



Listing of Special Purpose Acquisition Companies (SPACs)

on Hong Kong Stock Exchange (HKEX)

**特殊目的收購公司
在香港交易所上市**

In March this year, the Financial Secretary directed the Securities and Futures Commission (SFC) and the Hong Kong Stock Exchange (HKEX) to investigate the feasibility of listing special purpose acquisition companies (SPACs) in Hong Kong. In September 2021, HKEX issued a consultation paper (CP) to consult the market on the introduction of a new framework for listing of SPACs, based on the US SPAC model. This article will review the history of SPAC regime in the US, discuss the main features of the SPAC listing regime under consultation, and update our members as to the Chamber's views and concerns in relation thereto.

History of SPACs in the US

Prior to the enactment of first state securities law in Kansas in 1911 (which law was promoted by John Dolley), offering of securities in the US was not statutorily regulated. As a result, many "speculative schemes which [had] no more basis other than so many feet of 'blue sky'" (as per the judgement of Justice Joseph McKenna in *Hall v. Geiger-Jones Co.*) were offered. Since then, state securities law is termed blue sky law. Under the blue sky law, state securities regulators would conduct a merit review before approving an offering; this is the merit-based regime that an offering may not be approved on merit ground despite full disclosure if such offering is not in the interests of the investors. In 1933, the national Securities Act was passed to regulate the public offering of securities in the US by requiring a listed applicant to file a registration document (similar to our prospectus regime) and to disclose all relevant information that is necessary for investors to make an informed decision whether to invest based on their own judgement. In 1934, the national Securities Exchange Act was passed to create the Securities and Exchange Commission (SEC), the most powerful regulator, to regulate the US securities market and to require listed companies to file periodic financial statements (similar to our continuing obligations after listing under our Listing Rules). Under the new law, SEC would not review the merit of any offering and would approve an offering upon full disclosure of all information as required under the law. In short, under the disclosure-based regime, one may sell bad apples provided that full disclosure is made as to how bad these apples are.

Under the disclosure-based regime, many speculative schemes (of and relating to blank check (cheque) companies, penny stocks and shell companies) were offered causing significant losses to investors, particularly retail investors. In response, US Securities Enforcement Remedies and Penny Stock Act was enacted in 1990 to, inter alia, regulate the offering by blank cheque companies and penny stocks. Section 7 of the Securities Act 1933 was amended mandating SEC to prescribe rules regulating the offering of blank cheque companies. Pursuant thereto, Rule 419 was enacted (inter alia) to prescribe the requirements for (a) information disclosure, (b) escrow arrangement for IPO proceeds, and (c) right of rescission by and refund to shareholders under certain circumstances for offering by blank cheque companies. A blank cheque company is defined in the Securities Act 1933 as 'any development stage company that is issuing a penny stock ... and that (A) has no specific business plan or purpose; or (B) has indicated that its business plan is to merge with an unidentified company'.

今年3月，財政司司長指示證券及期貨事務監察委員會（SFC）和香港交易所（港交所）研究特殊目的收購公司（SPAC）在香港上市的可行性。2021年9月，港交所刊發諮詢文件，以就根據美國SPAC模式引入SPAC上市的新框架向市場進行諮詢。本文將回顧美國SPAC制度的歷史，討論諮詢中的SPAC上市制度的主要特點，並向成員及時通報商會對此的觀點和疑慮。

美國SPAC的歷史

在1911年堪薩斯州頒佈首部州立證券法（該法由 John Dolley 推動）之前，美國的證券發行未受到法律的監管。因此，許多「行險僥倖的投機伎倆，其交易的基礎不過是幾英尺的藍天」（根據 Joseph McKenna 法官在 *Hall 對 Geiger-Jones Co.* 一案的判詞）被發售。自此，州證券法被稱為藍天法。根據藍天法，各州證券監管機構在批准發售前會進行價值評核；該制度基於價值評審，即儘管有充分的披露，但若該發售不符合投資者利益，則基於價值不得批准發售。1933年，美國通過《國家證券法》，對公開發售證券進行監管，要求上市申請人提交登記文件（類似於我們的招股章程制度），並披露所有必要的相關資料，以便投資者根據自身判斷作出是否投資的明智決定。1934年，美國通過《證券交易法》，設立證券交易委員會（證交會），作為最大權力的監管機構，負責監管美國證券市場，並要求上市公司定期提交財務報表（類似於我們根據《上市規則》上市後的持續責任）。根據新的法律，證交會將不評核任何發售的價值，並在法律規定的所有資料獲充分披露後批准發售。簡而言之，在以披露為基礎的制度下，只要充分披露蘋果有多壞，便可出售壞蘋果。

在以披露為基礎的制度下，許多投機計劃（包括空頭支票公司、仙股和空殼公司）得以發售，給投資者（特別是散戶投資者）造成巨大損失。有鑒於此，美國於1990年頒佈《證券執行救濟及仙股法案》，以監管包括空頭支票公司和仙股的發售。1933年《證券法》第7條被修訂，授權證交會規定空頭支票公司的發售規則。第419條據此頒佈，規定的要求包括：(a) 資料披露；(b) 首次公開招股所得款項的託管安排；及(c) 在某些情況下對空頭支票公司發售的股東撤銷權和退款權。在1933年《證券法》中，空頭支票公司是指「任何處於發展階段發售仙股的公司…且 (A) 沒有具體的商業計劃或目的；或 (B) 已表明其商業計劃是與一家不明公司合併」。

於1993年或前後，為應對第419條，Early Bird Capital Inc的創始人David Nussbaum提出並推廣SPAC，並由Graubard Miller的合夥人David Miller提供諮詢（兩人均為1980年畢業於紐約大學法學院的律師）。SPAC不是仙股公司（因此嚴格而言不是空頭支票公司），但在各方面均符合第419條。在首次提出時乃至2003年或2009年之前，SPAC並不受歡迎，有以下事實為證：(a) 2009年僅一間SPAC發售（籌集3,600萬美元）（對比2021年527間SPAC發售（籌集1,444.53億美元））；(b) 最初，只有不太知名的發起人、保薦人和包銷商參與其中；及(c) SPAC最初在場外交易，未在國家證券交易所上市。高盛當時對SPAC設有嚴格的政策直到最近，但現時卻宣稱2020年為SPAC年，高盛不僅是積極的保

In or about 1993, SPACs were created and promoted by David Nussbaum, founder of Early Bird Capital Inc and advised by David Miller, partner of Graubard Miller, (both were attorneys attending New York University law school and both graduated in 1980) in reaction to Rule 419. A SPAC was not a penny stock company (and hence technically is not a blank cheque company) but complying with Rule 419 in all respects. SPACs were not well received when first introduced until 2003 or even 2009 as evidenced by the fact (a) that only 1 SPAC was offered in 2009 (raised US\$36 million) (compared with 527 SPACs being offered in 2021 (raised US\$144,453 million)), (b) that initially, only less well-known promoters, sponsors and underwriters were involved, and (c) that SPACs were initially traded over the counter and not listed on national stock exchanges. Goldman Sachs then had a strict policy against SPACs until recently but now declared 2020 as the year of the SPAC with itself being not only an active sponsor and underwriter but also promoter of its own SPACs. New York Stock Exchange (NYSE) did not list any SPAC until May 2017 when the first SPAC by the name TPG Pace Energy Holdings was first listed. In 2020, the funds raised by SPAC IPOs exceeded those that were raised by traditional IPOs in the US. Hitherto, the largest and landmark SPAC is Pershing Square Tontine Holding Limited promoted by William A. Ackman, sponsored and underwritten by Citigroup, Jeffries and UBS, listed on NYSE and raised US\$4 billion. This SPAC trend is seen in Europe and now in Asia. Singapore has issued a consultation paper on SPAC in March 2021 and will have its first listing of SPAC very shortly.

Structure of SPAC Under the Consultation Paper

In order to understand the structure of SPAC, the following terms as defined in the CP are used in here, namely, De-SPAC Target means the target of De-SPAC Transaction, De-SPAC Transaction is a business combination between SPAC and De-SPAC Target leading to the listing of the Successor Company, SPAC Promoter is the promoter promoting the SPAC, Promoter Shares and Promoter Warrants are shares and warrants issued to the SPAC Promoter; and Successor Company is the company that is listed after completion of the De-SPAC Transaction.

Under the CP, the listing of SPAC and the subsequent Successor Company is proposed as follows:

- (a) SPAC is structured as a special purpose company to be listed with the IPO proceeds being used exclusively to finance the De-SPAC Transaction;
- (b) SPAC must be promoted by SPAC Promoters; at least one SPAC Promoter must hold a type 6 (advising on corporate finance) or type 9 (asset management) licence issued by SFC;
- (c) units (shares and warrants) of SPAC are listed under the new regime to be contained in chapter 18B of the Listing Rules;
- (d) proceeds of SPAC IPO are placed in a trust account to finance the De-SPAC Transaction; the gross fund raised in a SPAC IPO must be at least HK\$1 billion;
- (e) Promoter Shares and Warrants are issued to the SPAC Promoters and will not be listed;
- (f) other SPAC shares and warrants will only be offered to professional investors and will be listed and traded separately; the issue price must be at least HK\$10 per share;

薦人和包銷商，亦是自身 SPAC 的發起人。紐約證券交易所（紐交所）在 2017 年 5 月之前不接受 SPAC 上市，而首家上市的 SPAC 為 TPG Pace Energy Holdings。2020 年，SPAC 首次公開招股募集的資金超過美國傳統首次公開招股募集的資金。迄今為止，最大規模、具有里程碑意義的 SPAC 是由 William A. Ackman 發起，由花旗集團、Jeffries 和瑞銀保薦和包銷的 Pershing Square Tontine Holding Limited，該 SPAC 於紐交所上市，並籌集 40 億美元。SPAC 先後在歐洲和亞洲流行起來。新加坡已於 2021 年 3 月發佈一份關於 SPAC 的諮詢文件，並將在不久後迎來首個 SPAC 上市。

諮詢文件中的 SPAC 架構

為了理解 SPAC 的架構，本文使用諮詢文件中界定的以下用語，即 SPAC 併購目標指 SPAC 併購交易的目標，SPAC 併購交易指 SPAC 與 SPAC 併購目標之間促成繼承公司上市的業務合併，SPAC 發起人指發起 SPAC 的發起人，發起人股份和發起人權證指向 SPAC 發起人發行的股份和權證；繼承公司指 SPAC 併購交易完成後上市的公司。

根據諮詢文件，SPAC 上市及後續繼承公司建議如下：

- (a) SPAC 作為擬上市的特殊目的公司構建，首次公開招股所得款項完全用於為 SPAC 併購交易提供資金；
- (b) SPAC 必須由 SPAC 發起人發起；至少一名 SPAC 發起人必須持有證監會頒發的第 6 類（就機構融資提供意見）或第 9 類（提供資產管理）牌照；
- (c) SPAC 的單位（股份和權證）根據將列入《上市規則》第 18B 章的新制度上市；
- (d) SPAC 首次公開招股所得款項存入信託賬戶，為 SPAC 併購交易提供資金；SPAC 首次公開招股籌集的資金總額必須至少為 10 億港元；
- (e) 向 SPAC 發起人發行的發起人股份和權證，將不會上市；
- (f) 其他 SPAC 股份和權證將僅提供給專業投資者，並將各自獨立上市及交易；發行價必須至少為每股 10 港元；
- (g) 最終確定 SPAC 併購交易的條款後，必須發佈公告；任何 SPAC 併購交易必須包括獨立第三方投資者（PIPE 投資者）的投資，由此產生的資金必須至少構成繼承公司預期市值的 25%；
- (h) 完成 SPAC 併購交易的條件包括繼承公司上市；
 - (i) SPAC 併購交易必須獲得 SPAC 獨立股東批准；
 - (j) SPAC 目標可能是關連人士，而 SPAC 併購交易可能是關連交易；如是，SPAC 併購交易必須遵守《上市規則》第 14A 章的關連交易規定；
- (k) SPAC 併購交易完成，繼承公司的股份將上市，而 SPAC 將除牌；繼承公司的上市須完全遵守《上市規則》的上市規定；
- (l) 如果在上市後 24 個月內未發佈 SPAC 併購交易公告，且 SPAC 併購交易未能在上市後 36 個月內完成，除非最後期限延長，否則 SPAC 將被清盤和除牌，首次公開招股所得款項將退還股東；及
- (m) SPAC 股東可在 (a) SPAC 發起人發生任何重大變動；(b) 其投票反對任何 SPAC 併購交易；及 / 或 (c) 任何期限延長時贖回股份。

- (g) once the terms of the De-SPAC Transaction is finalised, an announcement must be made; any De-SPAC Transaction must include investment from independent third party investors (PIPE Investors) and the funds therefrom must constitute at least 25% of the expected market capitalisation of the Successor Company;
- (h) completion of the De-SPAC Transaction is conditional upon, inter alia, the listing of the Successor Company;
- (i) De-SPAC Transaction must be approved by independent shareholders of SPAC;
- (j) SPAC Target may be a connected person and De-SPAC Transaction may be a connected transaction; if so, De-SPAC Transaction must comply with the connected transaction requirements under chapter 14A of the Listing Rules;
- (k) once De-SPAC Transaction is completed, the shares of the Successor Company will be listed and the SPAC will be delisted; the listing of the Successor Company is subject to the listing requirements under the Listing Rules in full;
- (l) if De-SPAC Transaction announcement is not made within 24 months and De-SPAC Transaction is not completed within 36 months after listing, the SPAC will be liquidated and delisted and the IPO proceeds will be refunded to the shareholders unless the deadlines are extended; and
- (m) a SPAC shareholder may redeem its shares upon (a) any material change in SPAC Promoters, (b) its voting against any De-SPAC Transaction, and/or (c) any extension of any deadline.



Benefits and Risks to the Investors in Investing in SPACs

Investors of SPACs are benefited from and are protected by the following:

- (a) SPACs are promoted and managed by SPAC Promoters who have experience and track records in finding and executing the best De-SPAC Transactions for the SPACs;
- (b) IPO proceeds are held in trust accounts and will only be used in completing De-SPAC Transactions;
- (c) all De-SPAC Transactions are approved by independent SPAC shareholders;
- (d) completion of De-SPAC Transaction is subject to listing of Successor Company;
- (e) SPAC shareholders are refunded if De-SPAC Transactions are not completed within deadlines or the SPAC shareholders have voted against the De-SPAC Transactions; and
- (f) SPACs, SPAC Promoters and Directors, SPAC Promoter shares and warrants, SPAC Targets, De-SPAC Transactions and Successor Companies are highly regulated under chapter 18B of the Listing Rules.

投資者投資於SPAC的裨益及風險

SPAC投資者可從以下方面受益並受到保護：

- (a) SPAC由在為SPAC尋找和進行最佳SPAC併購交易方面具有經驗及往績記錄的SPAC發起人發起及管理；
- (b) 首次公開招股所得款項存入信託賬戶和只用於完成SPAC併購交易；
- (c) 所有SPAC併購交易均由獨立SPAC股東批准；
- (d) SPAC併購交易的完成取決於繼承公司的上市；
- (e) 如果SPAC併購交易未在截止日期前完成，或SPAC股東投票反對SPAC併購交易，則SPAC股東將獲得退款；及
- (f) SPAC、SPAC發起人及董事、SPAC發起人股份和權證、SPAC目標、SPAC併購交易及繼承公司均受《上市規則》第18B章的嚴格監管。

儘管存在上述裨益及保護，投資者仍面對以下風險：

- (a) 首次上市時，SPAC為空殼公司，除首次公開招股所得現金外並無其他資產；
- (b) SPAC目標在上市時尚未確定；因此，SPAC的成功及隨後繼承公司的上市完全取決於SPAC發起人的商業智慧；
- (c) 發起人股份和權證按面值向SPAC發起人發行，上市後將即時對投資者產生攤薄效應，但向SPAC發起人發行股份和權證的上限為30%；及
- (d) 如果SPAC併購交易未在截止日期前完成，SPAC發起人除了對SPAC進行清盤及除牌並退還所有首次公開招股所得款項淨額外，無需承擔任何責任，而投資者負責支付與SPAC上市和完成SPAC併購交易有關的費用和開支。

Despite the benefits and protections, investors are subject to the following risks:

- (a) when first listed, SPACs are shell companies with no assets other than cash from IPOs;
- (b) SPAC Targets are not identified at the time of listing; hence, the success of SPACs and subsequent listing of Successor Companies depend entirely on the business acumen of SPAC Promoters;
- (c) Promoter Shares and Warrants are issued to SPAC Promoters at nominal value and there will be an immediate dilution effect on the investors upon listing, subject to a cap of 30% of the shares and warrants to be issued to SPAC Promoters; and
- (d) If De-SPAC Transactions are not consummated before the deadlines, SPAC Promoters do not have any responsibility nor liability apart from liquidating and delisting the SPACs and refunding all net IPO proceeds whilst the investors are responsible for the fees and charges relating to the listing of SPACs and consummation of De-SPAC Transactions.

Views of the Chamber

The Chamber supports the introduction of the new framework for the listing and trading of SPACs in the manner as detailed in the CP as the new regime will expand the market instruments that are available to investors and will provide a new fund raising platform (SPAC IPOs) complementing the traditional IPOs - the two IPO regimes are on the same level playing field offering similar protections to investors. In relation thereto, the Chamber agrees that SPACs should be offered to professional investors only and that the listing of Successor Companies must comply with the listing requirements in full so as to ensure that SPACs are not used as vehicles to list sub-standard companies or businesses by way of backdoor.

In order for retail investors to access the SPAC market, the Chamber suggests to review the regime say after 12 to 18 months after its introduction to see if retail investors are eligible to participate in this new market and what additional protections are required to enable participation by retail investors.

Given that the new regime is only open to professional investors who normally are experienced market professionals, the Chamber is of the view that:

- (a) SPAC Promoters may not be required to be licensed by SFC and may be any promoters who are familiar with SPAC market so that seasoned SPAC Promoters from overseas may participate and bring their experience and expertise to Hong Kong; for example, Bill Ackman, the superstar SPAC sponsor and

商會觀點

商會支持按照諮詢文件中詳述的方式引入SPAC上市和交易的新框架，理由如下：新制度將擴大可供投資者選擇的市場工具，並提供新的融資平台（SPAC首次公開招股）來補充傳統的首次公開招股 — 兩種首次公開招股制度處於相同的公平競爭環境，為投資者提供類似的保護。對此，商會同意SPAC應只面向專業投資者，繼承公司的上市必須完全遵守上市規定，以確保SPAC不會用作不合標準的公司或企業借殼上市的工具。

為了讓散戶投資者進入SPAC市場，商會建議在該制度推出12至18個月後進行檢討，評估散戶投資者是否有資格參與此新市場，以及散戶投資者參與所需要的額外保護措施。

鑒於新制度只對專業投資者開放，他們通常為具有經驗的市場專業人士，商會認為：

- (a) SPAC發起人無需獲證監會發牌，可以是任何熟悉SPAC市場的發起人，如此海外經驗豐富的SPAC發起人便可將其經驗和專業知識用於香港；例如，知名SPAC保薦人和發起人Bill Ackman在未獲得證監會相關牌照的情況下便不可能成為我們SPAC的發起人；及



promoter, may not be the SPAC Promoter of our SPAC in the absence of relevant SFC licences; and

(b) independent investments by PIPE Investors are not necessary given that completion of any De-SPAC Transaction is subject to listing of Successor Company and that listing of the Successor Company is subject to the Listing Rules in full including appointment of IPO sponsors, undertaking due diligence, valuation of all properties, and vetting of all IPO documents by HKEX with oversight by SFC etc.

(b) PIPE投資者的獨立投資並非必要，因為任何SPAC併購交易的完成均取決於繼承公司的上市，而繼承公司的上市必須完全遵守《上市規則》的規定，包括委任首次公開招股保薦人，進行盡職調查，對所有財產進行估值，以及在證監會監督下由港交所審查所有首次公開招股文件等。

Details of the views and opinions of the Chamber are contained in its submission to HKEX and are available to our members on its website. **M**

商會的觀點和意見詳情載於其提交給港交所的文件中，會員可在商會網站查閱。**M**

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