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# Special Purpose Acquisition Companies (SPACs): The Global Investment Mania, Corporate Practices, and Regulatory Responses

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☞ Acquisitions; Hong Kong; Initial public offerings; Investor protection; Listing; Singapore; Special purpose vehicles; United States

## Abstract

*In recent years, special purpose acquisition companies (SPACs) have quickly emerged as a popular new asset class for international investors as well as a favourable listing option for financiers and entrepreneurs across the world as an alternative to traditional IPOs. The global SPAC transaction volume reached a record high of \$157 billion in 2020. This article provides an in-depth and comprehensive analysis on the latest corporate practices and regulations of SPACs, with a primary focus on the United States where most SPACs have been initiated and listed so far. It also considers the practices and regulations in other common law jurisdictions including the United Kingdom, Hong Kong and Singapore, which have been reforming their respective listing rules to welcome more SPACs. Besides, the article explains what accounts for the current SPAC frenzy and introduces how such novel corporate vehicle operates in practice. Finally, it analyses the potential future of SPACs based on the last materials and answers if they are mere a passing fad.*

## 1. Introduction

Companies choose to go public to raise new capital and increase their prestige, which also provides a way of existing businesses for some corporate controllers.<sup>1</sup> Initial public offering (IPO) is of particular importance for companies at the growing stage that need extra funding from international capital markets. Recent years have witnessed the close integration and cooperation of major stock markets across the world, such as the stock connect schemes and cross-listing between mainland

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<sup>1</sup> Eilis Ferran and Look Chan Ho, *Principles of Corporate Finance Law*, 2nd edn (Oxford: Oxford University Press, 2014), p.351.

China and international stock exchanges in Hong Kong, New York and London.<sup>2</sup> Apart from traditional IPOs, the reverse merger provides an alternative way to gain access to stock markets and has been adopted by an increasing number of companies to get a public listing.<sup>3</sup> Through a reverse merger, the target private company will be acquired by an existing public company to bypass the lengthy and complicated regulatory requirements associated with traditional IPOs. Similarly, special purpose acquisition companies (SPACs) refer to a special corporate vehicle established by sponsors as cash shells that will raise funds through a public listing and have a plan to acquire unspecified entities in the future.<sup>4</sup> It is an innovative financing vehicle combining the functions and features of multiple corporate financing methods, such as IPOs, private equity (PE) investment funds, mergers and acquisitions (M&As), and backdoor listings. The most notable characteristic of SPACs is that when they go public, investors are unaware of the target companies that any SPACs will eventually acquire, despite possessing some basic information about the preferred industries of the future acquirees to make investment decisions. The specific target companies to be merged with is undetermined at the time of the official listing of SPACs, and after that, SPAC sponsors will conduct a series of due diligence investigations and extensive negotiations to find the right targets. When shareholders vote to pass the resolution of the final M&A plan, the SPAC will finally merge with the target companies and the new entity will continue to be (re)listed under the name of the target companies. Also, the listing code will change during the M&A process. At this stage, the SPAC will complete its mission and the M&A process is often referred to as the “de-SPAC transaction” in practice.<sup>5</sup>

Since 2020, SPAC listing has attracted a lot of media attention, as the global SPAC transaction volume reached a record number of \$157 billion in 2020.<sup>6</sup> The COVID-19 pandemic has caused devastating impacts on the world economy, but it also fuelled investors’ enthusiasm for new asset classes like SPAC. The recent boom in the SPAC market can be attributed to multiple factors, such as the changing market conditions, the tightened regulations over traditional IPOs, as well as the high demand for alternative routes to access capital markets. In addition, a group of well-known US financiers, entertainment stars and athletes have become SPAC promoters, causing the celebrity effect that further boosted market sentiment<sup>7</sup> In the past, high-tech companies, especially those unicorns that refer to unlisted tech companies with a valuation of over \$1 billion, would only consider a listing through

<sup>2</sup> Flora Huang, “Stock connect: integration, internationalisation and implementation” (2021) *Journal of Business Law* 558.

<sup>3</sup> Cecile Carpentier, Douglas Cumming, and Jean-Marc Suret, “The value of capital market regulation: IPOs versus reverse mergers” (2012) 9 *Journal of Empirical Legal Studies* 56.

<sup>4</sup> In the United States, SPACs are also commonly known as blank-check companies which do not have any underlying operating businesses nor do they have assets other than cash and limited investments derived from the proceeds of their IPOs. See The US Securities and Exchange Commission, “What You Need to Know About SPACs — Investor Bulletin” (25 May 2021), available at <https://www.sec.gov/oiea/investor-alerts-and-bulletins/what-you-need-know-about-spacs-investor-bulletin>.

<sup>5</sup> Freshfields Bruckhaus Deringer, “Special purpose acquisition companies (SPACs)”, available at <https://www.freshfields.com/en-gb/what-we-do/services/financing-and-capital-markets/special-purpose-acquisition-company-spac/>.

<sup>6</sup> Patturaja Murugaboopathy, “Global SPAC deal volumes this year surpass total for 2020” (9 March 2021), *Reuters*, available at <https://www.reuters.com/article/uk-usa-markets-spac-idUKKBN2B11WG>.

<sup>7</sup> Matt Egan, “Celebs including A-Rod and Ciara are getting into SPACs: what could go wrong?” (23 February 2021), *CNN*, available at <https://edition.cnn.com/2021/02/23/investing/spac-arod-kaepernick-celebrities/index.html>.

SPAC when their IPO applications did not pass regulatory checks.<sup>8</sup> However, SPACs have now become the first choice for certain tech firms to go public, making traditional IPOs less favourable. There is no doubt that the largest SPAC market is still in the United States (US), despite the global popularity of bank-check companies. In 2020, 248 US companies went public by merging with SPACs, which collectively raised an amount of \$82.4 billion.<sup>9</sup> The SPAC mania continued in 2021. As of September 2021, US SPACs raised \$122 billion across 419 IPO deals.<sup>10</sup> Apart from the US, the London Stock Exchange (LSE) also allows the use of SPAC for listing, as it accepted the listing applications of at least 50 SPACs over the past five years.<sup>11</sup> The number of SPAC in the United Kingdom (UK) is second only to the US, but their listing rules remain slightly different. At present, the UK is in consideration of relaxing the SPAC-related listing rules whilst enhancing investor protection, hoping to attract more tech unicorns and maintain its status as the international financial centre after Brexit.<sup>12</sup> The stock exchanges of Canada and some European countries, such as Italy and the Netherlands, also have their own SPAC models, but their market sizes are relatively small. Moreover, a number of Asian bourses have been positively welcoming the listing of SPAC. SPACs have been allowed to sell their shares publicly, as an optional listing route, in South Korea and Malaysia for several years.<sup>13</sup> More recently, the Hong Kong Stock Exchange (HKEX) has been considering the official launch of its SPAC model while strengthening the law enforcement against illegal trading activities of shell companies.<sup>14</sup> Also, in September 2021, the Singapore Exchange (SGX) has announced new rules to enable SPAC listing on its mainboard.<sup>15</sup>

Against this backdrop, this article discusses and analyses the global rise of SPACs which have been an alternative listing route for financiers and entrepreneurs, as well as a novel type of asset class for global investors. It mainly focuses on the market practices and corporate and securities laws in the US, with reference to other key jurisdictions for SPAC transactions like the UK, Hong Kong and Singapore. Clearly, the SPAC investment mania has posed great challenges to securities regulators in relation to the information asymmetry problem, misrepresentations, frauds and other investor protection concerns. This has made regulators and stock exchanges reconsider the necessary regulatory changes for refining corporate listing and trading rules so as to strike a fine balance between promoting corporate finance innovation and entrepreneurship and protecting the interest of retail investors. The article will proceed as follows. Following the

<sup>8</sup> Ningyao Ye and Lerong Lu, "How to harness a unicorn? Demystifying China's reform of Share Listing Rules and Chinese Depository Receipts" (2019) 30 *International Company and Commercial Law Review* 454.

<sup>9</sup> Tom Huddleston, "What is a SPAC? Explaining one of Wall Street's hottest trends" (30 January 2021), CNBC, available at <https://www.cnbc.com/2021/01/30/what-is-a-spac.html>.

<sup>10</sup> Statista, "SPACs — statistics & facts", available at <https://www.statista.com/topics/7380/spacs-in-the-us/>.

<sup>11</sup> *Norton Rose Fulbright*, "SPACs: The London alternative" (May 2021), available at <https://www.nortonrosefulbright.com/en-gb/knowledge/publications/94734f5e/spacs-the-london-alternative>.

<sup>12</sup> Financial Conduct Authority (FCA), "Investor protection measures for special purpose acquisition companies: Changes to the Listing Rules (PS21/10)" (July 2021), available at <https://www.fca.org.uk/publication/policy/ps21-10.pdf>.

<sup>13</sup> Freny Patel, "SPAC invaders" *Asia Business Law Journal* (2 June 2021), available at <https://law.asia/spac-invaders-asia/>.

<sup>14</sup> Hong Kong Exchanges and Clearing Limited (HKEX), "Consultation Paper: Special Purpose Acquisition Companies" (17 September 2021), available at [https://www.hkex.com.hk/News/Regulatory-Announcements/2021/210917news?sc\\_lang=en](https://www.hkex.com.hk/News/Regulatory-Announcements/2021/210917news?sc_lang=en).

<sup>15</sup> SGX, "SGX introduces SPAC listing framework" (2 September 2021), available at <https://www.sgx.com/media-centre/20210902-sgx-introduces-spac-listing-framework>.

introduction, section 2 explains what accounts for the great popularity of SPAC in the US and globally. Section 3 considers how SPAC operates in practices, including the investor protection and incentive mechanisms. Section 4 discusses the market practices of SPAC in the US and the latest regulatory responses from the US Securities and Exchange Commission (SEC). Section 5 analyses the latest developments and regulations of SPACs in common law jurisdictions including the UK, Hong Kong, and Singapore. Section 6 explores the current investment dilemma in SPACs and make a prediction of the development trend of this novel corporate finance mechanism. Finally, section 7 draws a tentative conclusion.

## 2. What accounts for SPAC's popularity in the US and globally?

An increasing number of companies have been choosing SPAC to obtain a listing over other options because SPAC has various advantages for parties involved, including sponsors, investors and the target company. Ideally, the SPAC model could result in a win-win situation. This section explains the various reasons that make SPAC an increasingly popular listing option and investment objective. For one thing, retail investors have been calling for alternative investments and new asset classes like cryptocurrencies, SPACs and green bonds. For another, many financiers and entrepreneurs have viewed SPAC listing as a viable and attractive alternative to traditional IPOs.

From the side of funding supply, retail investors have long been calling for greater accessibility to alternative investments such as private equity, private debt, hedge funds, commodities, structured products, venture capital and derivative.<sup>16</sup> During the COVID-19 pandemic, we have seen a huge amount of hot money chasing new categories of financial assets like crypto-assets and SPACs. The price of a Bitcoin was only \$0.06 in July 2010, and after a long rally, it surged to \$19,300 in December 2017.<sup>17</sup> The Bitcoin price hit a record high of \$64,000 in April 2021 as the IPO of Coinbase, a major cryptocurrency trading exchange, greatly boosted investor confidence.<sup>18</sup> Also, the implementation of quantitative easing and other positive monetary policies around the world have poured more funds into financial markets, pushing up asset prices including SPACs. Compared with other alternative investments like PE funds, SPAC investors do enjoy certain benefits. For example, there will be a time limit (typically within 18 to 24 months after the IPO) for any SPACs to complete an acquisition.<sup>19</sup> If a deal is not closed by the deadline, the initial funds will be returned to investors. Investors also benefit from the appointment of professional sponsors who will rely on their experience and

<sup>16</sup> In contrast to traditional investments like cash, stocks and bonds, alternative investments refer to non-mainstream financial assets that have lower liquidity and are less regulated by the SEC and other regulatory bodies. Alternative investments used to be limited to high-net-worth and institutional investors, but they are becoming more mainstream. They are normally riskier than traditional investments but could provide higher returns. See Lauren Landry, "What are alternative investments?", *Harvard Business School Online*, available at <https://online.hbs.edu/blog/post/what-are-alternative-investments>.

<sup>17</sup> Lerong Lu, "Bitcoin: Speculative Bubble, Financial Risk and Regulatory Response" (2018) 33 *Butterworths Journal of International Banking and Financial Law* 178.

<sup>18</sup> Barbara Kollmeyer, "Bitcoin surges to new high above \$64,000 as investors wait for Coinbase IPO" (14 April 2021), *MarketWatch*, available at <https://www.marketwatch.com/story/bitcoin-surges-to-new-high-above-64-000-as-investors-wait-for-coinbase-ipo-11618381133>.

<sup>19</sup> S. Sharma et al, "SPAC Lifecycle and considerations for Private Companies" (November 2020), *Bloomberg Law*, available at <https://www.troutman.com/images/content/2/7/272572/2020-November-Bloomberg-SPAC-Lifecycle-and-Considerations-fo.pdf>.

resources to screen high-growth business targets. Moreover, as SPACs are already publicly listed before the final merger transactions, they will only need to meet the disclosure requirements regarding backdoor listing and other procedural rules when acquiring the targets, presenting fewer market and regulatory uncertainties than PE-backed start-ups seeking an IPO. In addition, investors' money will be held in escrow, which increases the safety of the investments. The underwriting fees in the trust account will be only released to the underwriters after the successful completion of de-SPAC transactions. Even if the deal fails to materialise, most funds can be withdrawn from the trust account to redeem the public shares.<sup>20</sup> Besides, SPAC shareholders enjoy the high liquidity of their investments as they are able to liquidate their holdings when the acquisition takes place.<sup>21</sup>

Global investors choose the SPAC to park their money for two reasons. On the one hand, they value the ability and vision of SPAC sponsors, many of whom are high-profile business tycoons and will be able to select good potential investment targets to achieve stock appreciation. Thus, the experience of the management team plays a crucial role in attracting investors, which has to be disclosed in the IPO prospectus for any SPAC. On the other, investors are drawn to SPAC's low-risk exit mechanism, such as the redemption rights.<sup>22</sup> Except for the restrictions during the lock-up period, the liquidity of SPAC shares is fairly high, which is superior to the investment exit cycle of traditional M&As.<sup>23</sup>

The celebrity effect has further exacerbated the rising trend of SPAC by drawing more investors to join the game. In the US, sports and entertainment stars have been participating in the SPAC boom by either endorsing existing SPACs or launching their own SPACs, which often leads to sky-high market valuations. For instance, the baseball legend Alex Rodriguez's SPAC, Slam Corp., raised \$500 million in its IPO on Nasdaq in February 2021.<sup>24</sup> Some well-known fund managers have also become SPAC promoters and launched some "star projects", which further lifted the market sentiment. Investment banks and equity funds, including Goldman Sachs, Morgan Stanley, Blackstone and Softbank, have all participated in the initiation of SPACs.<sup>25</sup> The celebrity effect, however, has made some ordinary investors underestimate or even ignore the risky nature of SPACs which are, in fact, shell entities with no operating businesses and a simple promise to purchase some uncertain private companies in the future. CNBC's Jim Cramer warned investors about the risks of celebrity-backed SPACs, stating that "These newer SPACs increasingly feel like an inside joke for the super-rich and a way for celebrities to monetize their reputations".<sup>26</sup> The SEC's Office of Investor Education

<sup>20</sup> Sharma et al, "SPAC Lifecycle and considerations for Private Companies" (2020).

<sup>21</sup> J. Kolb and T. Tykova, "Going public via special purpose acquisition companies: Frogs do not turn into princes" (2016) 40 *Journal of Corporate Finance* 80.

<sup>22</sup> During the SPACs' shareholder meetings to approve a proposed De-SPAC transaction, SPAC shareholders will have the right of redeeming their shares and receiving a pro rata amount of the escrow fund. Shareholders will normally receive \$10 per share.

<sup>23</sup> The lock-up period is a contract provision limiting insiders who already have shares from selling them for a certain period of time after the IPO. This duration of traditional IPO typically ranges from 90 to 180 days, and the lock-up period of SPAC IPOs typically last 180 days to one year.

<sup>24</sup> Egan, "Celebs including A-Rod and Ciara are getting into SPACs: what could go wrong?" (23 February 2021), *CNN*, available at <https://edition.cnn.com/2021/02/23/investing/spac-arod-kaepernick-celebrities/index.html>.

<sup>25</sup> A. Ramkumar, "2020 SPAC boom lifted Wall Street biggest banks" (5 January 2021), *The Wall Street Journal*, available at <https://www.wsj.com/articles/2020-spac-boom-lifted-wall-streets-biggest-banks-11609842601>.

<sup>26</sup> Tyler Clifford, "Cramer says celebrity SPAC plays 'feel like an inside joke for the super-rich'" (4 February 2021), *CNBC*, available at <https://www.cnbc.com/2021/02/04/jim-cramer-issues-caution-about-celebrity-spac-plays.html>.

and Advocacy sent an investor alert on celebrity-backed SPACs, saying that “It is never a good idea to invest in a SPAC just because someone famous sponsors or invests in it or says it is a good investment”.<sup>27</sup>

From the demand side of funds, which includes SPACs, their sponsors and the target companies, they all benefit from the fast, low-cost and convenient advantages of the blank-check financing vehicles which have a relatively low listing threshold compared with companies opting for a conventional IPO. There is an increasing demand from private businesses for alternative routes to access capital markets, such as a merger with a SPAC (de-SPAC) and a direct listing of shares on a national securities exchange.<sup>28</sup> In the US, the duration from the formation of a SPAC to its IPO could be as short as eight weeks.<sup>29</sup> It means that investment bankers, lawyers and accountants spend less time in preparing the application materials for the public offering of SPACs, so the saved time allows them to make more deals which will bring in extra revenues. Thanks to the short trading history of the newly founded shell companies that do not have real assets or operating businesses, SPACs only need to disclose limited information and risk factors in their financial statements when going public. In preparation for listing registration, SPAC sponsors only have to provide some essential materials, such as the executive resumes in line with the registration templates. It does not ask for SPACs’ historical performance, asset amount and operating years. Moreover, the feedback documents from the SEC tend to be very concise, which takes a shorter time for SPAC sponsors to respond.

As for sponsors, they are willing to establish and manage SPACs mainly due to the potential financial rewards. Sponsors will have the incentive of obtaining 20% of SPAC shares at the nominal price, which can be realised within 1 year after the de-SPAC transaction. A SPAC listing is less costly than ordinary IPOs. For most IPO projects in the US, underwriters typically charge 3.5% to 7% of the money raised in a public offering, but for SPACs, the listing fee is around 5.5%, including 2% to be paid at the time of listing and 3.5% to be deposited into a trust account with the raised funds.<sup>30</sup> Compared with PE financing, SPACs benefit from the larger financing scale and wider investment attraction as they are listed on national stock exchanges. When a tender offer is made to target companies, the sponsors and third parties like private equity funds, hedge funds and other private investors will be able to purchase minority shares through private placements (Private Investment in Public Equity or PIPE) to replenish the cash of SPACs so as to fund the business combination within a short time.<sup>31</sup> This part of additional

<sup>27</sup> The US Securities and Exchange Commission, “Celebrity Involvement with SPACs — Investor Alert” (10 March 2021), available at <https://www.sec.gov/oiea/investor-alerts-and-bulletins/celebrity-involvement-spacs-investor-alert>.

<sup>28</sup> Vinson & Elkins, “Alternative Routes to Going Public: Initial Public Offering, De-SPAC or Direct Listing”, available at <https://www.velaw.com/insights/alternative-routes-to-going-public-initial-public-offering-de-spac-or-direct-listing/>.

<sup>29</sup> PwC, “How special purpose acquisition companies (SPACs) work”, available at <https://www.pwc.com/us/en/services/audit-assurance/accounting-advisory/spac-merger.html>.

<sup>30</sup> PwC, “Considering an IPO? First, understand the costs”, available at <https://www.pwc.com/us/en/services/consulting/deals/library/cost-of-an-ipo.html>.

<sup>31</sup> Allen & Overy, “The role of Private Investment in Public Equity (PIPE) in financing SPACs business combinations” (1 June 2021), available at <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/the-role-of-private-investment-in-public-equity-pipe-in-financing-spacs-business-combinations>.

shares can be used as the consideration for the acquisition, which is more favourable than an acquisition by PE funds where all cash is needed.<sup>32</sup>

An increasing number of private companies have gone for a merger with SPACs to obtain a public listing. Over the past, technology companies especially the unicorns would only consider a listing through de-SPAC if their IPO applications failed the regulatory check by securities regulators and stock exchanges.<sup>33</sup> Nonetheless, SPACs have now become the primary choice for some tech firms to float their shares due to the saving of cost and time and greater certainty of getting a successful listing compared with IPOs. Private companies that choose traditional IPOs will encounter many uncertainties, such as the unpredictability of the listing application outcome, the precise time it takes to obtain a listing, and the exact valuation of the issuer. However, listing via de-SPAC only requires the consent of two parties as long as they satisfy some basic disclosure and approval procedures. When SPACs make a tender offer to target companies, the shells already have money at their disposal and the acquirees do not need to seek approval from a large number of external investors. Thus, the SPAC listing route is less dependent on external market conditions.

As competition is intense among high-tech firms, the fintech and big-tech industries have been constantly evolving, which calls for a speedy listing option.<sup>34</sup> By choosing the SPAC listing model, they can float their shares soon after their establishment without accumulating years of performance and accounting reports to satisfy onerous financial reporting requirements under the IPO process.<sup>35</sup> The fast listing allows target companies to gain the first-mover advantage by tapping capital markets to raise funds and promote reputation, who, therefore, are more likely to become leading businesses in their respective industries. Furthermore, shareholders of the target companies will have more flexible choices regarding the proceeds from listing. When their businesses merge with SPACs, the actual controllers can ask for cash plus share swap as the payment consideration. As a result, part of the proceeds can be cashed out immediately as shareholders do not need to wait until the end of the lock-up period to liquidate their equities. SPAC parties can also stipulate a valuation adjustment mechanism in the merger agreement, which grants more space to adjust the consideration.<sup>36</sup> Finally, another advantage for the target companies of SPACs is that their existing shareholders' control might not be compromised. In contrast, PE investors often ask for preference shares and claim a lot of priority rights, which significantly weakens the founders' control over the company. Under the SPAC model, external investors will invest in the shell company rather than the actual target company, so most of them only

<sup>32</sup> Debevoise & Plimpton, "PE jumps into SPAC markets" (2017), *Private Equity Report*, available at: <https://privateequityreport.debevoise.com/-/media/per/spac.pdf>.

<sup>33</sup> Ye and Lu, "How to harness a unicorn? Demystifying China's reform of Share Listing Rules and Chinese Depositary Receipts" (2019) 30 *International Company and Commercial Law Review* 454.

<sup>34</sup> Douglas W. Arner et al., "The Evolution of FinTech: A New Post-Crisis Paradigm?" (2016) 47 *Georgetown Journal of International Law* 1271.

<sup>35</sup> Sheppard, Mullin, Richter & Hampton LLP, "SPACs 2.0: New SPAC rules changes approved by NASDAQ and NYSE AMEX and new market features make SPACs a more attractive investment vehicle in 2011" (2011) *The National Law Review*, available at: <https://www.natlawreview.com/article/spacs-20-new-spac-rules-changes-approved-nasdaq-and-nyse-amex-and-new-market-features-make-s>.

<sup>36</sup> The valuation adjustment mechanism (VAM) is also known as the bet-on agreement which is concluded between the Private Equity (PE) investor and the invested company, agreeing upon some conditions (mostly the future financial performance indicator of the invested companies) by which the investors may exercise the right to adjust the valuation when the conditions are satisfied.



hold ordinary shares and consequently, the founders' control over the target company will remain mostly untouched.

### 3. How do SPACs operate in practice?

The sponsors of SPAC are mostly investment banks, fund companies, and other professional institutions in the fields of PE and M&A. The SPAC issues public units to investors with an issuing price of \$10 per unit, containing one share of common stock and 1/2 or 1/3 of public warrants.<sup>37</sup> Ordinary shares and warrants can be listed and traded on stock exchanges separately. Sponsors promote will be issued at the start of the SPAC registration, accounting for 20% of the total publicly issued shares. It aims to compensate the management team who are not allowed to receive any commissions or bonuses until the de-SPAC transaction finishes.<sup>38</sup> Another feature of SPAC is that the raised funds will be managed by a trust account after the IPO. The funds in the trust account will be used to make short-term low-risk investments, such as purchasing short-term US Treasury Bonds, although the SEC does not impose restrictions on the use of such funds.

After the SPAC publicly floats the shares, it must complete the acquisition of target businesses within a time limit, which is usually two years. Otherwise, the SPAC would have to enter the liquidation process to return the invested funds. If a merger is completed within the allotted time, the SPAC will continue to exist as an ordinary listed company. The target company to be merged with will not be determined after the SPAC's IPO. It is because if the SPAC has a specific target of acquisition at the time of listing, the SEC will require the SPAC to further disclose relevant information of the target company, including but not limited to the target's financial situation, which will significantly slow down the entire IPO process. Accordingly, directors and executives of the SPAC often state in the prospectus that target assets have not been ascertained in the pre-IPO stage. In practice, the target corporates will have almost two to three times the market value of the shell so as to avoid the dilution of founders' share equities.<sup>39</sup>

Once the acquisition target is located, the SPAC will move to the most important phase of operation, i.e. the de-SPAC transaction, which has a process akin to that of a public company acquisition. According to the SEC's proxy rules, the SPAC, as an acquirer, has to obtain shareholders' approval once an initial business combination opportunity has been identified.<sup>40</sup> Nonetheless, there is no need for the target company to meet the SEC's requirements regarding the voting rules. After the date of signing the final agreement of de-SPAC transactions, it takes at least three to five months to complete the whole process.

We now turn to the investor protection and incentive mechanisms in a SPAC listing. Certain conflicts of interests may arise between investors and sponsors in the initiation, floating. For example, investors and sponsors sometimes have

<sup>37</sup> One warrant can be used to subscribe for one common share at a price of US\$11.5 per share in the future, the purpose of which is to provide investors with additional compensation for the investment.

<sup>38</sup> Corporate Finance Institute (CFI), "What is a Special Purpose Acquisition Company (SPAC)?", available at <https://corporatefinanceinstitute.com/resources/knowledge/strategy/special-purpose-acquisition-company-spac/>.

<sup>39</sup> D. Bernstein, "SPACs: A Guide for Management" (19 October 2020), *SEC Audits, Advisory, IPOs*, available at <https://crm.marcumbp.com/china-accounting-insights/spacs-guide-for-management>.

<sup>40</sup> R. Dinu, "De-SPAC Process—Shareholder Approval, Founder Vote Requirements, and Redemption Offer" (27 December 2019), *GigCapital*, available at <https://www.gigcapitalglobal.com/de-spac-process-shareholder-approval-founder-vote-requirements-and-redemption-offer/>.

different views over the choice of target companies, which mostly depends on the ability and experience of the sponsor team. As discussed above, there is no information of the target company to be disclosed to investors before the final de-SPAC transaction. If the target company is not found before the expiration date, founders' warrants which are subscribed by the sponsors will expire automatically. Therefore, in some cases, sponsors prefer to find a target company that will be easier to merge within the time limit, instead of searching for the best target in the investors' interest. Another conflict of interest results from the management incentive of sponsors. The sponsors' income is mainly derived from a block of shares (known as the sponsors promote), which is around 20% of the total share capital of the post-IPO equity. After the de-SPAC transaction, this part of sponsors promote will be converted to the shares of the target company which can be traded in one year's time. Once the SPAC sponsors complete the transaction, their income will be locked in. This is in stark contrast with the earning of other fund managers who are required to manage the asset portfolio for at least five years, and whether the fund managers could carry interest depends on the performance of assets under their management.<sup>41</sup> Therefore, the sponsors might be less incentivised to well manage the target company compared with average fund managers.

To reconcile the conflicting interests of sponsors and public investors, a set of incentive and interest-coordination measures have emerged in the SPAC operation. First, a trust account will be set up to deposit most of the funds raised during the IPO (which generally holds 90–100% of the total fund), and such funds can only be used for the sole purpose of completing future M&As. Prior to the completion of de-SPAC transactions, the expenditure of the SPAC's daily operation will be paid from the rest of the IPO funds directly held by the sponsors or be paid by the sponsors on an additional basis. Second, public warrants, which are included in the unit along with ordinary shares, will be distributed to public investors at the time of IPO. Besides, some SPACs will set up a crescent term to adjust the exercise price of warrants dynamically. The provision aims to adjust the warrant strike price when additional shares are issued at a price below a specified threshold in relation to a business combination. In such cases, the strike price of the warrants will be adjusted to 1.15 times one of the following two prices, whichever is higher: (a) the market value of the stock; or (b) the price of the newly issued shares.<sup>42</sup>

#### 4. SPAC market practices and regulations in the US

As stated, a SPAC listing in the US and other jurisdictions typically contains two steps: first, to build a shell company; and second, to merge with a target company. The first step refers to a formal IPO process which includes the setting of offering price, the underwriting of shares, holding the roadshows as well as finalising the registration requirements and issuing an IPO prospectus. At this stage, the regulation of the SPAC in the US is no different from that of ordinary IPOs. If there exist any issuance frauds, the legal liabilities will be the same for all issuers. However,

<sup>41</sup> ACCA Global, "What is a fund and what does a fund manager do?", available at <https://yourfuture.accaglobal.com/global/en/your-career/sectors-industries-roles/funds-manager.html>.

<sup>42</sup> Ramey Layne, Brenda Lenahan, and Sarah Morgan, "Update on Special Purpose Acquisition Companies" (17 August 2020), *Harvard Law School Forum on Corporate Governance*, available at <https://corpgov.law.harvard.edu/2020/08/17/update-on-special-purpose-acquisition-companies/>.

when the SPAC enters the second stage and prepares to complete the acquisitions, they need to fulfil the detailed requirements regarding information disclosure. First of all, there are provisions in most articles of association for the SPAC, stipulating that original shareholders need to vote to approve the acquisition plan. In a normal M&A process, if the acquirer's number of stocks included in the purchase consideration is no more than 20% of the total issued shares of the acquirer, it does not require the acquirer's shareholders to vote for approval.<sup>43</sup> In contrast, in a SPAC acquisition, approval from the majority of the acquirer's shareholders is always needed.

Prior to the vote for acquisition, the details to be disclosed to shareholders include how the acquisition decision is reached, the financing methods, and the transaction contracts of the final M&A deal. Moreover, it is essential for sponsors to present important information (in a document called Sch 14A) like the financial situation and business operation of the target company to the shareholders after the acquisition is announced.<sup>44</sup> As for the false statements, the US law has been in support of shareholders' right to sue their issuers for compensation.<sup>45</sup> It is likely to cause shareholder's class actions at this stage. Aside from Sch 14A, there will be additional information disclosure requirements for SPAC issuers. For example, the legislation asks the US-listed companies when executing major acquisitions to make the current report and issue Form 8-K.<sup>46</sup> In addition, the SEC requires the SPAC to file a special Form 8-K (which is often dubbed as "Super 8-K") containing all information equivalent to that required by a Form 10 registration statement.<sup>47</sup> Accordingly, the regulators try to ensure that the level of information disclosure in any SPAC listing is no less than that for any ordinary IPOs in New York. The entire process of SPAC listing ends with a proxy vote when shareholders decide to pass the final acquisition proposal or not. Alternatively, the shareholders of the SPAC, who are not in favour of the acquisition transaction, would have the redemption right to liquidate their shares for cash. Such protective mechanisms, to some extent, contribute to the prevention of fraud in the SPAC listings in the US.<sup>48</sup>

In response to the SPAC frenzy, the SEC has strengthened regulatory scrutiny to address issues like shareholder protection and disclosure standards, and set the SPAC as one topic in its annual regulatory agenda in 2021.<sup>49</sup> The SEC staff have been carefully examining filings and disclosures made by SPACs and their private targets in order to ensure that the public can make informed investment and voting

<sup>43</sup> Nasdaq Rule 5635; NYSE American Company Guide, Sections 711, 712, and 713.

<sup>44</sup> All the details to be disclosed will be incorporated into a document called Sch.14A. Apart from the Sch.14A, there are extra information disclosure rules during the SPAC process, such as the Form 8-K for listed companies to complete an acquisition. Also, SPAC sponsors are under an obligation to conduct extensive due diligence and to accept the SEC's review of the disclosure documents.

<sup>45</sup> *Jl Case CO v Borak*, 377 U.S. 426, 1964.

<sup>46</sup> The US Securities and Exchange Commission, "Principles for Ongoing Disclosure and Material Development Reporting by Listed Entities", available at [https://www.sec.gov/about/offices/oia/oia\\_corpfin/princludisclos.pdf](https://www.sec.gov/about/offices/oia/oia_corpfin/princludisclos.pdf).

<sup>47</sup> Ramey Layne and Brenda Lenahan, "Special Purpose Acquisition Companies: An Introduction" (6 July 2018), *Harvard Law School Forum on Corporate Governance*, available at <https://corpgov.law.harvard.edu/2018/07/06/special-purpose-acquisition-companies-an-introduction/>.

<sup>48</sup> Daniel S. Riemer, "Special purpose acquisition companies: SPAC and SPAN, or Blank Check Redux" (2007) 85 *Washington University Law Review* 931.

<sup>49</sup> The US Securities and Exchange Commission, "Press Release: SEC Announces Annual Regulatory Agenda" (11 June 2021), <https://www.sec.gov/news/press-release/2021-99>.

decisions about de-SPAC transactions.<sup>50</sup> The following paragraphs have summarised the key regulatory responses from the SEC in 2020–2021.

On 22 December 2020, the SEC’s Division of Corporation Finance issued guidance on disclosure considerations for SPACs regarding their IPOs and subsequent business combination transactions.<sup>51</sup> For example, SPAC sponsors, directors and officers, apart from working on behalf of the SPAC to identify acquisition targets, might also have other fiduciary or contractual obligations to other entities. This could lead to conflicts of interest involving entities that may compete with the SPAC for de-SPAC opportunities.

On 10 March 2021, the SEC’s Office of Investor Education and Advocacy (OIEA) cautions investors not to make investment decisions related to SPACs based solely on celebrity involvement.<sup>52</sup> The involvement of celebrities in the advertisement or sponsorship of SPACs does not indicate that SPACs are a suitable investment for any retail investors. Also, conflicts of interest might arise between SPAC sponsors and shareholders, which expose investors to extra risks that they might not be aware of.<sup>53</sup>

On 8 April 2021, Mr John Coates, the Acting Director of the SEC’s Division of Corporation Finance, made a public statement on the liability risks of SPACs and mentioned the forward-looking information included in the SPACs’ filings and disclosures.<sup>54</sup> It noted that one advantage of listing via de-SPAC over traditional IPOs is that SPAC sponsors are able to use a safe harbour under the US Private Securities Litigation Reform Act (PSLRA) to shield them from subsequent private litigation liability when SPACs manage to include forward-looking statements in their filings for a de-SPAC transaction to the SEC.<sup>55</sup>

On 12 April 2021, the SEC published a staff statement on accounting and reporting considerations for warrants issued by SPACs.<sup>56</sup> It pointed out that, based on evaluation of fact patterns of the terms of warrants issued by SPACs, they should be classified as a liability measured at fair value rather than as equity according to the US Generally Accepted Accounting Principles (“GAAP”).

On 25 May 2021, the SEC’s OIEA updated its investor bulletin to educate investors about investing in SPACs.<sup>57</sup> The bulletin provides a brief overview of important concepts when investors consider investing their money in any SPACs, both when a SPAC is in its shell company stage and when the SPAC is at the time

<sup>50</sup> John Coates, “Statement: SPACs, IPOs and Liability Risk under the Securities Laws” (8 April 2021), available at <https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws>.

<sup>51</sup> The US Securities and Exchange Commission, “Special Purpose Acquisition Companies - CF Disclosure Guidance: Topic No. 11” (22 December 2020), available at <https://www.sec.gov/corpfin/disclosure-special-purpose-acquisition-companies>.

<sup>52</sup> The US Securities and Exchange Commission, “Celebrity Involvement with SPACs — Investor Alert” (10 March 2021), available at <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-alerts/celebrity>.

<sup>53</sup> The US Securities and Exchange Commission, “Celebrity Involvement with SPACs — Investor Alert” (10 March 2021).

<sup>54</sup> Coates, “Statement: SPACs, IPOs and Liability Risk under the Securities Laws” (8 April 2021), available at <https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws>.

<sup>55</sup> Coates, “Statement: SPACs, IPOs and Liability Risk under the Securities Laws” (8 April 2021).

<sup>56</sup> The US Securities and Exchange Commission, “Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies”, 12 April 2021, by John Coates (Acting Director, Division of Corporation Finance) and Paul Munter (Acting Chief Accountant), available at <https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs>.

<sup>57</sup> The US Securities and Exchange Commission, “What You Need to Know About SPACs — Updated Investor Bulletin” (25 May 2021), available at <https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/what-you>.

of and following the initial business combination.<sup>58</sup> It is of great importance to understand how to evaluate an investment in a SPAC at different stages, including the financial interests and motivations of SPAC promoters and related parties.

On 26 May 2021, SEC Chair Gary Gensler testified before a sub-committee meeting of the US House of Representatives where he introduced five key capital market trends: IPOs and SPACs, Private Funds, Crypto Assets, Fintech, and Data Analytics.<sup>59</sup> The rapid rise of IPO numbers in the US, along with the unprecedented surge in SPACs, has placed pressure on the SEC's limited resources. The chair has raised concerns about whether retail SPAC investors are protected appropriately and if they could obtain proper and accurate information they need at both blank-check IPO and target merger stages.<sup>60</sup> The chair also noted that SPACs could be less efficient than conventional IPOs as SPAC sponsors generate significant dilution and costs.<sup>61</sup> Accordingly, the chair had asked his staff to consider what recommendations they would make to the SEC for possible rules or guidance in this area, and stated that the SEC's Corporation Finance, Examinations, and Enforcement Division would also be closely watching each SPAC stage to ensure that investors are being protected.<sup>62</sup>

On 13 July 2021, the SEC announced a charge against a US SPAC, its promoter, the de-SPAC target and their CEOs regarding the potentially misleading statements made in an investor presentation and SEC filings of the proposed de-SPAC transaction.<sup>63</sup> It led to an SEC litigation proceeding against the chief executive in the US District Court for the District of Columbia, as well as an SEC settlement agreement with all other parties, with the terms including a total penalty of over \$8 million, tailored investor protection undertakings and the forfeiture of founder's shares.<sup>64</sup> The SEC Chair commented: "This case illustrates risks inherent to SPAC transactions as those who stand to earn significant profits from a SPAC merger may conduct inadequate due diligence and mislead investors."<sup>65</sup>

On 9 September 2021, the SEC's Investor Advisory Committee voted unanimously to send non-binding recommendations that the SEC enhances the enforcement of disclosure rules for SPACs.<sup>66</sup> First, the IAC suggested the SEC to

<sup>58</sup> The US Securities and Exchange Commission, "What You Need to Know About SPACs — Updated Investor Bulletin" (25 May 2021). Investors, before the initial business combination, are suggested by the SEC to familiarize themselves with information: prospectus and reports, trust accounts, trading price, period to consummate the initial business combination, and warrants and their redemptions. Investors, at the time of the initial business combination, are advised to pay attention to information: share redemption and vote, proxy, information or tender offer statement (available at in the SEC's EDGAR database), and the interests of the sponsor.

<sup>59</sup> The US Securities and Exchange Commission, "Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee", 26 May 2021 by Chair Gary Gensler.

<sup>60</sup> The US Securities and Exchange Commission, "Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee", 26 May 2021 by Chair Gary Gensler.

<sup>61</sup> The US Securities and Exchange Commission, "Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee", 26 May 2021 by Chair Gary Gensler.

<sup>62</sup> The US Securities and Exchange Commission, "Testimony Before the Subcommittee on Financial Services and General Government, U.S. House Appropriations Committee", 26 May 2021 by Chair Gary Gensler.

<sup>63</sup> The US Securities and Exchange Commission, "SEC Charges SPAC, Sponsor, Merger Target and CEOs for Misleading Disclosures Ahead of Proposed Business Combination" (13 July 2021), available at <https://www.sec.gov/news/press-release/2021-124>.

<sup>64</sup> The US Securities and Exchange Commission, "SEC Charges SPAC, Sponsor, Merger Target and CEOs for Misleading Disclosures Ahead of Proposed Business Combination" (13 July 2021), available at <https://www.sec.gov/news/press-release/2021-124>.

<sup>65</sup> The US Securities and Exchange Commission, "SEC Charges SPAC, Sponsor, Merger Target and CEOs for Misleading Disclosures Ahead of Proposed Business Combination" (13 July 2021), available at <https://www.sec.gov/news/press-release/2021-124>.

<sup>66</sup> The US Securities and Exchange Commission, "Recommendations of the Investor as Purchaser and Investor as Owner Subcommittees of the SEC Investor Advisory Committee regarding Special Purpose Acquisition Companies

regulate SPACs more intensively by exercising enhanced focus and stricter enforcement of existing disclosure rules under the Securities Exchange Act of 1934 regarding the adequacy of disclosure around the role of the SPAC sponsor (and any insiders or affiliates such as celebrity sponsors and advisors), the economics of various participants in a SPAC process (e.g. the founders' promote and its impact on dilution), the mechanics and timeline of the SPAC process, the opportunity set and target company areas of focus, the competitive pressure and risks involved in searching appropriate targets and reaching market an acceptable price, the acceptable range of terms under which any additional funding (e.g. PIPE) might be sought at the time of acquisition, how sponsors assess the quality of target companies in terms of governance and internal control to ensure the standard of operating as a public company, and the minimum de-SPAC due diligence in accounting and audit done by the sponsor.<sup>67</sup> Second, the IAC recommends the SEC to compile and publish an analysis of the players in the various SPAC stages, their compensation, and their incentives, based on which the IAC may make follow-up actions to promote investor protection.<sup>68</sup>

## 5. SPAC market practices and regulations in the UK, Singapore and Hong Kong

The SPAC mania has swept across the world, as a number of jurisdictions in Asia and Europe have been considering changing their listing standards to welcome more SPACs. This section pays attention to SPAC practices and regulations in London, Hong Kong and Singapore, as they have been in rivalry with New York to win more IPO businesses for a long time.

In the UK, SPACs as cash shells are not qualified to list on the premium segment of the Official List in the London Stock Exchange (LSE).<sup>69</sup> Under the Financial Conduct Authority (FCA) Listing Rules, SPACs neither meet the independence and track record requirements for premium listing as commercial companies, nor do they meet the risk diversification requirements for premium listing for closed-ended investment funds. However, these eligibility requirements do not apply to a listing on the Standard segment of the Official List or the Alternative Investment Market (AIM) of the LSE. Therefore, these two markets are regarded as attractive venues for SPACs in the UK.<sup>70</sup> In 2020, seven SPACs went public on the main market or AIM, raising approximately US \$46 million in total; as of March 2021, three SPACs listed in London received \$343 million collectively.<sup>71</sup>

(Drafted 26 August 2021)", available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf>.

<sup>67</sup> The US Securities and Exchange Commission, "Recommendations of the Investor as Purchaser and Investor as Owner Subcommittees of the SEC Investor Advisory Committee regarding Special Purpose Acquisition Companies (Drafted 26 August 2021)", available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf>.

<sup>68</sup> The US Securities and Exchange Commission, "Recommendations of the Investor as Purchaser and Investor as Owner Subcommittees of the SEC Investor Advisory Committee regarding Special Purpose Acquisition Companies (Drafted 26 August 2021)", available at <https://www.sec.gov/spotlight/investor-advisory-committee-2012/draft-recommendation-of-the-iap-and-iao-subcommittees-on-spacs-082621.pdf>.

<sup>69</sup> Norton Rose Fulbright, "SPACs: The London alternative" (May 2021), available at <https://www.nortonrosefulbright.com/en-gb/knowledge/publications/94734f5e/spacs-the-london-alternative>.

<sup>70</sup> Norton Rose Fulbright, "SPACs: The London alternative" (May 2021), available at <https://www.nortonrosefulbright.com/en-gb/knowledge/publications/94734f5e/spacs-the-london-alternative>.

<sup>71</sup> S. Malhotra, "UK listing review: reforms proposed to SPAC regime" (20 May 2021), available at <https://www.pinsentmasons.com/out-law/analysis/uk-listing-review-reforms-proposed-to-spac-regime>.

In order to better compete with international stock exchanges and modernise domestic capital markets, the FCA has been consulting on proposals to change certain SPAC listing rules in the UK in April 2021, aiming to provide alternative access to the capital market for SPACs with higher levels of investor protection.<sup>72</sup> The FCA found some disproportionate barriers to the listing of SPACs in the UK in the consultation. According to the UK Listing Review led by Lord Hill (the Hill Review), one of the key deterrents for the potential UK SPAC investors lies in the current Listing Rules, presuming that the trade of SPAC shares should be suspended once an acquisition is announced.<sup>73</sup> In the UK, the acquisition with the target company will be regarded as a thorough change to the nature of the SPAC business and thus requires a re-listing process of the newly-merged entity. The process includes the cancellation of the existing listing and the FCA's approval of the re-listing prospectus. Therefore, not until the business combination is completed and the prospectus is published can the investors sell their shares or realise their investments. The basis for this presumption is that there is generally supposed to be a lack of publicly available information about the proposed transactions, so it is difficult to assess SPACs' economic situation and to inform the public investors accordingly.

In the opinion of the FCA, this has become an obvious barrier for SPAC listing in the UK, especially when it is compared with the US regulation. In the consultation, the FCA has proposed to avoid the suspension of trading in SPACs' shares when additional requirements are complied with by the SPACs. For instance, the first requirement is about the size of SPACs, in which SPACs must raise an aggregate gross proceed of no less than £200m from public shareholders in the IPO. The £200m threshold does not include funds provided by sponsors, directors or anyone promoting SPACs, which aims to increase the diversity of investment sources and provide SPACs with solid investment from the outset. On 27 July 2021, the results of the consultation were published by the FCA, setting out changes to be made on the UK Listing Rules and the revised SPAC guidance took effect on 10 August 2021.<sup>74</sup> As opposed to the £200m thresholds proposed in the original consultation, the updated changes to the Listing Rules will apply a threshold of £100m instead. Additional requirements include the approval of the acquisition from SPACs' public shareholders and granting SPAC shareholders redemption rights, among others.<sup>75</sup> If SPACs fail to meet these additional requirements, the current Listing Rules on the suspension of SPAC shares will continue to work.<sup>76</sup>

<sup>72</sup> FCA, "FCA consults on strengthening investor protections in SPACs" (30 April 2021), available at <https://www.fca.org.uk/news/press-releases/fca-consults-strengthening-investor-protections-spacs>.

<sup>73</sup> FCA Listing Rules 5.6, "Generally, when a *reverse takeover* between a *shell company* and a target is announced or leaked, there will be insufficient publicly available information about the proposed transaction and the *shell company* will be unable to assess accurately its financial position and inform the market accordingly. In this case, the *FCA* will often consider that suspension will be appropriate, as set out in LR 5.1.2G (3) and (4). However, if the *FCA* is satisfied that there is sufficient publicly available information about the proposed transaction it may agree with the *shell company* that a suspension is not required", available at <https://www.handbook.fca.org.uk/handbook/LR.pdf>.

<sup>74</sup> FCA Policy Statement PS 21/10, available at <https://www.fca.org.uk/publication/policy/ps21-10.pdf>.

<sup>75</sup> All the conditions proposed by the FCA in its consultation paper are: size, ring-fencing, time limit, board approval, shareholder approval, "fair and reasonable", redemption option, and announcement obligations. *Pinsent Masons*, "UK listing review: reforms proposed to SPAC regime" (20 May 2021), available at <https://www.pinsentmasons.com/out-law/analysis/uk-listing-review-reforms-proposed-to-spac-regime>.

<sup>76</sup> FCA, "FCA consults on strengthening investor protections in SPACs" (30 April 2021), available at <https://www.fca.org.uk/news/press-releases/fca-consults-strengthening-investor-protections-spacs>.

The FCA's intention of the revision is to introduce the US-style SPACs to the UK capital market and to strengthen the protection of domestic investors.

Apart from the US and the UK, some Asian companies and investment institutions have set their sights on joining this competition. The Singapore Exchange Ltd (SGX) and the Hong Kong Stock Exchange & Clearing Ltd (HKEX) have been reportedly working towards the acceptance of the SPAC listing one after another, which indicates a potential SPAC boom in Asia. So far, most SPACs across the world still prefer to get a listing in the US, given the favourable securities law and deep market liquidity in New York. Therefore, the US market has become quite saturated and its SPAC boom seems to result in an over-supply of shells seeking acquisitions with a limited pool of target companies. However, certain companies of high quality have the intention to go public through de-SPAC mergers in other regions, especially in Asia, where the de-SPAC combination is still much wanted. Therefore, it is high time for Asian jurisdictions to embrace SPAC listing. In South Korea and Malaysia, the only two Asian markets where SPACs could get a listing before 2021, the past performance and investors' reaction to SPACs has been mixed. In South Korea, the country's first SPAC, the "Green Korea" SPAC by Daewoo Securities which debuted in March 2010, ended up being liquidated, as investors in Korea have shown less interest in SPACs than their US peers and are reluctant to park their money in SPACs.<sup>77</sup> In 2020, there were only 19 SPAC IPOs on the Korean Stock Exchange with the average capital raised by a Korean SPAC being only 2% of that of a US-listed SPAC.<sup>78</sup> In Malaysia, there are five SPACs listed on the domestic market, two of which have successfully found acquisition targets and became fully operational listed companies, but the remaining three ended up with liquidation.<sup>79</sup> Therefore, despite the increasing popularity of SPACs, the stock exchanges and financial regulators in the Asia-Pacific region have been cautious about the listing standards and investor protection. However, given the requirement of market development and potential merger and acquisition possibilities in Asia, both Singapore and Hong Kong have shown great interest in the SPAC market.

In Singapore, after an extensive public consultation over SPACs, a new set of rules regarding SPAC listing was officially published by the Singapore Exchange (SGX) on 2 September.<sup>80</sup> Due to the importance of Singapore to international financial markets, the SGX is likely to be the first major bourse in Asia to offer SPAC listing to attract global sponsors and investors.<sup>81</sup> Earlier in 2021, the SGX issued a market consultation paper to assess the possibility of allowing SPACs to

<sup>77</sup> Anna J. Park, "Why are SPACs unpopular in Korea?" (28 March 2021), *The Korean Times*, available at [https://www.koreatimes.co.kr/www/biz/2021/04/175\\_305924.html](https://www.koreatimes.co.kr/www/biz/2021/04/175_305924.html).

<sup>78</sup> The SPAC IPOs on the Korean markets attracted 164 billion South Korean won (KRW) in total in 2020, with only 8.6 billion won raised by each. See "Why are SPACs unpopular in Korea?" (2021), *The Korean Times*, available at [https://www.koreatimes.co.kr/www/biz/2021/05/175\\_305924.html](https://www.koreatimes.co.kr/www/biz/2021/05/175_305924.html).

<sup>79</sup> The first SPAC, Hibiscus Petroleum, was launched in June 2011, followed by CLIQ Energy in April 2013, Sona Petroleum in July 2013, Reach Energy in August 2014 and Red Sena in December 2015. The two successful SPACs are Hibiscus Petroleum and Reach Energy. The Star, "Time for SPACs to return" (19 December 2020), available at <https://www.thestar.com.my/business/business-news/2020/12/19/time-for-spacs-to-return>.

<sup>80</sup> SGX, "SGX introduces SPAC listing framework" (2 September 2021), available at <https://www.sgx.com/media-centre/20210902-sgx-introduces-spac-listing-framework>.

<sup>81</sup> Raphael Lim, "SGX to allow SPAC listings from Friday, with minimum market cap of S\$150m" *The Business Times* (2 September 2021), available at <https://www.businesstimes.com.sg/companies-markets/sgx-to-allow-spac-listings-from-friday-with-minimum-market-cap-of-s150m>.



be listed in Singapore.<sup>82</sup> However, SPACs are not a new thing to the Singaporean capital market. As early as 2010, the SGX already launched a consultation regarding this issue, but at that time, the proposal was only supported by a small number of investors and companies. “If the market is supportive, we hope to be able to do that sometime this year”, said Loh Boon Chye, the Chief Executive Officer of the SGX on 17 February 2021.<sup>83</sup> In Singapore, traditional IPOs raised US\$914 million in 2020, a 73.11% drop from 2017’s US\$3.4 billion, according to *Bloomberg*.<sup>84</sup> Therefore, Singapore has the incentive to host more SPACs to boost its stock market and cement its status as a leading international financial centre.<sup>85</sup> Indeed, the lower interest rates, shorter business cycles, volatile market environment, and even the stimulus measures all have pushed up the market’s greater demand to raise capital. The Singapore SPAC model can help to reduce the risk exposure while providing an alternative investment channel. The SxG has been expecting new SPACs in various sectors to be listed in 2022. The Thai Beverage PCL intends to seek a target valued at about US\$10 billion for the unit and plans to be listed in the second quarter of 2022.<sup>86</sup>

In Hong Kong, in terms of its SPAC market development, the Securities and Futures Commission of Hong Kong (SFC) and the HKEX have jointly issued a briefing to a forum of senior financial professionals in March 2021, explaining the latest developments in the regulation of SPAC listing.<sup>87</sup> The Financial Secretary of Hong Kong, Mr Paul Chan Mo-Po, asked the aforementioned two institutions to further explore a suitable listing system to enhance the competitiveness of Hong Kong as an international financial hub while safeguarding the rights of the investing public.<sup>88</sup> As is known, Singapore and Hong Kong have always been competing to become the major financial centres in Asia. At present, in terms of the number of total funds raised for IPOs, SGX is still far behind HKEX. Hong Kong continues to strengthen its position as one of the world’s top IPO destinations as it has adopted a series of innovative measures to attract investors globally. The Hong Kong IPO market has been ranked the first in the world over 7 out of the past 12 years.<sup>89</sup> In 2020 alone, a total of HK\$398 billion was raised by companies listed in HKEX,

<sup>82</sup> SGX, “Consultation Paper on Proposed Listing Framework for SPACs”, available at <https://api2.sgx.com/sites/default/files/2021-03/Consultation%20Paper%20on%20Proposed%20Listing%20Framework%20for%20Special%20Purpose%20Acquisition%20Companies.pdf>.

<sup>83</sup> Ishika Mookerjee, “Singapore Exchange Hopes to List SPACs as Early as This Year” (18 February 2021), *Bloomberg*, available at: <https://www.bloomberg.com/news/articles/2021-02-18/singapore-exchange-hopes-to-list-spacs-as-early-as-this-year>.

<sup>84</sup> Ishika Mookerjee, “Singapore Exchange Hopes to List SPACs as Early as This Year” (18 February 2021), *Bloomberg*, available at: <https://www.bloomberg.com/news/articles/2021-02-18/singapore-exchange-hopes-to-list-spacs-as-early-as-this-year>.

<sup>85</sup> Lerong Lu and Alice Lingsheng Zhang, “Why Singapore Exchange’s Embrace of SPAC Listings Is a Game Changer” (27 September 2021), *Columbia Law School’s Blog On Corporations And The Capital Markets*, available at <https://clsbluesky.law.columbia.edu/2021/09/27/why-singapore-exchanges-embrace-of-spac-listings-is-a-game-changer/>.

<sup>86</sup> Elffie Chew, Julia Fioretti, and Vinicy Chan, “ThaiBev Nears Singapore IPO Filing for \$10 Billion Unit” (28 January 2021), *Bloomberg*, available at <https://www.bloomberg.com/news/articles/2021-01-28/thaibev-said-to-near-singapore-ipo-filing-for-10-billion-unit>.

<sup>87</sup> Enoch Yiu and Chad Bray, “What are SPACs, where are the pitfalls and why is Hong Kong mulling joining in the latest investment craze?” (2 April 2021), *South China Morning Post*, available at <https://www.scmp.com/business/banking-finance/article/3126445/what-are-spacs-where-are-pitfalls-and-why-hong-kong>.

<sup>88</sup> Enoch Yiu and Chad Bray, “What are SPACs, where are the pitfalls and why is Hong Kong mulling joining in the latest investment craze?” (2 April 2021), *South China Morning Post*, available at <https://www.scmp.com/business/banking-finance/article/3126445/what-are-spacs-where-are-pitfalls-and-why-hong-kong>.

<sup>89</sup> HKEX, “Listing with HKEX”, available at [https://www.hkex.com.hk/Join-Our-Market/IPO/Listing-with-HKEX?sc\\_lang=en](https://www.hkex.com.hk/Join-Our-Market/IPO/Listing-with-HKEX?sc_lang=en).

with a year-on-year increase of 25%.<sup>90</sup> However, the Hong Kong exchange is more cautious than its Singapore counterpart about SPAC listing. “Considering Asian exchanges’ prudent attitude and tightening reviews on shell companies, backdoor listing, reverse takeover or reverse merger, all of which are vehicles similar to SPACs that may also allow companies to circumvent IPO scrutiny and regulatory oversight, the bourses are unlikely to fully embrace SPACs anytime soon,” explained by Mr Bruce Pang who is the head of macro and strategy research at China Renaissance Securities.<sup>91</sup> Generally, HKEX is sceptical about non-IPO listings. For one thing, it already has set strict rules on backdoor listings and shell activities. For another, Hong Kong has always been renowned for high-quality listing and stable secondary trading, which all have a strong attraction for first-tier issuers (e.g. the largest and best companies in Asia and beyond, like Alibaba, Tencent, HSBC and Prada) to list there, aiming to benefit from a premium valuation that Hong Kong market brings as well as the abundant market liquidity provided by both Chinese and international investors.<sup>92</sup> These factors combined have all made the Hong Kong capital market less dependent on the new SPAC model. Finally, the operator of Hong Kong Stock Market allows SPACs to list their shares starting on 1 January 2022, joining global bourses from New York to Singapore in providing a new fundraising avenue for start-ups.<sup>93</sup> The authors believe that Hong Kong and other Asian financial hubs need to pay closer attention to the protection of the rights and interests of retail investors during and after corporate mergers. Due to the special nature of SPACs as discussed previously, investors often have limited information about the businesses carried out by listed entities, as it depends on the SPACs’ management team to fulfil the investors’ expectations. Most investors’ decision of whether to invest in the SPACs will be purely based on the past performance of the SPAC sponsors. To safeguard the investors’ funds, Asian regulators are likely to impose stricter scrutiny and supervision on SPACs, and they could learn lessons from the US where it provides investors with security guarantees through various protection mechanisms such as class litigation.

## 6. Are SPACs just a passing fad?

This section discusses the investment dilemma and sustainability of global SPAC markets. It is widely known that the investment return from SPACs is relatively high within a short period of time. That is the reason why investors around the world rush towards any newly listed SPACs to park their money. However, some studies indicated that the overall performance of SPACs has been far worse than that of average public companies in the long run. For example, the average buy-and-hold return of SPACs is -51.9%, compared with 8.5% for investments in companies in their post-IPO period, suggesting that almost half of investors’ money in SPACs would be lost finally.<sup>94</sup> It is obvious that many businesses employing

<sup>90</sup> HKEX, “Listing with HKEX”, available at [https://www.hkex.com.hk/Join-Our-Market/IPO/Listing-with-HKEX?sc\\_lang=en](https://www.hkex.com.hk/Join-Our-Market/IPO/Listing-with-HKEX?sc_lang=en).

<sup>91</sup> Rebecca Isjwara and Xiuxi Zhu, “Hong Kong, Singapore adopt divergent approaches to SPACs as deals heat up” (2 March 2021), *S&P Global*, available at <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/hong-kong-singapore-adopt-divergent-approaches-to-spacs-as-deals-heat-up-62920263>.

<sup>92</sup> HKSE, “Special Purpose Acquisition Companies Consultation Paper” (September 2021).

<sup>93</sup> HKSE, “New Listing Regime for Special Purpose Acquisition Companies” (December 2021).

<sup>94</sup> L. Dimitrova, “Perverse incentives of special purpose acquisition companies, the poor man’s private equity funds” (2017) 63 *Journal of Accounting and Economics* 99.

SPACs to go public are performing poorly in terms of capital flux and management qualification, and the average loss of half capital for investors casts a shadow on the long-term growth and sustainability of SPACs. Despite the remarkable rise of SPACs in international capital markets, they have attracted fierce criticism from investors and scholars. Mr Charles Munger, who is the vice-chairman of Berkshire Hathaway and deputy to the legendary investor Mr Warren Buffet, once described the current SPAC mania as an “irritating bubble” in an interview.<sup>95</sup> Klausner, Ohlrogge and Ruan, in their latest paper, pointed out the substantial dilution of cash holding of SPACs after their IPOs, in most cases, is likely to cause a post-merger share price fall, and thus, the SPAC’s low-cost and fast listing regime has been run at the expense of public investors in the US.<sup>96</sup>

Public investors in SPACs are exposed to extra-financial risks. SPAC investors at the IPO stage, most of whom are institutional investors, investment banks, and PE funds, have the right to buy shares at a pre-arranged price through warrants with \$11.50 for SPACs being listed at \$10, which is a free call option on whatever the outcome of SPACs. These privileged pre-IPO investors could sell or redeem their holdings and recover all of their initial capital, while still having access to SPAC investments via exercising warrants in the future. In contrast, individual retail investors who buy in the open market not only miss out on the chance of having warrants, but also could suffer potential losses as a result of other investors exercising their warrants. When early-stage shareholders execute their warrants to purchase new shares, it can cause significant dilution in the value of shares of outside investors who buy in aftermarket.<sup>97</sup> In this sense, SPACs are likely to be an ideal investment for hedge funds or Wall Street insiders who buy SPACs prior to their IPOs, but not so much for other investors who enter the market later. Furthermore, the poor aftermarket performance of SPACs can be largely attributed to a fraction of companies that have been unable to identify a suitable acquisition target after the listing of shell companies. If the acquisition task is not completed within the two-year “screening for a target” period, all funds will be returned to the investors, and sponsors will lose their promotes, and their warrants will become worthless. Unlike the managers of PE funds, SPAC sponsors do not charge management fees. All their earnings hinge on a successful acquisition, and otherwise, they would not receive any bonuses or remunerations. The two-year restriction period is set to prevent SPACs from delaying the acquisition process, which is initially promulgated as a means of investor protection. However, it might incentivise sponsors to search for less satisfactory target companies to meet the deadline, including those acquirees with poor business prospects. When the SPAC structure does not align the founder’s rewards with the capital market development, in the long run, the situation will get worse as investors are likely to bear long-term financial losses.

<sup>95</sup> Emily Graffeo, “Investing legend Charlie Munger blasts SPACs as indication of an ‘irritating bubble’ and says the ‘world would be better off’ without them” (24 February 2021), *Markets Insider*, available at <https://markets.businessinsider.com/news/stocks/charlie-munger-spac-bubble-mania-investment-stock-market-buffett-berkshire-2021-2>.

<sup>96</sup> Michael Klausner, Michael Ohlrogge and Emily Ruan, “A sober look at SPACs” (2022) 39 *Yale Journal on Regulation* 228.

<sup>97</sup> Michael Brush, “These are the hidden dangers lurking inside SPACs that can hurt you” (27 February 2021), *Market Watch*, available at <https://www.marketwatch.com/story/these-are-the-hidden-dangers-lurking-inside-spacs-that-can-hurt-you-11614267559>.

SPACs in the US are still gaining momentum as they have raised \$87.9 billion in the first three months of 2021, exceeding the total amount of \$83.4 billion SPAC share offering in 2020.<sup>98</sup> However, the number of SPAC deals did drop 90% in April 2021, when the SEC issued a public statement stating that it would supervise the disclosure of information in the SPAC process and investigate relevant accounting issues.<sup>99</sup> It has sent a message that the regulatory agencies have tightened the oversight over future SPAC deals. However, the regulators' dilemma is whilst they want to avoid the poor performance of companies using reverse-takeover to go public, they also wish to encourage more public involvement with the capital markets.<sup>100</sup> As for the target companies, the original intention of choosing SPAC to go public is to bypass onerous information disclosure rules and multiple layers of regulatory scrutiny needed for an IPO, since SPAC listings have shortened the time frame and cut the underwriting costs. Thus, the enhanced supervision is likely to make such listing method less appealing to target companies if regulators ask SPACs to follow the same set of standards as other businesses going through IPOs.

## 7. Conclusion

The SPAC listing has experienced fast growth during the COVID-19 pandemic which has caused dramatic changes in the business revenue and valuation of companies seeking an IPO. The article has analysed the operating mechanism and advantages of the SPAC in the US and globally which can provide private firms with an opportunity to enter the capital market on a fast track, compared with the lengthy, complicated, and costly process of traditional IPOs. Despite the multiple benefits of this alternative listing route, the SPAC also see other drawbacks such as the lack of investor protection and the underperformance of the long-term share price of most SPACs. Moreover, this article has considered the latest market practices of the SPAC in the US as well as the recent regulatory responses from the SEC, with reference to the market practices and regulations of the SPAC in other common law jurisdictions including the UK, Singapore and Hong Kong. Clearly, the ongoing SPAC investment mania has made global securities regulators rethink if there is a real need to promote the listing of the SPAC. If so, what regulatory changes shall be introduced to support the financing need of innovative enterprises and to protect retail investors and market transparency and integrity. However, due to the rapid changes in the investor appetites, market conditions and regulatory attitudes, whether the global popularity of the SPAC will last for a long time remains to be seen. As the international capital markets are likely to return to normal after the pandemic, we will wait until then to draw a firm conclusion about if the SPAC will become a mainstream financing method or just staying as an alternative listing option for modern corporations.

<sup>98</sup> Yun Li, "SPACs break 2020 record in just 3 months, but the red-hot industry faces challenges ahead" (19 March 2021), *CNBC*, available at: <https://www.cNBC.com/2021/03/19/spacs-break-2020-record-in-just-3-months.html>.

<sup>99</sup> The US Securities and Exchange Commission, "Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Acquisition Companies (SPACs)" (12 April 2021), available at <https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs>.

<sup>100</sup> J. Brant Arseneau, "Are space SPAC IPOs a regulator's dilemma?" (20 March 2021), *The Hill*, available at <https://thehill.com/opinion/technology/544155-are-space-spac-ipos-a-regulators-dilemma>.