworks expressed by respondents during the consultation stage.[159]

Furthermore, there is also value in making these standards mandatory through the Singapore and HK Frameworks. By turning the US market standards and regulations into mandatory requirements, regulators are able to guarantee that market participants have to comply with these standards. As a result, prospective market participants involved in SPACs in Singapore and Hong Kong can be assured that the minimum standards and safeguards commonly found in the US, including any that are typically regarded as optional in the US, will be complied with. This in turn allows them to deal with SPACs with confidence, thereby furthering the SGX and HKEx's goal of creating SPAC markets in their respective jurisdictions.

B. *The Consultation Process: Maintaining Standards and Regulatory Innovation*

Aside from acting as a gauge of the market's receptivity to the imposition of standards and regulations found in the US, the consultation process was also used to solicit views on various proposals that the SGX and HKEx had. The following changes considered by the regulators during their consultations will be discussed: limiting retail investors from investing in SPACs, requiring a third-party to validate the terms of the De-SPAC Transaction (in particular, the valuation of the Target), and linking the shareholders' voting and redemption decisions.

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[158] Daniel Riemer, *supra* note 16 at 944–950; Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 875–877.

[159] See generally, SGX Response, *supra* note 11 at Part II, HKEx Response, *supra* note 41 at Appendix II.

This discussion will explain the underlying rationale that the regulators had in mind when they consulted on these proposals and examine how they reacted to the markets' response to their suggestions. Two key points may be drawn from this analysis. Firstly, the Singapore and HK Frameworks have both innovated on the US model of SPAC regulation by mandating the involvement of third-parties to act as gatekeepers in the De-SPAC Transaction in an attempt to boost investor protection. Secondly, the consultation process exposed the extent to which market participants value the redemption right when investing in a SPAC. The suggestion to link voting and redemption decisions proved to be extremely unpopular and it was eventually abandoned. While the regulators had made this proposal in hopes of enhancing investor protection, the reaction of the consultation participants showed that they placed a premium on a strong, unrestricted right of redemption.[160] This development also demonstrated the need for regulators to be closely in-tune with the needs and expectations of the market.

1. *Gatekeepers: Mandating Third-Party Involvement*

The Singapore and HK Frameworks both require the involvement of intermediaries (or third-parties aside from the SPAC, Sponsor and investor) in the De-SPAC Transaction. There are two key intermediaries that have been roped in. Firstly, a professional financial adviser has to be appointed to assist the Sponsor with due diligence and compliance with the listing rules during the De-SPAC Transaction.[161] Secondly, a PIPE investor has to signal their concurrence on the valuation of the Target in the De-SPAC Transaction by investing in the De-SPAC Transaction.[162] In Singapore, this role can also be carried out by an independent valuer who issues an opinion on the valuation of the Target.[163]

These intermediaries play two key roles in the De-SPAC Transaction: that of information intermediaries and as gatekeepers. As information intermediaries, they act as agents of trust, lending their expertise and reputation to assure investors that the information disclosed has been verified and is trustworthy.[164] As gatekeepers, they control access to the market, providing an additional layer of investor protection.[165]

Financial advisers to the Sponsor fulfil these roles by virtue of their direct involvement in the process of preparing for the De-SPAC Transaction.[166] They perform the role of information intermediaries by directly verifying that information disclosed to the market is accurate. Furthermore, by ensuring compliance with the

[160] SGX Response, *supra* note 11 at [3.1]–[3.7], [3.17] to Part II; HKEx Response, *supra* note 41 at [324]–[331].

[161] SGX Listing Rule 210(11)(*m*)(*v*), 608; HKEx Main Board Listing Rules 18B.37, 18B.51(1).

[162] SGX Mainboard Rule 210(11)(*m*)(*vi*); HKEx Main Board Listing Rule 18B.40.

[163] SGX Mainboard Rule 210(11)(*m*)(*vi*).

[164] John Armour *et al*, *Principles of Financial Regulation*, (Oxford: Oxford University Press, 2016) at 119–122.

[165] *Ibid* at 122, 123.

[166] SGX Response, *supra* note 11 at [4.35] of Part II; HKEx Response, *supra* note 41 at [198].

listing rules, they act as gatekeepers against the Target becoming a listed entity without full compliance with the requirements of the listing rules.

PIPE investors serve as information intermediaries and gatekeepers through their decision to co-invest in the De-SPAC Transaction.[167] By co-investing, they act as information intermediaries by signalling to the market that they have considered the information that has been disclosed and believe that it is reliable. In fact, they are likely to have carried out their own due diligence checks on the Target.[168] At the same time, they perform a gatekeeping function by certifying that they believe the De-SPAC Transaction is a viable investment opportunity in the Target, and that the valuation and other terms are fair. Independent valuers perform the same role, save that they signal their support for the De-SPAC Transaction by issuing an opinion in support of it instead of participating as an investor.[169]

The fact that financial advisers and PIPE investors are able to fulfil these roles allows regulators to leverage on their efforts and expertise to verify the terms of the De-SPAC Transaction and increase the standard of investor protection under the Singapore and HK Frameworks. This is especially helpful in the likely situation that the evaluation of the Target's business requires deep domain expertise and/or detailed due diligence.[170]

These proposals found widespread support in the market and were eventually implemented. The fact that these measures were very similar to existing well-known market practices appears to have helped them garner acceptance from the market, providing further evidence of the importance of familiarity in regulatory design.

The SGX and HKEx both found that a majority of the respondents to their consultations supported the requirement for a financial advisor to be appointed.[171] Aside from the benefits of ensuring the quality of the Target by carrying out due diligence and ensuring compliance with the listing rules, the proposal also appears to have found support because it was consistent with the existing regulatory framework applicable to IPOs on their respective boards.[172]

Majority support was also observed with respect to the proposal to require the involvement of PIPE investors and, in the case of the SGX, professional valuers, in the De-SPAC Transaction.[173] The market appeared to agree with the regulators' view that PIPE investors and professional valuers are suitable experts to assist in verifying the terms of the De-SPAC Transaction and that mandating their participation will help protect investor interests.[174] The SGX also noted that a reason cited by supporters was that the market was already familiar with the idea of relying on an independent valuer to certify other transactions carried out by listed companies.[175]

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[167] SGX Response, *supra* note 11 at [2.123] of Part II; HKEx Response, *supra* note 41 at [228]–[230].

[168] SGX Response, *supra* note 11 at [2.123] of Part II; HKEx Response, *supra* note 41 at [329].

[169] SGX Response, *supra* note 11 at [2.123] of Part II.

[170] Bai, Ma & Zheng, *supra* note 110.

[171] SGX Response, *supra* note 11 at [4.22] of Part II; HKEx Response, *supra* note 41 at [187].

[172] SGX Response, *supra* note 11 at [4.35] of Part II; See also, HKEx Response, *supra* note 41 at [192]–[198].

[173] SGX Response, *supra* note 11 at [2.114] of Part II; HKEx Response, *supra* note 41 at [223].

[174] SGX Response, *supra* note 11 at [2.114], [2.115], [2.123] of Part II; HKEx Response, *supra* note 41 at [224]–[231].

[175] SGX Response, *supra* note 11 at [2.114].

2. *Linking Voting and Redemption Decisions*

The SGX and HKEx had initially proposed that shareholders should be allowed to redeem their shares only if they had voted against the De-SPAC Transaction.[176] This would have limited the redemption right, making it more similar to an appraisal remedy instead.[177] However, this proposal was not included in the final Singapore and HK Frameworks. Instead, due to opposition from market participants, the regulators decided that shareholders should be free to redeem their shares regardless of how they had voted in respect of the De-SPAC Transaction.[178]

When introducing the proposal, the SGX explained that it would be "reasonable for shareholders to align their interests with and stand by their voting decisions".[179] In addition, the SGX hoped this measure would limit the dilutive effects inherent to the SPAC structure by lowering redemption rates, allowing any dilution to be spread over a larger shareholder base.[180] While the SGX focused on dilution, the HKEx appeared to be more concerned about shareholder protection, stating that this measure would ensure that the shareholder vote remains a "meaningful check on the reasonableness of [the De-SPAC Transaction's] terms".[181]

These arguments put forth by the SGX and HKEx appear sound in principle and reflect the basic point that shareholders must be invested in the outcome of a vote for the voting mechanism to be a true reflection of their views. In a typical situation where the redemption right is not present, shareholders are the residual claimants of the company's assets. This creates a vested interest for them to be heard on matters of corporate governance when they will, in theory, exercise their votes in a manner that maximises the company's value.[182]

As it stands, the typical structure of a SPAC distorts the incentives of investors when voting on the De-SPAC Transaction.[183] Allowing shareholders to redeem regardless of how they voted separates their economic interests and from their power to vote. This creates a problem which has been described as "empty voting".[184] Empty voting is problematic as allowing shareholders who do not have an economic interest in the long-term future of the SPAC to vote removes the basic premise underlying the shareholders' authority as residual claimants. When this occurs, the economic incentive of shareholders to vote in a manner that benefits

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[176] SGX Consultation, *supra* note 7 at [1.1] of Part IV; HKEx Consultation, *supra* note 7 at [340]–[342].

[177] For more information on appraisal remedies that apply in mergers in other jurisdictions, see Reinier Kraakman *et al*, *The Anatomy of Corporate Law: A Comparative and Functional Approach*, 3d ed (Oxford: Oxford University Press, 2017) at ch 7.4.

[178] SGX Mainboard Rule 210(11)(*m*)(*x*); HKEx Main Board Listing Rule 18B.57.

[179] SGX Consultation, *supra* note 7 at [1.1] of Part IV.

[180] *Ibid*.

[181] HKEx Consultation, *supra* note 7 at [340].

[182] Easterbrook & Fischel, *The Economic Structure of Corporate Law* (Cambridge: Harvard University Press, 1996) at 67, 68.

[183] Halbhuber, *supra* note 112 at 10, 11.

[184] Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 906–915; Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 28–32, 43–46; Mira Ganor, "The Case for Non-Binary, Contingent, Shareholder Action" (2021) 23 J Bus L 390 at 409–415; see also, Henry Hu & Bernard Black, "The New Vote Buying: Empty Voting and Hidden (Morphable) Ownership" (2006) 79 S Cal L Rev 811 for a broader discussion on how empty voting is problematic.

the SPAC as a whole is replaced with other economic incentives. In the case of SPAC shareholders, this would be the potential gain they may receive through the Warrants they own if the De-SPAC Transaction is approved. Alternatively, a shareholder who has decided to divest their interest in the SPAC may also vote in favour of the De-SPAC Transaction in the hopes that news of the De-SPAC Transaction being approved will result in an increase in the value of their shares, which they may then sell at a profit. As a result, the significance of the SPAC's shareholders approval of the De-SPAC Transaction is hollowed and the ability of the shareholder vote to act as a shareholder protection mechanism is weakened.[185] After all, if more than half of the SPAC's shareholders vote in favour of the De-SPAC Transaction but nevertheless decide to withdraw their participation, can the De-SPAC Transaction really be said to have their support?

Unlike the proposals to mandate the involvement of third parties in the De-SPAC Transaction, which were well received, this proposal to limit the right of redemption was not.[186] A possible explanation might lie in the familiarity discussion above. While market participants appeared to be familiar with the concept of relying on third-parties to verify and monitor transactions, the appraisal remedy is not present in either Singapore or Hong Kong. Indeed, market familiarity appeared to be a main concern among consultation respondents.[187] However, this was not the sole reason for the negative feedback.

The consultation responses in Singapore and Hong Kong on this issue can be generally split into three categories. Firstly, that limiting redemptions in this manner would be inconsistent with common market practice in other jurisdictions, especially the US.[188]

Secondly, that a strong right of redemption is a fundamental feature of SPACs that investors will require. Redemption sets a price floor on the investors' exit, protecting them from downside risk, incentivising many investors to invest in SPAC IPOs. For example, short-term investors such as hedge funds who wish to adopt an arbitrage trading strategy which relies on the ability to redeem. Accordingly, such a limitation may deter these investors and have a chilling effect on SPAC IPOs.[189]

Lastly, requiring investors to vote against the De-SPAC Transaction in order to redeem shares introduces uncertainty to the De-SPAC Transaction. An investor's decision to redeem may be due to factors other than their views on the De-SPAC Transaction. For example, given that the SPAC only identifies the Target sometime after its IPO, there is a real risk that investors bound by an investment mandate may find that they are not permitted to hold shares in the Merged Entity. In the likely scenario that an investor has already decided to redeem their shares, requiring them to also vote against the De-SPAC Transaction distorts their voting incentives in a manner similar to the empty voting scenario. More importantly to the consultation

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[185] Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 909–915; Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 22–28.

[186] SGX Response, *supra* note 11 at [3.1]–[3.5] of Part II; HKEx Response, *supra* note 41 at [324], [325].

[187] SGX Response, *supra* note 11 at [3.2] of Part II; HKEx Response, *supra* note 41 at [325(g)].

[188] *Ibid*.

[189] SGX Response, *supra* note 11 at [3.2], [3.3] of Part II; HKEx Response, *supra* note 41 at [325(b)], [325(c)], [325(f)].

respondents, this also reduces the certainty that sufficient votes will be garnered in support of the De-SPAC Transaction. In turn, this uncertainty may dissuade potential Targets from going public through a SPAC.[190]

The connecting thread between these responses is a strong signal that the market believes that linking voting and redemption rights will render the Singapore and HK Frameworks significantly less competitive when it comes to attracting Sponsors and De-SPAC Targets. In other words, the market appears to have determined that the right of redemption is a non-negotiable fundamental protection for shareholders.

The regulators recognised the force of these objections and reversed their views on whether the redemption right should be limited. As a starting point, they recognised that the proposal may not serve its intended purpose. The SGX noted that the presence of PIPE investment would mitigate the dilutive effect of redemptions such that it is no longer a "key source" of dilution.[191] This is especially apt given that the Singapore Framework has been set up to incentivise the Sponsor to seek PIPE investments as doing so will allow them to dispense with having to seek an independent valuation. As for the HKEx, they noted that linking voting and redemption may have a distortive effect on the shareholder vote,[192] which may reduce its effectiveness in protecting shareholders.

Given this context, it was almost natural that the regulators decided it was not worth the risk of imposing this restriction, especially as they recognised that doing so may reduce the competitiveness of the Singapore and HK Frameworks.[193] The SGX pointed to the benefits of taking a market-familiar approach and noted that the delinking of the voting and redemption rights in the US led to a significant increase in De-SPAC Transactions proceeding to completion.[194] In a similar vein, the HKEx also revised their views, stating that the proposal may not be a "meaningful regulatory safeguard on the terms and valuation of the De-SPAC Transaction" in light of the analysis above on its distortive effect on the shareholder vote.[195]

To describe this consultation process more simply, the SGX and HKEx had proposed linking the voting and redemption rights as they respectively believed that doing so would help to combat dilution and help protect shareholders. However, they did not proceed with this proposal in light of feedback that it may not be fit for purpose. Conversely, it might have a negative impact in limiting the attractiveness of the Singapore and HK Frameworks given that the market placed a heavy premium on having an unrestricted redemption right.

On the surface, the decision to decouple the redemption of shares from the voting decision of the redeeming shareholder appears to be a missed opportunity to shore up shareholder protection as the empty voting problem reduces the level of scrutiny that will be applied to the De-SPAC Transaction by shareholders before voting. Instead, the balance has been set in favour of giving SPACs and potential Targets

[190] SGX Response, *supra* note 11 at [3.2], [3.4] of Part II; HKEx Response, *supra* note 41 at [325(a)], [325(e)].
[191] SGX Response, *supra* note 11 at [3.16], [3.17] of Part II.
[192] HKEx Response, *supra* note 41 at [328].
[193] SGX Response, *supra* note 11 at [3.17] of Part II; HKEx Response, *supra* note 41 at [327].
[194] SGX Response, *supra* note 11 at [3.17] of Part II.
[195] HKEx Response, *supra* note 41 at [327], [328].

more comfort that the De-SPAC Transaction is likely to proceed to completion. Nevertheless, it is helpful to keep in mind at this point that the SGX and HKEx were designing regulatory rules in the hope of attracting market participants to help set up a market for SPACs in their respective jurisdiction. It was thus imperative that the finalised Singapore and HK Frameworks be designed in accordance with the market's views on the importance of the redemption right, as well as in a manner that encourages higher levels of participation in the SPAC markets that are being established in Singapore and Hong Kong.

Furthermore, the emphasis placed by the market on the importance of a strong redemption right is consistent with the history of the development of SPAC regulation in the US. As the discussion above outlined, SPACs as they were originally conceived in the US treated the redemption right as a pseudo-shareholder vote on the De-SPAC Transaction.[196] This meant that the De-SPAC Transaction that has been approved by the SPAC's shareholders still could not proceed to completion if a significant number of shareholders choose to redeem their shares. While this level of scrutiny might have helped to protect SPAC shareholders from De-SPAC Transactions that are bad deals being approved, developments in the US SPAC markets have shown that shareholders are willing to give up the protections provided by these voting rights in exchange for better economic protections in the form of a strong, unrestricted redemption right.[197] The consultation responses in Singapore and Hong Kong show that participants in these markets share similar views.

This consultation process further underlines the importance of market-familiar approaches when seeking to design regulations for a new market. Market-familiar rules bring comfort and confidence to potential market participants not just because they are familiar rules. These rules may also codify delicate negotiated balances, and reflect the preferences that such participants have as to how they wish to be protected. In this specific case, it was also helpful that the SGX's concern of dilution and the HKEx's concern of validating the terms of the De-SPAC Transaction could be managed using alternative measures, specifically through the involvement of PIPE investors. As a result, they did not have to choose between their shareholder protection goals and respecting the demands of the market.

It was thus prudent for the regulators to first design the Singapore and HK Frameworks in a manner that is more facilitative at the outset, and move to close in on any gaps that may become evident once the rules have been put into practice. As the SGX noted, this is an area that requires further monitoring and targeted measures should be introduced if future developments in the SPAC market demonstrate that they are necessary.[198] A possible measure that may be considered in the future is to leverage on a different third-party to protect investors – the institutional investor. Retail investors are typically assumed to be unable or otherwise unwilling to sift through the voluminous amounts of information disclosed by a publicly listed entity. Instead, the common view is that they benefit from the decision making of

[196] As discussed in Part IV.A.1.a, *supra*.

[197] Rodrigues & Stegemoller, "Exit, Voice and Reputation", *supra* note 23 at 909–915; Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 22–28.

[198] SGX Response, *supra* note 11 at [3.17] of Part II.

larger institutional investors.[199] These institutional investors have the resources to carry out in-depth research into the SPAC and evaluate the proposals that are placed before its shareholders. They then serve as information intermediaries as the actions that they take will influence the SPAC's share price. Retail investors can then rely on changes in the share's price as a proxy in their decision making.[200]

Following the analysis above, a decision by institutional investors invested in SPACs to redeem could be used to protect retail investors. If a conversion threshold of 50% is required as a proxy to shareholder approval, high levels of redemptions by institutional shareholders could prevent the De-SPAC Transaction from completion. In this manner, they would (inadvertently) protect retail investors who were unable or unwilling to protect themselves. More generally, they would also serve a gate-keeping function by preventing low-quality Targets from accessing public equity.[201]

Concerns of potential greenmailing may also be dealt with using existing take-over regulations. As the HKEx had commented in their initial consultation, the risk of greenmail could be mitigated by takeover regulation which limits the ability of the Sponsor to pay a premium for the SPAC's shares.[202] Specifically, if the Sponsor purchases a large block of the SPAC's shares (representing 30% of the voting rights in the SPAC), it would have to make a general offer to all shareholders.[203] In principle, the same restriction would also limit the ability of hedge funds to obtain sufficient shares to be able to unilaterally derail a De-SPAC Transaction. Finally, this proposal remains consistent with the strong, free right to redeem which the market seeks to retain.

V. Conclusion

This paper has set out how the SGX and HKEx have designed the Singapore and HK Frameworks. As a starting point, they have referred heavily to US regulations and practice to ensure that the Singapore and HK Frameworks incorporate practices that are familiar to the market and allow the SGX and HKEx to be competitive jurisdictions for SPACs to list. By making the Singapore and HK Frameworks primarily mandatory in nature, they were then able to ensure that the base level of protection encoded in these rules could be guaranteed to all market participants.

At the same time, the SGX and HKEx have also sought to beef up investor protection measures and address known issues with the SPAC structure, such as conflicts of interests and dilutions. In this vein, modifications had been proposed for the Singapore and HK Frameworks, such as the requirement for third-party validation of the De-SPAC Transaction, and for shareholders to first vote against the De-SPAC Transaction before they may be allowed to exercise their right of redemption. This

[199] Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 37, 38; Ronald Gilson & Reinier Kraakman, "The Mechanisms of Market Efficiency" (1984) 70 Va L Rev 549.

[200] *Ibid*.

[201] Rodrigues & Stegemoller, "Redeeming SPACs", *supra* note 13 at 39, 40, 63–66.

[202] HKEx Consultation, *supra* note 7 at [354]; HKEx Response, *supra* note 41 at [344].

[203] Rule 26 of the Hong Kong Code on Takeovers and Mergers; Rule 14 of the Singapore Code on Take-Overs and Mergers contains a similar requirement.

consultation process has allowed the regulators to identify what concerns are most important to market participants, and which aspects of the existing US SPAC structure were regarded to be essential and could not be changed without severely impacting the competitiveness of the Singapore and HK Frameworks. The consultation results, and in particular the opposition to the linking of the voting and redemption rights, do not just reflect a bias towards having a set of rules that are market familiar. Rather, they also expose the deeply-held preferences of market participants which can be corroborated through a review of how SPACs have developed in the US to favour strong exit rights instead of control rights to protect shareholders during the De-SPAC Transaction.

Nevertheless, this does not change the fact that the SGX and HKEx have introduced new restrictions in the Singapore and HK Frameworks. For example, there is a minimum equity participation requirement for Sponsors in Singapore and limits preventing investments by retail investors in Hong Kong. In both jurisdictions, third-parties are required to validate the terms of the De-SPAC Transaction and the Target will have to comply substantially with IPO requirements during the De-SPAC Transaction. While these measures may have increased costs (or reduced potential benefits) for Sponsors, the market's response appears to show that it has determined that they do not appear strike at the utility of the SPAC as a listing mechanism.

It is essential at this point to note that this paper has focused on the process by which the SGX and HKEx have gone about designing the Singapore and HK Frameworks, and not on their desirability or effectiveness. Its key observation is that regulators have sought to facilitate the establishment of SPAC markets in their respective jurisdictions by tailoring the Singapore and HK Frameworks, and the proposed enhancements contained therein, to the expectations of market participants. A key assumption has been that it would be desirable to conform to the expectations of the market. This is especially as the current aim of the regulators is to set up SPAC markets and any attempts at enhancing the framework should be implemented only if the market indicates a willingness to accept these terms.

The market's response to the Singapore and HK Frameworks appears to have been positive, with 3 SPACs having listed on the SGX[204] and 10 SPACs on the HKEx.[205] One of the main benefits of introducing SPACs as a listing mechanism is the ability of SPACs to fill a niche within the market for private equity by leveraging on investors who are more willing to invest in risky investments and Sponsors with the right expertise to evaluate and value the Target and its business, allowing Targets that are higher-risk or who have business models which are not easily valued by traditional valuation methods to access the public markets.[206]

At this point in time, the only determinative observation we can make about the SGX and HKEx's efforts is that they have designed regulatory frameworks that are largely acceptable to market participants, thereby inducing the listing of SPACs.

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204 Anshuman Daga, "Singapore hosts third SPAC listing; Novo Tellus-backed firm makes debut" *Reuters* (27 January 2022) <https://www.reuters.com/markets/stocks/buyout-fund-novo-tellus-backed-spac-debuts-singapore-2022-01-27/>.

205 Jinag Yang & Dave Sebastian, "Hong Kong's First SPAC Makes Its Debut" *The Wall Street Journal* (18 March 2022) <https://www.wsj.com/articles/hong-kongs-first-spac-makes-its-debut-11647587585>.

206 Bai, Ma & Zheng, *supra* note 110; Bazerman & Patel, *supra* note 4; Daniel Riemer, *supra* note 16.

Until these SPACs successfully complete De-SPAC Transactions and the subsequent performance of the Merged Entities can be evaluated, it would be premature to pass judgment on the Singapore and HK Frameworks. After all, much will also depend on the manner with which this initial batch of Sponsors manage the SPACs, and their interactions with investors (both shareholders and PIPE investors), Targets and regulators. Nevertheless, this paper shall attempt to set out some preliminary thoughts that may be useful in framing any future analysis of the Singapore and HK SPAC markets.

As a starting point, one might ask whether it would be desirable to allow the listing of SPACs in the first place. Aside from the concerns regarding potential conflicts of interests explored above, a more fundamental objection might be that it is inappropriate to allow the listing of an entity without an established business in the first place. Indeed, before the introduction of the Singapore and HK Frameworks, both the SGX and HKEx had regulations in place generally prohibiting an issuer from continuing to be listed if it ceases to have an operational business and becomes a cash company.[207]

A key nuance between SPACs and other cash companies is that the SPAC is listed for the specific purpose of identifying and merging with an unlisted business. SPAC investors participate in this knowledge with the hope of leveraging on the expertise of the Sponsor and are protected by measures such as the escrow requirements. Given that the aim of the SPAC is ultimately to participate in the De-SPAC Transaction (failing which it will be liquidated), its existence as a listed entity is by design merely transitional and it should be seen as an intermediate step towards the ultimate listing of the Target's business through the creation of the Merged Entity. In other words, the SPAC is merely an alternative pathway towards listing, and not intended to be a listed entity in and of itself.[208]

In this context, the more immediate concern is in ensuring that the introduction of SPACs does not simultaneously result in the creation of an avenue for regulatory arbitrage. To that end, the SGX and HKEx have mandated standards generally equivalent to those found in an IPO by requiring compliance with the same disclosure requirements in the context of the De-SPAC Transaction and imposing the same quantitative initial listing requirements on the Merged Entity. This ensures that the Merged Entities are, at least in theory, on par with other entities that have attained listed status through the traditional IPO process, which would limit the case for any calls for further regulation.[209]

The key remaining difference then is that the SPAC has taken a key gatekeeper in the IPO listing process (the underwriter) and replaced them with other gatekeepers (the Sponsor, the PIPE investor and the SPAC's shareholders). The key driving motivator for all these parties is that they are financially incentivised towards the success of the final listed entity. It remains an open question whether the measures in the Singapore and HK Framework are sufficient to ensure that these incentives

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[207] SGX Mainboard Rule 1017; HKEx Main Board Listing Rule 13.24.

[208] The SGX and HKEx have identified this as the intended use of SPACs. SGX Consultation, *supra* note 7 at [2.2] of Part I; HKEx Response, *supra* note 41 at [304], [305].

[209] See, for example, Jill Fisch, "GameStop and the Reemergence of the Retail Investor" (2022) 102 BUL Rev 1799 which makes a similar point at 1825, 1826.

are strong enough to mitigate the conflicts of interests which have been identified. Again, a conclusion on this point can only be drawn once the performance of the Merged Entities can be observed.

As a further corollary, the analysis above also brings into question whether, given the modifications introduced by the SGX and HKEx, SPACs are investment vehicles which are suitable for retail investors. As noted previously, the SGX and HKEx have demonstrated different regulatory philosophies with respect to retail participation in SPACs. While the SGX has opted for *caveat emptor*, the HKEx has taken a more paternalistic approach. The SGX's approach allows retail investors to participate directly and benefit from the growth of the Merged Entity from the start instead of having to take the market price at the point of the De-SPAC Transaction. Furthermore, there may also be benefits of having retail investors invest directly instead of through intermediaries and such as institutional investors.[210] Lastly, the availability of the choice to invest in SPACs in and of itself can also be seen as a benefit to investors.[211] Nevertheless, retail investors who invest in SPACs remain exposed to additional risks than if they had invested in more traditional investment vehicles. Whether allowing retail participation is the right choice may ultimately depend on the success of other measures such as the use of PIPE investors as additional gatekeepers and the SGX's investor education efforts in ensuring that investors understand the underlying risks. If these measures are successful, it may not be necessary to go to the extent of prohibiting retail investments.

The introduction of the Singapore and HK Frameworks is merely the first step in a much longer journey towards the development of healthy markets for SPACs in Singapore and Hong Kong. At the current point where the aim is to sow the initial seeds of a SPAC market, it is perhaps still more important to have a facilitative regime, provided that it incorporates the minimum standards of investor protection, so that a market can be developed. The behaviour of the Sponsors and the progress of the existing SPACs in carrying out their De-SPAC Transactions will also be closely watched by market participants and regulators alike and regulators may then rely on these observations in making the necessary adjustments to the Singapore and HK Frameworks. For example, the regulators may relook their decisions on whether to allow retail participation or whether the voting and redemption rights should be linked. The experience will also allow them to fine tune their efforts at investor education to create a more robust marketplace. While some SPACs or Merged Entities may eventually fail, as would naturally happen when early-stage high-growth companies are listed on the public market,[212] it is hoped that SPACs, Sponsors, PIPE investors and Targets will be able to properly leverage on this flexible listing mechanism to generate net positive returns for the market as a whole.

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[210] *Ibid* at 1831–1851.

[211] SGX Consultation, *supra* note 7 at [3.3], [3.4] of Part I; SGX Response, *supra* note 11 at [2.42] of Part II.

[212] Bai, Ma & Zheng, *supra* note 110.